

Public Document Pack



Contact Officer:
Sharon Thomas / 01352 702324
sharon.b.thomas@flintshire.gov.uk

To:

Councillors: Patrick Heesom, Paul Johnson and Arnold Woolley

Co-opted Members:

Robert Dewey, Jonathan Duggan-Keen, Phillipa Earlam, Edward Michael Hughes, Julia Hughes and Kenneth Molyneux

25 September 2018

Dear Sir/Madam

You are invited to attend a meeting of the Standards Committee which will be held at 6.30 pm on Monday, 1st October, 2018 in the Clwyd Committee Room, County Hall, Mold CH7 6NA to consider the following items

Please note that a training session for the Standard Committee members will be held from 6.00pm until 6.30pm

A G E N D A

1 APPOINTMENT OF CHAIR

Purpose: Nominations will be sought for a Chair of the Committee.

2 APPOINTMENT OF VICE-CHAIR

Purpose: Nominations will be sought for a Vice-Chair of the Committee.

3 APOLOGIES

Purpose: To receive any apologies.

4 DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

Purpose: To receive any Declarations and advise Members accordingly.

5 MINUTES (Pages 3 - 6)

Purpose: To confirm as a correct record the minutes of the meeting on 2 July 2018.

6 DISPENSATIONS

Purpose: To receive any requests for dispensations.

7 ADJUDICATION PANEL FOR WALES SANCTIONS GUIDANCE (Pages 7 - 32)

Purpose: That the Committee notes the content of the guidelines.

8 PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL REPORT FOR 2017/18 (Pages 33 - 40)

Purpose: To inform the Standards Committee of the Public Services Ombudsman for Wales Annual Report for 2017/18.

9 PUBLIC SERVICES OMBUDSMAN FOR WALES (PSOW) CASE BOOK

Purpose: To receive a verbal report on the Ombudsman's Case Book (link below).

<https://www.ombudsman.wales/wp-content/uploads/2018/08/Code-of-Conduct-Casebook-Eng-Issue-17-July-2018.pdf>

10 NORTH WALES STANDARDS FORUM

Purpose: To receive a verbal report from Julia Hughes.

11 FORWARD WORK PROGRAMME (Pages 41 - 42)

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

Yours faithfully



Robert Robins
Democratic Services Manager

STANDARDS COMMITTEE
2nd JULY 2018

Minutes of the meeting of the Standards Committee of Flintshire County Council held at County Hall, Mold on Monday, 2nd July 2018

PRESENT: Edward Hughes (Chairman)

Councillors:

Patrick Heesom, Paul Johnson and Arnold Woolley.

Co-opted members:

Jonathan Duggan-Keen, Phillipa Earlam, Julia Hughes and Ken Molyneux.

IN ATTENDANCE:

Deputy Monitoring Officer, and Team Leader – Democratic Services

APOLOGY:

Rob Dewey.

83. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None.

84. MINUTES

The minutes of the meeting held on 4th June 2018 were submitted and, subject to the typographical errors being amended, were confirmed as a correct record.

RESOLVED:

That the minutes be approved and signed by the Chairman as a correct record subject to the typographical errors being amended.

85. DISPENSATIONS

The Deputy Monitoring Officer explained that none had been received.

86. REPORT BACK FROM THE STANDARDS COMMITTEE FORUM – 29TH JUNE 2018

The Standards Committee representative, Phillipa Earlam, provided a verbal update on the topics that had been discussed at the Standards Committee Forum on 29th June 2018, hosted by Gwynedd Council, which were as follows:

Prior to the Forum Flintshire's Monitoring Officer had circulated guidance on the use of social media, the content of which was mirrored by a presentation delivered by the Communications Director at Gwynedd Council. The following elements were discussed:

- It could be a good means of communication between a Councillor and their electorate but the risks and downsides were emphasised;
- The use of public and private accounts;

- How to respond to criticism;
- Online discussions;
- You can't control a conversation;
- If you set up a facebook account by way of a means to be contacted, you needed to ensure you kept a regular check on the account to ensure timely responses;
- Data Protection breaches, particularly in relation to photographs and gaining consent for use; and
- Thinking about your audience.

