

Public Document Pack

Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr

Bridgend County Borough Council



Swyddfeydd Dinesig, Stryd yr Angel, Pen-y-bont, CF31 4WB / Civic Offices, Angel Street, Bridgend, CF31 4WB

*Rydym yn croesawu gohebiaeth yn Gymraeg.
Rhowch wybod i ni os mai Cymraeg yw eich
dewis iaith.*

*We welcome correspondence in Welsh. Please
let us know if your language choice is Welsh.*



Annwyl Cyngorydd,

PWYLLGOR SAFONNAU

Cynhelir Cyfarfod Pwyllgor Safonau o bell trwy Microsoft Teams ar **Dydd Iau, 18 Chwefror 2021** am **10:00**.

AGENDA

1. Ymddiheuriadau am absenoldeb
Derbyn ymddiheuriadau am absenoldeb gan Aelodau.
2. Datganiadau o fuddiant
Derbyn datganiadau o ddiddordeb personol a rhagfarnol (os o gwbl) gan Aelodau / Swyddogion yn unol â darpariaethau'r Cod Ymddygiad Aelodau a fabwysiadwyd gan y Cyngor o 1 Medi 2008.
3. Cymeradwyaeth Cofnodion 3 - 6
I dderbyn am gymeradwyaeth y Cofnodion cyfarfod y 19/11/2020 a 21/12/2020
4. Deddf Llywodraeth Leol ac Etholiadau (Cymru) 2021 7 - 10
5. Pwyllgor Safonau - Y Broses Gwrandawriadau 11 - 22
6. Panel Dyfarnu Cymru - Canllawiau Sanctsiynau 23 - 46
7. Materion Brys
I ystyried unrhyw eitemau o fusnes y, oherwydd amgylchiadau arbennig y cadeirydd o'r farn y dylid eu hystyried yn y cyfarfod fel mater o frys yn unol â Rhan 4 (pharagraff 4) o'r Rheolau Trefn y Cyngor yn y Cyfansoddiad.
8. Gwahardd y Cyhoedd

Ffôn/Tel: 01656 643643

Negeseuon SMS/ SMS Messaging: 07581 157014

Facs/Fax: 01656 668126

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Gwefan/Website: www.bridgend.gov.uk

Cyfnwidi testun: Rhowch 18001 o flaen unrhyw un o'n rhifau ffon ar gyfer y gwasanaeth trosglwyddo testun

Text relay: Put 18001 before any of our phone numbers for the text relay service

Rydym yn croesawu gohebiaeth yn y Gymraeg. Rhowch wybod i ni os yw eich dewis iaith yw'r Gymraeg

We welcome correspondence in Welsh. Please let us know if your language choice is Welsh

Nid oedd y cofnodion sy'n ymwneud â'r eitem canlynol yn cael eu cyhoeddi, gan fod eu bod yn cynnwys gwybodaeth eithriedig fel y'i diffinnir ym Mharagraffau 12 a 14 o Ran 4 a Pharagraff 21 o Ran 5, Atodlen 12A, Deddf Llywodraeth Leol 1972, fel y'i newidiwyd gan Orchymyn Llywodraeth Leol (Cymru) 2007 (Mynediad at Wybodaeth) (Amrywio).

Os, yn dilyn cymhwyso'r prawf budd y cyhoedd yn yr Is-Bwyllgor yn penderfynu yn unol â'r Ddeddf i ystyried yr eitemau hyn yn breifat, bydd y cyhoedd yn cael eu gwahardd o'r cyfarfod yn ystod ystyriaeth o'r fath.

9. Cymeradwyaeth Cofnodion wedi'u Eithrio 47 - 52
I dderbyn am gymeradwyaeth y cofnodion eithriedig cyfarfod y 19/11/2020 a 21/12/2020

Nodyn: Sylwch: Yn sgil yr angen i gadw pellter cymdeithasol, ni fydd y cyfarfod hwn yn cael ei gynnal yn ei leoliad arferol. Yn hytrach, bydd hwn yn gyfarfod rhithwir a bydd Aelodau a Swyddogion yn mynychu o bell. Bydd y cyfarfod yn cael ei recordio i'w ddarlledu ar wefan y Cyngor cyn gynted ag sy'n ymarferol ar ôl y cyfarfod. Os oes gennych unrhyw gwestiwn am hyn, cysylltwch â cabinet_committee@bridgend.gov.uk neu ffoniwch 01656 643147 / 643148.

Yn ddiffuant

K Watson

Prif Swyddog – Gwasanaethau Cyfreithiol, Adnoddau Dynol a Rheoleiddio

Dosbarthiad:

Cynghowrwy
G Thomas

Cynghorwyr
MC Clarke

Cynghorwyr
P Davies

Aelodau Lleyg

Mrs J Kiely

Mr C Jones OBE

Mr J Baker

Mr P Clarke

Presennol

Y Cynghorydd Mr C Jones OBE – Cadeirydd

Mr P Clarke
P Davies

MC Clarke

Mrs J Kiely

Mr J Baker

Swyddogion:

Mark Galvin
Andrew Rees
Laura Griffiths
Kelly Watson

Uwch Swyddog Gwasanaethau Democrataidd - Pwyllgorau
Rheolwr Gwasanaethau Democrataidd
Prif Cyfreithiwr
Prif Swyddog – Gwasanaethau Cyfreithiol, Adnoddau Dynol a Rheoleiddio

61. DATGANIADAU O FUDDIANT

Datganodd y Cynghorydd P Davies fuddiant rhagfarnus yn Eitem 7 ar yr Agenda gan ei fod yn gydweithiwr/cyfaill i ddau o'r ymgeiswyr. Gadawodd y Cynghorydd Davies y cyfarfod tra oedd y cais hwn yn cael ei ystyried.

62. CADARNHAU COFNODION

PENDERFYNIAD:

Bod cofnodion cyfarfod y Pwyllgor Safonau dyddiedig 12 Rhagfyr 2019, yn cael eu cymeradwyo fel cofnod gwir a chywir.

63. LLYTHYR BLYNYDDOL YR OMBWDSMON 2019-2020

Cyflwynwyd adroddiad gan y Swyddog Monitro, a'i ddiben oedd cyflwyno Llythyr Blynyddol yr Ombwdsmon ar gyfer 2019-2020 i'r Pwyllgor.

Esboniodd fod Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn adrodd yn flynyddol ar nifer y cwynion yn erbyn cyrff cyhoeddus a dderbynnir gan ei swyddfa.

Swyddog Cwynion yr Awdurdod oedd Swyddog Cyswllt Ombwdsmon Gwasanaethau Cyhoeddus Cymru, a'r Swyddog Monitro oedd yn gyfrifol am gysylltu ag Ombwdsmon Gwasanaethau Cyhoeddus Cymru ynghylch cwynion Cod Ymddygiad Aelodau.

Roedd Atodiad A i'r adroddiad yn darparu Llythyr Blynyddol yr Ombwdsmon ar gyfer 2019-2020.

Cadarnhaodd y Swyddog Monitro mai 34 oedd nifer y cwynion yn erbyn yr Awdurdod ar gyfer y cyfnod 2019-2020 o'i gymharu â 33 yn 2018-19. Roedd y ffigur ar gyfer 2019-20 yn cynrychioli 0.23 o gwynion a dderbyniwyd fesul 1000 o breswylwyr, ac nid oedd yr un o'r cwynion yn erbyn yr Awdurdod yn mynd rhagddynt i ymchwiliad. Ymyrrodd Ombwdsmon Gwasanaethau Cyhoeddus Cymru mewn 1 o'r achosion hyn yn unig.

Y Gwasanaethau i Blant a ddenodd y nifer fwyaf o gwynion gyda 15 cwyn, ac yna'r Gwasanaethau i Oedolion gyda 4. Yn ôl ei natur, mae'r Gwasanaethau i Blant yn denu nifer uwch o gwynion na meysydd gwasanaeth eraill, ac roedd nifer o'r cwynion a dderbyniwyd yn ymwneud â'r penderfyniadau a wnaed gan y Gwasanaethau

Cymdeithasol Plant o dan ddeddfwriaeth diogelu, a oedd yn faes gwasanaeth cyfnewidiol.

