

Public Document Pack

Gareth Owens LL.B Barrister/Bargyfreithiwr
Head of Legal and Democratic Services
Pennaeth Gwasanaethau Cyfreithiol a Democraataidd



To: Kevin Sibbons (Chairman)

CS/NG

Councillors: David Cox, Hilary McGuill and
Arnold Woolley

25 September 2012

Co-opted Members

01352 702345/

Chris Bretherton-Watt, Jonathan Duggan-Keen,
Patricia Jones, Kenneth Martin and Merfyn Roberts

Dear Sir / Madam

A meeting of the **STANDARDS COMMITTEE** will be held in the **COUNCIL CHAMBER, BUCKLEY TOWN COUNCIL** on **MONDAY, 1ST OCTOBER, 2012** at **6.30 PM** to consider the following items.

Please note that the meeting will commence at 6.30pm following a training session for Standards Committee Members from 6.00pm – 6.30pm

Yours faithfully

Democracy & Governance Manager

AGENDA

- 1 **APOLOGIES**
- 2 **DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**

County Hall, Mold. CH7 6NA
Tel. 01352 702400 DX 708591 Mold 4
www.flintshire.gov.uk
Neuadd y Sir, Yr Wyddgrug. CH7 6NR
Ffôn 01352 702400 DX 708591 Mold 4
www.siryfflint.gov.uk

The Council welcomes correspondence in Welsh or English
Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

3 **MINUTES** (Pages 1 - 6)

To confirm as a correct record the minutes of the meeting held on 3 September 2012.

4 **DISPENSATIONS**

5 **MEETING WITH TOWN AND COMMUNITY COUNCIL REPRESENTATIVES**
(Pages 7 - 12)

From 6.30pm the Committee will be joined by representatives of Town and Community Councils to discuss the following report:-

CODE OF CONDUCT AND TREATING OTHERS WITH RESPECT

- Letter dated 17 September, 2012 from the Public Services Ombudsman for Wales plus revised guidance following the 'Calver' Case.
- Open discussion about how the Standards Committee can help Town and Community Councils to promote high standards of ethical behaviour.

6 **FORWARD WORK PROGRAMME** (Pages 13 - 14)

For the Committee to consider topics to be included on the attached draft Forward Work Programme.

STANDARDS COMMITTEE **3 SEPTEMBER, 2012**

Minutes of the meeting of the Standards Committee of the Flintshire County Council held at County Hall, Mold on Monday 3 September, 2012

PRESENT: Mr. K.P. Sibbons (Chairman)

Mrs. P.S. Jones, Mr. K.A. Martin and Mr. M. Roberts

Councillors: H.J. McGuill and A. Woolley

APOLOGY:

Mr. C. Bretherton-Watt

IN ATTENDANCE:

Head of Legal and Democratic Services, Democracy and Governance
Manager and Committee Officer

7. DECLARATIONS OF INTEREST (Including Whipping Declarations)

No declarations of interest were made.

8. MINUTES

Matters arising

In response to a question on resolution (b) of minute number 2, the Head of Legal and Democratic Services explained that Councillor C.S. Carver had been granted dispensation in line with his request.

The Head of Legal and Democratic Services reported that he had attended a meeting of Saltney Town Council who had agreed to host a further training session for all Town and Community Councillors. The date of the session would be confirmed in due course.

A number of comments and concerns were raised around the poor attendance at training events and how this could be improved. In response to a suggestion from Councillor H.J. McGuill, the Head of Legal and Democratic Services said that by improving the training events to make them more interesting and relevant it would encourage more Town and Community Councillors to attend. Further promotion on the role of the Standards Committee would be carried out over the next few months but in the meantime he would write to the Clerks of Town and Community Council's to encourage greater attendance at forthcoming training events.

Following a suggestion from the Chairman, the Head of Legal and Democratic Services said that he would submit a report to the meeting of the Committee on 5 November, 2012 on the trend relating to the number of complaints being made.

RESOLVED:

- (a) The minutes of the meeting held on 18 June 2012 were confirmed as a correct record;
- (b) That the Head of Legal and Democratic Services write to all Clerks of Town and Community Council's to encourage greater attendance at forthcoming training events; and
- (c) That an update report be submitted to the meeting of the Committee on 5 November, 2012 outlining the trend relating to the number of complaints being made.

9. APPOINTMENT OF TOWN & COMMUNITY REPRESENTATIVE

The Head of Legal and Democratic Services introduced a report to enable the Committee to select a representative from the Town and Community Councils to serve on the Standards Committee and to amend the process for appointing such representatives to enable future interviews to be carried out by the Chair of the Council, the Chair of the Standards Committee and the Monitoring Officer. A copy of the revised procedure was attached at Appendix 2 of the report. Following a letter being sent to Town and Community Councils seeking nominations, 6 applicants were interviewed on 28 August, 2012 by the:-

- Retiring Member of the Standards Committee representing Town and Community Councils;
- The Chair of the Council; and
- The Chairman of the Standards Committee of a neighbouring authority.

