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Bridgend County Borough Council



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Cyfarwyddiaeth y Prif Weithredwr / Chief Executive's Directorate

Deialu uniongyrchol / Direct line /: 01656 643148 / 643694 / 643513

Gofynnwch am / Ask for:

Ein cyf / Our ref:

Eich cyf / Your ref:

Dyddiad/Date: Monday, 17 June 2024

Dear Councillor,

STANDARDS COMMITTEE

A meeting of the Standards Committee will be held Hybrid in the Council Chamber - Civic Offices, Angel Street, Bridgend, CF31 4WB on **Friday, 21 June 2024 at 10:00**.

AGENDA

1. Apologies for Absence
To receive apologies for absence from Members.
2. Declarations of Interest
To receive declarations of personal and prejudicial interest (if any) from Members/Officers in accordance with the provisions of the Members' Code of Conduct adopted by Council on 1 September 2008.
3. Ombudsman Investigation Under S69 of the Local Government Act 2000 3 - 80
4. Urgent Items
To consider any item(s) of business in respect of which notice has been given in accordance with Rule 4 of the Council's Procedure Rules, and which the person presiding at the meeting is of the opinion should by reason of special circumstances be transacted at the meeting as a matter of urgency.

Note: This will be a Hybrid meeting and Members and Officers will be attending in the Council Chamber, Civic Offices, Angel Street Bridgend / Remotely via Microsoft Teams. The meeting will be recorded for subsequent transmission via the Council's internet site which will be available as soon as practicable after the meeting. If you would like to view this meeting live, please contact cabinet_committee@bridgend.gov.uk or tel. 01656 643148 / 643694 / 643513 / 643159.

Yours faithfully

K Watson

Chief Officer, Legal and Regulatory Services, HR and Corporate Policy

Attendees:

MJ Williams

G Thomas

Mr P Clarke

P Baker

Agenda Item 3

Meeting of:	STANDARDS COMMITTEE
Date of Meeting:	21 JUNE 2024
Report Title:	OMBUDSMAN INVESTIGATION UNDER S69 OF THE LOCAL GOVERNMENT ACT 2000
Report Owner / Corporate Director:	MONITORING OFFICER
Responsible Officer:	LAURA GRIFFITHS GROUP MANAGER LEGAL AND DEMOCRATIC SERVICES
Policy Framework and Procedure Rules:	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.
Executive Summary:	To undertake the hearing into the conduct of Cllr Brian Jones of Porthcawl Town Council.

1. Purpose of Report

- 1.1 To undertake the hearing into the conduct of Cllr Brian Jones of Porthcawl Town Council.

2. Background

- 2.1 Under the Local Government Act 2000 all allegations and breaches of the Member Code of Conduct are submitted to the Public Services Ombudsman for Wales (PSOW) for investigation in the first instance.
- 2.2 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.
- 2.3 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.
- 2.4 The Public Services Ombudsman for Wales (the Ombudsman) has investigated complaints against Cllr Brian Jones. The Ombudsman determined that the Member may have breached the Code of Conduct, in particular, the following paragraphs of

the Code: 4(b), 4(c), 6(1)(a) and 6(2) of the Code:

4(b) Members must show respect and consideration for others;

4(c) Members must not use bullying behaviour or harass any person;

6(1)(a) Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute;

6(2) Members must comply with any request of their authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

- 2.5 The Standards Committee determined on 9 April 2024 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 has failed, or may have failed, to comply with the relevant Members' Code of Conduct.

3. Current situation / proposal

- 3.1 The Monitoring Officer wrote to the Member on 11 April 2024 providing information on the determination of the Standards Committee and providing a copy of the adopted procedure and requesting him to provide information within 14 days in readiness for the hearing. On 22 April 2024 he confirmed in writing that he would be attending the hearing and calling three witnesses and provided written representations attached as **Appendix 1**.
- 3.2 The Monitoring Officer subsequently wrote to the Ombudsman confirming that the matter would proceed by way of hearing and providing the written submissions received from the Member. The response from the Ombudsman is attached as **Appendix 2**. Officers from the Ombudsman's Office will be in attendance at the hearing to make representations to the Committee.
- 3.3 The adopted procedure is appended to this report (**Appendix 3**). The Monitoring Officer will advise the Committee as to process. The Committee has previously considered the confidential report of the Ombudsman (**Appendix 4**) and the Appendices Files (**Appendix 5**) and is to undertake the hearing at its meeting on 21 June 2024.
- 3.4 Standards hearings are held in public unless the Committee is satisfied that it is appropriate to exclude the public for the discussion of exempt information under the Schedule 12A of the Local Government Act 1972. The categories of exempt information for these purposes includes information about an individual, provided the Committee is satisfied that the public interest in exempting the information outweighs the public interest in disclosing it. This means that the Committee will firstly be required to decide whether the hearing (or any part of it) should be conducted in public or private. It should be noted that the Committee is required to produce a report on the outcome of the investigation, which is to be published by the Monitoring Officer after the conclusion of the matter in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001.
- 3.5 The Committee will need to consider Stage 1 – Findings of Fact and consider whether there are any significant disagreements as to the facts contained within the PSOW investigation report. Having made your finding of fact (or if there is no

disagreement on the facts) the Committee will then need to consider whether the Member has breached the Code of Conduct. Should the Committee decide that, on the evidence, there is a breach of the Code then the Committee will need to consider the appropriate sanction. Attached as **Appendix 6** is the Adjudication Panel of Wales Sanction Guidance. Should the Committee decide that, on the evidence, there is no breach of the Code then that will be the end of the adjudication.

- 3.6 After making its final determination, the Committee is required to give notice of its determination to the Member concerned and the Ombudsman and to produce and publish a report on the outcome of the investigation. If the Committee finds a breach of the Code, the Member may apply to the Adjudication Panel for Wales within 21 days from receiving notice of the Committee's determination for permission to appeal. If permission to appeal is granted, the Adjudication Panel for Wales may either uphold the Committee's determination, recommend a different sanction to the Committee for reconsideration or overturn the Committee's determination.

4. Equality implications (including Socio-economic Duty and Welsh Language)

- 4.1 The protected characteristics identified within the Equality Act 2010, Socio-economic Duty and the impact on the use of the Welsh Language have been considered in the preparation of this report. As a public body in Wales, the Council must consider the impact of strategic decisions, such as the development or the review of policies, strategies, services and functions. It is considered that there will be no significant or unacceptable equality impacts as a result of this report.

5. Well-being of Future Generations implications and connection to Corporate Well-being Objectives

- 5.1 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. This report also assists in the achievement of the following well-being objective under the Well-being of Future Generations (Wales) Act 2015:-

A county borough where people feel valued, heard and part of their community.

- 5.2 The Standards Committee is responsible for promoting and maintaining high standards of conduct by members and co-opted members. Standards are an implicit requirement in the successful implementation of the corporate well-being objectives.

6. Climate Change Implications

- 6.1 There are no climate change implications.

7. Safeguarding and Corporate Parent Implications

- 7.1 There are no safeguarding and corporate parent implications.

