

**FLINTSHIRE COUNTY COUNCIL
COMPLAINT REFERRED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES:
STANDARDS COMMITTEE PROCEDURE**

This document sets out the procedure for the Standards Committee to follow in reaching decisions regarding complaints alleging breach of the Code of Conduct by members of Flintshire County Council and members of the town and community councils within Flintshire., which are referred to the Monitoring Officer or Legal Services Manager by the Public Services Ombudsman for Wales (“the Ombudsman”).

1. Background

- 1.1 The Ombudsman has power under section 69 of the Local Government Act 2000 to investigate cases of written allegations that a current or former councillor or co-opted member of Flintshire County Council or of a town or community council within Flintshire has failed to comply with the authority's code of conduct. The Ombudsman can likewise investigate where she considers that a current or former councillor or co-opted member may have failed, to comply with the authority's code of conduct due to information arising as a result of an investigation.
- 1.2 Having carried out an investigation, the Ombudsman may make one of the following findings:
- (a) That there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned,
 - (b) That no action needs to be taken in respect of the matters which are the subject of the investigation,
 - (c) That the matters which are the subject of the investigation should be referred to the Monitoring Officer, or
 - (d) That the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(1) of the Local Government Act 2000.
- 1.3 When a report of the Ombudsman is referred to the Monitoring Officer, the Monitoring Officer is required by the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 to make the initial determination referred to in section 2 of this procedure.
- 1.4 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.
- 1.5 This procedure sets out the procedure to be followed by the Standards Committee in making the initial determination and in taking actions following its initial determination. It covers:
- (a) The initial determination
 - (b) The Subject Member's Response

- (c) Arrangements prior to the hearing
- (d) Requirement for training
- (e) Pre-Hearing Review
- (f) Notice of Hearing
- (g) Legal Support
- (h) Access to Information
- (i) Failure of a party to attend a hearing
- (j) The Hearing
- (k) Written Decision
- (l) Appeals
- (m) Report of the outcome of the investigation

2. Initial Determination

- 2.1 The Standards Committee must make an initial determination that either: there is no evidence of any failure to comply with the Code of Conduct; or that the member who is the subject of the Ombudsman's investigation ("the subject member") should be given the opportunity to make representations to the Committee either orally or in writing in respect of the findings of the investigation.
- 2.2 If the Standards Committee determines that there is no evidence of any failure to comply with the Code of Conduct officers of Flintshire County Council shall notify:
 - (a) The subject member.
 - (b) Where the subject member is a member or co-opted member of a corporate joint committee and a member of a constituent council of the corporate joint committee or a national park authority which is required to appoint a member of the corporate joint committee, the monitoring officer of the constituent council or national park authority.
 - (c) The person who made the allegation which led to the investigation.
 - (d) The Ombudsman.
- 2.3 If the Standards Committee determines that the subject member should be given the opportunity to make representations to the Committee either orally or in writing in respect of the findings of the investigation, officers of Flintshire County Council shall notify the subject member. They shall ask the subject member to confirm if they wish to make representations in writing or if they wish to make oral representations at a hearing.

3. The Subject Member's Response

- 3.1 The response from the subject member who is the subject of the investigation as to whether they wish to make representations and, if so, whether they wish to make representations in writing or to make oral representations at a hearing, will be reported to the Standards Committee.
- 3.2 If the subject member does not wish to make representations or the member wishes to make representations in writing only, that will be reported to the Standards Committee. The Standards Committee will then consider the report from the Ombudsman and, if applicable, any written representations from the subject member and shall determine whether there has been a breach of the Code of Conduct. If the Standards Committee determines that there has been a breach of the Code of Conduct, the Standards Committee shall determine whether there should be a sanction and, if so, what that sanction should be.
- 3.3 If the subject member wishes to make oral representations, arrangements for a hearing will be made as follows.

4. Arrangements prior to the Hearing

- 4.1 The report of the Ombudsman's investigation will be sent to the Standards Committee and to the subject member.
- 4.2 Officers of Flintshire County Council will inform the subject member who is the subject of the report will be informed of the need to hold a hearing and the possible sanctions. The subject member will be asked to provide information as follows:
 - (a) Whether they will be represented and, if so, by whom.
 - (b) Which areas of the Ombudsman's report (if any) are disputed, with reasons.
 - (c) Details of any witnesses the subject member intends to call and a summary of the evidence that each witness shall give.
 - (d) The names of any witness to be relied upon by the Ombudsman who they would wish to put questions.
 - (e) Details of any written evidence on which the subject member intends to rely.
 - (f) Whether the subject member intends to ask the Standards Committee to exclude members of the press and public from any part of the hearing, and the reasons for doing so.
 - (g) Dates when the subject member, their witnesses and representatives would be unavailable to attend a hearing.
 - (h) Whether the subject member is willing for the hearing to be held entirely by remote attendance or whether the hearing should take place in person.
 - (i) Whether the subject member or any witness they intend to call requires the hearing to be conducted in Welsh.
 - (j) Any accessibility requirements of the subject member, their witnesses and representatives