Following the interviews, the preferred candidate was Mr. Jonathan Duggan-Keen, currently serving as a Caerwys Town Councillor.

Following a suggestion from the Democracy and Governance Manager, the Committee agreed that the retiring Member together with the Chairman of the Standards Committee of Wrexham County Borough Council should be reimbursed for their attendance during the interviews.

RESOLVED:

- (a) That Mr. Jonathan Duggan-Keen be recommended to Council as the Town/Community representative to serve until the second County Council meeting after the AGM following the next County Council elections;
- (b) That Mrs Diane Johnson be thanked for her service on the Standards Committee and in the recruitment of her successor and reimbursed for her time during the interview process;

- (c) That the Chairman of the Standards Committee from Wrexham County Borough Council be thanked for his involvement in recruiting the Town/Community representative and be reimbursed for his time; and
- (d) That the procedure attached at Appendix 2 be recommended to Council for incorporation into the Constitution.

10. FLINTSHIRE COUNTY COUNCIL STANDARDS COMMITTEE ANNUAL REPORT 2011/12

The Head of Legal and Democratic Services introduced the Standards Committee Annual Report 2011/12 and highlighted the following minor amendments to the report:-

- That the word (Appendix A) be amended to read (Appendix 1) in the first paragraph of section 3 of the report;
- That the word 'mitigate' be amended to read 'handle' in the third paragraph of section 3 of the report; and
- That the words 'Welsh Government' be amended to read 'Welsh Local Government Association' in section 4 of the report.

The Committee also highlighted the following amendments to the report:-

- That the date of '11 June, 2011' be amended to '11 July, 2011' in the frequency of meetings listed in the report; and
- That the special meeting held in March 2012 be added to the frequency of meetings listed in the report.

Following discussion, the Committee agreed that the Annual Report should be circulated to all Town and Community Councils and One Voice Wales as well as any other organisations that may be suggested through the North Wales Standards Committee Forum. A copy of the report would be made available on Flintshire County Councils website.

RESOLVED:

- (a) That the Standards Committee Annual Report 2011/12 be approved; and
- (b) That the Annual Report be circulated to all Town and Community Councils and One Voice Wales as well as any other organisations that may be suggested through the North Wales Standards Committee Forum

11. PUBLIC SERVICE OMBUDSMAN'S ANNUAL LETTER 2011/12

The Head of Legal and Democratic Services introduced the Annual Letter of the Public Services Ombudsman for Wales, which in summary outlined that Flintshire had:-

- Fewer complaints about services than the all Wales average, although numbers had risen (39 – 2011/12, 34 – 2010/11);
- Complaints about services taken into investigation remained static at 3;
- Flintshire's response time to requests for information was more efficient than the Wales average; and
- No Code of Conduct complaints were investigated by the Ombudsman.

RESOLVED:

That the report be noted.

12. TRAINING & DEVELOPMENT NEEDS FOR STANDARDS COMMITTEE MEMBERS

The Head of Legal and Democratic Services invited the Committee to consider what training and development needs they would like in order to support them in their role.

A number of suggestions had been submitted by the Chairman and Mr. K.A. Martin prior to the meeting, which included, the role of Councillors, Council Services, training on holding hearings, granting dispensation and sanctions. The Head of Legal and Democratic Services suggested that training around Local Government governance, the role of the Council, the role of Councillors, Council Services, Cabinet functions and Council Functions could be provided to the Committee prior to the start of Committee meetings at 6.00 p.m. with the Committee meeting being moved back to start at 6.30 p.m. Larger topics such as how to hold a hearing would have to be arranged for a separate day to allow adequate time to be spent on the topic. The Committee supported the suggestions.

Following discussion, the Democracy and Governance Manager explained that the allowance paid to co-opted members of the Standards Committee was set by the Independent Remuneration Panel for Wales (IRPW) and at present this was limited to attendance at Committee meetings only. The IRPW were currently consulting on arrangements from May 2013 and this was to be considered by the County Council at its meeting on 11 September, 2012. He also explained that the Welsh Local Government Association (WLGA) had produced various role descriptions for Councillors which had been adopted by Flintshire County Council.

The Head of Legal and Democratic Services asked the Committee to contact him following the meeting if there were additional training needs they required.