Ychwanegodd y Swyddog Monitro fod 7 cwyn yn ymwneud â'r Côt Ymddygiad yn erbyn Cynghorwyr yr Awdurdod wedi dod i law Swyddfa'r Ombwdsmon yn ystod y cyfnod hwn a bod pob un wedi'u cau ar ôl yr ystyriaeth gychwynol. Derbyniwyd 3 chwyn yn ymwneud â'r Côt Ymddygiad yn erbyn Cynghorau Tref a Chymuned ym Mhen-y-bont ar Ogwr, ac nid oedd angen cymryd camau pellach ar 2 ohonynt, gyda'r llall yn cael ei gau ar ôl yr ystyriaeth gychwynol.

Nododd y Cadeirydd fod nifer y cwynion a wnaed ym Mhen-y-bont ar Ogwr yn ymddangos yn isel a braf oedd nodi hyn.

PENDERFYNWYD:

Bod y Pwyllgor wedi nodi Llythyr Blynyddol yr Ombwdsmon sydd ynghlwm yn Atodiad A i'r adroddiad.

64. EITEMAU BRYD

Dim.

65. GWAHARDD Y CYHOEDD

PENDERFYNWYD:

O dan Adran 100A (4) o Ddeddf Llywodraeth Leol 1972 fel y'i diwygiwyd gan Orchymyn Llywodraeth Leol (Mynediad at Wybodaeth) (Amrywio) (Cymru) 2007, fod y cyhoedd yn cael eu heithrio o'r cyfarfod wrth ystyried yr eitemau busnes canlynol gan eu bod yn cynnwys gwybodaeth eithriedig fel y'i diffinnir ym Mharagraff 12 o Ran 4 a Pharagraff 21 o Ran 5 o Atodlen 12A i'r Ddeddf.

Ar ôl cymhwyso'r prawf budd y cyhoedd, penderfynwyd, yn unol â'r Ddeddf y cyfeirir ati uchod, ystyried yr eitemau canlynol yn breifat, gyda'r cyhoedd wedi'u heithrio o'r cyfarfod, gan yr ystyriwyd bod budd y cyhoedd o ran cynnal yr esemptiad ym mhob amgylchiad yn drech na budd y cyhoedd wrth ddatgelu'r wybodaeth, oherwydd bod y wybodaeth yn y ddau adroddiad o natur bersonol a/neu gyfrinachol ac y byddai'n niweidiol i'r personau a restrir yn yr eitemau hyn, pe bai'r wybodaeth a grybwyllir felly yn ymwneud â hwy yn cael ei datgelu.

66. RHESTR FER O YMGEISWYR AR GYFER Y SWYDD CYNGHORYDD TREF A CHYMUNED AR Y PWYLLGOR SAFONNAU.

67. ATGYFEIRIO YMCHWILIAD GAN YR OMBWDSMON O DAN ADRAN 69 O DDEDDF LLYWODRAETH LEOL 2000

Daeth y cyfarfod i ben am 10:50

Presennol

Y Cyngorydd Mr C Jones OBE – Cadeirydd

Mr P Clarke
P Davies

MC Clarke

Mrs J Kiely

Mr J Baker

Swyddogion:

Andrew Rees

Kelly Watson

Michael Pitman

Rheolwr Gwasanaethau Democrataidd

Prif Swyddog – Gwasanaethau Cyfreithiol, Adnoddau Dynol a Rheoleiddio

Swyddog Gwasanaethau Democrataidd – Pwyllgorau

69. DATGANIADAU O FUDDIANT

Cyhoeddodd y Cyngorydd P Davies fuddiant niweidiol yn eitem 5 ar yr agenda - Y Broses ar gyfer Cyfweld Ymgeiswyr ar y Rhestr Fer ar gyfer Cynrychiolydd Cyngorydd Tref a Chymuned Ar y Pwyllgor Safonau gan ei fod yn ffrind ac yn gydweithiwr i rai o'r ymgeiswyr. Tynnodd y Cyngorydd Davies yn ôl o'r rhan honno o'r cyfarfod.

70. EITEMAU BRYD

Dim

71. GWAHARDD Y CYHOEDD

PENDERFYNWYD: Ni fydd yr adroddiadau/cofnodion yn ymwneud â'r eitemau a ganlyn yn cael eu cyhoeddi gan eu bod yn cynnwys gwybodaeth sydd wedi'u heithrio, fel y'i diffinnir ym Mharagraff 12, Rhan 4 a/neu Baragraff 21, Rhan 5 o Atodlen 12A i Ddeddf Llywodraeth Leol 1972 fel y'i diwygiwyd gan Orchymyn Llywodraeth Leol (Mynediad at Wybodaeth)(Amrywio)(Cymru) 2007.

Os bydd y Pwyllgor, ar ôl cymhwyso'r prawf budd cyhoeddus, yn penderfynu trafod yr eitemau hyn mewn sesiwn breifat, bydd y cyhoedd yn cael eu gwahardd o'r cyfarfod yn ystod y trafodaethau hyn.

72. Y BROSES AR GYFER CYFWELIAD YMGEISWYR AR Y RHESTR FER AR GYFER
CYNRYCHIOLYDD CYNGHORYDD TREF A CHYMUNED AR Y PWYLLGOR
SAFONAU

Daeth y cyfarfod i ben am 15:17

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BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO STANDARDS COMMITTEE

18 FEBRUARY 2021

REPORT OF THE MONITORING OFFICER

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

1. Purpose of report

- 1.1 To provide the Committee with an overview of the Local Government and Elections (Wales) Act 2021 in so far as it directly impacts on the functions of the Committee.

2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-
1. **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
 2. **Smarter use of resources** – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.
- 2.1 Standards are an implicit requirement to the successful achievement of the Council's corporate priorities.

3. Background

- 3.1 The Local Government and Elections (Wales) Bill was passed by the Senedd on 18th November 2020 and received Royal Assent on 20th January 2021. It is a substantial piece of legislation covering electoral reform, public participation, governance and performance and regional working.
- 3.2 The new approach, as set out in the Act, is designed to be a more streamlined, flexible, sector-led approach to performance, good governance and improvement. The intention is for councils to be proactive in considering how internal processes and procedures should change to enable more effective planning, delivery and decision making in order to drive better outcomes.
- 3.3 In summary the Act introduces:

Reforming Electoral Arrangements for local government

- Extending the voting franchise to 16 and 17 year olds and foreign citizens legally resident in Wales;
- Enabling councils to choose between 'first past the post' or the 'single transferable vote' voting systems;
- Change of electoral cycle for principal councils from four years to five years;
- Allowing non-politically restricted council staff to stand for election in their own authority (but who should resign if elected);
- Removal of Returning Officers' Fees for local elections.

General Power of Competence

- There was wide spread support for a general power of competence. This is now included in the Act.

Reforming public participation in local government

- Duty to encourage local people to participate in local government (and to produce a strategy to that effect);
- Duty to make petition scheme (and repeal of community polls);
- Duty to broadcast certain council meetings;
- Flexibility around remote attendance of Members.

Reforms around democratic governance and leadership

- Appointment of Chief Executives (rather than Head of Paid Service) with specific duties;
- Appointment of assistants to Cabinets and allowing job-sharing Leaders or Cabinet Members;
- Updating family absence provisions in line with those available to employees;
- Requiring Leaders of political groups to promote and maintain high standards of conduct by Members of their groups.

Reform of the performance and governance regime

- Repeal of the 2009 Measure duties, replacing audit and reporting duties with self-assessment and panel assessment (peer review);
- Reforms to Audit Committees, renaming as Governance and Audit Committees and prescribing membership and chair.

Collaborative Working

- Powers for councils to initiate the establishment of Corporate Joint Committees (CJCs) covering any functions
- Powers for Ministers to establish CJCs covering the four functions of economic development, transport, strategic planning and school improvement.

Voluntary Mergers of principal councils

- Compulsory mergers are no longer Government policy;
- Powers to facilitate voluntary mergers of principal councils and restructuring a principal area.

