

Public Document Pack



Cyngor Sir
CEREDIGION
County Council

Neuadd Cyngor Ceredigion, Penmorfa,
Aberaeron, Ceredigion SA46 0PA
ceredigion.gov.uk

12 May 2021

Dear Sir / Madam

I write to inform you that a Meeting of the Ethics and Standards Committee will be held remotely via video-conferencing on Wednesday, 19 May 2021 at 10.00 am for the transaction of the following business:

1. **Apologies**
2. **Disclosure of personal / prejudicial interests**
3. **To confirm as a true record the minutes of the meeting of the Ethics & Standards Committee held on 18 November 2020 (Pages 3 - 12)**
4. **Matters arising**
5. **S 62 Local Government and Election (Wales) Act 2021 Duties of leaders of political groups in relation to standards of conduct (Pages 13 - 16)**
6. **To discuss with party leaders the methods of promoting and maintaining high standards by conduct by Members of Ceredigion County Council**

To consider applications for dispensation from the following Councillors:-

 - 7a Councillor Rowland Rees-Evans - Ceredigion County Council (Pages 17 - 24)
 - 7b Councillor Mark Strong - Ceredigion County Council (Pages 25 - 30)
 - 7c Councillor Mark Strong - Aberystwyth Town Council (Pages 31 - 36)
8. **Recruitment of Independent Members- update (Pages 37 - 38)**
9. **Update on Code of Conduct matters- Update on recent press articles (Pages 39 - 40)**
10. **Corporate Joint Committees (General) (Wales) Regulations 2021 (Pages 41 - 44)**

11. **Update on Adjudication Panel for Wales matters (Pages 45 - 62)**
12. **Update on the Public Services Ombudsman matters -Consultation on revisions of Code of Conduct Guidance's (Pages 63 - 204)**
13. **Ethics and Standards Committee Annual Report, 2020/21 (Pages 205 - 246)**
14. **Training**
15. **The Ethics and Standards Forward Work Programme 2021/22 (Pages 247 - 250)**
16. **To appoint a Chair and Vice-Chair for the Committee (Pages 251 - 252)**
17. **To consider any other applications for dispensation received since the agenda was published**
18. **Any other matter which the Chairman decides is for the urgent attention of the Committee**

A Translation Services will be provided at this meeting and those present are welcome to speak in Welsh or English at the meeting.

Yours faithfully



Miss Lowri Edwards
Corporate Lead Officer: Democratic Services

To: Chairman and Members of Ethics and Standards Committee
The remaining Members of the Council for information only.

Minutes of a Meeting of the **ETHICS & STANDARDS COMMITTEE**
held remotely by videoconference on
18 November 2020

PRESENT:

Mr Hywel Wyn Jones (Chair), Mrs Caroline White, Ms Carol Edwards, Mr John Weston and Mr Rif Winfield (Independent Members);
Councillor Odwyn Davies and Councillor Dai Mason (Elected Members)
Councillor Gill Hopley (Town and Community Council representative)

IN ATTENDANCE:

Ms Elin Prysor (Monitoring Officer)
Mrs Lisa Evans (Scrutiny and Standards Officer)

(10am – 12.15pm)

S1 Apologies

Councillor Julian Evans apologised for his inability to attend the meeting.

S2 Disclosure of Personal Interests / Prejudicial Interests

Councillor Gill Hopley declared a personal and prejudicial interest in applications received for New Quay Town Council and withdrew from the video conference during consideration of these items accordingly.

S3 Minutes of the meeting held on 05 August 2020

It was RESOLVED to confirm as a true record of the minutes of the meeting of the Committee held on 05 August 2020.

Matters Arising

None.

S4 Applications for dispensation

(i) Councillor Elizabeth Evans, Ceredigion County Council

An application for dispensation dated 22 September 2020 was received from Councillor Elizabeth Evans to speak only on the Aberaeron Coastal Defence Scheme (to include Aberaeron harbour and Pwll Cam, Aberaeron). Councillor Evans mother lives in Market Street, Aberaeron. Her home directly overlooks the car park adjacent to Pwll Cam. Councillor Evans family also own a building at No 18 Market Street, Aberaeron – she has no income from it nor does she have any part ownership of the property.

Councillor Evans was present at the meeting to present her application and answered questions regarding her application.

Councillor Evans was requested to leave the video conference for the Committee to consider her application.

It was RESOLVED to grant Councillor Evans with dispensation to **speak only** on the grounds that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; and the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise; (regulation 2 (d) and (f) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(ii) Councillor Elizabeth Evans, Aberaeron Town Council

An application for dispensation dated 22 September 2020 was received from Councillor Elizabeth Evans to speak only on the Aberaeron Coastal Defence Scheme (to include Aberaeron harbour and Pwll Cam, Aberaeron). Councillor Evans mother lives in Market Street, Aberaeron. Her home directly overlooks the car park adjacent to Pwll Cam. Councillor Evans family also own a building at No 18 Market Street, Aberaeron – she has no income from it nor does she have any part ownership of the property.

Councillor Evans was present at the meeting to present her application and answered questions regarding her application.

Councillor Evans was requested to leave the video conference for the Committee to consider her application.

It was RESOLVED to grant Councillor Evans with dispensation to **speak only** on the grounds that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; and the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise; (regulation 2 (d) and (f) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(iii) Councillor Dan Potter, Ceredigion County Council

An application for dispensation dated 30 October 2020 was received from Councillor Dan Potter to speak only on issues discussed regarding the harbour at the Harbour Users Consultative Committee for New Quay which are held prior to the season and following (March and October). Councillor Potter owns New Quay marine a boating business which repairs boats in the harbour. He is also employed by Ceredigion County Council annually to undertake the swimming area as a Safe Swim area contractor. Councillor Potter also leases two mooring from Ceredigion County Council and owns a shed outside the lifeboat station and the old coast guard station in Paragon. He also receive £40 a week as a coxswain of New Quay Lifeboat /RNLI.

Councillor Potter was present at the meeting to present his application and answered questions regarding his application.

Councillor Potter was requested to leave the video conference for the Committee to consider his application.

It was RESOLVED to grant Councillor Potter with dispensation to **speak only** on the grounds that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; and the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise; (regulation 2 (d) and (f) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(iv) Councillor Dan Potter, Ceredigion County Council

An application for dispensation dated 30 October 2020 was received from Councillor Dan Potter to speak and vote on issues discussed regarding the harbour and beach at New Quay. Councillor Potter owns New Quay marine a boating business which repairs boats in the harbour. He is also employed by Ceredigion County Council annually to undertake the swimming area as a Safe Swim area contractor. Councillor Potter also lease two mooring from Ceredigion County Council and owns a shed outside the lifeboat station and the old coast guard station in Paragon. He also receive £40 a week as a coxswain of New Quay Lifeboat /RNLI.

Councillor Potter was present at the meeting to present his application and answered questions regarding his application.

Councillor Potter was requested to leave the video conference for the Committee to consider his application.