- (k) Any other information that the Standards Committee considers it appropriate to request.
- 4.3 Officers of Flintshire County Council will write to the Ombudsman and ask the Ombudsman to confirm:
- (a) That the Ombudsman or the Ombudsman's investigating officer will attend the hearing to present the report of the Ombudsman's investigation.
 - (b) Whether the Ombudsman or the Ombudsman's investigating officer will be represented and, if so, by whom.
 - (c) Details of any witnesses the Ombudsman or the Ombudsman's investigating officer intends to call and a summary of the evidence they will give.
 - (d) Dates when the Ombudsman or the Ombudsman's investigating officer, their witnesses and representatives would be unavailable to attend a hearing.
 - (e) Any accessibility requirements of the Ombudsman or the Ombudsman's investigating officer, their witnesses and representatives.
 - (f) Any other information that the Standards Committee considers it appropriate to request.
- 4.4 Members of the Standards Committee will be asked to provide details of any dates when they would be unavailable to attend a hearing. They will also be asked to confirm any accessibility requirements.
- 4.5 Members of the Standards Committee will be asked to confirm if they are ineligible to participate in the hearing because:
- (a) They have not received training on dealing with allegations of breach of the Code of Conduct as required by section 5 of this procedure or
 - (b) They have a prejudicial interest in the matter to be considered at the hearing.
- 4.6 A date, time and location for the hearing will be decided by officers of Flintshire County Council, and the subject member, the Ombudsman and the Standards Committee will be informed of these details.

5. Requirement for Training

- 5.1 Subject to paragraph 5.2, a member of the Standards Committee will not be eligible to participate in a hearing considering a report on an alleged breach of the Code of Conduct unless the member has received training provided or approved by Flintshire County Council on how to undertake such a hearing and that training was no longer ago than four years before the date of the relevant hearing.
- 5.2 The Standards Committee may decide to waive the requirement for training set out in paragraph 5.1 if the Standards Committee considers that it would otherwise be impracticable for the Standards Committee to conduct a hearing.

6. Pre-Hearing Review

- 6.1 The subject member and the Ombudsman will be asked if they require a pre-hearing review. The purpose of any such review will be to consider any practical details which need to be addressed in advance of the hearing.
- 6.2 If the subject member or the Ombudsman request a pre-hearing review, a meeting of the Standards Committee will be held for this purpose.
- 6.3 The Standards Committee may request that a meeting be arranged for the purpose of a pre-hearing review if the Committee considers that this would be appropriate, and a request has not been made by the subject member or the Ombudsman. In these circumstances the subject member and the Ombudsman will be given at least 14 days' notice and they and their representatives may attend the pre-hearing review.

7. Notice of Hearing

- 7.1 Notice of the hearing will be given in accordance with the statutory requirements relating to notice of the Council's committee meetings.

8. Legal Support

- 8.1 Flintshire County Council will provide legal and democratic services to the Standards Committee for the purpose of dealing with a report from the Ombudsman and conducting a hearing.
- 8.2 The Monitoring Officer will usually provide legal support to the Standards Committee but may arrange for another officer of the Council or an external legal adviser to do so.

9. Access to Information

- 9.1 The Committee will consider whether meetings of the Standards Committee which deal with reports on alleged breaches of the Code of Conduct should be held in public or private.
- 9.2 Whilst the Standards Committee will need to take a decision on the merits of each item considered at a meeting, having taken account of advice, the Standards Committee expects that:
 - (a) 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. This will be on the basis that paragraphs 12 and 18 of Part 4 of Schedule 12A to the Local Government Act 1972 applies and that reports and discussions at such meetings will contain information that is exempt from public access because it is information relating to a particular individual and because they contain information received in confidence.
 - (b) The hearing to consider an allegation that the subject member has breached the code of conduct will be held in public, subject to requests by the Ombudsman or subject member for some/all of the hearing to be held in private. A request to hold a hearing or part of a hearing in private will be considered on its merits

- 9.3 The Standards Committee will apply the test of whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 9.4 It is expected that, subject to consideration of any exceptional circumstances, the public interest in maintaining the exemption would outweigh the public interest in disclosing the information because disclosure of details of a report of an investigation into a member's conduct at the preliminary stages of a multi-stage procedure would be a disproportionate intrusion into the private life of the member who is the subject of the report and could affect the ability of the member to receive a fair hearing.
- 9.5 If the Standards Committee decides that an exemption from public access applies to a report or a meeting the exclusion of the public will include any member of Flintshire County Council who is not a member of the Standards Committee.
- 9.6 In accordance with the constitution of Flintshire County Council, the Standards Committee may exclude from a meeting, including a meeting held for the purpose of a hearing, any person who interrupts proceedings or who causes a disturbance.

10. Failure of a Party to attend a hearing

- 10.1 If the subject member or the Ombudsman or Ombudsman's investigating officer fails to attend a hearing of which they have been noted the Standards Committee may:
- (a) Make a decision in the absence of the relevant party; or
 - (b) Adjourn the hearing if the Standards Committee decides that there is a good reason for the absence of the relevant party.