4. Current situation / proposal

- 4.1 The 'Coming into Force' provisions of the Act are complex with some provisions coming into force within days of Royal Assent (20th January 2021), others within months, and the majority via Ministerial Statutory Instrument. Welsh Government will be developing a clear outline timetable for implementation for local authorities.
- 4.2 Sections 62-64 of Part 4 of the Act refer specifically to areas that will directly impact on the work of the Standards Committee as follows:
- 4.2.1 Duties of leaders of political groups in relation to standards of conduct – take reasonable steps to promote and maintain high standards of conduct by the members of the group, and must co-operate with the Committee in the exercise of the Committee's functions. Monitoring compliance by leaders with their duties under this section, and advising, training or arranging to train leaders about matters relating to those duties.
- 4.2.2 Duty of standards committee to make annual report – describe how the Committee's functions have been discharged during the financial year.
- 4.2.3 Certain investigations by the Public Services Ombudsman for Wales – Schedule 8 of the Bill makes amendments to the Local Government Act 2000 and other Acts, about investigations by the Ombudsman concerning failures to comply with a code of conduct.
- 4.3 The Committee will be provided with further updates on the transition of the Act as appropriate.
- 5. Effect upon policy framework & procedure rules**
- 5.1 None directly applicable to this report.
- 6. Equality Impact Assessment**
- 6.1 There are no equality implications arising from this report.
- 7. Wellbeing of Future Generations (Wales) Act 2015 implications**
- 7.1 The well-being goals identified in the Act were considered in the preparation of this report. As the report is for information only it is considered that there will be no significant or unacceptable impacts upon the achievement of well-being goals/objectives as a result of this report. Elements of the Act will however have a positive impact on the five ways of working under the Wellbeing of Future Generations (Wales) Act 2015.
- 8. Financial implications**
- 8.1 None directly applicable to this report but individual elements of the legislation will have future cost implications.
- 9. Recommendations**
- 9.1 The Committee is recommended to note the report.

**Kelly Watson,
Monitoring Officer.
February 2021**

Contact Officer: Laura Griffiths, Group Manager Legal and Democratic Services

Telephone: 01656 643135

E-mail: laura.griffiths@bridgend.gov.uk

Postal Address Civic Centre, Angel Street, Bridgend, CF31 4WB

Background documents: None

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO STANDARDS COMMITTEE

18 FEBRUARY 2021

REPORT OF THE MONITORING OFFICER

STANDARDS COMMITTEE – HEARINGS PROCESS

1. Purpose of report

- 1.1 The purpose of this report is to note the adopted procedure to determine Code of Conduct complaints which are referred to the Committee to ensure that matters are dealt with fairly and efficiently.

2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objective under the **Well-being of Future Generations (Wales) Act 2015:-**

Smarter use of resources – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.

3. Background

- 3.1 Under the Local Government Act 2000 all allegations and breaches of the Code of Conduct are submitted to the Public Services Ombudsman for Wales for investigation in the first instance.
- 3.2 The Ombudsman may determine a matter be referred to the Authority's Monitoring Officer for investigation or may as in this case undertake the investigation and refer the matter to the Monitoring Officer for consideration by the Standards Committee.
- 3.3 The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001, as amended, set out the functions of the Monitoring Officer and the Standards Committee in relation to investigations and determinations.

4. Current situation / proposal

- 4.1 Attached as **Appendix 1** is the adopted procedure that the Committee will follow where it is required to make decisions about the conduct of Councillors following investigations by the Public Services Ombudsman for Wales or the Council's Monitoring officer. If there is any conflict between this document and any statutory requirements then those statutory requirements will prevail.
- 4.2 All Elected Members receive training on the Code of Conduct as part of their induction training. Refresher training was recently arranged for Elected Members and Committee Members in January 2021.

5. Effect upon policy framework & procedure rules

5.1 There is no effect upon the Policy Framework. The Procedure for the Investigation of Complaints is supplementary to the Procedural Rules applicable to the Standards Committee.

6. Equality Impact Assessment

6.1 The report does not give rise to concerns on equality grounds and does not impact sections of society differentially.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The well-being goals identified in the Act were considered in the preparation of this report. It is considered that there will be no significant or unacceptable impacts upon the achievement of well-being goals/objectives as a result of this report.

7.2 Compliance with the Code of Conduct by members ensures the Council maintains a high standard of behaviour and conduct and thereby encouraging and promoting democracy throughout society thereby contributing to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:

- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

8. Financial Implications

8.1 None.

9. Recommendation

9.1 It is recommended that Members note the adopted procedure to be applied to hearings before the Committee attached as **Appendix 1**.

Kelly Watson

Chief Officer – Legal, HR and Regulatory Services and Monitoring Officer

Contact Officer: Kelly Watson,
Chief Officer – Legal, HR and Regulatory Services and Monitoring Officer

Telephone: 01656 643106

E-mail: Kelly.watson@bridgend.gov.uk

Postal Address: Civic Centre, Angel Street,
Bridgend, CF31 4WB

Background documents: None

PROCEDURE FOR DEALING WITH ALLEGATIONS MADE AGAINST COUNCILLORS AND REFERRED TO THE STANDARDS COMMITTEE

Introduction

1. This document sets out the procedure that the Council's Standards Committee will follow where it is required to make decisions about the conduct of Councillors following investigations by the Public Services Ombudsman for Wales or the Council's Monitoring Officer under Part III of the Local Government Act 2000 and related regulations. If there is any conflict between this document and any statutory requirements then those statutory requirements will prevail.

Interpretation

2. In this procedure:
 - (a) 'the Act' means the Local Government Act 2000
 - (b) 'the Council' means Bridgend County Borough Council
 - (c) 'the Code of Conduct' means the code of conduct for members adopted by the Council or the community councils within the Council's area in 2008 in accordance with Section 51 of the Act, including any revisions
 - (d) 'the Complainant' means any person who made any allegation which gave rise to the investigation
 - (e) the 'Investigating Officer' means the person who conducted an investigation into any alleged breach of the Code of Conduct and produced the investigation report, being either the Ombudsman (or a person acting on his or her behalf) or the Monitoring Officer
 - (f) an 'investigation report' means a report on the outcome of an investigation into any alleged breach of the Code of Conduct produced either by the Ombudsman under s71(2) of the Act or by the Monitoring Officer under the Regulations.
 - (g) 'the Member' means any person who is the subject of an investigation into any alleged breach of the Code of Conduct
 - (h) 'the Monitoring Officer' means the officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989
 - (i) 'the Ombudsman' means the Public Services Ombudsman for Wales
 - (j) 'the Regulations' means the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 as amended

- (k) 'the Standards Officer' means the officer for the time being appointed by the Council to support the work of the Standards Committee

Summary of the procedure

3. Under section 69 of the Act, the Ombudsman may investigate any alleged breach of the Code of Conduct by members or co-opted members (or former members or co-opted members) of the Council or a community council in the Council's area.
4. Under section 70(4) of the Act, where the Ombudsman ceases such an investigation before it is completed, he or she may refer the matters which are the subject of the investigation to the Monitoring Officer. The Monitoring Officer will then investigate matters in accordance with the Regulations before reporting and, if appropriate, making recommendations to the Standards Committee.
5. Alternatively, under section 71(2) of the Act, where the Ombudsman decides after investigating that it is appropriate, he or she will produce a report on the outcome of the investigation and send it to the Monitoring Officer and the Council's Standards Committee. The Monitoring Officer will then consider the report of the Ombudsman in accordance with the Regulations, before, if appropriate, making recommendations to the Standards Committee.
6. The Standards Committee will then make an initial determination either:
 - (a) that there is no evidence of any failure to comply with the Code of Conduct, or
 - (b) that the Member should be given the opportunity to make representations, either orally or in writing
7. Where the Member is given an opportunity to make representations, the Standards Committee will convene a hearing to consider any response made by the Member and it must determine under regulation 9(1) of the Regulations either that:
 - (a) there is no evidence of any failure to comply with the Code of Conduct and that therefore no action needs to be taken,
 - (b) the Member has failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure
 - (c) the Member has failed to comply with the Code of Conduct and should be censured, or
 - (d) the Member has failed to comply with the Code of Conduct and should be suspended or partially suspended from being a member or co-opted member of his/her authority for a period not exceeding six months.

and take any such action accordingly.

Investigations by the Monitoring Officer (referrals under section 70(4) of the Act)

8. Where the Ombudsman ceases his or her investigation before it is completed and refers the matters which are the subject of the investigation to the Monitoring Officer under section 70(4) of the Act, the Monitoring Officer must:-
 - (a) conduct an investigation; and

- (b) report, and if appropriate make recommendations to the Council's Standards Committee
- 9. The Monitoring Officer will investigate in accordance with the Regulations and may follow such procedures as he or she considers appropriate in the circumstances of the case.
- 10. After concluding an investigation, the Monitoring Officer must:
 - (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee,
 - (b) send a copy of the report to the Member, and
 - (c) take reasonable steps to send a copy of the report to the Complainant.
- 11. The Standards Committee will consider the Monitoring Officer's report and any recommendations in accordance with the procedure set out below.