8. Financial Implications

8.1 There are no financial implications arising from this report.

9. Recommendation

9.1 It is recommended that the Committee continue with the hearing, relying on the information in the Ombudsman investigation report and in accordance with the adopted procedure.

Background documents:

None



**Ombwdsmon
Ombudsman**
Cymru • Wales

The investigation of complaints
against
Councillor Brian Jones
of
Porthcawl Town Council

A report by the
Public Services Ombudsman for Wales
Cases: 202201160 & 202201353

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Introduction

Report by the Public Services Ombudsman for Wales on the investigation of 2 individual complaints made against Councillor Brian Jones of Porthcawl Town Council, of breaches of the Council's statutory Code of Conduct for Members

This report is issued under section 69 of the Local Government Act 2000.

Summary

The Ombudsman investigated 2 complaints made by a member of the public (“the first complainant”) and the Former Clerk (“the second complainant”) to Porthcawl Town Council (“the Town Council”) about a Member (“the Member”) of the Town Council.

It was alleged by the first complainant that the Member had used racial slurs and disrespectful language towards other members of the Town Council on social media.

It was alleged by the second complainant the Member had used disrespectful language towards the Former Clerk on social media and had refused to apologise at a Town Council meeting.

The Ombudsman found that the Member had used a racial term in an exchange on social media which was directed at a member who was of ethnic origin. Whilst the Member said this was the result of a predictive text error, the Ombudsman found the likelihood of this was low. The Ombudsman considered that the Member’s conduct may amount to breaches of paragraphs 4(b) (respect and consideration), 4(c) (bullying and harassment) and 6(1)(a) (disrepute) of the Code of Conduct.

The Ombudsman also found that the Member had made an inappropriate and uncalled for post about the Town Council and the Former Clerk in an exchange on social media and that he had refused to apologise at a Town Council meeting. In his response to the Ombudsman’s investigation the Member said he stood by his comments. The Ombudsman considered that the Member’s conduct may amount to breaches of paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

During the course of the investigation the Ombudsman also found that the Member had disclosed information about the investigation to a third party, and in doing so had failed to comply with the Ombudsman’s requests regarding the need for privacy and the requirement to maintain confidentiality, which may be suggestive of a breach of paragraph 6(2) (complying with requests) of the Code of Conduct.

The Ombudsman concluded that the Member's conduct may amount to a breach of paragraphs 4(b), 4(c), 6(1)(a) and 6(2) of the Code of Conduct and referred the matter to the Monitoring Officer of Bridgend County Borough Council for consideration by its Standards Committee.

The Complaints

The first complaint

1. On 23 May **2022**, my Office received a complaint from a member of the public, Mr Scott Daly (“the first complaint”), that Councillor Brian Jones had failed to observe the Code of Conduct for Members of Porthcawl Town Council (“the Town Council”). It was alleged that Councillor Jones had used racial slurs and disrespectful language towards other members of the Town Council on social media. A copy of the first complaint and supporting information is attached at Appendix 1.

The second complaint

2. On 31 May 2022, my Office received a complaint (“the second complaint”) from the Former Clerk to the Council, Mrs Kerry Grabham, (“the Former Clerk”) that Councillor Brian Jones had failed to observe the Code of Conduct for members of the Town Council. It was alleged that Councillor Jones had used disrespectful language towards the Former Clerk on social media and had refused to apologise at a Town Council meeting. A copy of the complaint and supporting information is attached at Appendix 2.

Legal background and relevant legislation

3. As required by Part III of the Local Government Act 2000 (“the Act”), the Council has adopted a Code of Conduct for Members which incorporates the provisions of a Model Code contained in an order made by the Welsh Ministers. A copy of that Code is at Appendix 3. Town Council members are required to sign an undertaking that, in performing their functions, they will observe the Town Council’s Code of Conduct. Councillor Jones gave such undertakings on 8 May **2017** and 12 May 2022. Copies of those declarations are attached at Appendix 4.

4. Section 69 of the Act provides the authority for my investigation and the production of this report.

5. Section 69B(2) of the Act provides that an investigation (conducted under Section 69) must be conducted in private.

6. Additionally, Section 69E of the Act provides that information obtained in the exercise of my functions under Part III may only be disclosed in specific circumstances, these being:

- a. to enable the performance of my function under Parts III (Investigations) and IV (Adjudications)
- b. to enable the performance of the functions of the Adjudication Panel for Wales
- c. for the purpose of criminal proceedings or the investigation of a criminal offence
- d. to enable the performance of the functions of the Auditor General
- e. to enable the performance of the functions of the Electoral Commission

7. The Town Council's Code of Conduct incorporates the mandatory provisions of the Model Code of Conduct for Wales, which is consistent with 10 core principles of conduct, derived from the Nolan Principles for Public Life:¹

- 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

¹The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No. 2276 (W.166)

8. Part 2 of the Model Code of Conduct² provides that Members must observe the Code:

- a) whenever they conduct the business, or are present at a meeting, of their authority
- b) whenever they act, claim to act or give the impression they are acting in the role of member to which they were elected or appointed
- c) whenever they act, claim to act or give the impression they are acting as a representative of their authority or
- d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

9. Article 10 of the European Convention on Human Rights (“ECHR”) was brought into effect in UK law by the Human Rights Act 1998. It provides that:

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the reputation or rights of others”.

10. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10 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 personal comment.

²The Model Code of Conduct prescribed by the Local Authorities (Model Code of Conduct) (Wales) Order 2008 as amended.

11. If behaviour is considered to be in breach of the Code of Conduct, any restriction to a Member's freedom of expression must be proportionate and justified in the circumstances of any case. Restriction of a Member's freedom of expression is more likely to be justified, the more egregious the conduct is.

12. Case law - *Sanders v Kingston* [2005] England and Wales High Court ("EWHC") 1145, which set out a 3-stage test as follows:

- (i) Did the Member's conduct breach a Paragraph of the Code of Conduct?
- (ii) Would the finding, in itself, comprise of a prima facie breach of Article 10?
- (iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

13. Case law - *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) ("Heesom"):

"Civil servants are, of course, open to criticism, including public criticism;... it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration."

As local authorities are corporate bodies, individual councillors are "quasi-employers" of officers employed by their authorities. As such, there is a mutual bond of trust and confidence between councillors and their officers.

My investigation

14. Having considered the complaints as made to me, I concluded that it was appropriate to investigate whether Councillor Jones had failed to comply with any of the following provisions of the Code of Conduct:

- 4(b) – Members must show respect and consideration for others.
- 4(c) – Members must not use bullying behaviour or harass any person.
- 6(1)(a) – Members must not conduct themselves in a manner which could reasonably be considered as bringing their office or authority into disrepute.

15. Councillor Jones was informed of my intended investigations (which explains that my investigations are conducted in private and the requirement for confidentiality) on 7 July 2022. He was reminded on 6 November 2023 and 27 February 2024 about the restrictions on the disclosure of information concerning my Office’s investigations. (Appendix 5).

