

STANDARDS COMMITTEE

Date of Meeting	Monday 4 th December 2023
Report Subject	Adoption of Procedure for dealing with a report referred by the Public Services Ombudsman for Wales regarding allegations of breach of a Code of Conduct for Members
Report Author	Legal Services Manager

EXECUTIVE SUMMARY

The Standards Committee is responsible for dealing with reports that are referred to the Council's Monitoring Officer by the Public Services Ombudsman for Wales under section 69 of the Local Government Act 2000. Such a referral is made after the Ombudsman has carried out an investigation into, and has concluded that there is evidence of, an alleged breach of the authority's code of conduct for members.

When the Standards Committee receives a report, it must deal with such a report in accordance with the requirements of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.

The Standards Committee does not currently have a procedure for dealing with reports that are referred to it for determination. The Council has received a report from the Public Services Ombudsman for Wales and is referring this to the Standards Committee for determination. The Standards Committee therefore needs to adopt a procedure to deal with the immediate report and for any reports that may be referred to the Standards Committee in the future.

The appendix to this report sets out a recommended procedure.

RECOMMENDATIONS

1	The Standards Committee agrees to adopt the procedure set out in Appendix 1 to this report for dealing with reports regarding alleged breaches of a local authority's code of conduct for members.
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REPORT DETAILS

1.00	THE NEED TO ADOPT A PROCEDURE FOR DEALING WITH A REPORT FOR DEALING WITH A REPORT REFERED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES REGARDING ALLEGATIONS OF BREACH OF A CODE OF CONDUCT FOR MEMBERS
1.01	The Standards Committee is responsible for dealing with reports that are referred to the Council's Monitoring Officer by the Public Services Ombudsman for Wales ("the Ombudsman") under section 69 of the Local Government Act 2000. When the Standards Committee receives a referral, it must deal with such a report in accordance with the requirements of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.
1.02	Regulation 8 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 says that, subject to any express provision in those Regulations or in the Standards Committees (Wales) Regulations 2001, it is for a local authority's Standards Committee to decide on the practice and procedure to be followed in exercising functions under those Regulations. The Standards Committee therefore need to decide on the procedure that it will be used.
1.03	A referral has been received so the Standards Committee needs to decide on the procedure that will be used.
1.04	A recommended procedure is set out at Appendix 1 to this report.

2.00	KEY PROVISIONS OF THE PROPOSED PROCEDURE
2.01	The proposed procedure has been prepared to ensure that it meets the requirements of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 plus the rules of natural justice and European Convention on Human Rights. It makes provision for the member who is the subject of a report to receive a fair hearing and for an allegation to be comprehensively and reasonably considered by the Standards Committee. It covers all practical details that will need to be addressed in dealing with a report from the Ombudsman. Key provisions contained in the procedure include:
2.02	<u>Initial Determination</u> When a report is referred to the Standards Committee, the Committee is required to make an initial determination that either: <ol style="list-style-type: none">1. There is no evidence of any failure to comply with the Code of Conduct; or2. That the member who is the subject of the Ombudsman's investigation should be given the opportunity to make

	<p>representations to the Committee either orally or in writing in respect of the findings of the investigation.</p> <p>This is not a determination as to whether there is a breach of the Code of Conduct nor is it a hearing of the evidence. The only decision for the Standards Committee to make is whether there is no evidence of a breach.</p> <p>Usual principles of good decision making apply so the Standards Committee must have regard to all relevant information. This is likely to include observation within the Ombudsman's report as to whether there is any indication of possible breach of the Code of Conduct and any evidence appended to the report. It is not considered that the Standards Committee will require any additional evidence or submission from the subject member or the Ombudsman at this stage.</p>
2.03	<p><u>Arrangements for communicating with the member and dealing with the member's response</u></p> <p>The procedure requires officers to notify the subject member of the Standards Committee's initial determination and ask the subject member to confirm if they wish to make written or oral representations.</p> <p>Depending on the subject member's response, officers will either report to the Standards Committee that the subject member does not wish to make representations or will make arrangements for the Committee to receive the subject member's representations. If the member wishes to make representations, those arrangements will include a hearing.</p>
2.04	<p><u>Arrangements prior to the hearing</u></p> <p>The procedure sets out details for liaising with the member and the Ombudsman prior to hearing to confirm their expectations regarding practical arrangements for the hearing and their availability.</p> <p>The procedure also makes provision for checking the availability and eligibility of members to attend a hearing.</p>
2.05	<p><u>Requirement for training</u></p> <p>The procedure includes a requirement for members of the Standards Committee who are going to participate in a hearing to have attended training provided or approved by Flintshire County Council on the subject of dealing with a report referred by the Public Services Ombudsman for Wales regarding allegations of breach of a code of conduct for members and that training was no longer ago than one year before the date of the relevant hearing.</p> <p>This requirement has been included for the purpose of good governance, as it is important to effective decision making that all persons who participate in a hearing to have the same level of understanding about the decisions that they are required to take.</p>