Investigations by the Ombudsman (referrals under section 71(2) of the Act)

- 12. Where the Ombudsman completes his or her investigation and sends a report to the Monitoring Officer and the Council's Standards Committee under section 71(2) of the Act, the Monitoring Officer must consider the Ombudsman's report and, if appropriate, make recommendations to the Council's Standards Committee.
- 13. The Standards Committee will consider the Ombudsman's report together with any recommendations made by the Monitoring Officer in accordance with the procedure set out below.

The first meeting of the Standards Committee – Initial Determination

- 14. After the Monitoring Officer has:
 - (a) produced an investigation report in accordance with paragraph 10; or
 - (b) considered the Ombudsman's investigation report in accordance with paragraph 12

s/he will arrange for a meeting of the Standards Committee to be convened as soon as possible and for a copy of the investigation report, together with the Monitoring Officer's recommendations (if any), to be sent to each of the members of the Standards Committee.
- 15. Notice of the time and place of the meeting will be given in accordance with Part VA of the Local Government Act 1972 as amended by the Standards Committees (Wales) Regulations 2001.
- 16. If the investigation report is produced by the Ombudsman, the Monitoring Officer will advise the Standards Committee. If the investigation report is produced by the Monitoring Officer, the Standards Officer or some other suitably qualified person will advise the Standards Committee.

17. The business of the Standards Committee meeting will be limited to considering the investigation report and the Monitoring Officer's recommendations (if any) and to making an initial determination either:-
- (a) that there is no evidence of any failure to comply with the Code of Conduct, or
 - (b) that the Member should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the Code of Conduct.

After the first meeting of the Standards Committee

18. Where the Standards Committee decides that there is no evidence of any failure to comply with the Code of Conduct, the Standards Officer will accordingly notify the Member, the Complainant and the Ombudsman.
19. Where the Standards Committee decides that the Member should be given the opportunity to make representations, the Standards Officer will notify the Member of the Committee's decision and the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

Preparing for the hearing to consider the Member's representations

20. The Standards Officer, in consultation with the Chair of the Standards Committee, will write to the Member to propose a date for a hearing to consider any representations that the Member may wish to make and to ask the Member to respond in writing within 14 days to confirm whether s/he:
- (a) is able to attend the hearing
 - (b) wants to make representations, whether orally or in writing and if so, to include any written representations in his or her response
 - (c) disagrees with any of the findings of fact in the investigation report, and if so, which matters he or she disagrees with and the reasons for any disagreements;
 - (d) wants to appear before the Committee in person or be represented at the hearing by a solicitor, barrister or any other person, in accordance with his/her right under the Regulations
 - (e) wants to give evidence to the Standards Committee, either orally or in writing;
 - (f) wants to call relevant witnesses to give evidence to the Standards Committee;
 - (g) wants any part of the meeting to be held in private;
 - (h) wants any part of the investigation report or other relevant documents to be withheld from the public

21. The Standards Officer will notify the Investigating Officer of the proposed hearing date and ask whether he or she will be attending the hearing.
22. The Standards Officer will send a copy of the Member's response under paragraph 20 to the Investigating Officer and will ask him/her to confirm in writing within 7 days whether s/he:
 - (a) has any comments on the Member's response
 - (b) wants to be represented at the hearing;
 - (c) wants to call relevant witnesses to give evidence to the Standards Committee;
 - (d) wants any part of the meeting to be held in private; and
 - (e) wants any part of the investigation report or other relevant documents to be withheld from the public.
23. The Standards Officer will write to the members of the Committee, the Member and the Investigating Officer at least two weeks before the hearing to:
 - (a) confirm the date, time and place for the hearing;
 - (b) summarise the allegation;
 - (c) outline the main facts of the case that are agreed;
 - (d) outline the main facts which are not agreed;
 - (e) note whether the Member or the Investigating Officer will attend or be represented at the hearing;
 - (f) list those witnesses, if any, who will be asked to give evidence;
 - (g) enclose the investigation report, any relevant documents, the Member's response and any further response from the Investigating Officer; and
 - (h) outline the proposed procedure for the meeting.

Powers of the Standards Committee

24. The Standards Committee may, in accordance with the requirements of natural justice, conduct the meeting in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings. It must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings. The Standards Committee will decide factual evidence on the balance of probabilities.
25. The Member or the Investigating Officer may be represented or accompanied whether or not legally qualified but if in any particular case the Standards

Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.

26. The Standards Committee may take legal advice from a Council officer appointed for this purpose at any time during the meeting or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the Member and the Investigating Officer if they are present.
27. Where appropriate, and in accordance with the Regulations, the Standards Committee has power to censure the Member, or suspend or partially suspend the Member for a period not exceeding 6 months.

Procedure at the hearing

28. The hearing will be held in public unless the Standards Committee is persuaded that there is a good reason to exclude the public.
29. The procedure at the meeting shall be as set out below, subject to the Chair making such changes as he or she thinks fit in order to ensure a fair and efficient hearing.

Introduction

30. The Chair of the Standards Committee will introduce those persons present and will explain the manner and order of proceedings

First stage: Preliminary procedural issues

31. The Standards Committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Second stage: Making findings of fact

32. The Standards Committee will then consider whether or not there are any significant disagreements about the facts contained in the investigation report.
33. If there is a disagreement as to the facts:-
 - (a) the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the investigation report.
 - (b) the Investigating Officer may call any necessary supporting witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
 - (c) the Member will then be invited to make representations to support his or her version of the facts.

- (d) the Member may call any necessary witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.
34. At any time, the Standards Committee may question any of the people involved or any of the witnesses.
 35. If the Member disagrees with any relevant fact in the investigation report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
 - (a) continue with the hearing, relying on the information in the investigation report
 - (b) allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
 36. At the conclusion of the representations as to matters of fact, the Standards Committee will retire to deliberate in private on the representations, after which the Chair of the Standards Committee will announce their findings of fact.

Third stage: Deciding whether the Member has failed to comply with the Code

37. The Standards Committee will then consider whether, based on the facts it has found, the Member has failed to comply with the Code.
38. The Standards Committee will invite the Investigating Officer to make representations as to whether or not, based on the facts the Committee has found, the Member has failed to comply with the Code of Conduct.
39. The Standards Committee will invite the Member to respond to the representations of the Investigating Officer and to make representations as to whether or not, based on the facts the Committee has found, he or she has failed to comply with the Code of Conduct.
40. The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.
41. The Member will be invited to make any final relevant points.
42. The Standards Committee will retire to deliberate in private on the representations and decide whether or not the Member has failed to comply with the Code of Conduct, after which the Chair of the Standards Committee will announce their findings.

Fourth stage: Action to be taken

43. If the Standards Committee decides that the Member has not failed to comply with the Code of Conduct, it will formally record that there is no evidence of any failure by the Member to comply with the Code of Conduct and that therefore no action needs to be taken.
44. If the Standards Committee decides that the Member has failed to comply with the Code of Conduct it will invite the Member and the Investigating Officer to make representations as to:
 - (a) whether or not the Committee should apply a sanction; and
 - (b) what form any sanction should take.
45. The Standards Committee will retire to deliberate in private on the representations and decide either that:
 - (a) no action needs to be taken in respect of the failure to comply with the Code of Conduct,
 - (b) the Member should be censured or
 - (c) the Member should be suspended or partially suspended from being a member or co-opted member of his or her authority for a period not exceeding six months [or, if shorter, for the remainder of that member's term of office],after which the Chair of the Standards Committee will announce their decision.
46. After making a decision the Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision (including details of the Member's right of appeal) to the Member, the Complainant and the Ombudsman as soon as reasonably practicable.

Failure to make representations / attend the hearing

47. If the Member fails to make representations, the Standards Committee may:
 - (a) unless it is satisfied that there is sufficient reason for such failure, consider the investigation report and make a determination in the Member's absence; or
 - (b) give the Member a further opportunity to make representations
48. If a party fails to be present or represented at a hearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence -
 - (a) hear and decide the matter in the party's absence; or
 - (b) adjourn the hearing.

Illness or incapacity

49. If the Standards Committee is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter.

Suspension

50. A period of suspension or partial suspension will commence on the day after:
- (a) the expiry of the time allowed to lodge a notice of appeal to an appeals tribunal under the Regulations (i.e. within 21 days of receiving notification of the Standards Committee's determination);
 - (b) receipt of notification of the conclusion of any appeal in accordance with the Regulations;
 - (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under the Regulations,
- whichever occurs last.

