

Consultation response form: WG47012

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Consultation Questions

We are not seeking specific responses on all the Recommendations. This is because taking into account discussions held with stakeholders and key partners Welsh Ministers' responses to the Recommendations include a number of suggestions for legislative change, highlights some actions which have subsequently been addressed without the need for legislation since the Report was published, some suggestions for non-legislative action and further suggestions for improvement which have been identified in discussion with stakeholders since the Report's publication.

However, there is a general question at the end of the consultation questions where you can add your comments on the Recommendations that do not have a specific question below, or where you wish to make any other comments on the consultation document.

Recommendation 4

Q1. Do you agree the relevant regulations relating to the Ethical Standards Framework should be amended to align with the definitions relating to protected characteristics in the Equality Act 2010, and that we should amend the definition of equality and respect in section 7 of The Conduct of Members (Principles) (Wales) Order 2001 (legislation.gov.uk)?

Yes

Comment: Flintshire County Council has already made this amendment as a voluntary change to its own code of conduct. However, a change to the national model is logical and would help to ensure consistency across Wales.

Recommendation 10

Q2. Should the Adjudication Panel Wales (APW) be able to issue Restricted Reporting Orders?

Yes (majority view)

Comment: Any steps taken that might result in the removal of an elected councillor are of fundamental importance to the electorate and the greatest transparency should apply to such proceedings. Alleged breaches of the code can arise from a wide variety of factual situations and it is entirely possible that some of these would be circumstances where restrictions reporting might be desirable e.g. where a hearing involves minors. There is a sufficiently established body of jurisprudence on the importance of open reporting and when restrictions on reporting are appropriate for such a power to be used judiciously. A number of councillors expressed the view that due to the need for transparency no such orders should be possible.

Q3. Should there be express legal provision to enable the APW to protect the anonymity of witnesses?

Yes (majority view)

Comment: Alleged breaches of the code can arise from a wide variety of factual situations and it is entirely possible that some of these would be circumstances where witnesses would feel embarrassed to give evidence (this has already happened in respect of a Flintshire county councillor). Allowing witnesses to testify anonymously would reduce that risk of embarrassment and thus increase the chance of their participation. To put it another way it could harm the administration of justice if witnesses were to refuse to testify due to the absence of the power to ensure their anonymity. It is of equal importance however to ensure that natural justice is followed and to ensure that the accused member is able to fully defend the case being brought against them, and this would include knowing the identity of their accuser.

Please also see comments above regarding transparency and need to see the evidence on which any decision is reached to remove an elected representative.

Q4. Do you support the proposed changes to the permission to appeal procedure outlined in this recommendation. If not, what alternatives would you suggest?

Yes

Comment: It seems appropriate that the Ombudsman should be able to comment on requests for permission to appeal and that the process should allow time to comment.

Q5. Should there be an express power for the APW to summon witnesses to appeal tribunals?

Yes

Comment: It would clearly be contrary to the interests of justice if a witness were not to attend a hearing.

Q6. Should there be any changes in the procedure for referring appeals decisions back to standards committees?

No

Comment: it is an established practice that appeals tribunals should remit cases back to the primary decision maker for reconsideration. Whilst it would be a "brave" Standards Committee that disagreed with the APW the proposed change would remove the right for them to choose to do so which would be a diminution of their freedom of action.

Q7. Do you agree there should be an express provision to enable part or all of tribunal hearings to be held in private?

Yes

Comment: See comments above in response to Question 3

Q8. Do you agree that the requirement to provide not less than seven days' notice of the postponement of a hearing should be retained?

Yes/No: (delete as appropriate)

Comment: (Optional)

Q9. Should there be a wider range of sanctions available to the APW, and if so, what should they be?

Yes (majority view)

Comment: Flintshire has previously and consistently advocated for a wider and more flexible range of sentencing powers along the lines of those previously available in England. There should be the power to order that training be undertaken or an apology issued in addition to existing powers. These should

also be capable of being conditionally suspended so that for example a councillor might be suspended unless s/he issues a suitable apology within 30 days. There was a view expressed that a forced apology, which might be “mealy mouthed”, could be a distraction from a strong, clearly worded censure issued by the Case Tribunal itself.

Q10a. Do you support the proposed amendments to the process for interim case tribunals outlined in this recommendation? If not, could you please explain.

Yes (majority view)

Comment: It is presently too difficult to apply for an interim suspension order which creates a serious risk in a small number of cases. For example, where there is a safeguarding concern about a professional then under Part 5 of the Wales Safeguarding Procedures s/he could be put on administrative suspension pending an investigation in order to protect the vulnerable and the employing organisation. No such similar provision exists in relation to councillors/members. Likewise there might be examples of other serious misconduct such as extreme bullying or corruption where an interim suspension would help to protect witnesses and the public interest. The predominant view is that, in order to protect evidence, the status quo or the reputation of a council, there may be circumstances where an interim suspension might be appropriate.