The Communications Team in Gwynedd provided regular workshops for Members where they could help them set up social media accounts and provide them with advice and guidance on how to take care online.

It was agreed that the issues discussed would be reported back to Standards Committees and a discussion to follow with the Monitoring Officer, IT and the Communications Team on the draft Social Media Policy. It was not yet a formal draft and the date for when it would be sent out for consultation was not yet known. Comments could possibly be fed back to the Conference in September.

Anglesey had tabled questions in relation to the proposed merger of local authorities, which had since been superseded, and raised that if Gwynedd Council and Anglesey County Council merged there would be in excess of 100 town and community councils and this was where the majority of their current issues came from.

Denbighshire County Council commented that they had seen a decrease in complaints relating to town and community councils and they felt this was due to the training of Clerks which saw an improvement in procedures.

A question was asked by Anglesey County Council as to how other Councils appointed a town or community council representative to their Standards Committee, commenting that it had been a long process for them taking over one year.

On the Local Resolution Protocol, a Chair of a Standards Committee had been encouraged by the Public Services Ombudsman for Wales (PSOW) to undertake dispute mediation training with a view to providing mediation direct as opposed to going to the Ombudsman. Feedback was it was a difficult role to undertake and could possibly undermine the Standards Committee in the future as if mediation did not work, the case could be reported to the Standards Committee and the mediator would have to stand down.

David Richards, the Director of Governance at Welsh Government had delivered a presentation to Anglesey County Council which had been well received. It was felt it would be useful to receive a presentation at the Standards Committee Forum and it was suggested that he send the slides from his presentation to Anglesey to Monitoring Officers so that they could recommend where it could be tailored specifically.

The Standards Committee Conference was scheduled for 14th September 2018 and there would be a maximum of four delegates per authority at a cost of £70 per delegate.

On dealing with claims of misconduct a flyer had been handed out from the PSOW; Anglesey's representative felt it covered a lot of the points but not all. It was felt that Monitoring Officers would be looking at the paper and would provide feedback. There was a general feeling that when a Councillor was accused of something, the standard procedure should be for them to stand down whilst the ombudsman's investigation took place.

RESOLVED:

That the feedback from the Standards Committee Forum on 29th June 2018 be noted.

87. STANDARDS CONFERENCE

The Deputy Monitoring Officer explained that the Standards Conference was scheduled to take place on 14th September 2018 in Aberystwyth University, Ceredigion.

The Chair said he was annual leave on that date so it was agreed that an email would be sent to seek expressions of interest in attending. The Council would be allocated four places.

RESOLVED:

- (a) That the details be received;
- (b) That an email be sent out to seek expressions of interest in attendance at the Conference.

88. FORWARD WORK PROGRAMME

The Chairman introduced the Forward Work Programme and invited suggestions for any items.

Julia Hughes said she thought at a previous meeting it had been agreed that a report on the Overview of Ethical Complaints would be put on the agenda for each meeting. The Deputy Monitoring Officer said he would check the resolution from when that item was considered. If it had not been resolved to include it on the agenda for each meeting it could be discussed at the next meeting to agree a frequency of reporting.

Councillor Johnson said it had been agreed in April 2018 that a template annual report would be sent to Councillors but he had not received it. The Deputy Monitoring Officer said he would follow that up.

Julia Hughes suggested the following for the Forward Work Programme:

- Feedback from visits to town and community councils to be on the Forward Work Programme for October, December, February, April and June;

- Consultation on Social Media Guidance – to be included on the Forward Work Programme once the consultation date was known;
- Upcoming vacancy in November – consideration of the process; and
- Verbal update from the Standards Committee Conference

RESOLVED:

That the Forward Work Programme be noted, including the suggestions above.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 – TO CONSIDER THE EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED:

That the press and public be excluded for the remainder of the meeting for the following item by virtue of exempt information under paragraph 18a of Part 4 of Schedule 12A of the Local Government Act 1972 (as amended).

89. REVIEW OF THE MEMBERS’ CODE OF CONDUCT

The Deputy Monitoring Officer introduced the Review of the Members’ Code of Conduct report following a request at the last meeting for the Committee to see the outcome letters from the two complaints considered by the Ombudsman against County Councillors in 2017.

Councillor Woolley said the report demonstrated that the current processes and existing systems worked well.