It was RESOLVED to grant Councillor Potter with dispensation to **speak and vote** on the grounds that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; and the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise; (regulation 2 (d) and (f) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(v) Councillor Dan Potter, New Quay Town Council

An application for dispensation dated 30 October 2020 was received from Councillor Dan Potter to speak and vote on issues discussed regarding the harbour and beach at New Quay. Councillor Potter owns New Quay marine a boating business which repairs boats in the harbour. He is also employed by Ceredigion County Council annually to

undertake the swimming area as a Safe Swim area contractor. Councillor Potter also lease two mooring from Ceredigion County Council and owns a shed outside the lifeboat station and the old coast guard station in Paragon. He also receive £40 a week as a coxswain of New Quay Lifeboat /RNLI.

Councillor Potter was present at the meeting to present his application and to answer any questions regarding his application.

Councillor Potter was requested to leave the video conference for the Committee to consider his application.

It was RESOLVED to grant Councillor Potter with dispensation to **speak only** on the grounds that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; and the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise; (regulation 2 (d) and (f) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(vi) Councillor Dan Potter, New Quay Town Council

An application for dispensation dated 5 November 2020 was received from Councillor Dan Potter to speak and vote on matters relating to a proposed project that the Digital Development Officer at Ceredigion County Council is attending a meeting of the Town Council to discuss. The project proposes the adoption of technology which provides the ability to retrieve data such as footfall, level of use, shopping habits and behaviours; which can be used to influence the decision making of local businesses to operate more efficiently (opening times, staffing levels etc). The aim is to support local business and promote the local economy, particularly given the ongoing circumstances and uncertainty where greater levels of information will play an important role in allowing businesses, as well as the tourism sector, in facing the challenges in responding to Covid. Councillor Potter owns New Quay marine a boating business which repairs boats in the harbour, this proposal could benefit me as the proposed scheme could benefit the local economy.

Councillor Potter was present at the meeting to present his application and answer any questions regarding his application.

Councillor Potter was requested to leave the video conference for the Committee to consider his application.

It was RESOLVED to grant Councillor Potter with dispensation to **speak and vote** on the grounds that no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business; and that the nature of the members' interest is such

that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (regulation 2 (a) and (d) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(vii) Councillor Jennifer Davies, New Quay Town Council

An application for dispensation dated 5 November 2020 was received from Councillor Jennifer Davies to speak and vote on matters relating to a proposed project that the Digital Development Officer at Ceredigion County Council is attending a meeting of the Town Council to discuss which can help the Council and the economy of New Quay by collating information. Councillor Davies runs New Quay Heritage Centre as a volunteer on behalf of NQTC.

It was RESOLVED to grant Councillor Davies with dispensation to **speak and vote** on the grounds that no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business; and that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (regulation 2 (a) and (d) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(viii) Councillor Julian Evans, New Quay Town Council

An application for dispensation dated 5 November 2020 was received from Councillor Julian Evans to speak and vote on matters relating to a proposed project that the Digital Development Officer at Ceredigion County Council is attending a meeting of the Town Council to discuss. Councillor Evans is the Chair of New Quay Memorial Hall which could benefit from the collation of data that the Digital Officer could provide. He is also a trustee of New Quay Community library.

It was RESOLVED to grant Councillor Evans with dispensation to **speak and vote** on the grounds that no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business; and that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (regulation 2 (a) and (d) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

S5 Any other applications for dispensation received since the agenda was published

(i) Councillor Brett Stones, New Quay Town Council

An application for dispensation dated 15 November 2020 was received from Councillor Brett Stones to speak and vote on matters relating to a proposed project that the Digital Development Officer at Ceredigion County Council is attending a meeting of the Town Council to discuss. Councillor Stones owns a gift shop and a take away food business in the town.

It was RESOLVED to grant Councillor Stones with dispensation to **speak and vote** on the grounds that no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business; and that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (regulation 2 (a) and (d) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(ii) Councillor Marc Rees, New Quay Town Council

An application for dispensation dated 15 November 2020 was received from Councillor Marc Rees to speak and vote on matters relating to a proposed project that the Digital Development Officer at Ceredigion County Council is attending a meeting of the Town Council to discuss. Councillor Rees owns a car park opposite the Sup Shack in New Quay.

It was RESOLVED to grant Councillor Rees with dispensation to **speak and vote** on the grounds that no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business; and that the nature of the members' interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (regulation 2 (a) and (d) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

(iii) Councillor Steve Hartley, New Quay Town Council

An application for dispensation dated 15 November 2020 was received from Councillor Marc Rees to speak and vote on matters relating to a proposed project that the Digital Development Officer at Ceredigion County Council is attending a meeting of the Town Council to discuss. Councillor Hartley owns a boating business taking people out to see the wildlife of Cardigan Bay. He also own a caravan park in Gilfachredda called Frondeg Caravan Park.

It was RESOLVED to grant Councillor Hartley with dispensation to **speak and vote** on the grounds that no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business; and that the nature of the members' interest is

such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (regulation 2 (a) and (d) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001). The dispensation was granted for a period of **12 months**.

S6 Recruitment of Independent Members

The Scrutiny and Standards Officer presented the report on the recruitment of 2 new independent members to the Committee. The current Chair Mr Hywel Wyn Jones and Mr Rif Winfield were appointed initially on 27/9/2011 and reappointed on 27/9/2017. Their respective terms of office will expire on 26/9/2021. These members are not now eligible for reappointment. Consequently it is now necessary to recruit two new independent members to the Ethics and Standards Committee to maintain the Committee's composition, as set out in the Constitution, and as required by legislation.

The Committee AGREED to recommend to Council:

- 1) The job description, person specification and criteria subject to the following amendments:
 - Live and/or work in the area is amended to Live and/or work in Ceredigion; and that this requirement is elevated to essential;
 - Removal of the Linguistic skills level table.
- 2) Membership of the Selection Panel as follows:
 - Chairman of the Council
 - Independent/Lay Panel member (nominated by the Monitoring Officer)
 - Chair and Vice Chair of the Ethics and Standards Committee (or other independent members nominated by the Monitoring Officer as necessary)
 - Town and Community Council representative nominated by One Voice Wales.
- 3) Professor John Williams is nominated as the independent/Lay Panel Member

S7 WELSH GOVERNMENT CONSULTATION – Regulations to establish corporate joint committees

It was reported that the Welsh Government is currently consulting on the draft regulations which will establish four regional Corporate Joint Committees across Wales. Members of the Ethics and Standards Committee were requested to consider questions 8 (a) (b) and (c) of the consultation document.

It was AGREED that members and staff of a CJC should be subject to a Code of Conduct and that the code should be similar to that of Principal

Councils and that all co-opted members be covered by a code i.e. those with and without voting rights. This will form part of the corporate response to the consultation.

S8 Update on Monitoring Officer matters

A BBC report titled 'Covid: Councillor 'reckless' for 5G masts claims' published on 29th September was circulated to Members of the Committee for information.

The Monitoring Officer provided an overview of a further BBC report titled 'Penketh Parish Council chair apologises for abusive outburst'.

It was AGREED to note the content of the reports.

S9 Update on Adjudication Panel for Wales matters

It was reported that there have been a number of changes within the Adjudication Panel for Wales (APW). The Committee considered the documents which have been updated, namely:

- Presidential Guidance: Anonymity
- Presidential Guidance: Disclosure
- Presidential Guidance: The role of the Monitoring Officer in APW proceedings

It was AGREED to note the content of these document.