The Interim Case Tribunal would, of course, need to be cognisant of the potential democratic impact of a suspension which might leave a single member ward unrepresented. Perhaps more importantly it might also impact on the political balance of a council, and so could cause political instability.

The ICT should therefore have the power to issue a partial suspension where that would be sufficient to protect the status quo e.g. suspending a councillor from the Planning Committee where s/he has been accused of taking bribes in relation to planning applications.

Assuming that interim suspension orders came to resemble the administrative suspension that might be applied to employees then any interim suspension order should not also suspend the councillor’s allowances.

Note there was also a view expressed that, whilst an administrative suspension might be a confidential matter for employees, it would be noticed if an elected representative were suspended even in the interim. This could have a negative electoral impact for a councillor who might subsequently be cleared of any wrong doing.

Q10b. If you do support the changes to the process for interim case tribunals, do you agree that an intermediate arrangement should be put in place i.e., by shortening and streamlining the process for interim case tribunals in The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001?

If yes, do you have any suggestions as to how this process could be streamlined within the regulations?

Yes

Comment: (Optional)

Q11. Do you have any further views on the recommendations made in relation to the operation of the APW?

No

Comment: (Optional)

Recommendation 12

Q12. Do you have any suggestions as to how work might be taken forward to raise awareness of the Ethical Standards Framework, in particular for people with protected characteristics as described in the Equality Act 2010?

Comment: Anecdotally, it would seem that wide range of people do already know about the regime. However, it is clearly not possible to know if a potentially valid complaint has not been investigated because of a lack of awareness of the process. Publicity materials could be produced and distributed to bodies representing such groups and all councils will have a network of such local organisations. This is an area where co-ordinated central action would save duplication of time and effort. A single body should be commissioned to produce these materials in conjunction with the Ombudsman, WLGA and Lawyers in Local Government.

Other related matters outside of the Review Report

Q13. Advertising for independent members of standards committees: Do you agree the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed?

Yes

Comment: The costs of such adverts are high and anecdotal experience shows that most applicants come via other channels such as websites or existing networks of Independent Members. It is of more importance to ensure that able candidates from a wide range of backgrounds are attracted to the role and so WG should issue guidance on inclusive recruitment.

Q14a. Former council employees sitting as independent members on standards committees: Do you agree that the lifelong ban on former council employees being independent members of their previous employer's standards committee should be removed?

No. The strength of Standards Committees at present is that they must consist of a majority of Independent Members who can without doubt be said to be truly independent and politically impartial.

Q14b. If yes, what do you think would be a suitable period of grace between employment and appointment to a standards committee, and should this be the same for all council employees, or longer for those who previously holding statutory or politically restricted posts?

There was a unanimous view that politically restricted officers should not be able to serve as Independent Members. In respect of other officers the position is more nuanced. Again the predominant view is that they should not be able to serve. If, despite this view, WG wishes to permit them to be eligible then the period of grace for former employees therefore needs to be long to minimise the perception that the former employee is still affected by prior association with the council. The period of grace could be set to fixed period say 5 or 10 years or could be flexible based on (multiples of) length of service with or without a minimum. E.g. twice the length of the period of employment with a minimum period of 12 months/5 years etc

Q15. Former councillors sitting as independent members on standards committees:

Do you agree that the lifelong ban on serving as an independent member on the standards committee of the council to which a councillor was elected should be removed? If yes, what do you think would be a suitable period of grace?

No

Comment (Optional): The role of councillor, even those not in national political parties, is always a political one. The current make up of committees and structure on membership ensure that Independent Members are truly seen to be independent of local politics. Removing that prohibition risks weakening that safeguard.

Q16. Standards committees' summoning witnesses and sanctions: Should standards committees have the power to summon witnesses?

Yes

Comment: The same considerations apply here as to Question 5. Without its own powers of contempt the mechanism to issue a witness summons would need an enforcement route, perhaps the power to seek a warrant from the Magistrates.

Q17. Do you agree that the sanctions a standards committee can impose should be changed or added to?

Yes

If yes, what sanctions would you suggest? See response to Question 9. The same power to impose conditional sentences should apply to Standards Committees as should the powers to order an apology and/or training.

Welsh language

We would like to know your views on the effects that the above changes to the Framework and Model Code of Conduct would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

Q18. What effects do you think there would be?

None either negative or positive. These proposal would appear to be neutral in effect

Q19. How could positive effects be increased, or negative effects be mitigated?

Q20. Please also explain how you believe the proposed amendments could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Q21. Do you have any other comments you wish to make on the matters raised in this consultation, including for those Report Recommendations where no specific question has been posed?