16. It subsequently became apparent during my investigations that Councillor Jones may also have failed to comply with the following further provision of the Code of Conduct:

- 6(2) – Members must comply with any request of their authority’s monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

17. During the investigations, my Investigation Officer obtained additional information and copies of relevant documents from the Town Council (Appendix 6) and from the “Facebook” social media channel (Appendix 7). The following witnesses were interviewed:

- Mrs Kerry Grabham, the Former Clerk

- Ms Ceri John, the Deputy Clerk
- Councillor Neelo Farr - Member of the Town Council and Bridgend County Borough Council

Copies of all witness statements are attached at Appendices 8 - 11.

18. The evidence found during the investigations was shared with Councillor Jones, enabling him to review it before responding to the questions which were put to him during 2 online interviews via Microsoft Teams on 17 November 2023. Transcripts of the interviews are included at Appendices 12 and 13.

19. Councillor Jones read a statement at each interview. Following the interviews Councillor Jones provided copies of the statements and further written submissions and supporting documentation (Appendices 14 - 18).

20. I have given Councillor Jones the opportunity to comment on a draft of this report which included my provisional views and findings arising from the investigation. Councillor Jones provided a response to the draft report (including supporting statements from third parties) which is available at Appendix 19.

My guidance on the Code of Conduct

21. My predecessor issued Guidance for Members of Town and Community Councils in Wales on the Model Code of Conduct (“the Guidance”). I include at Appendix 20 extracts of the Guidance which are relevant to this complaint, and which were in place at the time of the events.

Events

22. Prior to the local elections on 5 May 2022, Councillor Jones was a Member of both Bridgend County Borough Council (“BCBC”) and the Town Council. Councillor Jones’ BCBC ward was expanded to 2 members for the May 2022 election. At the election Councillor Jones was not

re-elected to BCBC and the relevant seats were won by Councillor Farr and Councillor Graham Walter. Councillor Jones retained his seat on the Town Council.

23. At the election Councillor Farr and Councillor Jonathan Pratt were both elected to BCBC and the Town Council. Following the election, Councillor Farr became BCBC's Cabinet Member for Regeneration with a portfolio encompassing local development in Porthcawl. At the time of the incident complained about she was the only BCBC Cabinet Member on the Town Council.

24. Councillor Jones has been a member of the Town Council since **2012**. He was re-elected to the Town Council in May 2017 and May 2022. He served as Mayor and the Former Clerk's Line Manager from May 2020 to May **2021**.

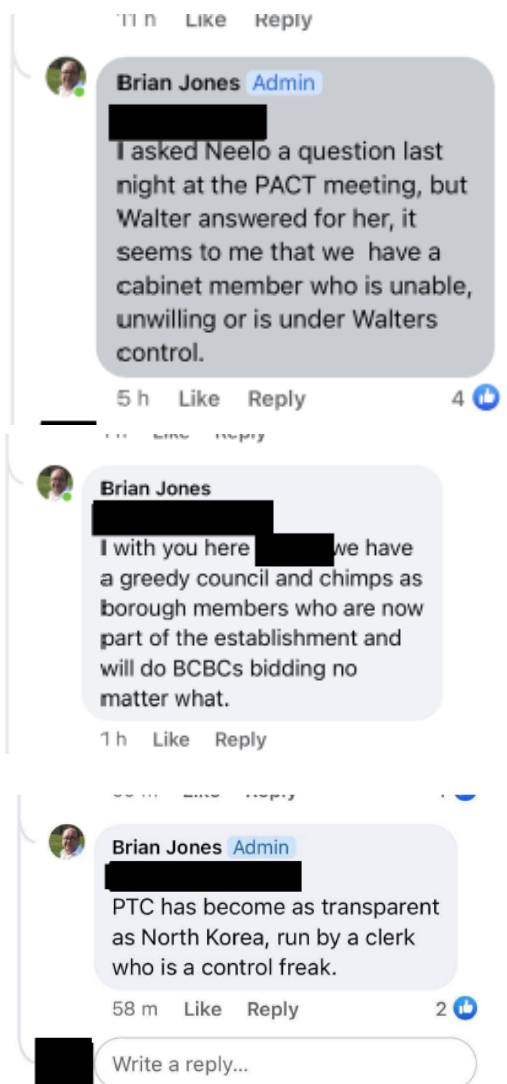
25. Councillor Jones undertook training on the Code of Conduct in **2020** and **2023**. He was provided with a copy of the Town Council's Social Media policy in 2021 and received Social Media training in 2022/23.

26. At the time of the events complained of, Councillor Jones was a member of a private Facebook group called "Porthcawl Residents" ("the Porthcawl Residents Facebook Group"). The group was created in May 2021 and currently has 1700 members. Councillor Jones was also a member of another private Facebook group called "A Voice for the Future - Porthcawl" ("the Voice for the Future - Porthcawl Facebook Group"). This group was created in July 2021 and currently has 1000 members.

27. The Former Clerk joined the Town Council on 8 February 2021. An external auditor was appointed in May 2021 to undertake an internal audit for the Council's 2020/2021 financial year. At a full Town Council meeting on 29 June 2021 the Town Council noted the contents of the internal audit report ("the Report"), which outlined irregularities in the Town Council's financial governance, and resolved to accept its recommendations. The Report was published on the Town Council's website in July 2021. Councillor Jones and some other members of the Town Council disputed the Report's content and publication; however, it remains on the Town Council's website.

28. Audit Wales informed the Town Council in early 2021 that it would be undertaking an in-depth audit of the Town Council (not yet concluded). Audit Wales subsequently referred matters to the Police, who carried out an investigation between 2021 and 2022. In order to assist Audit Wales and the Police with their enquiries, the Former Clerk was required to provide information on behalf of the Town Council to both bodies, whilst also undertaking her role for the Town Council. During this period, the Former Clerk took sick leave due to work-related stress.

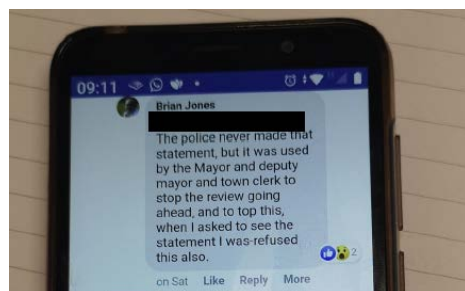
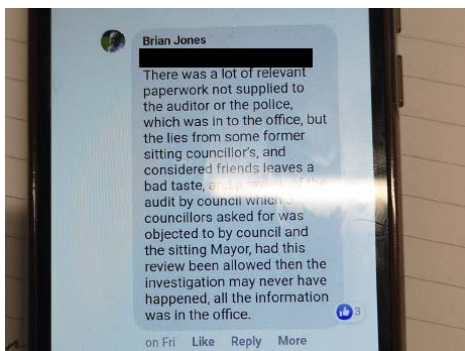
29. On or around 19 May 2022, Councillor Jones had online exchanges with members of the Porthcawl Residents and Voice for the Future - Porthcawl Facebook Groups during which he made the following comments:



(Appendix 1 Pages 5 to 8)

30. At a special meeting of the Town Council on 30 May 2022 (under Item 6 - Social Media), the Mayor advised the meeting that unacceptable and insulting comments had been posted on social media platforms. The minutes record that the Former Clerk was extremely disappointed and upset to learn of the comments, and several Councillors shared their concerns relating to the disrespectful posts and an expectation that there should be an apology. The minutes record that Councillor Jones advised the meeting on 2 occasions that there would be no apology (Appendix 6 Page 209).