Phillipa Earlam said she felt the letters appended to the report were not in “plain English” and complainants could find it difficult to understand the content.

RESOLVED:

That it be noted that the evidence indicates that existing systems seem to be working and that the Members’ Code of Conduct does not need revision.

90. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

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

(The meeting started at 6.30pm and ended at 7.15pm)

.....
Chairman



STANDARDS COMMITTEE

Date of Meeting	Monday 1 st October 2018
Report Subject	Adjudication Panel for Wales Sanctions Guidance
Report Author	Matthew Georgiou

EXECUTIVE SUMMARY

The Adjudication Panel for Wales (APW) has issued sanctions guidance (the Guidance) for when a Councillor has been found to have breached the Members' Code of Conduct (the Code) by a case tribunal, or an appeal tribunal. The Guidance came into effect on the 1st September 2018. The primary purpose of the Guidance is to assist the APW's case tribunals, when considering the appropriate sanction to impose where a Councillor has been found to have breached the Code. It also seeks to fulfil the wider role of supporting all those, including local Standards Committees, in maintaining, promoting and adjudicating on the Code. The Guidance is a living document that will be updated and revised as the need arises, following consultation.

RECOMMENDATIONS

1	That the Committee note the contents of the Guidance.
---	---

REPORT DETAILS

1.00	BACKGROUND
1.01	The APW have issued the Guidance pursuant to its powers under Section 75(10) of the Local Government Act 2000.
1.02	The Guidance describes: 1. The ethical framework for conduct of County and Town and Community Councillors; 2. The role of the APW; and 3. The approach of the APW's tribunals to sanctions, following a finding that the Code has been breached.

1.03	Committee Members are familiar with the ethical framework and the role of the APW and, as such, paragraphs 1.04 to 1.11 of this report summarise the Guidance in respect of the types of APW tribunals, the purpose and range of sanctions available to them, and their approach to sanctions.
1.04	<p><u>Purpose of sanctions</u></p> <p>The Guidance sets out five purposes as follows: - 1. To provide a disciplinary response to an individual Member's breach of the Code; 2. To place misconduct and sanction on public record; 3. To deter future misconduct; 4. To promote a culture of compliance with the Code; and 5. To foster public confidence in local democracy.</p>
1.05	<p><u>Types of APW Tribunal and available sanctions</u></p> <p>There are three types of tribunal which can be established by the President of the APW. A Case Tribunal, an Interim Case Tribunal or an Appeal Tribunal.</p>
1.06	A Case Tribunal is an independent tribunal established to consider an alleged breach of the Code, where a full investigation by the Public Services Ombudsman for Wales (PSOW) has taken place and the PSOW has referred his report on his investigation to the APW. Should the APW find that the Code has been breached, the sanctions available are 1. To take no action; 2. To suspend or partially suspend a Member for up to twelve months; or 3. To disqualify a Member for up to five years.
1.07	An Interim Case Tribunal is an independent tribunal established when an investigation is underway by the PSOW but has been referred to them to consider whether to suspend or partially suspend the Member under investigation, pending the completion of his investigation. The maximum period of suspension is six months, or, if less than six months, until the investigation is complete. Unlike the Case Tribunal and Appeal Tribunal, a decision to suspend is a neutral act given the investigation is still ongoing.
1.08	An Appeal Tribunal is an independent tribunal of the APW established to review a decision of a local Standards Committee, where the PSOW has referred an investigation to them. The tribunal must decide whether to uphold and endorse the decision and sanction imposed by the Standards Committee, uphold the decision on breach of the Code but refer the matter back to the Standards Committee with a recommendation as to an alternative sanction, or to overturn the decision that the Code has been breached. The available sanctions are the same as those that are open to the Standards Committee on referral to them by the PSOW; that is, to censure or to suspend or partially suspend up to a maximum of six months.
1.09	<p><u>Approach and process in determining sanction</u></p> <p>Tribunals established by the APW must always have in mind underlying principles of fairness, the public interest, proportionality, consistency and equality and impartiality when approaching the issue of sanction. The appointed tribunal must also act in accordance with Article 6 (right to a fair hearing) of the European Convention on Human Rights (ECHR) and in addition, both when considering whether a Councillor is in breach of the Code, and when considering whether to impose a sanction, the APW has to assess whether such a finding would be a breach of the Councillor's enhanced right to freedom of speech under Article 10 of the ECHR. The</p>