The Chairman provided an overview of the decision report of the Adjudication Panel for Wales in relation to Councillor Neil McEvoy, Cardiff City Council and informed Members that the report was available on the APW website.

S10 Update on the Public Services Ombudsman matters

There had been no new Code of Conduct Casebooks published since the last meeting.

S11 Training

It was agreed that opportunities to deliver training via video conferencing or pre-recorded training be explored by officers and Town/Community Councils asked if they have any specific training requests in relation to the code and hosting remote meetings.

S9 Any other Business

It was reported that the Monitoring Officer and Scrutiny and Standards Officer are currently undertaking a review of the Council's Hearings Procedure and the updated APW documents would be incorporated.

Confirmed in the Meeting of the Ethics & Standards Committee held on 19 May 2021

CHAIRMAN:_____

DATE: _____

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CEREDIGION COUNTY COUNCIL

- Report to:** Ethics and Standards Committee
- Date of meeting:** 19 May 2021
- Title:** S 62-63 of the Local Government and Elections (Wales) Act 2021
- Purpose of the report:** To note the new duties that S 62-63 of the Local Government and Elections (Wales) Act 2021 places on political leaders and the standards committee.

The Local Government and Elections (Wales) Act 2021 places new duties on leaders of political groups and standards committees. Appendix A contains the relevant sections, namely s62 and s63.

With regard to the duties of leaders of political groups in relation to standards of conduct, (S.52A Local Government Act 2000) states that a leader of a political group consisting of members of a county council in Wales must take reasonable steps to promote and maintain high standards of conduct by the members of the group; and must co-operate with the council's standards committee.

In section 54 Local Government Act 2000 (functions of standards committees), a standards committee of a county council or county borough council in Wales also has the specific functions of—

- (a) monitoring compliance by leaders of political groups on the council with their duties under section 52A(1), and
- (b) advising, training or arranging to train leaders of political groups on the council about matters relating to those duties.

S.63 inserts the requirements for the standards committee annual report. As well as describing how the committee's functions have been discharged the report must also include what has been done to discharge the general and specific functions conferred on the committee by section 54 or 56. An annual report by a standards committee of a county council or county borough council in Wales must include the committee's assessment of the extent to which leaders of political groups on the council have complied with their duties under section 52A(1). The annual report may also include recommendations to the authority about any matter in respect of which the committee has functions.

Current Position

The political leaders of Ceredigion County Council are invited annually to the Ethics and Standards Committee to discuss the methods of promoting and maintaining high standards of conduct by Members of Ceredigion County Council.

Proposal

The Committee is asked to note the new duties and to consider ways that the Committee monitoring role can be implemented and fulfilled and what evidence/actions the Committee might require from the political leaders in order to fulfil the requirements of the legislation.

Recommendation(s):

1. To note the new duties that S 62-63 of the Local Government and Elections (Wales) Act 2021 places on political leaders and the standards committee.
2. To consider how the Committee can assess the extent to which leaders of political groups on the council have complied with their duties under section 52A(1).

Contact Name: Lisa Evans
Designation: Scrutiny and Standards Officer
Date of Report: 23 April 2021
Acronyms:

Local Government and Elections (Wales) Act 2021

Conduct of Members

62 Duties of leaders of political groups in relation to standards of conduct

(1) The 2000 Act is amended as follows.

(2) After section 52 insert—

“52A County and county borough councils: duties of leaders of political groups in relation to standards of conduct

(1) A leader of a political group consisting of members of a county council or county borough council in Wales—

(a) must take reasonable steps to promote and maintain high standards of conduct by the members of the group, and

(b) must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

(2) In complying with subsection (1), a leader of a political group must have regard to any guidance about the functions under that subsection issued by the Welsh Ministers.

(3) The Welsh Ministers may by regulations make provision for the purposes of this section about the circumstances in which—

(a) members of a county council or county borough council in Wales are to be treated as constituting a political group;

(b) a member of a political group is to be treated as a leader of the group.

(4) Before making regulations under subsection (3), the Welsh Ministers must consult such persons as they think appropriate.”

(3) In section 54 (functions of standards committees), after subsection (2) insert—

“(2A) A standards committee of a county council or county borough council in Wales also has the specific functions of—

(a) monitoring compliance by leaders of political groups on the council with their duties under section 52A(1), and

(b) advising, training or arranging to train leaders of political groups on the council about matters relating to those duties.”

(4) In section 106 (Wales: orders and regulations)—

(a) omit subsection (5);

- (b) in subsection (7) after “section 21G” insert “or regulations under section 52A(3)”.
- (5) In the 2013 Act, omit section 68(4)(a).
- (6) In this Act, omit section 63(2).

63 Duty of standards committee to make annual report

- (1) In Part 3 of the 2000 Act, at the end of Chapter 1 insert—

“56B Annual reports by standards committees

- (1) As soon as reasonably practicable after the end of each financial year, a standards committee of a relevant authority must make an annual report to the authority in respect of that year.
 - (2) The annual report must describe how the committee's functions have been discharged during the financial year.
 - (3) In particular, the report must include a summary of—
 - (a) what has been done to discharge the general and specific functions conferred on the committee by section 54 or 56;
 - (b) reports and recommendations made or referred to the committee under Chapter 3 of this Part;
 - (c) action taken by the committee following its consideration of such reports and recommendations;
 - (d) notices given to the committee under Chapter 4 of this Part.
 - (4) An annual report by a standards committee of a county council or county borough council in Wales must include the committee's assessment of the extent to which leaders of political groups on the council have complied with their duties under section 52A(1) during the financial year.
 - (5) An annual report by a standards committee of a relevant authority may include recommendations to the authority about any matter in respect of which the committee has functions.
 - (6) A relevant authority must consider each annual report made by its standards committee before the end of 3 months beginning with the day on which the authority receives the report.
 - (7) The function of considering the report may be discharged only by the relevant authority (and accordingly is not a function to which [section 101](#) of the Local Government Act 1972 applies).
 - (8) In this section “financial year” means a period of 12 months ending with 31 March.”
- (2) Until section 62 comes into force, section 56B of the 2000 Act is to be read as if subsection (4) were omitted.



Cyngor Sir
CEREDIGION
County Council

APPLICATION TO THE ETHICS & STANDARDS COMMITTEE FOR DISPENSATION

Information

Please refer to the flowchart which will provide further guidance regarding the need for dispensation.

Members should also be aware of the Code of Conduct and its contents. If you are in any doubt, please contact the Monitoring Officer.

Please ensure that **ONLY ONE** matter is used per form, if there are multiple matters (different cases) please use separate forms.

If you require dispensation for both Town/Community Council **AND** County Council you must use **separate** forms for each application.

Please send this completed form to:

ethicsandstandards@ceredigion.gov.uk / moesegasafonau@ceredigion.llyw.cymru

Ethics and Standards
Neuadd Cyngor Ceredigion
Penmorfa
Aberaeron
Ceredigion
SA46 0PA
Tel: 01545 570881

For any further guidance or advice, please contact:

Monitoring Officer - Elin Prysor
Neuadd Cyngor Ceredigion,
Penmorfa,
Aberaeron,
Ceredigion,
SA46 0PA

MonitoringOfficer@ceredigion.gov.uk / SwyddogMonitro@ceredigion.gov.uk



**APPLICATION TO THE ETHICS & STANDARDS COMMITTEE
FOR DISPENSATION**

Please note that each section **MUST** be completed. Please refer to the attached Guidance Notes when completing the form.