Yes

Comment:

The local government sector has responded largely positively to the Penn Report. As the consultation recognises, we have taken responsibility for our regulation and have worked collectively since its publication to adopt a number of the recommendations where legislative change is not required. So far we have:

- i. held a further national standards conference (which had simply been delayed by the pandemic);

- ii. established a national forum for Standards Committee chairs to mirror, and replace, the forum that has existed for some time in North Wales (and which was latterly extended to include authorities from Mid Wales as well; and
- iii. we are currently working to harmonise the threshold for declaring gifts & hospitality at a proposed level of £25, and every authority in Wales with a different threshold has committed to take that change through its Standards Committee. As part of greater transparency it would be possible for councils to encourage all gifts to be declared.

There are 2 recommendations which require legislative change by Welsh Government for which there are currently no proposals for action. Flintshire would wish to see legislative action to support the following recommendations:

- 1) Presently there is no proposal to make it mandatory for a councillor to report their own criminal behaviour, which seems illogical when there is an obligation on others to do so. At Flintshire we have chosen to voluntarily adopt such a model by making an obligation to report any conviction imposed on the councillor since making their declaration of acceptance of office (excluding anything punishable by way of FPN) in order to have clearly defined trigger for the obligation to take effect. This embodies the leadership principle of the model principles and ensures that councillors own up in a responsible manner for their behaviour. It also adds an extra tool if the councillor seeks to cover up their criminality. Lastly, it avoids the difficulty of seeking to require councillors to disclose convictions that are spent or which would not debar them from standing for election under s.80A Local Government Act 1972. Clearly, it is a possibility that a councillor might appeal a conviction, and they have 56 days in which to do so, but it is by no means certain that an appeal will be submitted and legally they remain convicted until such time as the appeal has been successful. If a councillor does appeal then the PSOW could easily postpone the investigation until the appeal is resolved.
- 2) Although at Flintshire we have been able to establish an acceptance that training on the code should be undertaken by all councillors, that acceptance is based on the voluntary compliance of all 67 councillors. Clearly, enforced attendance at training can be a fruitless exercise if an individual doesn't wish to pay attention. However a provision within the code that training is mandatory would lend strength in any attempt to persuade that councillor to attend. Furthermore, should attempts to persuade the councillor to attend prove to be unsuccessful then such a provision would at least provide a sound basis on which to tackle their recalcitrance.

The Council (on a majority view) would therefore support the inclusion of an obligation to undertake training within the declaration of acceptance of

office, which would seem a suitable mechanism. Equally, the model code could include an obligation to undertake training. That could either be to training on the code itself or to undertake such training as the council defines to be mandatory to allow for greater local discretion.

Note there was a view expressed that if a councillor were specifically elected on a platform that's/he would not undertake training then it would be wrong to impose any punishment for failing to attend.

Further, a comment was made that clerks are an important part of the governance structure for town and community councils. Whilst there has been a provision requiring training of councillors there is no, and should be a, similar obligation in respect of clerks.

- 3) Social media is, as noted both in the report and the proposed response, an area of particular concern. Given the difficulties of legislating on an issue that might engage the right to freedom of political expression, any response needs to be carefully crafted. Councillors did suggest that perhaps the code might require councillors to be fair and accurate in any reporting or comment on council business. This might help to stem the flow of unfiltered (toxic) comments and “give purchase” where enforcement proceedings are taken. More training could also be used and wide engagement on this will be important. It is worth noting that not all town & community councils are members of One Voice Wales, and other representative groups such be included.
- 4) An issue has recently arisen about the powers of the Ombudsman to make referrals where a councillor is also on another relevant authority (i.e. an authority with its own standards committee). Currently, there is no express power for the Ombudsman to refer cases to more than authority at a time. This may/may not be necessary depending on whether the finding of the standards committee in a principal authority would also be binding on a relevant authority such as a park or fire authority.

E.g., a councillor is suspended by a county council for actions in their private life which brings their office into disrepute. The councillor is also on a fire authority. Those actions might also bring their office on the fire authority into disrepute as well. Does the suspension from the county council also automatically suspend the councillor at the fire authority or would the fire authority's own standards committee need to hear the issue? The latter seems the more likely position.

If the FRA would need to hold its own hearing, then the PSOW might usefully be given the power to make a referral to several authorities at once (which

might be implied using the statutory interpretation rules that the singular includes the plural). Conversely, if it is deemed that the ruling of the principal council's standards committee ruling does affect the fire authority then this could helpfully be defined in the legislation as to extent of a suspension and what the term "suspension" means as it is not technically defined in any piece of legislation.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick

here:

Thank you for taking time to respond to this consultation. A summary of responses will be published in due course.