31. On 18 February 2023, Councillor Jones had an exchange with members of the Porthcawl Residents Facebook Group during which he made the following comments:



(Appendix 9 Pages 470/471 and 483)

32. On 20 February 2023, the Deputy Clerk provided a letter to the Former Clerk (addressed to my Office) about a visit Councillor Jones had made to the Town Council offices on 10 February, which stated that, during his visit, Councillor Jones had made “derogatory” comments about my Office and said he and other members were able to behave “in any way”. (Appendix 10 Page 490).

33. During my Office’s investigation, the Former Clerk took sick leave due to work-related stress. She resigned from the Town Council in June 2023.

What the witnesses said

The First Complaint - What Mr Daly said

34. With his complaint and supporting information, Mr Daly provided screenshots of exchanges on the Facebook groups which encompassed 3 posts by Councillor Jones posted on or around 19 May 2022, set out at paragraph 29, in which Councillor Jones referred to the Town Council, its members and the Former Clerk. Mr Daly said Councillor Jones’ comment about “chimps” was a racial slur and aimed at Councillor Neelo Farr, as she is of Pakistani origin and the only councillor who sat as a borough and cabinet member. Mr Daly said that whilst he understood debates could become heated, there should not be name calling or bullying.

35. Mr Daly also said that Councillor Jones had used disrespectful language towards other members of the Town Council and his remark about the Former Clerk was unprofessional, and not the way a Member should speak about fellow colleagues. He said Councillor Jones had a negative attitude towards his fellow members, had openly insulted them and the Former Clerk on social media, and had failed to apologise for his comments at a Town Council meeting (Appendix 1).

The Second Complaint - What the Former Clerk said

36. With her complaint, the Former Clerk provided a copy of the screenshot in which Councillor Jones said the Town Council had become “as transparent as North Korea, run by a clerk [sic] who is a control freak.”

The Former Clerk said this was disrespectful to her role as Clerk and Councillor Jones had refused to apologise.

37. The Former Clerk subsequently provided screenshots of an exchange on the Voice for the Future - Porthcawl Facebook Group which encompassed a discussion between individuals (including Councillor Jones) about development matters and included the following post by Mr Daly:



(Appendix 8 Pages 447-451)

38. In her statement, the Former Clerk said:

- Whilst her working relationship with Councillor Jones was initially good, it changed after the internal audit in 2021 and he then began requesting information and asking for amendments to agendas. She said, at that time, the Police were treating her as a witness, and the Town Council had been advised that matters related to the police investigation should not be discussed. The Former Clerk said this made her ability to deal with information requests from members difficult.
- On or around 20 May 2022, a member of the public messaged her about a post made by Councillor Jones on Facebook and sent her a screenshot. The Former Clerk said she was not able to see what had been posted on Facebook herself as it was a private group, and she did not have access to it.
- The matter was put on the agenda for the next Town Council meeting, however Councillor Jones refused to apologise in the meeting to her or any other member.

- The police investigation had put her in a difficult position with regard to what she could disclose to others and there was no understanding or recognition of that in Councillor Jones' comment about her. She said Councillor Jones had made derogatory comments about the Town Council as well as her and she thought his remarks had brought the Town Council into disrepute.
- She felt the racist nature of Councillor Jones' post in a public forum brought her integrity, character and role in the Town Council into question and she found it upsetting, unjust and unnecessary.
- She understood that Councillor Jones had since removed his comments from Facebook.
- The Town Council has a Social Media Policy which she had emailed to Councillor Jones when she started her role.

39. The Former Clerk subsequently provided screenshots of a further exchange between Councillor Jones and other individuals on 17 and 18 February 2023 which she felt was targeted at her (Appendix 9 Pages 463-484).

40. The Former Clerk said these comments were unfair and unwarranted and Councillor Jones' conduct had contributed to her having to take leave from the Town Council with work-related stress and anxiety and she subsequently resigned from her role.

What the Deputy Clerk said

41. In her statement the Deputy Clerk said:

- As far as she could recall, she was alone during Councillor Jones' visit to the office on 10 February 2023. She said, as the visit was some time ago, she could not clearly recall what happened or what he had actually said, and her letter addressed to my Office dated 20 February which she provided to the Former Clerk contained her concept of something "derogatory" Councillor Jones had said in passing that day.

What Councillor Jones said

The First Complaint

42. In his interview and submissions Councillor Jones said:

- He had received training on the Code of Conduct in 2020 and 2023 and use of social media in 2023.
- He had known Councillor Farr for over 35 years and Mr Daly was her son. Whilst he and Councillor Farr were political opponents, with opposing views on local building development, he could not recall having had any disagreement with her.
- The post in which he referred to “chimps” was meant to say “chumps” and his use of the word “chimps” was a result of predictive text and was not aimed at Councillor Farr. He said the word “chump” was not derogatory and would have been a correct term for those who are “easily led.”
- At the time, he was being subject to attack by people who opposed his views about local development, and he believed in freedom of speech and the right to defend himself.
- Councillor Farr was not part of the exchange and, as far as he was aware, she used a different social media site.
- The social media item in the 30 May Town Council meeting was not related to the post Mr Daly had complained about, but an entirely different matter related to the Former Clerk. In any event, the Town Council did not have “the authority to dictate what a Councillor should do”.
- Mr Daly had been selective with his complaint. Councillor Jones provided the following posts which he said were from the same thread. He said the exchange had been a political discussion and not bullying, and he had named 2 members he was critical of and had pointed out that Mr Daly had an issue with predictive text.



(Appendix 14 Page 557)

- Once he realised that there might be some concern over his post, he had privately messaged Councillor Farr to say the post was not about her, and he had removed his post within 48 hours.
- He could not now provide a copy of his message to Councillor Farr as some of the messages they had exchanged were no longer saved due to lack of storage space.
- Councillor Farr had replied and accepted what he had said and talked about other council business.
- The fact that the word “chumps” had mutated to “chimps” was regrettable and he should have checked it before he posted it. He said it was not intentional, and he did not think his conduct amounted to a breach of the Code.
- Councillor Farr had not complained about the post, he did not believe he had offended anybody and the only person who appeared to be offended was her son.