11. The Hearing

Preliminary Matters

- 11.1 A designated waiting area will be made available for witnesses until they are called.
- 11.2 The Standards Committee will consider any representations as to whether the hearing should be considered in private and will reach a determination on this in accordance with the Access to Information Procedure Rules set out in the constitution of Flintshire County Council.
- 11.3 The Chair will introduce those present and explain the procedure to be followed and ask everyone present to confirm that they understand.
- 11.4 Any procedural issues will be addressed.

Determining the facts

- 11.5 The Standards Committee will consider whether there are any disagreements between the Ombudsman and the subject member as to the facts in the Ombudsman's report.
- 11.6 If there are no disagreements as to the facts the Standards Committee will consider whether the facts demonstrate a breach of the Code of Conduct.
- 11.7 If there is a disagreement as to the facts the Ombudsman or the Ombudsman's investigating officer will be invited to make representations to support the relevant findings of facts in the Ombudsman's report. The Ombudsman or the Ombudsman's

investigating officer may call witnesses and the subject member and the Standards Committee will be allowed to put questions to any such witnesses.

- 11.8 The subject member will then be invited to make representations to support their version of the facts. The subject member may call witnesses and the Ombudsman or the Ombudsman's investigating officer and the Standards Committee will be allowed to put questions to any such witnesses.
- 11.9 At the conclusion of the presentation of the subject member's case, the Ombudsman or the Ombudsman's investigating officer will be invited to sum up their case as to the facts. The subject member will then be invited to sum up their case as to the facts.
- 11.10 The Standards Committee will consider their decision on the facts in dispute. This part of the hearing will not be open to the public. No person other than members of the Standards Committee and any officers and advisers who need to be present to provide support to the Standards Committee may be present for this part of the hearing.
- 11.11 The Chair of the Standards Committee will announce the Standards Committee's decision on the facts in dispute.

Whether the facts demonstrate a breach of the Code of Conduct

- 11.12 The Ombudsman or the Ombudsman's investigating officer will be invited to make representations as to whether the facts, as found by the Standards Committee, demonstrate a breach of the Code of Conduct.
- 11.13 The subject member will be invited to make representations as to whether the facts, as found by the Standards Committee, demonstrate a breach of the Code of Conduct.
- 11.14 The Standards Committee will consider their decision as to whether the subject member is in breach of the Code of Conduct. This part of the hearing will not be open to the public. No person other than members of the Standards Committee and any officers and advisers who need to be present to provide support to the Standards Committee may be present for this part of the hearing.
- 11.15 The Chair of the Standards Committee will announce the Standards Committee's decision as to whether the subject member is in breach of the Code of Conduct.

If relevant, deciding a sanction

- 11.16 If the Standards Committee decides that the subject member breached the Code of Conduct, the Standards Committee will ask the Ombudsman or the Ombudsman's representative if they wish to make any representations as to whether a sanction should be imposed and, if so, what that sanction should be.
- 11.17 The Standards Committee will then invite the subject member to make representations and to put forward any evidence which the subject member believes that the Standards Committee should consider when making a decision as to whether a sanction should be imposed and, if so, what that sanction should be.
- 11.18 The Standards Committee may put questions to the Ombudsman or the Ombudsman's representative or the member before reaching a decision as to whether a sanction should be imposed and, if so, what that sanction should be.

11.19 The Standards Committee will consider their decision as to whether a sanction should be imposed and, if so, what that sanction should be. This part of the hearing will not be open to the public. No person other than members of the Standards Committee and any officers and advisers who need to be present to provide support to the Standards Committee may be present for this part of the hearing.

11.20 The Chair of the Standards Committee will announce the Standards Committee's decision as to sanction,

12. Written Decision

12.1 The Committee will use reasonable endeavours to announce its decisions on the same day that the hearing ends. 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.

13. Appeals

13.1 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.

14. Report of the outcome of the investigation

14.1 The Standards Committee will arrange for a report on the outcome of an investigation into alleged breach of the Code of Conduct to be produced in accordance with the requirements of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.

14.2 The report will be sent to:

- (a) The subject member.
- (b) The Ombudsman.
- (c) The Monitoring Officer of Flintshire County Council.
- (d) Where the subject member is a member or co-opted member of a corporate joint committee and a member of a constituent council of the corporate joint committee or a national park authority which is required to appoint a member of the corporate joint committee, to the monitoring officer of the constituent council or national park authority.

14.3 The Standards Committee will also take reasonable steps to send a copy of the report to the person who made the allegation which led to the investigation.

14.4 After receiving the report the Monitoring Officer of Flintshire County Council will carry out the following actions in accordance with the requirements of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001:

- (a) Publish the report on the Council's website and make copies available for inspection by the public without charge.

- (b) Supply a copy to any person on request if the person making the request pays such charge as the Council may reasonably require.
- (c) Publish a notice in local newspapers and publicise in such other ways as appear to the Monitoring Officer to be appropriate that copies of the report are available.