	High Court established that there is a three-stage approach that must be followed in this regard: - 1. Can the tribunal conclude that there has been a breach of the Code as a matter of fact? 2. If so, is the finding of breach and the imposition of a sanction on the face of it a breach of Article 10? and 3. If so, is the restriction one which is justified by reason of the requirements set out in Article 10 as to when the convention right may be legitimately interfered with?
1.10	The Guidance sets out a five-stage process for a tribunal in determining sanction: - 1. Assess the seriousness of the breach and consequences for individuals and/or the Council; 2. Identify the broad type of sanction most likely to be appropriate having regard to the breach; 3. Consider any mitigating and/or aggravating factors surrounding the breach; 4. Consider any further adjustments necessary; and 5. Confirm the decision on sanction and include within a written decision an explanation of the sanction imposed.
1.11	Paragraphs 34 to 66 of the Guidance explain in detail how these stages of the process will work. For example, in respect of assessing seriousness of the breach, the Guidance explains that matters such as nature and extent of the breach, the number of breaches, the Councillor's culpability/intentions, any previous breaches of the Code, and the consequences of the breach on individuals, the council and the wider public, are all matters to which a tribunal will have regard. The tribunals will start by considering the appropriateness of possible sanctions of least impact. Paragraphs 36 to 38 give examples of the types of behaviour that are likely to lead to harsher sanctions. The Guidance provides a useful and detailed explanation of the other four stages of the process for determining sanction.
1.12	In addition to the Guidance, the APW also publish an annual report which summarises the cases they have heard and the decisions they have made and the web address for those reports is provided at 6.02 of this report.

2.00	RESOURCE IMPLICATIONS
2.01	N/A

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	N/A

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Appendix 1 - The Guidance

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk
6.02	The APW's annual reports can be found here :- http://apw.gov.wales/about/annual-reports/?lang=en

7.00	GLOSSARY OF TERMS
7.01	APW – The Adjudication Panel for Wales which is the statutory independent body whose function is to establish independent tribunals for the purpose of determining cases referred to them by the PSOW, or on appeal from a decision of a Standards Committee.
7.02	PSOW – the Public Services Ombudsman for Wales, who is responsible, amongst other matters, for investigating complaints regarding breaches of the Code.

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

CONTENTS

Introduction

page 2

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

Standards in Public Life

page 3

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

The Adjudication Panel for Wales

page 5

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

The Tribunals' Approach: underlying principles

page 7

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

Case and Appeal Tribunals: determining sanction

page 9

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

Interim Case Tribunals: determining sanction

page 18

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

Annex: other relevant documents and guidance

page 21

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)



STANDARDS COMMITTEE

Date of Meeting	Monday 1 October 2018
Report Subject	Public Services Ombudsman for Wales Annual Report for the year 2017/18
Report Author	Matthew Georgiou

EXECUTIVE SUMMARY

The Public Services Ombudsman for Wales (PSOW) has published his Annual Report (AR) for 2017/2018 pursuant to Paragraph 14 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2005.

This report summarises the headline matters in the AR with a particular focus on matters relating to standards of County & Town and Community Councillors.

RECOMMENDATIONS

1	To note the matters relating to Code of Conduct Complaints (CCCs) reported in the AR.
---	---

REPORT DETAILS

1.00	BACKGROUND
1.01	The PSOW has published his AR for 2017/2018 pursuant to Paragraph 14 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2005. The AR has been combined with the annual accounts for the PSOW as it was last year.

