

LOCAL RESOLUTION PROTOCOL

WORKING GROUP

REPORT BACK

6TH MARCH 2025

Members

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Background

The PSOW conducted a review of all LRP's taking counsel's advice on their provisions. Following that review the PSOW shared with MOG the findings from counsel's advice (Appendix 1). We agreed to convene a small working group to consider preparing a model protocol that would address the perceived problems identified by counsel for the PSOW.

The group met on 11th December 2024, 23rd January 2025 and 20th February 2025. It considered the summary of counsel's advice (kindly provided by the PSOW), the group leader's duty (Appendix 2) and all the current LRPs that had been supplied to the PSOW when they undertook their own review.

During its deliberations the group agreed that a model LRP would not be prepared. The group has therefore drafted a checklist based on the comments by counsel with advice for each council to review its own LRP against the points listed below.

In addition, given that there would not be a model LRP document, we agreed that we would recommend each council to review its LRP against the principles enunciated in the advice from counsel to the PSOW as follows:

- 1) The LRP should only apply to the following (subject to point 2 below):
 - a. low level complaints -
 - b. complaints only at county/county borough council/city council level
 - c. member-on-member complaints
- 2) The LRP may include the option to permit officers to use/complain under the protocol as well
- 3) The LRP should specify the standards of behaviour expected – an aggregate list of behaviours drawn from 8 existing LRP's is attached for suggested inclusion (Appendix 3)
- 4) Examples of what might be perceived to be high level complaints can be included in the LRP but it should state that the MO will advise in all the circumstances and the complainant will choose which route to adopt.
- 5) It is difficult for the MO to appear unbiased and to fulfil their statutory role in proceedings if they make a complaint themselves and so the complainant should be urged to refer the matter to the PSOW if warranted rather than the MO performing that task
- 6) The complainant and the member must agree to use the protocol
- 7) The LRP should not apply to
 - a. complaints from members of the public

- b. complaints by members about officers because, as employees, the correct measure to use would be the council's disciplinary policy (which may well include an informal resolution stage in any event)
- 8) Use of the protocol cannot exclude the statutory right of the complainant to complain to the PSOW at any time they choose
- 9) The number of stages within the LRP is up to each council but 2 seems to be most common.
- 10) Whether the LRP includes group leaders is up to each council but it should be borne in mind that they have a duty to assist the Standards Committee in its duties ([relevant extract below](#)). Some LRP's rely upon Group Leaders as the primary agents to resolve complaints, but it is more common for them to be called in at the second stage if initial attempts at resolution by the Monitoring Officer have not been successful
- 11) The inclusion of a hearing stage is not recommended because of perceived predetermination (see below) and because without a clear statutory basis it is not possible to interfere with a person's human rights. If a hearing stage is included then the following should be borne in mind:
 - a. There is no statutory basis for a sanction and even a finding of breach can be regarded as an interference with a councillor's human rights
 - b. Any "sanctions" should therefore be limited to inviting the member to apologise and/or undertake training
 - c. The Standards Committee must be cognisant that should the complaint subsequently be made to the PSOW and referred back for a hearing it will need to exclude any members who might be said to have predetermined the matter.
 - d. If an LRP includes a hearing stage, then it should also include a statement about which members will take part and which will be kept in reserve. Some LRPs deal with this by saying a single Independent Member will be engaged as a form of advisory arbiter to the Monitoring Officer in lieu of a hearing

I am grateful to the members of the LRP for their input and to Debbie Marles for chairing a meeting when I was myself unable to attend.

Gareth Owens

Chief Officer Governance, Flintshire County Council

Chair of Working Group

As discussed at the last MOG meeting, PSOW has obtained a legal opinion on the status of some provisions with Local Resolution Procedures ('LRPs').

As agreed, this note sets out the key issues of principle arising from the advice and the PSOW's position on the use of LRPs:

- LRPs are entirely informal and there is no statutory basis for LRPs
- LRPs are intended to deal with low level & trivial complaints, for example allegations of a failure to show respect and consideration at the very lowest level and which the right to free speech may indicate are not breaches of the code (For example, [One Voice Wales's LRP](#) for Town & Community Council's states "*Serious complaints – breaches of the Code of Conduct, failure to disclose interests/bullying/abuse of position or trust/repeated breaches*" should not be considered under the process
- Issues which are suitable for consideration under a Local Resolution Procedure should be clearly defined to avoid any confusion arising. Examples seen that draw on an authorities established standards of conduct which sit alongside the Code of Conduct provide a clear list of examples of behaviour expected from Councillors
- Matters that suggest a breach of the Code for example, relating to the declaration of interests, bullying, disreputable conduct should be referred to the PSOW for consideration and expressly excluded if possible
- The powers of Standards Committees under an LRP are legally uncertain or tenuous at best given that there is no statutory basis for it in the LGA 2000 or other statute/secondary legislation
- LRPs are drafted on the basis that the complainant and the subject of the complaint agree to participate (i.e. upon consent) with both agreeing to participate and agreeing to be bound by its outcome. Although, it is reasonable that a complaint to PSOW will bring the LRP process to a stop, it the parties should not be precluded by that agreement from making a referral if they consider it is appropriate to do so after the process has started
- The ethical standards regime as a system does not however deal with 'private rights' – rather it is intended to maintain standards in public life in which 'the complainant' merely acts as a trigger to an investigation by PSOW
- No decision under an LRP can oust the PSOW's power to investigate a potential breach of the Code under s69(1)(a) of the LGA 2000. This is a statutory power with the purpose of maintaining high standards of conduct in public life in Wales and cannot be and isn't limited by the private agreement of two individuals who submit to an LRP
- Therefore, any 'sanction' which a standards committee decides to 'informally' apply, could result in the committee finding itself revisiting in a quasi-judicial capacity a complaint they have already considered under an LRP if the PSOW were to refer the back to it formally under the LGA 2000. This is dubious from a public law perspective because it would constitute 'predetermination' and impinge upon and fetter the discretion of the PSOW. Examples seen that stop short of a determination of No Further Action or Censure seem to