Referral by an Appeals Tribunal

51. Where the Standards Committee determines that the Member has failed to comply with the Code of Conduct, the Member may appeal against the determination to an appeals tribunal drawn from the Adjudication Panel for Wales.
52. An appeals tribunal may endorse the decision of the Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the decision.
53. If:
- (a) the Standards Committee determines that the Member failed to comply with the Code of Conduct;
 - (b) the Member appeals to an appeals tribunal drawn from the Adjudication Panel for Wales; and
 - (c) the said tribunal refers the matter back to the Standards Committee with a recommendation that a different penalty be imposed,
- the Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the appeals tribunal and will determine whether or not it should uphold its original determination or accept the recommendation.
54. After making its determination the Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision to the Member, the Complainant, the Ombudsman and the president of the Adjudication Panel for Wales as soon as reasonably practicable.

Publication of the Standards Committee's report

55. The Standards Committee will cause to be produced within 14 days after:

- (a) the expiry of the time allowed to lodge a notice of appeal under the Regulations, or
- (b) receipt of notification of the conclusion of any appeal in accordance with the Regulations, or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under the Regulations,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Ombudsman, the Monitoring Officer, the Member and take reasonable steps to send a copy to the Complainant.

56. Upon receipt of the report of the Standards Committee, the Monitoring Officer shall:

- (a) for a period of 21 days publish the report on the Council's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
- (b) supply a copy of the report to any person on request if he or she pays such charge as the Council may reasonably require, and
- (c) not later than 7 days after the report is received from the Standards Committee, give public notice, by advertisement in newspapers circulating in the area and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

Costs

57. The Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO STANDARDS COMMITTEE

18 FEBRUARY 2021

REPORT OF THE MONITORING OFFICER

ADJUDICATION PANEL FOR WALES – SANCTION GUIDANCE

1. Purpose of report

- 1.1 To apprise Members of the Sanction Guidance received from the Adjudication Panel for Wales (APW) which has recently been revised and modernised.

2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objective under the **Well-being of Future Generations (Wales) Act 2015**:-

Smarter use of resources – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.

3. Background

- 3.1 Following a recent consultation to improve and modernise its Sanctions Guidance, a new Sanctions Guidance has been published by the APW. The primary purpose of the Guidance is to assist the APW's case tribunals, when considering the appropriate sanction to impose where a Councillor has been found to have breached the Code of Conduct.
- 3.2 It also seeks to fulfil the wider role of supporting all those, including local Standards Committees, in maintaining, promoting and adjudicating on the Code. The Guidance is a living document that will be updated and revised as the need arises, following consultation.

4. Current situation / proposal

- 4.1 The APW have issued the Guidance pursuant to its powers under Section 75(10) of the Local Government Act 2000. The Sanctions Guidance is attached for Members' information at **Appendix 1** to this report.
- 4.2 The Guidance describes: 1. The ethical framework for conduct of County and Town and Community Councillors; 2. The role of the APW; and 3. The approach of the APW's tribunals to sanctions, following a finding that the Code has been breached.

5. Effect upon policy framework & procedure rules

- 5.1 There is no effect upon policy framework and procedure rules.

6. Equality Impact Assessment

6.1 There are no equality implications arising from the report.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The well-being goals identified in the Act were considered in the preparation of this report. It is considered that there will be no significant or unacceptable impacts upon the achievement of well-being goals/objectives as a result of this report.

7.2 Compliance with the Code of Conduct by members ensures the Council maintains a high standard of behaviour and conduct and thereby encouraging and promoting democracy throughout society thereby contributing to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:

- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

8. Financial Implications

8.1 There are no financial implications, the report is for information only.

9. Recommendation

9.1 The Committee is asked to note the Sanctions Guidance issued by the APW attached as Appendix 1.

Kelly Watson

Chief Officer – Legal, HR and Regulatory Services and Monitoring Officer

February 2021

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Background documents: None

Sanctions Guidance

Issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000.

Foreword by the President

I am pleased to introduce our new *Sanctions Guidance* which sets out the approach to be taken by case, appeal and interim case tribunals of the Adjudication Panel for Wales in order to reach fair, proportionate and consistent decisions on the sanctions that should be applied in relation to an individual's breach of the local Code of Conduct.

The Guidance has been developed by members of the Adjudication Panel for Wales in consultation with the Public Services Ombudsman for Wales, Monitoring Officers and other interested parties. I would like to thank everyone for their contributions. In publishing this Guidance, I hope it will help all those with whom we share an interest in the Code - most importantly members of county and community councils, fire and rescue authorities, and national park authorities in Wales. I hope it reflects the importance we attach to the role of local members, the value of local democracy and the Adjudication Panel's commitment to promoting the highest standards in public life in Wales.

Claire Sharp
President, Adjudication Panel for Wales

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- the status, purpose and intended use of the Guidance, and its relevance to the public, individual members, Monitoring Officers and Standards Committees of councils, fire and rescue authorities, and national park authorities in Wales, the Public Services Ombudsman for Wales and the Adjudication Panel for Wales.

Standards in Public Life

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- the Code of Conduct, expectations for local members and the process to be followed when a breach of the Code is alleged.

The Adjudication Panel for Wales

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- the role of the Adjudication Panel for Wales, the purpose of the sanctions regime and sanction powers available to case, appeal and interim tribunals of the Adjudication Panel for Wales.

The Tribunals' Approach: underlying principles

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- an overview of the general principles that underpin the broad approach of case, appeal and interim case tribunals, specifically fairness, public interest, proportionality, consistency, equality and impartiality, and Article 10 of the European Convention on Human Rights.

Case and Appeal Tribunals: determining sanction

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- the specific sanctions available to case and appeal tribunals and the five stage process to be used to assess the seriousness of a breach, relevant mitigating and aggravating circumstances and any wider factors, and guidance on how to determine the specific sanction and duration; it also addresses the tribunal's power to make recommendations.

Interim Case Tribunals: determining sanction

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- the distinct aims of interim case tribunals to facilitate an ongoing investigation and the specific powers available in response to a report, and any recommendation, from the Ombudsman.

Annex: other relevant documents and guidance

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Introduction

1. This Guidance is issued by the President of the Adjudication Panel for Wales (APW) using powers available to her under the Local Government Act 2000¹. Its primary purpose is to assist the APW's case, appeal and interim case tribunals when considering the appropriate sanction to impose on a member, or former member, who is found to have breached their authority's Code of Conduct.
2. This Guidance describes:
 - i. the role of the ethical framework and Code of Conduct in promoting high public standards amongst members of councils, fire and rescue authorities, and national park authorities in Wales;
 - ii. the role of the Adjudication Panel for Wales (APW) and the purpose of the sanctions regime;
 - iii. the approach to be taken by its tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of sanctions and this Guidance are built on the values that underpin the Code of Conduct, in particular the fundamental importance of promoting the highest standards in local public life. The Guidance aims to assist tribunals in determining sanctions that are, in all cases, fair, proportionate and consistent.
4. The Guidance is not prescriptive and recognises that the sanction decided by an individual tribunal will depend on the particular facts and circumstances of the case. Any examples should be considered to be by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider in addition to this Guidance other factors that they consider necessary and appropriate. Nor does the Guidance affect the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of relevant sections of this Guidance.
5. In setting out the factors to be considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparent approach for the benefit of all parties involved tribunal proceedings. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal is likely to arrive at its decision on sanction.
6. The Guidance seeks to fulfil a wider role and support all those with an interest in maintaining, promoting and adjudicating on the Code of Conduct. It aims to complement the statutory Guidance published by the Public Services Ombudsman for Wales², confirming the expectations on local members in

¹ Section 75(10) of the Local Government Act 2000 ("the 2000 Act") provides a power for the President of the Adjudication Panel for Wales to issue guidance on how its tribunals are to reach decisions

² The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils:

terms of their conduct and emphasising the central importance of public confidence in local democracy. It should be of value to individual members, Monitoring Officers and Standards Committees of county and county borough councils, fire and rescue authorities, and national park authorities in Wales, and the Public Services Ombudsman for Wales.

7. This Guidance comes into effect on 1 September 2018. It is a living document that will be updated and revised as the need arises, following consultation.