The Second Complaint

43. In his interview and submissions Councillor Jones said:

- He had maintained good working relationships with the previous Clerks to the Town Council.
- His relationship with the Former Clerk became “severely strained” when she refused to provide him and other members with details they asked for, and she had provided information to Audit Wales without reference to him as her Line Manager and Chair of the Town Council, which led to the police investigation.
- The Former Clerk had misled the Town Council about various matters related to the internal audit, the Report and the police investigation. She had also refused him reasonable adjustments for Town Council meetings and complained about him to the Town Council and “continually deprived [him] of information [he] was entitled to”. As a result, it was “not unreasonable to view her as very controlling”.
- His comment that the Town Council had become as transparent as North Korea was made on the Voice for the Future - Porthcawl Facebook Group, which was a forum for residents to discuss political and local matters and which he participated in as a resident. He believed what he had said was true as the Town Council was not transparent, and the Former Clerk had refused to provide information and was “controlling the Council”.
- He did not delete his comment because he was not an Administrator of the Voice for the Future - Porthcawl Facebook Group. He did not ask for it to be removed, and whilst he thought it may have been removed by someone else, he was unsure of this or if it was still there, as he no longer visited the page.
- He had refused to apologise at the Town Council meeting on 30 May 2022. He had only said he would not apologise once, and he refused because he believed what he had said was true and there was a lack of transparency in the Town Council.

- He did not think his post reflected on him negatively as some members of the public had supported what he had said on Facebook, however, their comments were no longer available.
- He would not like to comment on the Deputy Clerk’s statement about his visit to the Town Council because they had a good working relationship, and he did not remember making the comments.
- The exchanges on 17 and 18 February were part of a political discussion with residents and members of the Town Council on the Porthcawl Residents Facebook Group, and he had simply commented on facts concerning the withholding of information.
- As a forthright person, he believed residents needed to be informed about what had happened at the Town Council and that the Town Council needed to be more transparent. He was “not sorry” about what he had put on Facebook because he thought the Former Clerk had acted “wrongly.” He thought she was a “very strong person” and “very confident in what she was doing.”
- He was entitled to his opinion and freedom of speech concerning the Former Clerk. His comment about excessive control was “not overstated,” he did not believe the Former Clerk could be “hurt or harassed by it” or that his choice of words could have had an impact on anybody, and he did not think he had breached the Code.

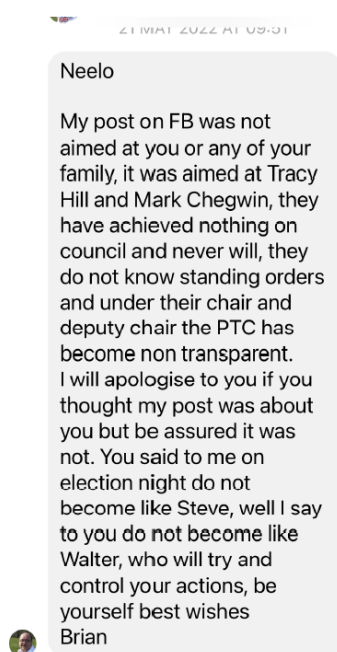
What Councillor Farr said

44. In her statement, Councillor Farr said,

- Her relationship with Councillor Jones was “not very good” due to historical family-related issues involving bullying and harassment, and the fact that Councillor Jones had lost his BCBC seat to her in the May 2022 election.
- A fellow Member sent her a message about Councillor Jones’ post, and somebody else also sent a screenshot of it. She viewed the post online at the time. Her recollection was that Councillor Jones had

called her a “monkey” and he had referred to something about a “borough councillor” and “monkey”. Her son, Scott Daly, saw the post and challenged Councillor Jones about it online.

- She found Councillor Jones’ post upsetting, offensive and racist. It had made her feel powerless, deflated and oppressed and that some people did not see her as part of a community which she had belonged to for 35 years.
- Councillor Jones sent her a message on 21 May at 09:51 about his post which she responded to (Appendix 11 Page 497 -501). Councillor Jones had also called her about it, and she told him clearly that she felt the message was directed at her because he had said something about borough councillors, and she was the only borough member on the Town Council. Councillor Jones had maintained the post was not about her and did not apologise.
- Councillor Farr provided a copy of the following exchange.



Walter, who will try and control your actions, be yourself best wishes
Brian

21 MAY 2022 AT 09:57

Thank you Brain I appreciate you messaging me. I know you are hurt and disappointed but I have no malice towards you. I could not comment the other night because I have not met with the department- I really don't know what has been agreed and not agreed- I don't know if that's correct

don't know if I can change anything or not at this stage but I promise I will do all I can to listen to all the residents and try my best to ensure Porthcawl is high in the agenda. Neelo

Seen

to listen to all the residents and try my best to ensure Porthcawl is high in the agenda. Neelo

Seen

You can now call each other and see information such as Active Status and when you've read

+ 📷 📎 🗣️ Aa 😊 👍

12:47
Brian Jones
21 MAY 2022 AT 10:30
Thank you Neelo I know you will do your best for Porthcawl, im not that disappointed, I believe and always will that the residents have the choice of who represents them.

I can't say the same about Walter please be careful with

I can't say the same about Walter please be careful with him, he is a control freak and will try to control you, he did the same with other Cllrs including me, most resisted but some fell for it, hence the post Hill and Chegwin, there are others also. I wish you good luck in your new role and hope it bares fruit for Porthcawl, but I and many others will still oppose the development of Sandy Bay for anything other than leisure facilities.

Brian

(Appendix 11 Page 497-501)

- She did not like attending the Town Council meetings in person and avoided it because Councillor Jones and his group made her feel intimidated. She tried to protect herself by doing things online and that felt safer. She was aware that Councillor Jones and his supporters had made derogatory remarks about her when she was speaking.

Councillor Jones' response to the draft report

45. With regard to the first complaint, Councillor Jones said:

- He had contacted Councillor Farr to reassure her he had not intended to cause her offence and she had not asked him to post an apology.
- He was sorry the word “chimp” had been used and he had been much more careful since.
- The social media thread had been quite heated, and he had been subject to “considerable criticism in connection with [his] Council role”.
- He was not aware of any ill feeling between the families apart from a historic event 35 years ago.
- He did not lose his seat to Councillor Farr, as such, because the ward was expanded to 2 members, and she and another member were elected.
- Councillor Pratt was also a member of BCBC and the Town Council at the time, however he understood that Councillor Farr could have felt his comment referred to her and that is why he contacted her quickly.
- He felt he had an amicable and mutually supportive relationship with Councillor Farr, and that she was a “decent person but is being manipulated by others”.

46. With regard to the second complaint, Councillor Jones said:

- His comments were part of a thread started by a local resident.
- He had not intended to undermine anyone but had been “hugely frustrated” when he was criticised for “not doing [his] job” because he could not obtain information.
- He did not name anybody in his comment, and he did not expand on it further.
- He was “ambushed” at the Town Council meeting on 30 May 2022 and felt members and the Former Clerk were “aggressive and threatening”. He did not offer an apology because of the “aggressive threats being made”.
- He did not agree with what the Former Clerk had said in her statements, and he disputed that the stress she experienced was caused by him in any way.
- His comments to the Deputy Clerk had been taken out of context and he had not been rude or critical of my Office.
- It was his “genuine belief that...[the Former Clerk] was an obsessive with a need to exercise control over situations and others.”