1.02	The purpose of the AR is to report on the performance of the PSOW's office over the year, provide an update on developments and to deliver any key messages arising from the work carried out during the year. For example, the AR refers to the PSOW's visit to this Committee in October last year.
1.03	This report summarises the headline matters in the AR with a particular focus on matters relating to standards of County & Town and Community Councillors.
1.04	The AR sets out the workload that has been dealt with by the PSOW during 2017/2018. It breaks the workload down into the number of enquiries received and the number of complaints received, and also breaks down the complaints into those received about services (public body complaints) and those received in relation to CCCs. This report will highlight the data relating to CCCs only (issues arising from public services or the annual accounts section of the AR are beyond the scope of this report).
1.05	The number of CCCs has risen by 14% since 2016/17. The total number of complaints for the year 2016/17 were 236 and for 2017/18 were 270. 42% of the complaints related to the promotion of equality and respect; 19% related to the failure to disclose or register interests; 16% related to integrity; 8% related to accountability and openness; and 7% related to failure to be objective or act with propriety. Of those complaints, 247 were closed (one less than last year) and 30 were investigated (down 32% on last year).
1.06	The 14% increase in CCCs is wholly due to an increase in complaints regarding Town and Community Councillors, which have risen 33% on last year.
1.07	Further statistical data is contained at pages 11 to 13 of the AR. Further detailed data is contained at pages 21 to 23 of the AR. However, in general terms the nature of the complaints were weighted towards those around equality and respect, followed by failure to register or declare interests and then issues related to integrity, which mirrors the position last year.
1.08	The most common outcome of the complaints were that they were 'Closed after initial consideration.' Of the 247 complaints in 2017/18, the majority were closed (213) under this outcome. These include decisions where: <ul style="list-style-type: none"> • there is no 'prima facie' evidence of a breach of the Code, and • it is not in the public interest to investigate.
1.09	Fewer complaints were closed after full investigation in 2017/18 (26) than in 2016/17 (34). The AR states that this is because the PSOW continued to apply a public interest test when deciding whether to investigate CCCs and the PSOW will only investigate the more serious complaints where an investigation is required in the public interest.

1.10	In 2017/18 the PSOW received nine complaints which raised potential whistleblowing concerns about alleged breaches of the Code of Conduct. These complainants either did not provide 'prime facie' evidence of a breach of the code or did not warrant investigation in the public interest.
1.11	Of the cases the PSOW investigated and closed this year, three cases were referred to the Adjudication Panel for Wales. Two of these cases were considered by the Panel during the year and in both cases serious breaches of the Code were found on the basis of the PSOW's investigations and reports. Both cases involved Councillors making derogatory remarks and unfounded allegations against staff and engaging in bullying, harassment, intimidation and malicious behaviour. As a result, a former member of the Council was disqualified from holding office for 14 months and a former member of Conwy County Borough Council was disqualified from holding office for 18 months. A detailed breakdown of the outcomes of CCCs is provided at Annex B to the AR.

2.00	RESOURCE IMPLICATIONS
2.01	N/A

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	N/A

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Appendix 1 - Annex B of the AR

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>https://www.ombudsman.wales/wp-content/uploads/2018/07/PSOW-Annual-Report-and-Accounts-2017-2018.pdf</p> <p>Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew_georgiou@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	PSOW:- the Public Services Ombudsman for Wales whose duty it is to investigate complaints made by members of the public in relation to the actions and decision making of public bodies in Wales.
7.02	AR:- Annual Report of the PSOW for 2016/17
7.03	CCCs:- Code of Conduct Complaints

Annex B: Code of Conduct Complaints closed— Statistical Breakdown by outcomes by local authority

County/County Borough Councils

County/County Borough Councils	C	D	NE	NA	SC	AP	W	Grand Total
Blaenau Gwent	3	1						4
Bridgend	3			1				4
Caerphilly	4							4
Cardiff	2		1					3
Carmarthenshire	6							6
Ceredigion	1							1
Swansea	6							6
Conwy	4			1		1		6
Denbighshire	2							2
Flintshire	3					1		4
Gwynedd	6		1					7
Isle of Anglesey	3							3
Merthyr Tydfil	6		1					7
Monmouthshire	3					1		4
Neath Port Talbot	1							1
Newport	3							3
Pembrokeshire	9							9
Powys	13		5	1				19
Rhondda Cynon Taf	1							1
Torfaen	4			2				6
Vale of Glamorgan	1		1					2
Wrexham	1							1
Grand Total	85	1	9	5	0	3	0	103

Key

C Closed after initial consideration
D Discontinued
NE No evidence of Breach
NA No action necessary