Standards in Public Life

The Code of Conduct

8. The Local Government Act 2000 introduced an ethical framework to promote high standards of conduct in public life in Wales. The framework's central mechanism is the Code of Conduct. All local authorities, community councils, fire and rescue authorities and national park authorities in Wales must have in place a Code of Conduct. All elected members and co-opted members (with voting rights) must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their term of office.
9. The Welsh Government has issued a model Code of Conduct³ in order to ensure consistency across Wales and to give certainty to members and the public as to the minimum standards expected. The model Code is consistent with ten core principles of conduct⁴ prescribed by the National Assembly for Wales in 2001, which are themselves derived from the Nolan Committee's Principles for Public Life⁵:
 - i. Selflessness
 - ii. Honesty
 - iii. Integrity and Propriety
 - iv. Duty to Uphold the Law
 - v. Stewardship
 - vi. Objectivity in Decision-making
 - vii. Equality and Respect
 - viii. Openness
 - ix. Accountability
 - x. Leadership

Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

³ The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008, as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016
www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf and
www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf

⁴ The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)
http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf

⁵ Nolan Report "Standards of Conduct in Local Government in England, Scotland and Wales"

Local codes must incorporate any mandatory provisions of the model Code and may incorporate any optional provisions of the model Code. At this time, all provisions of the model Code are mandatory.

Expectations on local members

10. Members of county councils, county borough councils, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
 - whenever they are acting or present at a meeting of their authority, claiming to act or giving the impression of acting in an official capacity in the role of member to which they were elected or appointed or as a representative of their authority;
 - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute, or if using or attempting to use their position to gain an advantage or avoid a disadvantage for anyone or if they misuse the authority's resources.
11. Members are expected to engage in any training and access ongoing advice, as the need arises, from their local Monitoring Officer and Standards Committee. Members are also expected to be familiar with and have regard to the Public Services Ombudsman's statutory guidance on the Code⁶. It addresses each of the Code's requirements in order to help members understand their obligations in practical terms. It offers advice on the fundamental ethical principles that many members need to consider on a regular basis – for example, declarations of interest, confidentiality and whether their actions constitute bullying or harassment– in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the Code and the Principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

Allegations of breach

13. There are non-statutory local protocols in place for low-level member-on-member complaints which do not result in case or appeal tribunals. Allegations that a member's conduct is in breach of the Code can be made to the Ombudsman, who will decide whether to investigate a complaint. If, following an investigation, the Ombudsman finds that there is evidence of a breach of the Code, he can refer his report to the relevant local Standards Committee or to the President of the Adjudication Panel for Wales. The Ombudsman may also refer reports from an ongoing investigation to the President for consideration by an interim case tribunal.

⁶ The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

The Adjudication Panel for Wales

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales⁷ as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Code. The Panel's operation is subject to regulation by the Welsh Government.

Case tribunals

15. Case tribunals are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction (if any).

Appeal tribunals

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may uphold and endorse any sanction imposed or refer the matter back to the Standards Committee with a recommendation as to a different sanction or overturn the determination of the Committee that there has been a breach of the Code. An appeal tribunal cannot recommend a sanction which was not available to the Standards Committee.

Interim case tribunals

17. Interim case tribunals are appointed by the President to consider a report, and any recommendation to suspend a member, from the Ombudsman during an ongoing investigation into alleged misconduct. The tribunal is responsible for determining the need to suspend, or partially suspend, the member or co-opted member from the authority or a role within the authority. The maximum duration of the suspension or partial suspension is 6 months. Unlike case and appeal tribunals, suspension by an interim case tribunal is a neutral act, given the ongoing nature of the Ombudsman's investigation.

The sanctions regime

18. The Committee on Standards in Public Life⁸ had a key role in developing the ethical framework and identified the need for mechanisms to enforce and punish public office holders who breached the standards expected of them, if the ethical framework was to command public credibility. The purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

⁷ Part III, Local Government Act 2000

⁸ Reference to the report on enforcement

- provide a disciplinary response to an individual member's breach of the Code;
- place the misconduct and appropriate sanction on public record;
- deter future misconduct on the part of the individual and others;
- promote a culture of compliance across the relevant authorities;
- foster public confidence in local democracy.

19. The sanctions available to a case tribunal that has found a breach of the Code are⁹:

- a. to take no action in respect of the breach;
- b. to suspend or partially suspend the member from the authority concerned for up to 12 months;
- c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

The sanctions available to an appeal tribunal that has found a breach of the Code are:

- d. censure;
- e. to suspend or partially suspend the member from the authority concerned for up to 6 months.

20. The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.

⁹ Section 79, Local Government Act 2000

The Tribunal approach – underlying principles

21. Tribunals must always have in mind that every case is different and requires deciding on its own particular facts and circumstances. Following a finding that the Code of Conduct has been breached, tribunals must exercise their own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors. They must also ensure that the sanctions take account of the following underlying principles in order to ensure that their decisions support the overall ambitions of the ethical framework, fulfilling the purpose of the sanctions, and are in line with the tribunal's wider judicial obligations.

Fairness

22. The tribunal should take account and seek to find an appropriate balance between the various interests of the Respondent/Appellant, the Complainant, other interested parties to a case, the Ombudsman, the authority, the electorate and the wider public.

Public interest

23. Whilst seeking to ensure that the sanction imposed is appropriate, fair and proportionate to the circumstances of the case, the tribunal should consider the reputation of and public confidence in local democracy as more important than the interests of any one individual.

Proportionate

24. Tribunals will take account of the good practice identified in the Ombudsman's Guidance and Code of Conduct Casebook¹⁰ in order to assist their sense of proportionality when determining the sanction appropriate to the scale and/or nature of the breach.

Consistent

25. Tribunals will aim to achieve consistency in their sanctions in order to maintain the credibility of the ethical framework. They will take account of the good practice identified by the Ombudsman (para.24) in addition to this Guidance and its own previous decisions. Where a tribunal panel has reason to depart from the Guidance, it should clearly explain why it has done so.

Equality and impartiality

26. Fair treatment is a fundamental principle for the Adjudication Panel for Wales and is embedded within individual members' judicial oath. Tribunals must ensure that their processes and practices safeguard their capacity for objective, independent and impartial decision-making, free from prejudice and partiality, in order to uphold their judicial responsibilities.

¹⁰ <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

Human Rights (Articles 6 and 10)

27. Tribunals must ensure that their processes and practices respect human rights. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Articles 6 and 10 of the European Convention on Human Rights in their deliberations. These articles enshrine the right to a fair hearing and freedom of expression.

28. Article 10 is a key provision when considering possible breaches of the Code. It provides that:

“10(1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...”

10(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

29. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable. This protection does not extend to gratuitous or offensive personal comment, nor to ‘*hate speech*’ directed at denigrating colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

30. In their consideration of Article 10, tribunals should apply the three-stage approach established by Mr Justice Wilkie¹¹ in the case of *Sanders v Kingston (No1)* and which applies to both decision about breach and sanction, as follows:

- i. Can the Panel as a matter of fact conclude that the Respondent’s conduct amounted to a relevant breach of the Code of Conduct?
- ii. If so, was the finding of a breach and imposition of a sanction *prima facie* a breach of Article 10?
- iii. If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

¹¹ Wilkie J in the case of *Sanders v Kingston No (1)* [2005] EWHC 1145

Case and Appeal Tribunals – determining sanction

31. A tribunal will decide whether or not a sanction is appropriate after considering the facts of a case and finding that an individual has breached the Code of Conduct. In determining any appropriate sanction, the tribunal's approach should be sufficiently broad so as to accommodate its consideration of the various interests of those involved in the case, any specific circumstances of the individual respondent/appellant, the intended purpose of the sanctions available (in particular, the wider public interest) and the tribunal's wider judicial responsibilities.
32. Case tribunals will decide on the appropriate sanction to impose, if any, and the duration of any such sanction; appeal tribunals will consider the appropriateness of the sanction imposed by the Standards Committee.