	<p>However, it is recognised that this requirement may on occasion cause practical difficulty in arranging a hearing. In order to be quorate, a meeting of the Standards Committee requires attendance of at least three members of the Committee and at least half of these must be independent members. If a hearing deals with an allegation relating to a member of a town or community council, one of the members of the Standards Committee participating in the hearing must be a town or community representative. Therefore, there is provision in the procedure for the requirement for training to be waived if the Standards Committee considers that it would otherwise be impracticable for the Standards Committee to conduct a hearing.</p>
2.06	<p><u>Pre-Hearing Review</u></p> <p>The procedure makes provision for the subject member, the Ombudsman or the Standards Committee to request a pre-hearing review to consider any practical details which need to be addressed in advance of the hearing.</p>
2.07	<p><u>Notice of Hearing</u></p> <p>Notice of the hearing will be given in accordance with the statutory requirements relating to notice of the Council's committee meetings.</p>
2.08	<p><u>Legal Support</u></p> <p>The Council will provide legal and democratic services support to the Standards Committee. The legal support will usually be provided by the Monitoring Officer but the Monitoring Officer may arrange for support to be provided by another officer of the Council or by external legal advisers.</p>
2.09	<p><u>Access to Information</u></p> <p>The Standards Committee will need to decide whether any part of the pre-hearing process or the hearing itself should take place without the press and public being present. The procedure envisages that:</p> <ol style="list-style-type: none"> 1. Meetings where the Standards Committee is required to make an initial determination in respect of report on an alleged breach of the Code of Conduct and pre-hearing review will be held in private. Under paragraphs 12 and 18A of Part 4 of Schedule 12A to the Local Government Act 1972. Such meetings will contain information that is exempt from public access because it is information relating to a particular individual and because reports from the Ombudsman are provided in confidence for all purposes except the hearing itself. 2. The procedure also provides that exclusion of the public will include any member of Flintshire County Council who is not a member of the Standards Committee, because it contains personal data. 3. The actual hearing will usually be in public in accordance with the subject member's right to a fair hearing under Article 6 of the

	<p>European Convention on Human Rights. The Ombudsman or accused councillor may request for all or parts of the hearing to take place in private having regard to the sensitivity of evidence to be heard, and such applications will be considered on a case by case basis.</p>
2.10	<p><u>Failure of a party to attend a hearing</u></p> <p>If a party to the hearing fails to attend after having been given notice of a hearing, the procedure allows the Standards Committee to make a decision in the absence of that party or to adjourn the hearing if the Standards Committee decides that there is a good reason for the party's absence.</p>
2.11	<p><u>The Hearing</u></p> <p>The procedure sets out how the Standards Committee will approach:</p> <ul style="list-style-type: none"> • Preliminary matters • Determining the facts • Determining whether the facts demonstrate a breach of the Code of Conduct • Deciding on a sanction
2.12	<p><u>Written Decision</u></p> <p>The procedure says that the Standards Committee will use reasonable endeavours to announce its decisions on the same day that the hearing ends but that a full written decision with reasons will be issued within 10 working days of the end of the hearing and notified to the Ombudsman and the subject member.</p>
2.13	<p><u>Appeals</u></p> <p>The procedure notes that if a member is found to have breached the Code of Conduct, that member will have a right of appeal to the Adjudication Panel for Wales against the decisions of the Standards Committee in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.</p>
2.14	<p><u>Report of the outcome of the investigation</u></p> <p>The procedure requires the Standards Committee to arrange for a report on the outcome of the investigation to be produced and distributed and publicised in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.</p>

3.00	RESOURCE IMPLICATIONS
3.01	There are no resource implications associated with the adoption of the procedure but any action taken by the Standards Committee to deal with reports referred to it will require the Council to commit officer time and other resources.

4.00	CONSULTATIONS REQUIRED / CARRIED OUT
4.01	None.

5.00	RISK MANAGEMENT
5.01	No risk management requirements arising directly from this report.

6.00	APPENDICES
6.01	Appendix 1 – Procedure for dealing with a report referred by the Public Services Ombudsman for Wales regarding allegations of breach of a Code of Conduct for Members.

7.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
7.01	<p>Procedure for dealing with a report referred by the Public Services Ombudsman for Wales regarding allegations of breach of a code of conduct for members annexed to this report</p> <p>Local Government Act 2000</p> <p>Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001</p> <p>Standards Committee (Wales) Regulations 2001</p> <p>Contact Officer: Matt Powell, Legal Services Manager Telephone: 01352 702354 E-mail: matthew.powell@flintshire.nwalescls.com</p>

7.00	GLOSSARY OF TERMS
7.01	Code of Conduct for Members – The code of conduct that local authorities are required by the Local Government Act 2000 to adopt to govern the conduct of their members.

<p>Public Services Ombudsman for Wales – the person who holds the office of Public Services Ombudsman for Wales, established under the Public Services Ombudsman (Wales) Act 2019 and has power under the Local Government Act 2000 to investigate allegations that a member or co-opted member or former member or co-opted member has breached the Code of Conduct for members.</p>
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