

STANDARDS COMMITTEE

Date of Meeting	Monday, 1 November 2021
Report Subject	Penn Review of the Ethical Standards Framework
Report Author	Chief Officer Governance

EXECUTIVE SUMMARY

The current ethical standards regime was largely created by the Local Government Act 2000. Whilst minor updates have been made to the code since then the overall framework (training, roles of various people/bodies, enforcement) has remained fundamentally unchanged since then.

Welsh Government commissioned Richard Penn, a former Chief Executive (latterly at Bradford City Council), to review the framework. He consulted widely over the summer and has reported in accordance with his terms of reference. His report has been published by Welsh Government who have committed to considering his findings and undertaking consultation on their implementation.

The findings fall into categories based on whether they would need legislation to implement. Some recommendations need primary legislation (e.g. granting the Adjudication Panel for Wales the power to restrict reporting on sensitive cases), others require secondary legislation (such as updating the code of conduct itself) and some are matters of practice that can be implemented if the relevant parties are willing to do so.

Welsh Government has not yet indicated which findings it proposes to action.

RECOMMENDATIONS

1	That the findings of the report are reviewed by the Committee in preparation for any formal consultation by Welsh Government.
2	That the Monitoring Officer should explore whether a national forum for Independent Members can be established.
3	That the Committee considers whether to receive training on holding hearings now and again when a hearing is due to take place.

REPORT DETAILS

1.00	EXPLAINING THE REVIEW OF THE ETHICAL FRAMEWORK
1.01	<p>The current ethical framework consists of the code of conduct for Councillors plus the wider machinery that is necessary to ensure it works in practice and is enforced. It includes the work of the monitoring officer, this Committee, the Ombudsman and Adjudication Panel for Wales. It was introduced by the Local Government Act 2000. There have been minor changes over the years (e.g. small changes were made to the code in 2016) but the fundamental structure has remained the same in Wales. The system in England was changed substantially by the Localism Act 2011.</p>
	<p>Welsh Government commissioned Richard Penn, a former chief executive, to conduct a review of the whole framework to include:</p> <ul style="list-style-type: none">• an audit of the Codes of Conduct adopted by authorities;• an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;• whether the framework is still fit for purpose;• the role of Standards Committees;• an analysis of the arrangements and protocols in place to support members and staff;• consideration of the current sanctions and whether they are still appropriate.
	<p>Richard Penn consulted widely over the spring/summer. In publishing the findings Welsh Government issued a written statement, which concludes</p> <p>“The final Report which has been published today, concludes the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct. I will be considering the recommendations to amend the Model Code of Conduct in the short term. Any legislative change will be subject to a technical consultation.</p> <p>Action to address other recommendations will be taken forward in partnership with key stakeholders in the medium to longer term.”</p>
2.00	THE FINDINGS IN THE REPORT
	<p>The overall finding of the report was that the framework is fit for purpose and does not need major alteration. The report states</p> <p>“...some minor adjustments and amendments to the current framework ... could result in a lower number of low level complaints [being] made and the need for formal investigations being significantly reduced.”</p>
	<p>The report is broken down into headings (below). Some of the findings are statements, and other are recommendations. The recommendations for action further break down into matters of good practice which can be implemented locally, and those that will require legislation (a Bill or statutory instrument). The lead in times for both types of legislation can be long but Bills can take years to be passed. I have summarised the findings and indicated the type below with commentary where I have strong views.</p>

Type of Finding and need for legislation etc.	Finding	Commentary
Statement	<p>An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances</p> <p>Only 1 County Council has adopted the Model Code of Conduct without significant variations or additions. Over a half have adopted a local resolution procedure, and over one half also have a mandatory training requirement.</p>	
Statement	<p>An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements</p> <p>The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. There are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Richard Penn believes that mandatory training on the Code for all members and the greater use of local resolution procedures should result in a reduction of the number of the low level complaints and thus the need for formal investigations.</p>	<p>Mandatory training is a good idea but the extent to which it will reduce complaints under the code is moot. Most complaints are about failure to treat someone with respect or bullying and such behaviour is rarely caused by a lack of understanding, nor solved by greater understanding, of the code.</p>
Statement	<p>Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements</p> <p>The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Code of Conduct is seen as appropriate and not in need of major revision.</p>	