47. A copy of Councillor Jones’ response to the draft report encompassing his comments and unsigned supporting statements from two third parties is available at Appendix 19. One of the statements refers specifically to my investigation in the opening paragraph.

Undisputed facts

48. Councillor Jones has been a member of the Town Council since 2012. He signed declarations to observe the Code of Conduct in May 2017 and May 2022.

49. Councillor Jones served as Mayor of the Town Council and the Former Clerk's Line Manager from May 2020 to May 2021.

50. Councillor Jones received training on the Code of Conduct in 2020 and 2023. He received training on the use of social media in 2023.

51. Councillor Farr is a member of the Town Council. She is also a member of BCBC and the Cabinet Member for Community Safeguarding and Wellbeing. She holds appointments with a number of committees and outside bodies.

52. At the time of the events Councillor Farr was BCBC's Cabinet Member for Regeneration with a portfolio which included local development in Porthcawl.

53. The Town Council's 2020/2021 internal audit report was noted at a Council meeting on 29 June 2021 and published on its website in July 2021. Although some members of the Town Council disputed the Report's content and publication, it has remained as published.

54. Audit Wales informed the Town Council in early 2021 that it would be undertaking an in-depth audit of the Town Council (not yet concluded).

55. Audit Wales subsequently referred matters to the Police, who carried out an investigation between 2021 and 2022.

56. The Former Clerk was required to provide information on behalf of the Town Council to Audit Wales and the Police, whilst also undertaking her role for the Town Council.

57. The Porthcawl Residents Facebook Group and the Voice for the Future - Porthcawl Facebook Group are private social media groups, providing discussion forums for local politicians and residents. At the time of the events in 2022, Councillor Jones was a member of both groups.

58. On or around 19 May 2022, Councillor Jones posted comments on Facebook which said:

“I [sic] with you here [name redacted], we have a greedy council and chimps as borough members who are now part of the establishment and will do BCBCs [sic] bidding no matter what.”

And:

“PTC has become as transparent as North Korea, run by a clerk who is a control freak.”

59. On 21 May Councillor Jones sent a text message to Councillor Farr about his post, which Councillor Farr responded to.

60. Councillor Jones removed his comment referring to “chimps” within a couple of days of it being posted.

61. Councillor Jones did not remove his comment about the Town Council and the Former Clerk and was unsure if it had been removed by anyone else.

62. The Council discussed “unacceptable and insulting” comments on social media at a meeting on 30 May 2022. Councillor Jones advised the meeting there would be no apology.

63. Councillor Jones had an exchange with other members and residents on Facebook on 17 and 18 February 2023 which referred to the Former Clerk withholding information.

64. The Deputy Clerk provided a letter (addressed to my office) to the Former Clerk on 20 February 2023 about a visit Councillor Jones had made to the Town Council offices and “derogatory” comments he had made.

65. The Former Clerk resigned from the Town Council in June 2023.

Disputed facts

66. Was Councillor Jones' post about "chimps" directed at Councillor Farr?
67. Was Councillor Jones' reference to "chimps" a texting error?
68. Was Councillor Jones post about the Town Council and the Former Clerk inappropriate and uncalled for?
69. Did Councillor Jones fail to comply with my Office's requests in connection with the investigations?

Analysis of evidence

Was Councillor Jones' post about "chimps" directed at Councillor Farr?

Was Councillor Jones reference to "chimps" a texting error?

70. Appendix 1 Page 6/7 shows a screenshot of Councillor Jones' post and the exchanges around it. Appendix 8 Pages 447 - 451 shows screenshots of the same, wider, exchange (at a later period) with Councillor Jones' post removed.

71. The exchanges involve a discussion between 4 people including Councillor Jones and Mr Daly, about "development", "objections", "the inspectorate", "PEDW" and "BCBC". The nature and context of the exchanges encompass a decision or judgement that will be made on a development matter. In response to one of the contributor's concerns about whether objections would be considered, Councillor Jones posted the following comment:

"I [sic] with you here [name redacted], we have a greedy council and chimps as borough members who are now part of the establishment and will do BCBCs [sic] bidding no matter what."

72. Councillor Jones said he meant to use the word “chumps” rather than “chimps.” He said this was an honest mistake and not intentional, as predictive text had auto corrected it and “chumps” can easily mutate to “chimps.” Councillor Jones said, “chump just means someone that is easily led...and I don’t see that as derogatory because that’s what’s been happening.”

73. Councillor Jones said Councillor Farr’s portfolio included a local development proposal, which he was against. Councillor Jones said at the time he had been under attack from political opponents and those who opposed his views against the development, and that Councillor Farr “has come in and said she supports it” and the word “chump would have been correct...because she has actually just followed on and she’s being easily led”.

74. Councillor Jones said his post was part of a political discussion, his comments were not directed at Councillor Farr, and he was being critical of 2 other members who he had named in the same thread.

75. Councillor Jones provided screens shots of an exchange with Mr Daly (set out at paragraph 42) in which he named the 2 other members (Cllr Chegwyn and Cllr Hill), however, it is short and the context is not entirely clear. The exchange starts with Councillor Jones stating he is “entitled to an opinion of the 2 Cllrs Chegwyn and Hill”), and Mr Daly then indicated they were not borough members and asked if Councillor Jones was not obliged to follow a Code of Conduct. Councillor Jones said the exchange was part of the same thread involving his post about “chimps as borough members.” On balance, I consider it likely that it is part of the same discussion. In any event, the members he named were not members of BCBC. Councillor Farr was the only member of the Town Council who sat as a BCBC member and a Cabinet Member with a portfolio which included a local development proposal. Councillor Jones said his intention had been to use the word “chumps” because it denoted Councillor Farr as being easily led in respect of her support for the development. Councillor Farr said as far as she was concerned his comment was directed at her because he had mentioned a borough councillor, and she was the only member of the Town Council who was also on the borough council at that time. In his comments on the draft report Councillor Jones

noted that Councillor Farr's assertion that she was the only Town Council member who was a borough member at that time was incorrect, as Cllr Pratt was also a BCBC and Town Council member. However, Councillor Jones also said he understood that Councillor Farr could have felt his comment referred to her and that is why he contacted her quickly. I consider that, on balance, Councillor Jones' comment was directed at Councillor Farr.

76. Predictive text offers the user the option to write and complete a word with just a few taps. Whilst it offers suggestions for a word it does not necessarily force the suggestion on the user. Depending on the platform and the facility being used it usually provides the user with the choice of whether to accept the suggestion or not. Whilst Councillor Jones drew attention to predictive text in a post by Mr Daly, I have not seen any evidence in the exchanges provided that he endeavoured to explain what had happened regarding his own post or that it was a typing error. In his submission Cllr Jones said, "chump can easily mutate to chimps." However, it would appear that the likelihood of this is low, therefore I cannot be sure this happened.

Was Councillor Jones' post about the Town Council and Former Clerk inappropriate and uncalled for?