SC Refer to Standards Committee
AP Refer to Adjudication Panel
W Withdrawn

Community/Town Councils

Community/Town Council	C	D	NE	NA	SC	AP	W	Grand Total
Abertillery & Llanhilleth Community Council				1				1
Barmouth Town Council	1							1
Barry Town Council	3							3
Beaumaris Town Council	1							1
Bedlinog Community Council	2							2
Bishton Community Council	1							1
Brackla Community Council	3							3
Brawdy Community Council	3							3
Bridgend Town Council	1							1
Caerphilly Town Council	1							1
Chepstow Town Council	5							5
Clyro Community Council	10							10
Conwy Town Council	1							1
Cosheston Community Council	2							2
Cwmbran Community Council	1							1
Dinas Powys Community Council	1							1
Garw Valley Community Council	2	1						3
Glynneath Town Council	6	1					1	8
Gorseinon Town Council	2							2
Guilsfield Community Council	4							4
Hirwaun & Penderyn Community Council	1						3	4
Johnston Community Council	9							9
Knighton Town Council	3							3
Langstone Community Council	2							2
Llanbedrog Community Council	3			2				5
Llanddowror and Llanmiloe Community Council	2							2
Llanelli Rural Council			1					1
Llanfechain Community Council	1							1
Llanfrynach Community Council	2							2
Llangefni Town Council	1							1
Llangristiolus Community Council	1							1
Llangybi Community Council (Monmouthshire)	2							2
Llanover Community Council	1							1
Llansannan Community Council	1		1					2

Community/Town Council	C	D	NE	NA	SC	AP	W	Grand Total
Llay Community Council	4			1				5
Magor with Undy Community Council	1							1
Milford Haven Town Council	1							1
Mold Town Council	2							2
Mumbles Community Council	3	1						4
Nantyglo & Blaina Town Council	1							1
Neath Town Council	1							1
New Quay Community Council	1							1
Northop Hall Community Council	4							4
Ogmore Valley Community Council	1							1
Pembrey & Burry Port Town Council	14							14
Pembroke Dock Town Council	1							1
Pencoed Town Council	1							1
Penmaenmawr Town Council	1							1
Pentyrch Community Council	1							1
Porthmadog Town Council	1							1
Prestatyn Town Council	2							2
Saltney Town Council				1				1
Sully and Lavernock Community Council	1							1
Taffs Well Community Council	2							2
Trawsgoed Community Council	1							1
Tywyn Town Council	1		2					3
Welshpool Town Council	1							1
Ynysawdre Community Council	3							3
Grand Total	128	3	4	5	0	0	4	144

Key	
C	Closed after initial consideration
D	Discontinued
NE	No evidence of Breach
NA	No action necessary
SC	Refer to Standards Committee
AP	Refer to Adjudication Panel
W	Withdrawn

This page is intentionally left blank

FLINTSHIRE COUNTY COUNCIL – STANDARDS COMMITTEE – FORWARD WORK PROGRAMME 2018/19

Date of Meeting	Topic	Notes/Decision/Action
July 2019	<ul style="list-style-type: none"> • Training • Dispensations 	
June 2019	<ul style="list-style-type: none"> • Training • Dispensations • Members' Code of Conduct 	
1 April 2019	<ul style="list-style-type: none"> • Training • Dispensations 	
29 April 2019	<ul style="list-style-type: none"> • Training • Dispensations 	
March 2019	<ul style="list-style-type: none"> • Training • Dispensations 	
February 2019	<ul style="list-style-type: none"> • Training • Dispensations 	
January 2019	<ul style="list-style-type: none"> • Training • Dispensations • Officers Code of Conduct 	
December 2018	<ul style="list-style-type: none"> • Training • Dispensations 	

	<ul style="list-style-type: none"> • Planning Code of Practice 	
November 2018	<ul style="list-style-type: none"> • Training • Dispensations • Councillor Training 2018 	
October 2018	<ul style="list-style-type: none"> • Training • Dispensations • Standards Conference September 2018 • APW Sanctions Guidance • Public Services Ombudsman's Annual Report for 2017/18 • The Public Services Ombudsman for Wales Case Book 	<p>Verbal update by Julia Hughes Report by Matt Georgiou Report by Matt Georgiou</p> <p>Verbal update by Matt Georgiou</p>
September 2018	Meeting Cancelled	