

STANDARDS COMMITTEE

Date of Meeting	Monday, 2 November 2020
Report Subject	Directions from the President of the Adjudication Panel for Wales
Report Author	Chief Officer (Governance)

EXECUTIVE SUMMARY

Early in 2020 the Monitoring Officer wrote on behalf of Lawyers in Local Government (LLG) to the President of the Adjudication Panel for Wales (APW) raising concerns about disclosure during a tribunal process. Following discussion with the President she has issued directions to clarify the role of the Monitoring Officer during a tribunal hearing and also to create a new disclosure process where one did not exist before.

The President has also issued a direction on the circumstances in which anonymity will be afforded to witnesses and third parties (never to the accused Member).

These directions are not legally binding but will guide how each case tribunal handles such issues during a hearing. They represent welcome clarity on the issues concerned and will help to ensure the fairness of proceedings.

RECOMMENDATIONS

1	That the Committee welcomes the practice directions and agrees to consider applying similar principles (as appropriate) where required to any hearing before the Committee.
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REPORT DETAILS

1.00	EXPLAINING THE DIRECTIONS
1.01	<p>On 6th April 2020 the Monitoring Officer wrote on behalf of LLG to the President of the Adjudication Panel raising issues of concern about process during tribunal proceedings. The President discussed the issues raised within the correspondence and subsequently issued 3 practice directions covering:</p> <ol style="list-style-type: none">i. Disclosureii. The role of the Monitoring Officer during proceedingsiii. Anonymity for witnesses and third parties
1.02	<p>The statutory rules governing proceedings before a Case Tribunal are very short and give little detail. There is power vested in the President of the APW to determine procedure to ensure that case tribunal proceedings are fair, open and transparent. They also ensure consistency of process between different case tribunal hearings. The directions issued by the President are not legally binding but indicate how each tribunal will act in given situations or in respect of certain issues.</p>
1.03	<p>Evidence is naturally at the heart of a fair hearing process and often evidence is contained within documents. The Ombudsman's office carries out an investigation into each allegation and will receive documents that can trend to:</p> <ol style="list-style-type: none">1) Support the allegation2) Disprove the allegation3) Have no evidential value <p>When issuing a report, the Ombudsman's investigator will always append the documents that support the allegation and, where the number is manageable, will disclose all documents gathered during the investigation. However, until this direction was issued there were simply no rules, beyond those of natural justice, in case tribunal proceedings requiring the Ombudsman's investigator to disclose documents to the accused Member nor was there a process for the accused Member (or their legal representative) to request the disclosure of evidence gathered by the Ombudsman or direct from the Member's Council. That process has now been created by agreement with the Ombudsman's office.</p>
1.04	<p>The Monitoring Officer occupies a statutory role during case tribunal hearings. Although the role is not spelled out in any detail, it is to assist the tribunal's understanding of process within the accused Member's Council and to gather further information/documents/evidence that might be requested during a hearing. The practice direction sets out that role in more detail and also repeats part of the direction in relation to the Monitoring Officer's role in relation to disclosure.</p>
1.05	<p>Case tribunals occasionally receive requests to protect the identity of witnesses and third parties named during hearings. The practice direction issues guidelines on how such requests will be determined. The direction does not apply to the accused Member where legal jurisprudence sets out the principles to determine requests for hearings to be held in private.</p>

2.00	RESOURCE IMPLICATIONS
2.01	There are no cost of human resource implications arising from these directions.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	None are required.

4.00	RISK MANAGEMENT
4.01	These directions resolve perceived gaps in the procedures for case tribunal hearings, and serve to increase the fairness of such proceedings. As such they will reduce the risk of a decision or process being legally challenged.

5.00	APPENDICES
5.01	Appendix 1 – Direction on Disclosure Appendix 2 - Direction on the role of the Monitoring Officer Appendix 3 – Direction on Anonymity

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Email/letter dated 6 th April 2020 to President of Adjudication Panel for Wales. Contact Officer: Gareth Owens, Chief Officer Governance Telephone: 01352 702344 E-mail: Gareth.legal@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	Adjudication Panel for Wales – the body appointed to hear alleged serious breaches of the Councillors’ Code of Conduct President of the Adjudication Panel for Wales – the most senior Member of the APW, Claire Sharp, who is a qualified lawyer and has responsibility vested in her by reason of her office for the smooth running of the APW and the hearings undertaken by case tribunals Case Tribunal – a bench of 3 Members drawn from the APW who will hear the case in respect of a specific Member