The five-stage process

33. Case and appeal tribunals will follow a five step process in determining sanction:
- 33.1 assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)
 - 33.2 identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)
 - 33.3 consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)
 - 33.4 consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions; (para.43)
 - 33.5 confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)

Assessing the seriousness of the breach

34. The relative seriousness of the breach will have a direct bearing on the tribunal's decision as to the need for a sanction and, if so, whether a suspension or partial suspension (of up to 12 months) or disqualification (up to 5 years) is likely to be most appropriate. It is important to bear in mind though that appeal tribunals can only recommend a suspension (partial or full) for up to 6 months and cannot recommend disqualification due to the constraints upon its powers.
35. The tribunal will assess seriousness with particular reference to:
- the nature and extent of the breach, and number of breaches;

- the member’s culpability, their intentions in breaching the Code, and any previous breaches of the Code;
- the actual and potential consequences of the breach – for any individual(s), the wider public and/or the council as a whole;
- the extent to which the member’s actions have, or are likely to have the potential to, bring his/her office or the relevant authority into disrepute.

36. Examples of the way in which tribunals might weight seriousness include:

- a breach involving deliberate deception for personal gain or discrimination is likely to be regarded as more serious than that involving the careless use of a council email address on a personal social media profile;
- a breach involving the systematic harassment or bullying of a junior officer is likely to be regarded as more serious than instances of disrespectful language in the course of a council debate;
- a breach of confidentiality that results in the disclosure of the address of a looked after child is likely to be regarded as more serious than the disclosure of a planning officer’s confidential advice;
- a breach resulting in significant negative reputational damage to the office or authority is likely to be regarded as more serious than an inappropriately worded email to a member of the public.

37. Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority’s monitoring officer), the deliberate abuse of confidential, privileged or sensitive information for personal gain or that of a close personal associate, and sexual misconduct, criminal, discriminatory, predatory, bullying and/or harassing behaviour are all likely to be regarded as very serious breaches.

38. A member who is subject to a term of imprisonment for three months or more without the option of paying a fine in the previous five years before their election or since their election is automatically subject to disqualification¹².

Choosing the potential sanction

39. Having assessed the relative seriousness of the member’s breach of the Code, the tribunal will consider which of the courses of action available to it is most appropriate¹³. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact.

No action

39.1 The tribunal may decide that, despite the member having failed to follow the Code of Conduct, there is no need to take any further action in terms of sanction. Circumstances in which a tribunal may decide that no action is required may include:

¹² Section 80(1)(d), Local Government Act 1972

¹³ Section 79, Local Government Act 2000

- an inadvertent failure to follow the Code;
 - an isolated incident with extremely limited potential for consequential harm;
 - an acceptance that a further failure to comply with the Code on the part of the member is unlikely, nor are there any wider reasons for a deterrent sanction;
 - specific personal circumstances, including resignation or ill health, which render a sanction unnecessary and/or disproportionate.
- 39.2 A tribunal that finds a breach of the Code but decides that no action is necessary in terms of sanction, should consider whether there is a need to warn the member as to their conduct and/or seek assurances as to future behaviour. This provides an effective means of placing the member's behaviour on record, reflected in the tribunal's written decision, so that the warning and/or reassurance may be taken into account in the event of the same member being found to have breached the Code in the future. A failure to comply with any assurances given to the tribunal may be brought to the attention of the tribunal in any future hearings.

Suspension for up to 12 months

- 39.3 A case tribunal may suspend the member for up to 12 months from the authority(ies) whose Code/s has/have been breached.
- 39.4 Suspension is appropriate where the seriousness of the breach is such that a time-limited form of disciplinary response is appropriate in order to deter such future action, temporarily remove the member from the authority/a role within the authority, safeguard the standards set by the Code and to reassure the public that standards are being upheld.
- 39.5 A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions. Tribunals are also reminded that the highest sanction available to local Standards Committees is 6 months' suspension. They should bear this in mind when considering an Ombudsman's referral to the Adjudication Panel, in preference to the local Standards Committee, and when considering an appeal against a local Standards Committee sanction. It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee.
- 39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:
- the member's action has brought the member's office or authority into disrepute but they have not been found in breach of any other paragraph of the Code (though the most appropriate sanction will depend on the specific facts of each case);

- the breach merits a disciplinary response but, in view of the circumstances of the case, it is highly unlikely that there will be a further breach of the Code;
- the member has recognised their culpability, shown insight into their misconduct, and apologised to those involved.

Partial Suspension for up to 12 months

- 39.7 The tribunal may impose a partial suspension, preventing the member from exercising a particular function or role (such as being a member of a particular committee or subcommittee or the holder of a particular office) for up to 12 months.
- 39.8 Partial suspension is appropriate where the seriousness of the breach merits a suspension (see above) but the circumstances of the case are such that the member is permitted to continue in public office except for the role/function/activity specifically limited by the suspension.
- 39.9 In the case of a partial suspension, the tribunal will need to decide from what role/function/activity the member is to be suspended and, in the case of membership of more than one authority, the impact of the partial suspension in each relevant authority.
- 39.10 Circumstances in which a partial suspension may be appropriate include:
- the member is capable of complying with the Code in general but has difficulty understanding or accepting the restrictions placed by the Code on their behaviour in a specific area of council/authority activity;
 - the misconduct is directly relevant to and inconsistent with a specific function or area of responsibility held;
 - the member should be temporarily removed or prevented from exercising executive functions for the body to which the Code applies.

Disqualification for a maximum of 5 years

- 39.11 A case tribunal may disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.
- 39.12 Disqualification is the most severe of the sanctions available to a tribunal. It is likely to be appropriate where the seriousness of the breach is such that a significant disciplinary response is appropriate in order to deter repetition, make clear the unacceptable nature of such conduct in public office, underscore the importance of the Code and to safeguard the public's confidence in local democracy. A disqualification of less than 12 months is unlikely to be meaningful (except in circumstances when the term of office of the member is due to expire during that period or is no longer a member).

39.13 Circumstances in which a tribunal may decide that a disqualification is appropriate may include:

- deliberately seeking personal gain (for her/himself, a family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking to disadvantage another by exploiting membership of the authority and/or the authority's resources;
- deliberately disregarding or failing to comply with the provisions of the Code and continuing to assert the right so to do;
- repeatedly failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a second or subsequent breach, despite a warning and/or having given an assurance as to future conduct in a previous case before an Adjudication Panel for Wales tribunal;
- conduct that calls into question the Respondent's fitness for public office;
- bringing the relevant authority into serious disrepute.

Mitigating and aggravating circumstances

40. The tribunal will go on to consider how any particular circumstances of the member may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the member's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. This process is likely to have significant bearing on the duration of the sanction, varying the term down or up in line with the mitigating or aggravating factors. Such factors may at times be sufficient to persuade a tribunal that a suspension (if any) may be more appropriate than a disqualification, and vice versa.

41. Tribunals are encouraged to work through the examples set out below but are reminded that these are not exhaustive. Where any mitigating/aggravating factor relates directly to the nature or seriousness of the breach and the tribunal has already considered that factor in its choice of appropriate sanction, care should be taken as to the extent to which that factor is included in mitigation/aggravation. For example:

- if the sanction under consideration is a suspension because the conduct is regarded as a 'one off', this factor should not also be regarded as mitigating unless the 'one off' nature of the breach is so exceptional that it should have a direct bearing on the length of the suspension;

- if the breach is regarded as serious because it includes ‘bringing the authority into disrepute’, this factor should not also be regarded as aggravating unless the disrepute is so exceptional as to have a direct bearing on the length of the disqualification.

42. Tribunals should also take care to respect a member’s legitimate right to appeal and to distinguish protestations or assertions made in the course of exercising that right from those actions that might be regarded as aggravating factors designed to obstruct the processes of the Ombudsman or Adjudication Panel.

Mitigating circumstances

- i. substantiated evidence that the misconduct was affected by personal circumstances, including health and stress;
- ii. a short length of service or inexperience in a particular role;
- iii. a previous record of good service (especially if over a long period of time);
- iv. the misconduct was a one-off or isolated incident;
- v. that the member was acting in good faith, albeit in breach of the Code;
- vi. the misconduct arose from provocation or manipulation on the part of others;
- vii. the breach arose from an honestly held, albeit mistaken, view that the conduct involved did not constitute a failure to follow the Code, especially having taken appropriate advice;
- viii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- ix. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see paragraphs 27-30 above and Aggravating factor xii below);
- x. self-reporting the breach;
- xi. recognition and regret as to the misconduct and any consequences;
- xii. an apology, especially an early apology, to any affected persons;
- xiii. co-operation in efforts to rectify the impact of the failure;
- xiv. co-operation with the investigation officer and the standards committee/APW;
- xv. acceptance of the need to modify behaviour in the future;
- xvi. preparedness to attend further training;
- xvii. commitment to seeking appropriate advice on the Code in the future;
- xviii. compliance with the Code since the events giving rise to the adjudication.