77. Councillor Jones said the Former Clerk had withheld information, "misled" the Town Council and acted "wrongly." He said she had deprived him of information, and it was "not unreasonable to view her as very controlling." He said he thought his comment was "fully borne out of the facts and... reasonable under any right to free speech" and he did not believe the Former Clerk was "hurt or harassed" by it. He said there had been a police investigation, the residents needed to be informed about what was happening and the Town Council needs to be more transparent. Following his interview, he provided a large volume of information related to the Town Council's governance and the Former Clerk, which he said supported his view about the Former Clerk controlling the Town Council.

78. It is noted that the Former Clerk took on her new role at a difficult time for the Town Council and that some members of the Town Council, including Councillor Jones, were unhappy with the internal audit and its published report. Whilst still new to the Town Council, the Former Clerk

was also required to assist Audit Wales and the Police on behalf of the Town Council with their enquiries. The Former Clerk said Councillor Jones' comment on social media failed to understand or recognise the difficult position she was in at the time or what she could disclose to others, and it had questioned her integrity, character, and role.

79. Wikipedia defines North Korea as a “totalitarian dictatorship with a poor human rights record.” The term “control freak” can be described as a derogatory label indicating abnormal behaviour. Councillor Jones said he had expressed his opinion about the Former Clerk to which he was entitled and which he stood by. Whilst Councillor Jones has set out the reasons for the frustration he felt about the Former Clerk's actions, I consider that comparing the Town Council to North Korea and stating that the Former Clerk was a “control freak” were inappropriate and unnecessary comments for a “quasi-employer” and former line manager to make about a member of staff, on a social media platform able to be seen by local residents.

Did Councillor Jones fail to comply with my Office's requests in connection with the investigations?

80. Letters sent to Councillor Jones (Appendix 5) at the start of and during my investigation specified that my Office's investigations are conducted in private, and any evidence obtained is subject to restrictions as set out in the Act. Councillor Jones was advised in the letter of 7 July 2022 that he should not contact or discuss details of the complaint with any potential witnesses and to let my Office know if witnesses should be contacted. Councillor Jones did not provide any witness contact details during the course of the investigation. He was subsequently also advised on 6 November 2023 and 27 February 2024 that the information provided to him during the investigation, and with the draft report, should be held in the strictest confidence and not shared with anyone other than a legal or other adviser.

81. Councillor Jones submitted a response to the draft report which included supporting statements from members of the public. In particular, one individual said:

“I am writing to you in response to allegations made to you against Councillor Brian Jones, who is a Town Councillor on Porthcawl Town Council. I have been given to understand that Councillor Jones has been accused of bullying in Council meetings a fellow Councillor, namely Councillor Neelo Farr.”

82. Noting that the letter starts as a testament to Councillor Jones’ character and the manner in which he was observed by that individual to conduct himself at meetings, it then develops into an assessment of Councillor Farr’s character and references alleged incidents which are not of direct relevance to this investigation. The author specifically offers a view on whether she has observed any ‘bullying’ of Councillor Farr by Councillor Jones in Town Council meetings, demonstrating that she has been made aware of the nature of the investigation and allegations made against Councillor Jones by Councillor Farr during the investigation.

83. In the light of the above it would appear that Councillor Jones has shared details of the complaint and my draft investigation report, and specifically what Councillor Farr said in her evidence, with a member of the public. None of the provisions of the Act which govern disclosure of information obtained during my investigation permit the disclosure of details of the complaint, draft reports and/or witness evidence by an accused member to third parties who are not their legal or other representative. I consider that in doing so Councillor Jones has disclosed information which should reasonably be regarded as confidential, and he has failed to comply with my Office’s requests regarding the need for my investigations to be conducted in private and the requirement to maintain confidentiality.

Conclusions

84. My Guidance sets out that members are entitled to privacy in their personal lives and many of the provisions of the Code of Conduct only apply when members are acting in their role as member or acting as a representative of their council. However, the public rightly expects high

standards of those who represent them in public office and a member's conduct, whether in their private life or when acting or giving the impression that they are acting in their public role, has the potential to bring disrepute upon their council and their office as a councillor. Consequently, as there may be circumstances in which a member's behaviour in their private life can impact on the reputation and integrity of their authority, some of the provisions of the Code of Conduct apply to members at all times. Members are bound by the full extent of the Code of Conduct whenever they act, claim to act or give the impression that they are acting in the role of member, as a representative of their authority.

85. Councillor Jones made his posts on social media groups for local politicians and residents. Whilst he said he had participated as a resident; he also said his posts were part of political discussions. I am satisfied that the exchanges encompassed political matters and that Councillor Jones gave the impression he was acting in the role of member to which he was elected or appointed, and the Code of Conduct was therefore fully engaged.

86. Similarly, I am satisfied that in approaching members of the public to provide supporting statements for my investigation Councillor Jones gave the impression he was acting in the role of member to which he was elected or appointed, and the Code of Conduct was therefore fully engaged.

Councillor Jones' post about "chimps"

87. My Guidance sets out that members are expected to afford the public, colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean that Members cannot participate in robust debate with political opponents or make legitimate challenges in questioning policy or scrutinising performance, but it must be measured.

88. When considering allegations of bullying behaviour, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour.

89. Councillor Jones said the exchange had been a political discussion. He said whilst he had referred to “chimps as borough members” he had meant to say, “chumps as borough members” and his use of the word “chimps” was a result of predictive text. Councillor Jones said he was being critical of Cllr Chegwyn and Cllr Hill, and his comment was not directed at Councillor Farr. However, he also said he meant to use the word “chumps” because he thought it applied to Councillor Farr as she was “easily led.” He said that, once he realised there might be some concern over his post, he had privately messaged Councillor Farr to say the post was not about her, which she had accepted. Councillor Jones said he removed the post within 48 hours and the only person who appeared to be offended was Mr Daly, Councillor Farr’s son.

90. Councillor Farr provided a copy of Councillor Jones’ message to her and her response to him. In his message Councillor Jones said the post had been aimed at Cllr Hill and Cllr Chegwyn, and he would apologise if she thought it was aimed at her. In her response, Councillor Farr said she appreciated him messaging her and she had no malice towards him. Councillor Farr’s response does not suggest that she “accepted” the post was not about her. In her statement, Councillor Farr said Councillor Jones had also called her about the post, and she had made it clear to him that she thought it was directed at her because she was the only member of the Town Council who was also a borough member. Councillor Farr said that Councillor Jones had maintained his post was not aimed at her and he did not apologise. In her testimony to my Office Councillor Farr was clear that she felt the post had been aimed at her.

91. Mr Daly said the use of the word “chimps” was a racial slur and aimed at Councillor Farr as she is of Pakistani origin and the only member of the Town Council who sat as a BCBC and Cabinet Member. Given the circumstances and nature of the exchange, I consider that it was reasonable for Mr Daly to interpret the remark as directed at Councillor Farr. Councillor Jones acknowledged that he should have checked the post before he made it and that it remained online until he was aware of a concern about it. I am of the view that Councillor Jones’ should have fully considered the content of his post when he shared it, which he acknowledges he did not do, and apologised to Councillor Farr as soon as possible, and the failure to do so shows a lack of prudence and judgement.