RESOLVED:

- (a) That training around Local Government governance, the role of the Council, the role of Councillors, Council Services, Cabinet functions and Council Functions be provided to the Committee prior to the start of Committee meetings at 6.00 p.m. on 1 October, 2012 with the Committee meeting being moved back to start at 6.30 p.m.;

- (b) That a half day training session be arranged for October, 2012 on how to hold a hearing; and
- (c) That the Committee contact the Head of Legal and Democratic Services to highlight any additional training needs they require.

13. COUNCILLOR NEWSLETTER

The Head of Legal and Democratic Services introduced a protocol on the use of Council resources for the production of Councillor newsletters. At present the Council made available for use by Members the facilities in the group rooms and in Member Services which include computers, photocopying and postal arrangements. There should be a consistent approach to the use of such facilities by the 70 Members which should take into account the possible cost implications to the Council tax payer. A copy of the draft protocol was attached at Appendix 2 of the report.

A number of questions were raised around how the protocol would be enforced, the use of facilities in schools in Flintshire and how mobile phone devices would be monitored to ensure that they were not being used for personal use. The Head of Legal and Democratic Services responded that Members using facilities in schools would be re-charged; therefore their newsletters would not be paid for by Council tax payers.

Councillor H.J. McGuill suggested that the word 'free' in section 3 of the protocol be amended to the word 'able'. The Committee supported this suggestion.

Following discussion, the Head of Legal and Democratic Services agreed to undertake further work in order to define what was reasonable when using Council resources and provide a comprehensive list within the protocol.

RESOLVED:

- (a) That the protocol be approved; and
- (b) That a more comprehensive protocol be drawn up defining the use of resources and facilities for Councillors, particularly around mobile technology when dealing with a wider protocol.

14. FORWARD WORK PROGRAMME

The Head of Legal and Democratic Services invited the Committee to consider topics they would like included within the Forward Work Programme for the Committee.

Following discussion, the Head of Legal and Democratic Services agreed that he would include information on the role of the Standards Committee in the next Council newsletter. He asked that the Committee contact him with topics following the meeting to enable him to produce a draft Forward Work Programme to be submitted to the next Committee meeting on 1 October, 2012.

15. **DURATION OF MEETING**

The meeting commenced at 6.00 p.m. and ended at 7.16 p.m.

16. **MEMBERS OF THE PUBLIC AND PRESS IN ATTENDANCE**

There were no members of the public or press in attendance.

.....

Chairman

FLINTSHIRE COUNTY COUNCIL

REPORT TO: STANDARDS COMMITTEE
DATE: MONDAY, 1 OCTOBER 2012
REPORT BY: MONITORING OFFICER
SUBJECT: CODE OF CONDUCT AND TREATING OTHERS WITH RESPECT

1.00 PURPOSE OF REPORT

1.01 To inform Members of revised guidance by the Ombudsman.

2.00 BACKGROUND

2.01 Last year Councillor Calver was found to be in breach of the Code of Conduct by the Adjudication Panel for Wales for making statements on his blog that were highly disparaging of other Members of his Council. Councillor Calver took the Adjudication Panel for Wales to the High Court by way of Judicial Review and was successful.

2.02 In light of the decision in the High Court the Ombudsman has sent out the attached letter (Appendix 1) and issued revised guidance (attached as Appendix 2).

3.00 CONSIDERATIONS

3.01 In one sense, the letter is disappointing. Whilst the revised guidance is slightly better, it nevertheless appears to give Members scope to be rude to one another and to Officers or otherwise behave poorly. This may serve to erode public confidence in politicians and politics generally.

3.02 The decision does, however, make clear that Councillors are free to express their views and should not be constrained from raising important, controversial or unwelcome messages by the fear of complaints to the Ombudsman.

4.00 RECOMMENDATIONS

4.01 The Committee has two options open to it:-

- 1) Simply note the advice.
- 2) Make representations to the Ombudsman.

5.00 FINANCIAL IMPLICATIONS

5.01 None directly arising from this report.

6.00 ANTI POVERTY IMPACT

7.00 ENVIRONMENTAL IMPACT

7.01 None directly arising from this report.

8.00 EQUALITIES IMPACT

8.01 None directly arising from this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None directly arising from this report.

10.00 CONSULTATION REQUIRED

10.01 None directly arising from this report.

11.00 CONSULTATION UNDERTAKEN

11.01 None directly arising from this report.

12.00 APPENDICES

12.01 Appendix 1 – Ombudsman’s letter dated 17 September
Appendix 2 – Ombudsman’s revised guidance

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

None.