offer practical resolutions to issues negating such risks. We have also seen good practice where any member of a standards committee who has been involved in an informal LRP process, is then required to step back from any future consideration of a formal referral

- Were a standards committee to do this, the PSOW will fulfil her role under the LGA as usual, applying her usual approach when deciding whether to investigate and which of the findings under s69(4)(1)(a) – (d) is appropriate in the circumstances

The principles set out above are consistent with the PSOW's [Guidance](#) which refers to LRPs dealing with 'low level' complaints and disputes, typically about alleged failures to show respect and consideration.

This approach is also consistent with the High Court decision of *Bishop v The Public Services Ombudsman for Wales [2020] EWHC 1503 (Admin)*. The councillor sought an injunction from the High Court restraining the Ombudsman's investigation on the grounds that the complaint should have been dealt with pursuant to an LRP. The court rejected that argument. Any complaint received by the PSOW triggers the Ombudsman's powers under s69 of the LGA 2000 – upon receipt of a 'written allegation', the PSOW 'may investigate'.

If a discussion about this issue would be helpful we are happy to arrange this. When the Ombudsman revises her guidance in the autumn we will revisit the section on LRPs.

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Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility and accountability. However, they do have a role in taking reasonable steps in maintaining high standards, setting an example, using their influence to support a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues of alleged non-compliance as soon as they arise.

Reasonable steps the group leader may undertake include:

- demonstrating personal commitment to and attending and participating in relevant development or training around equalities and standards, including on the Code of Conduct
- actively encouraging group members to attend relevant development or training around equalities and standards including in relation to the Code of Conduct
- ensuring nominees to a committee have received the recommended training for participating on that committee
- promoting modelling civility and respect within group communications and meetings and in formal council meetings
- supporting informal resolution procedures in the council, and working with the standards committee and monitoring officers to achieve local resolution [my emphasis]
- encouraging a culture within the group which supports high standards of conduct and integrity
- attend a meeting of the council's standards committee if requested to participate in discussions on Code of Conduct issues
- drive forward work to implement any recommendations from the standards committee about improving standards
- work with the standards committee to proactively identify, consider and tackle patterns of inappropriate behaviour
- work together with other group leaders, within reason, to collectively support high standards of conduct within the council and where any issues identified involve more than one political group

**LOCAL RESOLUTION PROTOCOLS WITH SPECIFIC
STANDARDS OF CONDUCT/BEHAVIOUR INCLUDED**

Appendix 3

Flintshire, Monmouthshire, Rhondda Cynon Taf, Vale of Glamorgan, Neath Port Talbot,
Gwynedd, Powys and Caerphilly

Members must:

Behaviour towards others / Public Behaviour:

- Show respect to each other and officers
- Not make personal or abusive comments about each other or officers
- Not accuse each other or officers of lying or falsifying facts or documents
- Not make malicious allegations against each other or officers
- Not publish anything insulting about each other
- Not publish or spread any false information about each other or officers
- Show respect to diversity and equality
- Show respect to each other's diverse background and circumstances
- Not accuse or imply that officers are acting from political motives
- Use social media responsibly and in accordance with the Members' Code of Conduct

Behaviour in meetings:

- Behave with dignity in meetings
- Show respect to and obey decisions of the Chair and conversely Members can expect the Chair to show mutual respect to Members
- Make points based on the issue under discussion not personal remarks about others
- Allow others to speak without interruption or heckling
- Not to use indecent language nor make discriminatory remarks or remarks which prejudice or may be deemed to be offensive any section of society
- Exclude officers from the scope of political remarks

Confidentiality:

- Keep the confidentiality of exempt papers and any other documents which are not public.
- Not to release confidential information to the press or the public.
- Return or securely destroy confidential papers.
- Not to use confidential information for purposes other than intended.

Local members

- Work with any joint ward member and/or members of adjoining wards for the benefit of the locality.
- If dealing with any matter relating to another ward
 - Explain to anyone seeking assistance that they are not the local member;
 - Inform the local member, unless it would lead to a breach of confidentiality
- Ensure that officers are treated with respect at public meetings within their ward. Where several Councillors are at the same public meeting all share this obligation equally.