92. Councillor Jones' post made reference to "chimps as borough members" who are "part of the establishment and will do BCBCs bidding no matter what." In my view, given her role with BCBC, Councillor Jones' comment was directed at Councillor Farr. Councillor Farr said she found the post upsetting, offensive and racist. Calling someone a "chimp" is a racial insult which carries a derogatory meaning with a strong emotional and moral charge. In determining whether there was a failure to show respect and consideration, I will consider the specific circumstances of the case and if there was an attempt to undermine the individuals involved. I consider that Councillor Jones' comment was an attempt to undermine Councillor Farr and insulting and offensive and is therefore suggestive of a breach of paragraphs 4(b) and 4(c) of the Code of Conduct.

Councillor Jones' post about the Town Council and the Former Clerk

93. Appropriate challenges to the manner in which non-elected senior public servants do their job, even in very robust terms, are protected by Article 10. However, Article 10(2) provides that this right may be restricted as prescribed in law and when necessary, in democratic society, for the protection of the reputation and rights of others. Case law (set out above) states that, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, an adverse effect on good administration. Officers should not therefore be subject to unwarranted comments which may be reputationally damaging or that disenable them from carrying out their duties or undermine public confidence in the administration.

94. As a member of the Town Council, Councillor Jones' is a "quasi-employer". He had also previously been the Former Clerk's designated line manager on behalf of the Council. In my view, saying the Town Council is "becoming like North Korea" and the Former Clerk is a "control freak" on a social media group is a disrespectful and humiliating thing for an employer to do. It also has the potential of impairing the obligation of mutual trust and confidence between the employee and employer. Whilst the post was made on a private social media group, to which the Former Clerk did not have access, it was available to local

residents, and a member of the public notified the Former Clerk about it. The Former Clerk said she found it upsetting, unjust and unnecessary and it questioned her integrity, character and role.

95. Whilst Councillor Jones is entitled to voice his opinion, as set out above, it must be measured. I consider his choice of words about a member of staff on social media to be ill-judged, inappropriate and unnecessary and capable of breaching the duty of trust between the Town Council and its employee. In my view, Councillor Jones' comment was an attempt to undermine the Former Clerk, is insulting and offensive and is therefore suggestive of a breach of paragraphs 4(b) and 4(c) of the Code of Conduct.

96. Whilst several Members of the Town Council shared their concerns at a Council meeting about the disrespectful posts and agreed that members should be privileged and honoured to represent the Town Council and an apology was needed, Councillor Jones refused to comply.

97. He also stood by his comment in his interview and submissions to my Office. He said the Former Clerk was "very controlling" and "secretive" and the Council was not transparent. He said he felt he had a duty to the residents, and they needed to be informed about what was happening in the Town Council. He said he had a right to express his opinion and he was not sorry that he had put the comment on social media.

98. It is disappointing to note that, whilst Councillor Jones contacted Councillor Farr about a post which might upset her, he was not prepared to afford the Former Clerk the same consideration. Councillor Jones said he did not think his words about the Former Clerk could hurt or harass her or that they would have an impact on anyone. In my view, this shows a significant lack of insight and intransigence about his own behaviour.

99. It is also of concern to note that Councillor Jones continued to disparage the Former Clerk in his response to the draft report and maintained it was his "genuine belief" that she was "an obsessive with a need to exercise control over situations and others" and had sought to undermine him in meetings.

100. I have considered Article 10 of the ECHR and relevant case law throughout the investigation. I accept that elected Members have a duty to question and scrutinise officers and that Councillor Jones felt he had a duty to his electorate. However, the Former Clerk was obliged to co-operate with the Police and Audit Wales' enquiries. I consider that Councillor Jones' post about the Town Council and the Former Clerk on a social media platform for local residents amounted to a gratuitous and personal comment about her capabilities. Such an action has the ability to undermine public confidence in the Town Council's administration and to disenable staff from carrying out their duties. A legitimate aim of any interference with Article 10 rights is to prevent the interference with the rights and reputation of others. Therefore, I am satisfied that, given the circumstances, if a breach were proven, any sanction would be a proportionate interference with Article 10, in order to protect the rights of another.

101. A member's actions are subject to greater scrutiny than those of ordinary members of the public and their actions may have an adverse impact on the public perception of their office as a member or their Council as a whole. I am therefore satisfied that Councillor Jones' behaviour is suggestive of a breach of paragraphs 4(b) and 4(c). I am also of the view that his behaviour is likely to have brought his office as a member and his authority into disrepute and is therefore suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

102. I have also had regard to the test in *Sanders v Kingston* (set out above) when considering whether a referral to the Council's Standards Committee is proportionate. As I have noted, I consider that (i) the actions of Councillor Jones, in respect of his comments about members and officers, are suggestive of a breach of the Code of Conduct. I recognise that this finding, given the nature of his comments, may (ii) comprise a breach of Article 10, as it would be considered an interference with his right to freedom of expression. However, I am of the view that (iii) it is a legitimate aim of the ethical standards regime in Wales to protect officers from conduct of this kind and that, if the breaches are proven, a restriction would be justified for the reasons set out in Article 10 (2) above.

Councillor Jones' disclosure of information.

103. I expect the information including witness statements provided by my Office to a member during the course of an investigation to be treated in the strictest confidence and not to be disclosed to anyone other than a legal or other adviser. In addition, I expect members not to discuss the complaint with any witnesses whether directly or indirectly. Whilst it is reasonable for Councillor Jones to want to provide supporting and/or character statements in his defence, as set out clearly in my correspondence, he should in the first instance have notified my Office of the relevant parties who might be prepared to do this we could then have done this for him. This did not happen, and it appears that after receiving the draft report Councillor Jones approached two members of the public directly, and (in relation to one at least) divulged details of the complaint and evidence shared, in order to obtain supporting statements which he then forwarded to my Office in the form of typed and unsigned documents.

104. I am concerned to note that one of the witnesses stated, "I have been given to understand that Councillor Jones has been accused of bullying in Council meetings a fellow Councillor, namely Councillor Neelo Farr". I consider that this information is specific to Councillor Farr's statement. Unless the report on my investigation is made public the only individuals who should be aware of what Councillor Farr said in her statement should be Councillor Farr and Councillor Jones. Given the circumstances, it appears that Councillor Jones has shared the context of Councillor Farr's statement with someone else. I consider that the information referred to should reasonably be regarded as being of a confidential nature and that it has been shared without Councillor Farr's express consent. Furthermore, I am of the view that the sharing of such information is a failure to comply with my Office's requests regarding the need for privacy and confidentiality. As such, I consider that Councillor Jones' conduct is suggestive of a breach of paragraph 6(2) of the Code of Conduct.

Finding

105. My finding under section 69 of the Local Government Act 2000 is that my report on this investigation should be referred to the Monitoring Officer of Bridgend County Borough Council, for consideration by the Council's Standards Committee.

M.M. Morris.

Michelle Morris

27 March 2024

Ombwdsmon Gwasanaethau Cyhoeddus/Public Services Ombudsman

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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.

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 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.

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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)