Type of Finding and need for legislation etc.	Finding	Commentary
<p>Recommendation needing a statutory instrument (i – viii) or a Bill (ix)</p>	<p>The report proposes a number of amendments to the Code:</p> <ul style="list-style-type: none"> i. Specify the threshold for declarations of any gift, hospitality, material benefit or advantage to ensure consistency across Wales. ii. There is agreement that the Code should not require Councillors to disclose their home address iii. Define a ‘person’ either in the 2000 Local Government Act or in the Code. iv. Paragraph 4a of the Code (to have due regard to equality of opportunity for all people) should be extended to include all nine protected characteristics under the Equality Act 2010. v. The guidance on social media published by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code vi. 6(1)(b) of the Code of Conduct should be amended to make it an obligation of the member to report their own criminal behaviour as well as that of others (as at present) vii. Make training on the Code of Conduct mandatory for all members of by including a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 viii. Increase the use of local resolution of complaints by requiring that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman, in order to speed up the complaints process and ensure that the Ombudsman’s resources are devoted to the investigation of serious complaints. ix. Extend the Public Services Ombudsman for Wales’ power to refer complaints back for local resolution 	<p>Most proposed changes to the code seem sensible. The suggestion that all complaints should be considered for local resolution first has potentially major resource implications for monitoring officers. Flintshire receives few complaints about its own councillors each year but experience shows there are 10 to 15 complaints about Town and Community Councillors per annum. The Council is not resourced to manage that number of complaints.</p>

Type of Finding and need for legislation etc.	Finding	Commentary
<p>Recommendation needing statutory instrument (x – xvi) and a Bill (xvii)</p>	<p>Changes to the powers and processes of the Adjudication Panel for Wales</p> <p>The report recommends introducing</p> <ul style="list-style-type: none"> x. Restricted reporting orders - to control the reporting by the press about any case. xi. Anonymity of witnesses - an express power to order anonymity for witnesses in sensitive cases would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. xii. Disclosure – to put the recent practice direction on a legal basis xiii. Appeal Tribunal procedure – remove the requirement on Standards Committees to consider the decision of the APW on the Appeal if it is different to the original decision xiv. Case Tribunal procedure – updates to make the Case Tribunal Procedure more efficient and fairer to witnesses xv. Permission to appeal procedure - minor amendments to make the process more “balanced and sensible” xvi. Sentencing powers – to give the panel the power to impose more varied sanctions as was the case with the former Adjudication Panel for England xvii. Interim Case Tribunals - the threshold for meeting the legislative requirements for an interim referral is considered to be too high. The proposal is to introduce a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners’ Tribunal. 	<p>These seem sensible and reflect some changes requested by this Committee in the past</p>

Type of Finding and need for legislation etc.	Finding	Commentary
Recommendation for local adoption	<p>Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.</p> <p>xviii. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.</p> <p>xix. There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings</p> <p>xx. There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees</p> <p>xxi. The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.</p> <p>xxii. There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The report suggests that this is an issue that might be mitigated by mandatory training.</p>	<p>The Chair of the Committee already contributes to the ethical leadership of the Council.</p> <p>Does the Committee want training on hearings now and when it must hold one?</p> <p>The all Wales Standards Conference was postponed due to Covid and is due to take place this year. That would seem an appropriate venue in which to discuss the suggestion for an all Wales Standards Forum though we could make preliminary enquiries through the Monitoring Officers' network.</p> <p>See comments above about local resolution and mandatory training</p>

Type of Finding and need for legislation etc.	Finding	Commentary
	<p>xxiii. An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns</p> <p>xxiv. No view was expressed on whether the current sanctions open to Standards Committees are still appropriate</p> <p>xxv. Accessibility of the ethical standards framework - the report believes that the lack of publicity about the ethical standards framework constrains use of the process, especially if the person wishing to complain if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems.</p>	<p>I believe that officers or members understand the process to be followed if a member breaches the code.</p> <p>I also receive complaints from members of the public notwithstanding the largely on line nature of information about member behaviour. Introducing paper leaflets seems outmoded and unnecessarily resource hungry.</p>

3.00	RESOURCE IMPLICATIONS
3.01	The report itself has no implications. I have commented above where the recommendations would have resource implication for the Council.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	Report authors to display transparency and identify consultations.

4.00	RISK MANAGEMENT
4.01	Report authors to list key risks and mitigation measures. Risk paragraph to include anti-poverty, environment and equalities issues.

5.00	APPENDICES
5.01	Hyperlinks are marked within the report to key documents.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	None. Contact Officer: Gareth Owens, Chief Officer Governance Telephone: 01352 702344 E-mail: gareth.legal@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	Technical terms are defined within the report at the point where they first used.