1. YOUR DETAILS

Your full name: Rowland ReesEvans

Council:

County: x

Town/Community:

Name of your Council: Ceredigion County Council

Your address: Ystrad-Teilo, Llanrhystud, Ceredigion

SY23 5AY

Postcode:

Contact telephone number(s): 07971 844269

Email address: Rowland.Rees-Evans@ceredigion.gov.uk

2. DETAILS OF YOUR INTEREST

What is the matter being discussed by the Council?

I have a Constituent who has a planning application which is due to be turned down. I have asked for the Application to be sent to the Committee for consideration as the Applicant is known to me personally. I have no interest in the Application, I just know the Applicant and wish to have the chance to represent him at the Development Control Committee.

Describe your prejudicial interest in the above matter, including your connection with it:

I don't believe I have a prejudicial interest but a personal interest, but I am asking the Ethics and Standards Committee if you would allow me to speak on behalf of the Applicant, I would not be allowed to vote on this Application as it is within the Ward I represent, Llanrhystud.

Where will the above matter be considered? (e.g. Cabinet, County Council, Town/Community Council)

The Development Control Committee in the coming months, a date has not been set yet. Application No A200862.

If you are able to support this application I would be grateful if the dispensation could run until the decision has been made, sometimes applications are deferred and have to come back to the committee.

Under which paragraph of the Members Code of Conduct (20th May 2016 edition) does your interest fall?

Paragraph 10 (2) (a) it relates to, or is likely to affect —

- (i) any employment or business carried on by you;
- (ii) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
- (iii) any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;
- (iv) any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
- (v) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- (vi) any land in which you have a beneficial interest and which is in the area of your authority;
- (vii) any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- (viii) any body to which you have been elected, appointed or nominated by your authority;
- (ix) any —
- (aa) public authority or body exercising functions of a public nature;
- (bb) company, industrial and provident society, charity, or body directed to charitable purposes;
- (cc) body whose principal purposes include the influence of public opinion or policy;
- (dd) trade union or professional association; or
- (ee) private club, society or association operating within your authority's area, in which you have membership or hold a position of general control or management;

(x) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

Paragraph 10 (2) (b) a decision upon it might reasonably be regarded as affecting —

(i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;

(ii) any employment or business carried on by persons as described in 10(2)(b)(i);

(iii) any person who employs or has appointed such persons described in 10(2)(b)(i), any firm in which they are a partner, or any company of which they are directors;

(iv) any corporate body in which persons as described in 10(2)(b)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or

(v) anybody listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(b)(i) hold a position of general control or management, to a greater extent than the majority of—

(aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

Paragraph 13 You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where —

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, board, committee, sub-committee, joint-committee or joint sub-committee mentioned in sub-paragraph (a) and you were present when that decision was made or action was taken.

3. INFORMATION IN SUPPORT OF YOUR APPLICATION

Please provide additional (background/ factual) information in order to clarify/explain your interest further, and assist the committee considering this dispensation application.
(Please note that failure to complete this section will result in the application form being returned to you)

The Applicant is a Member of the Golf Club in Llanrhystud, a business which I am a Director.

The Applicant is a Key Worker in Ceredigion and wishes to build a house next to his Parents.

As explained above I only need dispensation to represent him at the Development Control Committee. As you know this is a non political committee, bearing in mind that we are now in Purdah.

(please continue on a separate sheet if necessary)

4. GROUNDS FOR DISPENSATION

The **Standards Committee (Grant of Dispensations)(Wales) Regulations 2001** prescribe the circumstances in which the Ethics & Standards Committee may grant a dispensation. The grounds for granting a dispensation are set out below.

On which of the following grounds do you believe that a dispensation should be granted in this case? Please tick the appropriate box(es).

(a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;	<input type="checkbox"/>
(b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies	<input type="checkbox"/>
(c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;	<input type="checkbox"/>
(d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;	<input type="checkbox"/>
(e) the interest is common to the member and a significant proportion of the general public;	<input type="checkbox"/>
(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;	<input checked="" type="checkbox"/>
(g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;	<input type="checkbox"/>
(h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or	<input type="checkbox"/>

- (i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify



5. GROUNDS FOR DISPENSATION- FURTHER INFORMATION

Please set out below the reasons why you consider that the Ethics & Standards Committee should grant a dispensation in this case (i.e. Please explain how and why you consider that one of the grounds for dispensation is/are satisfied)

(Please note that failure to complete this section will result in the application form being returned to you)

As already explained I am merely asking for dispensation to speak on behalf of a constituent who is known to me personally.

I don't believe, should I be allowed to speak, it would affect my role as a Councillor and be of any interest to the wider Public.

Should this application be successful I will not gain in any way shape or form.

(please continue on a separate sheet if necessary)

6. REQUEST

Are you applying for dispensation to speak only or to speak and vote?

Speak Only: x

Speak and Vote:

Please provide a reason for this:

I would not be allowed to vote as the application is in the ward I represent, Llanrhystud.

7. DURATION

What is the requested duration for this dispensation?

Specific: If possible as long as the application is live, in case it has to come back to the Committee due to a deferral.

Specific Meeting(s):

Please specify meeting date(s): _____

General:

6 months:

12 months:

8. DECLARATION

I request a dispensation in respect of the above matter.

I confirm that the information provided on this form is true to the best of my knowledge.

Signed:

Rowland Rees-Evans

Date:

27/03/2021

Please return this form to:

Ethics and Standards
Neuadd Cyngor Ceredigion
Penmorfa
Aberaeron
Ceredigion
SA46 0PA
Tel: 01545 570881

ethicsandstandards@ceredigion.gov.uk / moesegasafonau@ceredigion.llyw.cymru



Cyngor Sir
CEREDIGION
County Council

APPLICATION TO THE ETHICS & STANDARDS COMMITTEE FOR DISPENSATION

Please note that each section **MUST** be completed. Please refer to the attached Guidance Notes when completing the form.

1. YOUR DETAILS

Your full name: Mark Antony Strong

Council:

County:

Town/Community:

Name of your Council: Ceredigion County Council

Your address: Tŷ Blodwen, Ffordd Brynymôr, Aberystwyth

Postcode: SY23 2HX

Contact telephone number(s): 01970636578

Email address: mark.strong@ceredigion.gov.uk

2. DETAILS OF YOUR INTEREST

My wife Johanna F Breyer rents a garage from the Estates department at CCC, across the road from our property at the address above. In the last two years the Estates department have set out deeds, desk-based, to take possession of two lands – the garages and Cae Brynhyfryd (field) – for development as one single area.

What is the matter being discussed by the Council?

To enable me to discuss and vote on the area known as Cae Brynhyfryd separately from the area known as Brynymôr garages. I agree that I have a genuine personal interest in the area where we rent land for the garage, but historically the two areas have always been treated separately because of the access to them and their topography.

Describe your prejudicial interest in the above matter, including your connection with it:

A problem has arisen because a piece of work in an office has combined two areas that have historically always been treated separately. My personal interest lies with the garages, not with the field (Cae Brynhyfryd).