Contact Officer: Gareth Owens
Telephone: 01352 702344
Email: gareth.owens@flintshire.gov.uk

Our ref: PT/KS/mm

Ask for: Katrin Shaw

Your ref:

 01656 641182

Date: 17 September 2012

 Katrin.shaw@ombudsman-wales.org.uk

Mr Steve Thomas CBE
Chief Executive
Welsh Local Government Association
Local Government House
Drake Walk
Cardiff
CF10 4LG

Dear Steve

I thought it would be helpful to contact you in the light of a recent decision of the High Court concerning the Code of Conduct for members.¹

As you may be aware a member challenged the findings of the Adjudication Panel for Wales to uphold his Council's Standards Committee's decision to censure him for breaching paragraph 4(b) of the Code of Conduct by failing to show respect and consideration to his fellow councillors. The court found that whilst the comments which were posted on a website operated by the member were sarcastic and mocking and the tone ridiculed his fellow Councillors, because the majority of the comments related to the way in which the Council was run and the competence of the Councillors, the comments were "political expression". The ruling found that the Panel took an over-narrow view of what amounts to political expression and no account had been taken of the need for politicians to have "thicker skins". In view of the member's entitlement to freedom of expression, and the fact that the majority of comments were directed at fellow Councillors, the finding of a breach of the Code in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights. The Standards Committee's decision to censure the member was therefore set aside.

The impact of this ruling is that my staff will have to apply a higher threshold when deciding whether to investigate any conduct complained about which may be regarded as being "political expression". I will not therefore investigate such cases where 'political' criticisms are made, regardless of the tone of the exchange.

¹ Calver, R (On the Application Of) v The Adjudication Panel for Wales (Rev 1) [2012] EWHC 1172 (Admin) (03 May 2012).

Allegations of disrespectful behaviour towards officers, particularly those who may hold senior positions, must also be considered in the light of this ruling.

I have today issued my revised Guidance on the Code of Conduct which includes the impact of this ruling and other amendments. It is available on my website www.ombudsman-wales.org.uk .

I would be grateful if you would bring this issue to the attention of your members so as to avoid complaints being made which stand no prospect of being investigated in the light of this ruling. You may wish to incorporate this issue into the training materials which you recently prepared for members.

Yours sincerely

Peter Tyndall
Ombudsman

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that at all times including when acting in your private capacity you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity is likely to fall into this category.

Example

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room Councillor A said "good candidate, shame he's black". The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

Treating others with respect and consideration

See Paragraph 4(b)

Political groupings in authorities are expected to campaign for their ideas, and they may also seek to discredit the policies and action of their opponents. Criticism of ideas and opinion is part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code of Conduct for failing to treat someone with respect and consideration.

Furthermore, a member's freedom of expression attracts enhanced protection when his comments are political in nature. "Political" comments are not confined to those made within the Council chamber and, for example, include comments members may generally make on their authority's policies or about their political opponents.

It is therefore highly unlikely that I will investigate complaints made in this context and councillors need a "thicker skin" in dealing with, and responding to, politically motivated comments.

Likewise, when members raise such issues which could be considered political with officers, particularly those holding senior positions, when responding to such issues they should also do so with a "thicker skin" and expect to engage in robust discussions with officers.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should always treat members of the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectation and confidence in its elected representatives. This is the case in face to face settings such as meetings as well as when communicating by phone, letter, e-mail or other electronic means.

Example

The Adjudication Panel upheld a finding of a Standards Committee for failing to show respect and consideration for others by posting comments about other councillors and the way in which the Council was run.

The member sought judicial review of this decision. The Court found that whilst the comments which were posted were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the councillors, the comments were "Political Expression". The ruling said no account had been taken of the need for politicians to have "thicker skins". In view of the member's freedom of expression and the fact that the majority of comments were directed at fellow councillors the finding of a breach in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights. The Standards Committee's decision to censure the member was therefore set aside.

Example

A member of a town council wrote to a Deputy Minister of the Welsh Assembly Government about an employee ("Mr Smith") of a county council, which was also copied to the Council. In the letter the member questioned Mr Smith's competence and motivation and he made a number of comments of a disparaging and personal nature about Mr Smith and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out". The member was referred to the Adjudication Panel for Wales.

The Panel found that the member had breached paragraph 4(b) in that he had failed to show respect and consideration for others. It also found that by his use of words he had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

The member was disqualified for 12 months from being or becoming a member of a local authority.

FLINTSHIRE COUNTY COUNCIL – STANDARDS COMMITTEE – FORWARD WORK PROGRAMME

Date of Meeting	Topic	Notes/Decision/Action
7 January 2013	<ul style="list-style-type: none">• Election of new Chair person• Training Session• Any requests for dispensation	
3 December 2012	<ul style="list-style-type: none">• Recruitment of Independent Member• Use of Resources Protocol• Training Session• Any requests for dispensation	Independent Member – K Sibbons (retires Dec)
5 November 2012	<ul style="list-style-type: none">• Training Session• Any requests for dispensation	

This page is intentionally left blank