Aggravating factors

- i. long experience, seniority and/or position of responsibility;
- ii. seeking to unfairly blame others for the member's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or close personal associate) benefit or disadvantage for another;
- iv. deliberate exploitation of public office and/or resources for personal (for her/himself, a family member or close personal associate) or political gain;
- v. abuse or exploitation of a position of trust;
- vi. repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
- vii. dishonesty and/or deception, especially in the course of the Ombudsman's investigation;
- viii. lack of understanding or acceptance of the misconduct and any consequences;
- ix. refusal and/or failure to attend available training on the Code;
- x. deliberate or reckless conduct with little or no concern for the Code;
- xi. deliberately or recklessly ignoring advice, training and/or warnings as to conduct;
- xii. the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others (see paragraphs 27 – 30 above);
- xiii. obstructing and/or failing to co-operate with any Ombudsman's investigation, Standards Committee, and/or the Adjudication Panel for Wales's processes;
- xiv. refusal to accept the facts despite clear evidence to the contrary;
- xv. action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xvi. failure to heed previous advice and/or warnings and to adhere to any previous assurances given as to conduct relevant to the Code.
- xvii. Previous findings of failure to follow the provisions of the Code.
- xviii. Continuing to deny the facts, despite clear evidence to the contrary.

Fulfilling the purpose of the sanctions regime

43. The tribunal may need to consider further adjustments to the chosen sanction or length of sanction in order to achieve an appropriate deterrent effect, for the

individual and/or the wider council membership, or to maintain public confidence. Tribunals will also need to have regard to external factors that may exacerbate or diminish the impact of the chosen sanction.

Public interest

44. The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.

Eligibility for public office in other relevant authorities

45. Disqualification will automatically apply to a Respondent's current membership of all authorities to which the Local Government Act 2000 applies, irrespective of whether the other authorities' Codes have been breached. Disqualification will also prevent the Respondent from taking up public office, through election or co-option, on any other authorities to which the Act applies until the expiration of the disqualification period.

46. A suspension will preclude the member from participating as a member of the authority whose Code s/he has been found to have breached but not necessarily any other authorities of which the Respondent/Appellant is a member. Where the facts of a case call into question the member's overall suitability to public office, a disqualification may be more suitable than a suspension.

Former members

47. In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate (this can only apply in case tribunals). This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected. For appeal tribunals, a censure remains an option.

Financial impact

48. Tribunals should take into account the financial impact on members of a sanction: during suspension and disqualification, a member will be denied payment of their salary and allowances. The financial impact varies from an annual expenses reimbursement for community councillors to a basic salary

plus expenses for county councillors to the higher salaries paid to leaders of larger councils¹⁴.

Impact on the electorate

49. The High Court has recognised that Parliament has expressly provided case tribunals with a power to interfere with the will of the electorate and that such ‘interference’ may be necessary to maintain public trust and confidence in the local democratic process. Tribunals should be confident in their right to disqualify members whose conduct has shown them to be unequal to fulfilling the responsibilities vested in them by the electorate.
50. Suspension has the effect of temporarily depriving the electorate of local representation whereas disqualification triggers a process, either by-election or co-option, to replace the disqualified member.

Timing of local elections

51. In general, the length of a disqualification should be determined in relation to the nature of the breach and circumstances of the case, and be applied irrespective of the imminence or otherwise of local elections. There may be exceptional times when the duration of a disqualification might have a particularly disproportionate effect on the member. For example: a disqualification of 18 months, imposed in December 2020, would prevent a member from standing for local government election until May 2027, as the period of disqualification would overlap the May 2022 elections by one month. Tribunals should be willing to hear submissions as to why the length of disqualification should be varied, whilst bearing in mind the overriding public interest principle.

Automatic disqualifications

52. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more (whether suspended or not). That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the case tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification.

Confirming the sanction

53. Tribunals should confirm their final determination on sanction, notifying the hearing and recording it in the decision notice. Tribunals will make sure that the reasons for their determination, including any significant mitigating and aggravating factors, are included in the full written record of proceedings in order to ensure that the parties and the public are able to understand its conclusions on sanction.

¹⁴ <http://gov.wales/irpwsb/home/?lang=en>

Recommendations

54. Case tribunals also have the power to make recommendations¹⁵ to the relevant authority whose Code it has considered about any matters relating to:

- the exercise of the authority's functions
- the authority's Code of Conduct;
- the authority's Standards Committee.

55. The authority to whom the recommendations are made is under a duty to consider them within three months and then prepare a report for the Ombudsman outlining what the action it, or its Standards Committee, has taken or proposes to take. If the Ombudsman is not satisfied with the action taken or proposed, he/she has the power to require the authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them. As such, tribunals are advised to consider their use of this power with care.

Interim case tribunals – determining sanction

56. Interim case tribunals will decide, after considering a report (including any recommendation) from the Ombudsman on an ongoing investigation into alleged misconduct, whether to suspend or partially suspend, the member or co-opted member from the authority or a role within the authority.

57. Unlike case and appeal tribunals, interim case tribunals are not disciplinary. Interim case tribunals aim to:

- facilitate the Ombudsman's effective and expeditious investigation of the respondent's conduct;
- minimise any disruption to the business of the authority concerned during the investigation;
- maintain the reputation of the authority concerned;
- protect the authority concerned from legal challenge.

58. The powers available to an interim case tribunal¹⁶ are to suspend the Respondent, wholly or partially from being a member or co-opted member of the authority concerned, for not more than six months (or, if shorter, the remainder of the member's term of office). In the case of a partial suspension, the interim case tribunal will need to decide from what activity the respondent is to be suspended.

Purpose and process

59. Interim case tribunals recognise that no definitive finding has yet been made on the validity of the allegations about the Respondent and that any form of suspension can have a significant impact on a member's role, credibility and finances.

¹⁵ Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

¹⁶ Section 78(1), Local Government Act 2000

60. Interim case tribunals will therefore seek to take the minimum action necessary to ensure the effective completion of the investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The tribunal will only decide on full suspension if its aims cannot be met otherwise.

The nature of the allegation(s)

61. Interim case tribunals will start by considering the nature of the allegations against the Respondent in order to decide whether, if the allegation were substantiated, a suspension or partial suspension would be an appropriate sanction.

No action

62. If the tribunal concludes that neither suspension nor partial suspension would follow a finding of breach, it is highly unlikely to make such an order without compelling reasons as to why the Ombudsman's investigation cannot effectively proceed without such action.

63. If the tribunal concludes that a finding on breach would result in a suspension or partial suspension, it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the Ombudsman completing his investigation and referring a final report to the Adjudication Panel for Wales.

Partial Suspension

64. Partial suspension offers the possibility of safeguarding public confidence in an authority and enabling it to function effectively without depriving the member's constituents of ward representation. Interim case tribunals may wish to draw on the principles that apply to case and appeal tribunals' approach to partial suspension.

65. Partial suspension may be appropriate in circumstances where the allegations are directly relevant to and inconsistent with a specific function or area of responsibility held or the Respondent exercises executive functions for the authority whose Code s/he is alleged to have breached or – the Respondent may be excluded from their specific or executive responsibilities in order to reassure the public whilst not undermining the authority's ability to function effectively or depriving the electorate of their division/ward representation.

Suspension

66. Suspension is likely to be appropriate if there is a legitimate concern as to any of the following:

- the Respondent may interfere with evidence or with witnesses relevant to the matter under investigation;
- the business of the authority concerned cannot carry on effectively if the Respondent were to continue in office whilst the allegation against him or her

remained unresolved – the tribunal will have particular regard to any breakdown or potential breakdown in relations between the Respondent, other members and/or key staff of the authority;

- the allegations raise issues of such gravity that they jeopardise public confidence in the authority concerned if the Respondent were to continue in office whilst the allegations remained unresolved.

Annex: other documents and guidance relevant to tribunals

Adjudication Panel for Wales : Members Handbook (2017)

Public Services Ombudsman for Wales –The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016)

Equal Treatment Bench Book, Judicial College (as amended)

The Adjudications by Case Tribunals and Interim Case Tribunals (Wales Regulations 2001 No. 2288 (W.176), as amended by the Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)

The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001 No. 2281 (W171), as amended by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 No. 85 (W.39)

By virtue of paragraph(s) 12, 14 of Part 4 of Schedule 12A of the Local Government Act 1972.

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