Where will the above matter be considered? (e.g. Cabinet, County Council, Town/Community Council)

This could be discussed with Parc Natur Penglais (The Council has appointed me on this) – Cabinet, County Council and Town Council.

Under which paragraph of the Members Code of Conduct (20th May 2016 edition) does your interest fall?

Parts 'D', 'E', 'H' (because of Parc Natur Penglais)

Code of Conduct 11, disclosure of personal interest, part 5

3. INFORMATION IN SUPPORT OF YOUR APPLICATION

Please provide additional (background/ factual) information in order to clarify/explain your interest further, and assist the committee considering this dispensation application.

(Please note that failure to complete this section will result in the application form being returned to you)

Historically, before the Estates department joined the lands for its plan, Parc Natur Penglais asked for Cae Brynhyfryd to be included as part of the Parc. I supported them in this aim. Subsequently, the Brynymôr garages were joined into the plan. For me to enter Brynhyfryd field, I would have to walk almost 10 minutes uphill. Also there are cliffs of 10-15 metres in height above the garages and then a large area of gorse on a steep hill before reaching the field. It is not possible to see Brynhyfryd field from anywhere in my house.

I believe Brynhyfryd field is around 10 acres. The future of the field will be of interest to many homes in my ward, namely Cae Melyn, Ffordd y Bryn and possibly some houses on Queen's Avenue, and others from Glen Rosa up to Y Berllan and Plas Brynymôr on Brynymôr Road. These constitute between 80 and a 100 houses in the ward I represent.

The fact that the cliffs and the topography make developing this site as one unit almost impossible or unsustainable is what brings about my questions; also, the well-being of local democracy because the local elected member may not take part regarding the main part of the area in question. The area where the garages lie is very small in comparison with the area of the field. Therefore I ask for dispensation to discuss this matter about Cae Brynhyfryd fully, or alternatively ask the Committee to recommend that the two areas be treated separately by the Estates department.

(please continue on a separate sheet if necessary)

4. GROUNDS FOR DISPENSATION

The **Standards Committee (Grant of Dispensations)(Wales) Regulations 2001** prescribe the circumstances in which the Ethics & Standards Committee may grant a dispensation. The grounds for granting a dispensation are set out below.

On which of the following grounds do you believe that a dispensation should be granted in this case? Please tick the appropriate box(es).

(a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;	<input type="checkbox"/>
(b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies	<input type="checkbox"/>
(c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;	<input type="checkbox"/>
(d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;	<input checked="" type="checkbox"/>
(e) the interest is common to the member and a significant proportion of the general public;	<input checked="" type="checkbox"/>
(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;	<input type="checkbox"/>

(g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;	<input type="checkbox"/>
(h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or	<input checked="" type="checkbox"/>
(i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify	<input type="checkbox"/>

5. GROUNDS FOR DISPENSATION- FURTHER INFORMATION

Please set out below the reasons why you consider that the Ethics & Standards Committee should grant a dispensation in this case (i.e. Please explain how and why you consider that one of the grounds for dispensation is/are satisfied)

(Please note that failure to complete this section will result in the application form being returned to you)

I believe that the Committee should grant a dispensation to allow for a better understanding of the topography of the area and also, not allowing the local member to take part in discussions and to vote because of recent changes on paper only, without knowledge of the geography of the area, would be detrimental to democracy in Aberystwyth.

An interest in one rented garage in a small area that has been added on to a substantial area in the ward and that has the potential to create great interest in the ward, would not be commensurate with preventing an elected member from taking part in an important issue in his ward.

(please continue on a separate sheet if necessary)

6. REQUEST

Are you applying for dispensation to speak only or to speak and vote?

Speak Only:

Speak and Vote:

Please provide a reason for this:

This is for speaking and voting since this is a subject that could be important to a significant percentage of electors in the ward I represent

7. DURATION

What is the requested duration for this dispensation?

Specific:

Specific Meeting(s):

Please specify meeting date(s): _____

General:

6 months:

12 months: x

8. DECLARATION

I request a dispensation in respect of the above matter.

I confirm that the information provided on this form is true to the best of my knowledge.

Signed: Mark A Strong

Date: 8 May 2021

Please return this form to:

Ethics and Standards
Neuadd Cyngor Ceredigion
Penmorfa
Aberaeron
Ceredigion
SA46 0PA
Tel: 01545 570881

ethicsandstandards@ceredigion.gov.uk / moesegasafonau@ceredigion.llyw.cymru

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APPLICATION TO THE ETHICS & STANDARDS COMMITTEE FOR DISPENSATION

Please note that each section **MUST** be completed. Please refer to the attached Guidance Notes when completing the form.

1. YOUR DETAILS

Your full name: Mark Antony Strong

Council:

County:

Town/Community: x

Name of your Council: Aberystwyth Town Council

Your address: Tŷ Blodwen, Ffordd Brynymôr, Aberystwyth

Postcode: SY23 2HX

Contact telephone number(s): 01970636578

Email address: mark.strong@ceredigion.gov.uk

2. DETAILS OF YOUR INTEREST

My wife Johanna F Breyer rents a garage from the Estates department at CCC, across the road from our property at the address above. In the last two years the Estates department have set out deeds, desk-based, to take possession of two lands – the garages and Cae Brynhyfryd (field) – for development as one single area.

What is the matter being discussed by the Council?

To enable me to discuss and vote on the area known as Cae Brynhyfryd separately from the area known as Brynymôr garages. I agree that I have a genuine personal interest in the area where we rent land for the garage, but historically the two areas have always been treated separately because of the access to them and their topography.

Describe your prejudicial interest in the above matter, including your connection with it:

A problem has arisen because a piece of work in an office has combined two areas that have historically always been treated separately. My personal interest lies with the garages, not with the field (Cae Brynhyfryd).

Where will the above matter be considered? (e.g. Cabinet, County Council, Town/Community Council)

This could be discussed with Parc Natur Penglais (The Council has appointed me on this) – Cabinet, County Council and Town Council.

Under which paragraph of the Members Code of Conduct (20th May 2016 edition) does your interest fall?

Parts 'D', 'E', 'H' (because of Parc Natur Penglais)

Code of Conduct 11, disclosure of personal interest, part 5

3. INFORMATION IN SUPPORT OF YOUR APPLICATION

Please provide additional (background/ factual) information in order to clarify/explain your interest further, and assist the committee considering this dispensation application.

(Please note that failure to complete this section will result in the application form being returned to you)

Historically, before the Estates department joined the lands for its plan, Parc Natur Penglais asked for Cae Brynhyfryd to be included as part of the Parc. I supported them in this aim. Subsequently, the Brynymôr garages were joined into the plan. For me to enter Brynhyfryd field, I would have to walk almost 10 minutes uphill. Also there are cliffs of 10-15 metres in height above the garages and then a large area of gorse on a steep hill before reaching the field. It is not possible to see Brynhyfryd field from anywhere in my house.

I believe Brynhyfryd field is around 10 acres. The future of the field will be of interest to many homes in my ward, namely Cae Melyn, Ffordd y Bryn and possibly some houses on Queen's Avenue, and others from Glen Rosa up to Y Berllan and Plas Brynymôr on Brynymôr Road. These constitute between 80 and a 100 houses in the ward I represent.

The fact that the cliffs and the topography make developing this site as one unit almost impossible or unsustainable is what brings about my questions; also, the well-being of local democracy because the local elected member may not take part regarding the main part of the area in question. The area where the garages lie is very small in comparison with the area of the field. Therefore I ask for dispensation to discuss this matter about Cae Brynhyfryd fully, or alternatively ask the Committee to recommend that the two areas be treated separately by the Estates department.

(please continue on a separate sheet if necessary)

4. GROUNDS FOR DISPENSATION

The **Standards Committee (Grant of Dispensations)(Wales) Regulations 2001** prescribe the circumstances in which the Ethics & Standards Committee may grant a dispensation. The grounds for granting a dispensation are set out below.

On which of the following grounds do you believe that a dispensation should be granted in this case? Please tick the appropriate box(es).

(a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;	<input type="checkbox"/>
(b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies	<input type="checkbox"/>
(c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;	<input type="checkbox"/>
(d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;	<input checked="" type="checkbox"/>
(e) the interest is common to the member and a significant proportion of the general public;	<input checked="" type="checkbox"/>
(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;	<input type="checkbox"/>

(g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;	<input type="checkbox"/>
(h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or	<input checked="" type="checkbox"/>
(i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify	<input type="checkbox"/>

5. GROUNDS FOR DISPENSATION- FURTHER INFORMATION

Please set out below the reasons why you consider that the Ethics & Standards Committee should grant a dispensation in this case (i.e. Please explain how and why you consider that one of the grounds for dispensation is/are satisfied)

(Please note that failure to complete this section will result in the application form being returned to you)

I believe that the Committee should grant a dispensation to allow for a better understanding of the topography of the area and also, not allowing the local member to take part in discussions and to vote because of recent changes on paper only, without knowledge of the geography of the area, would be detrimental to democracy in Aberystwyth.

An interest in one rented garage in a small area that has been added on to a substantial area in the ward and that has the potential to create great interest in the ward, would not be commensurate with preventing an elected member from taking part in an important issue in his ward.

(please continue on a separate sheet if necessary)

6. REQUEST

Are you applying for dispensation to speak only or to speak and vote?

Speak Only:

Speak and Vote:

Please provide a reason for this:

This is for speaking and voting since this is a subject that could be important to a significant percentage of electors in the ward I represent

7. DURATION

What is the requested duration for this dispensation?

Specific:

Specific Meeting(s):

Please specify meeting date(s): _____

General:

6 months:

12 months:

8. DECLARATION

I request a dispensation in respect of the above matter.

I confirm that the information provided on this form is true to the best of my knowledge.

Signed: Mark A Strong

Date: 8 May 2021

Please return this form to:

Ethics and Standards
Neuadd Cyngor Ceredigion
Penmorfa
Aberaeron
Ceredigion
SA46 0PA
Tel: 01545 570881

ethicsandstandards@ceredigion.gov.uk / moesegasafonau@ceredigion.llyw.cymru

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CEREDIGION COUNTY COUNCIL

Report to: Ethics and Standards Committee

Date of meeting: 19 May 2021

Title: Recruitment of two independent members to the Ethics and Standards Committee

Purpose of the report: To ensure appropriate appointments are made to the Ethics and Standards Committee

Appointment of two Independent Members

The current Chair Mr Hywel Wyn Jones and Mr Rif Winfield were appointed initially on 27/9/2011 and reappointed on 27/9/2017. Their respective terms of office will expire on 26/9/2021. These members are not now eligible for reappointment.

On 10th December 2020 Council resolved:

- a) the job description, person specification and criteria for the appointment of independent members; and b) Membership of the Selection Panel.

The Selection Panel took place on 26th March 2021 and the interviews on 15th April 2021.

The two successful candidates were:

- Caryl Davies;
- Alan Davies.

It is proposed that these appointments will be for a term of 6 years from 27th September 2021.

Recommendation(s): The Ethics and Standards Committee recommend that Council on 17th June 2021 resolves:

1. to approve the appointment of the following independent members of the Ethics & Standards Committee:
 - Caryl Davies;
 - Alan Davies.from 27th September 2021 to 26th September 2027

Reasons for decision: The recommendations are necessary to ensure that the appropriate appointments are in place, in accordance with relevant legislation and the Constitution.

Contact Name: Lisa Evans
Designation: Scrutiny and Standards Officer
Date of Report: 19 April 2021
Acronyms:

CEREDIGION COUNTY COUNCIL

Report to: Ethics and Standards Committee

Date of meeting: 19 May 2021

Location: held remotely via video-conference

Title: Code of Conduct matters

Purpose of the report: For information

Introduction

See attached press articles regarding the following Code of Conduct matters:-

- Cllr Gruffydd Williams, who represents the Nefyn ward, Gwynedd County Council. He has been suspended by his Group, Plaid Cymru over allegations that he shared online material casting doubt over aspects of Covid-19 and mass vaccination [| News | Cambrian News \(cambrian-news.co.uk\)](#)
- Plaid Cymru Senedd member Helen Mary Jones due in court over murder trial tweet [Plaid Cymru Senedd member Helen Mary Jones due in court over murder trial tweet](#)

Recommendation(s): To note the articles for information.

Reasons for decision: For information

Appendices: Appendix A – Article – Cambrian News and BBC News online

Reporting Officer: Dana Jones, Democratic Services and Standards Officer

Date: 09 April 2021

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CEREDIGION COUNTY COUNCIL

Report to: Ethics and Standards Committee

Date of meeting: 19 May 2021

Title: Corporate Joint Committees (General) (Wales) Regulations 2021

Purpose of the report: To note the relevant content of the Corporate Joint Committees (General) (Wales) Regulations 2021 in relation to standards of conduct

The Corporate Joint Committees (General) (Wales) Regulations 2021 (“The General Regulations”) introduces a number of provisions in relation to the general administration and governance of Corporate Joint Committees, established by Part 5 of the Local Government and Elections (Wales) Act 2021.

Those provisions came into force on the 1 April 2021.

The overall intent in establishing Corporate Joint Committees is that a Corporate Joint Committee will be treated as part of or a member of the ‘local government family’ and largely subject to the same or similar powers and duties as local authorities in the way that they operate and are governed.

The General regulations set out the requirements and necessary legislative framework for effective administration and governance of a Corporate Joint Committee.

The General regulations seek to ensure that, as part of the wider application of the local government ethical framework that members, co-opted participants and employees of Corporate Joint Committees are subject to appropriate standards of conduct.

The provisions within these General regulations are to ensure the application of relevant authority’s Code of Conduct to members and co-opted participants of a Corporate Joint Committee. That is that the code of conduct of the relevant authority from which the member or co-opted participant is from will apply. This includes to require them to register any personal interests they have in the business of the Corporate Joint Committee in their relevant authority’s register of interest.

The General Regulations Part 1 Regulation 3 and Schedule 1:Standards of Conduct are contained in **Appendix A**.

Recommendation(s): To note the relevant content of the Corporate Joint Committees (General) (Wales) Regulations 2021 in relation to standards of conduct

Contact Name: Lisa Evans
Designation: Scrutiny and Standards Officer
Date of Report: 19 April 2021
Acronyms:

SCHEDULE 1 STANDARDS OF CONDUCT

Regulation 3

Application of relevant authority's code of conduct to members and co-opted participants

1

(1) Sub-paragraph (2) applies to a person who—

(a) is—

(i) a member, or

(ii) a co-opted participant,

of a corporate joint committee, and

(b) is—

(i) a member, or

(ii) a co-opted member,

of a relevant authority.

(2) For the purposes of the code of conduct of the relevant authority, a person to whom this paragraph applies is to be treated as though they had been appointed by the relevant authority to serve on the corporate joint committee.

(3) Where, by virtue of sub-paragraph (2), a person to whom that sub-paragraph applies is required, in so far as they are acting for the corporate joint committee, to comply with the model code of conduct (“the code”), sub-paragraphs (4) and (5) apply.

(4) References to a person's “authority” in Part 3 of the code are to be read as references to the corporate joint committee for which the person is acting.

(5) A person must register any personal interests they have in the business of the corporate joint committee in their relevant authority's register of member's interests by providing written notification to the authority's monitoring officer.

Application of authority code of conduct to employees

2

(1) Sub-paragraph (2) applies unless—

(a) express provision is made to the contrary, or

(b) the context requires otherwise.

(2) The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001 (“the 2001 Order”) applies to an employee of a corporate joint committee as it applies to an employee of a relevant authority.

(3) In the 2001 Order, as it applies by virtue of sub-paragraph (2), a reference to an employee's authority is to be read as reference to an employee's corporate joint committee.

Interpretation of Schedule 1

3

In this Schedule—

- (a) references to “the 2000 Act” are to the [Local Government Act 2000](#);
- (b) references to the “model code of conduct” are to the model code of conduct set out in the Schedule to the Local Authorities (Model Code of Conduct) (Wales) Order 2008;
- (c) “code of conduct” means the code of conduct adopted by a relevant authority under section 51 of the 2000 Act;
- (d) “co-opted member” has the meaning given by section 49 of the 2000 Act;
- (e) “relevant authority” has the meaning given by section 49 of the 2000 Act.

NOTES

Initial Commencement

Specified date

Specified date: 1 April 2021: see reg 1(2).

Document information

Corporate Joint Committees (General) (Wales) Regulations 2021

Date made

17/03/2021

Cyngor Sir CEREDIGION County Council

REPORT TO: Ethics and Standards Committee

DATE: 19 May 2021

LOCATION: held remotely via video-conference

TITLE: Update on Adjudication Panel for Wales matters

PURPOSE OF REPORT: For information

The Adjudication Panel for Wales (APW) is an independent tribunal that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh County, County Borough and Community Councils, Fire and National Park Authorities.

Appendix 1 contains a report dated 23 December 2020 on the decision of the Case Tribunal to suspend a Member of Merthyr Tydfil Borough Council for a period of seven months or, if shorter, the remainder of his term of office. The second report dated the 12 January 2021 reports on the decision of the Case Tribunal to disqualify a Former Community Council for Sully and Lavernock Community Council for 15 months.

WELLBEING OF FUTURE GENERATIONS:

Has an Integrated Impact Assessment been completed?
Not required
If, not, please state why
Summary:
Long term:
Integration:
Collaboration:
Involvement:
Prevention:

RECOMMENDATION (S):

To note the contents of the report.

Contact Name: Dana Jones
Designation: Democratic Services and Standards Officer
Date of Report: 09 April 2021
Acronyms:

|

NOTICE OF DECISION

TRIBUNAL REFERENCE NUMBER: APW001/2020-021/CT

RESPONDENT: Councillor Kevin O'Neill

RELEVANT AUTHORITY: Merthyr Tydfil Borough Council

1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

2. In a letter dated 13th July 2020, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Kevin O'Neill ("the Respondent"). The allegations were that the Respondent had breached the Code of Conduct for members of Merthyr Tydfil Borough Council Code of Conduct ("the Code").

3. The first allegation was that the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15th August 2018.

4. The second allegation was that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15th August 2018.

5. The third allegation was that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15th August 2018.

6. The fourth allegation was that the Respondent's e mail to the Director of Social Services on 16th August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the e mail sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.

7. The fifth allegation related to whether the Respondent's actions in speaking at the meeting of the 15th August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16th

August 2018 were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.

8. The sixth allegation related to the meeting with the former Chief Executive of the Council on the 5th March 2019 and whether the Respondent's conduct towards the former Chief Executive was inappropriate and failed to show respect and consideration to him in breach of the Code.

9. In accordance with Councillor O'Neill's wishes, the Case Tribunal determined its adjudication by way of written representations at meetings on Friday 18th and Tuesday 22nd December 2020 by Cloud Video Platform (but as if sitting at the Tribunal's offices at Cleppa Park, Newport.) **The Case Tribunal found by unanimous decision that the Respondent had failed to comply with the Code with regard to all of the allegations.**

10. Councillor O'Neill failed to comply with the Code as follows:

10.1 Paragraph 11(1) of the Code of Conduct states that "*Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.*"

10.2 The Case Tribunal found that Councillor O'Neill failed to declare a personal interest before and at the commencement of the inter-agency meeting of 15th August 2018.

10.3 Paragraph 14(1) of the Code of Conduct states that "*... where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee- (a) withdraw from the room, chamber or place where a meeting considering the business is being held -*"

10.4 The Case Tribunal found that Councillor O'Neill had a prejudicial interest and did not withdraw from the room at the inter-agency meeting on the 15th August 2018 when the Luther Lane property was being discussed in breach of paragraph 14(1) (a) of the Code.

10.5 Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must "*not seek to influence a decision about that business*".

10.6 The Case Tribunal found that the Respondent had a prejudicial interest and did seek to influence a decision about the business of the authority at the inter-agency meeting on the 15th August 2018, in breach of paragraph 14 (1) (c) of the Code.

10.7 Paragraph 14(1)(e) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member

must “*not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.*”

10.8 The Case Tribunal found that the Respondent had a prejudicial interest in the property at Luther Lane and made oral representations in the inter-agency meeting on the 15th August 2018 in breach of paragraph 14 (1) (e) of the Code.

10.9 Paragraph 14(1)(d) of the Code of Conduct states that where a member has a prejudicial interest in any business of the authority that the member “*must not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business*”

10.10 The Case Tribunal found that the Respondent had a prejudicial interest in the property at Luther Lane and sent an e mail to the Director of Social Services on 16th August 2018 in breach of paragraphs 14(1) (c) and (d) of the Code.

10.11 Paragraph 11(2)(a) of the Code of Conduct states that “(2) *Where you have a personal interest in any business of your authority and you make- (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication;*”

10.12 The Case Tribunal found that the Respondent had a personal interest in the business of the authority and sent an e mail to the Director of Social Services on 16th August 2018 in breach of paragraph 11 (2)(a) of the Code.

10.13 Paragraph 6(1)(a) of the Code of Conduct states that “6.-(1) *You must - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*”

10.14 The Case Tribunal found that the Respondent’s conduct in speaking at the inter-agency meeting on 15th August 2018 and sending the e mail to the Director of Social Services on 16th August 2018 in relation to business of the authority in which he had a prejudicial interest amounts to a breach of Paragraph 6(1)(a) of the Code.

10.15 Paragraph 4(b) of the Code of Conduct states that a member must “(b) *show respect and consideration for others.*”

10.16 The case tribunal find that the Respondent’s conduct towards the former Chief Executive of the Authority at the meeting of 5th March 2019 breached paragraph 4(b) of the Code.

11. The Case Tribunal decided by unanimous decision that Councillor O’Neill should be suspended from acting as a member of Merthyr Tydfil Borough Council for a period of seven months or, if shorter, the remainder of his term of office, with effect from the date of this notice.

12. The Authority and its Standards Committee are notified accordingly.

13. The Respondent has the right to seek the leave of the High Court to appeal the above decision.

14. The Case Tribunal makes the following recommendation to the authority;

14.1 That the Monitoring Officer or their delegate provide further training to the Respondent on the Code of Conduct, the meaning of 'prejudicial interests' and the approach to be taken to, and the status of, the advice of the Monitoring Officer. Such training to be undertaken within one month of the Respondent returning to his post following the service of his suspension.

Signed *Richard Payne* Date 23 December 2020

R. Payne, Chairperson of the Case Tribunal

S. Hurds, Case Tribunal Member

H. E Jones, Case Tribunal Member

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2020-021/CT

REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Former Community Councillor Baguley

RELEVANT AUTHORITY: Sully and Lavernock Community Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 The Case Tribunal determined its adjudication on the basis of the papers, at a meeting on 16 December 2020 conducted by means of remote attendance.

2. DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 16 September 2020, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against former Community Councillor Baguley (“the Respondent”).

2.1.2 **Allegation 1** was that the Respondent had breached the Code of Conduct for Members of Sully and Lavernock Community Council (“the Code”) as follows: That the Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019, which it was alleged could reasonably be regarded as bringing the Councillor’s office or authority into disrepute and thereby breached Paragraph 6(1) of the Code.

2.1.3 During the course of the investigation, the Ombudsman extended the investigation to include **Allegation 2** as follows: That the Respondent allegedly failed to supply information and evidence in respect of the privacy status of the relevant posts, in non-compliance with requests of the Ombudsman in

connection with an investigation conducted in accordance with his statutory powers and thereby breached Paragraph 6(2) of the Code.

2.2 The Details of Allegation 1: Three Facebook Posts

2.2.1 The three Facebook posts referenced in **Allegation 1** are as follows:

i) On 10 January 2019, responding to a Telegraph article titled “What if...Yvette Cooper was Labour leader”, Councillor Baguley wrote: “imagine this! This bitch is driving remain when the people of her constituency overwhelmingly [sic] voted out. A traitorous cow and one I hope she ends up with a noose around her neck!”

ii) On 9 March 2019 Councillor Baguley posted an online article about Shamima Begum and stated the following: “I hope that it [sic]she does carry out some atrocity Anna Soubry would be my chosen target”

iii) On 11 March 2019 Councillor Baguley commented on a video of Diane Abbott speaking at a conference. He wrote: “fucking idiot! Get me a gun please!”

2.2.2 The evidence was comprised of a bundle of Tribunal case papers including copies of numerous Facebook posts and correspondence to and from the Council’s Monitoring Officer, the Ombudsman and the Respondent.

The Respondent’s response to Allegation 1.

2.2.3 In an e-mail to the Ombudsman dated 10 July 2019, the Respondent stated “(a) Facebook have their own code of conduct which I have not fallen foul of as they would have censored the comments and (b) many of the comments made are of friends of mine and not my own.”

2.2.4 On 20 August 2019, he wrote as follows to the Ombudsman; “my comments on Facebook are my own beliefs and have not been censored by Facebook.”

2.2.5 On 17 October 2019 he wrote to the Ombudsman to say that he had consulted a solicitor and; “he feels (as would any fair minded person) that they are political opinions and I fully stand by them.”

2.2.6 On 12 November 2019, he said that; “Facebook generally remove offensive sexist and racist comments automatically as they have identifiers built into the algorithm so if they were offensive they would have been removed.”

2.2.7 On 8 June 2020, in response to written interview questions, the Respondent responded as follows;

- In relation to Paragraph 6(1)(a); “This is ambiguous as the word reasonably is subjective and open to interpretation.”

- With regard to the Facebook post, dated 10 January 2019, the Respondent explained that he had a; “long held personal dislike of this individual from my days living in her constituency and I agree my comments are a bit strong.”

- As to the public nature of the postings; “I assumed it was locked down but was obviously wrong.”

- With regard to the Facebook post, dated 9 March 2019, he explained what he meant as; “I would rather turn a gun on myself rather than listen to her” and as to the status of the post, he said; “I did not know whether public or not.”

- In relation to the Facebook post, dated 11 March 2019, the Respondent explained; “I dislike Anna Soubry” and as to the status of the post, he said; “Didn’t know it was public or private”.

-As to the nature of the posts, the Respondent stated; “Facebook always remove comments and posts they feel are offensive but they remained which shows they were ok with them”.

-Finally, the Respondent explained his; “long standing dislike of the labour party and its officials and followers” from negative childhood experience.

-As to freedom of expression; “I am also allowed to hold my views as free speech and opinions is not yet illegal in the UK”.

2.3 Allegation 2: Failure to comply with Ombudsman’s requests

2.3.1 The Ombudsman’s requests referenced in **Allegation 2** and the Respondent’s responses are as follows:

i) On 8 November 2019: “In your email of 10 July 2019, you said that you had it confirmed by Facebook support that your posts are not visible to anyone but your friends and this has been the case since 2013. It would assist the investigation if you could send me a copy of the activity log on your Facebook account to show when your privacy settings were changed and also a copy of the confirmation by Facebook that your posts have not been visible to anyone but your friends since 2013.” The Respondent replied almost immediately by sending a screenshot of his settings.

ii) On 12 November 2019: an e-mail advising the Respondent that the screenshot he had sent in response to i) above was of his current settings and asking again for his historical activity log. The Respondent was also asked to provide confirmation from Facebook to support his claim that it had confirmed his posts were not visible to anyone since 2013 and to confirm how he received this confirmation (e.g. by email or verbally by phone). Councillor Baguley responded the same day by e-mail; “No idea how to do that sorry can you tell me how?”.

iii) On 15 November: an e-mail to the Respondent, advising him how he could access his activity log. The Respondent did not respond to the email.

2.3.2 In response to the written interview questions on 8 June 2020, the Respondent stated as follows;

- With regard to his original comment that his posts had not been visible to anyone but his friend since 2013, he said that he had meant; "I checked my settings" and explained that he had contacted Facebook; "I phoned them and after a long and convoluted goose chase I got nowhere basically."

- As to whether he was aware of how Facebook settings work; "Not really" and as to his failure to provide a historical activity log, he said; "I didn't know how" and as to his continued failure to provide the same following guidance, he repeated; "No idea how to do it".

- As to the discrepancy between the posts being visible in 2019 and the Respondent's version of events that the posts had been visible to friends only from 2013 onwards, he said; "I thought this was the case".

-Finally, when asked when he changed to private or "friends" setting, the Respondent replied; "When I found out they had been strangely changed to public, maybe by my eldest son who has access and sometimes uses pictures I post".

2.3.3 The evidence was again comprised in the bundle of Tribunal case papers including correspondence from the Ombudsman and the Respondent.

3. FINDINGS OF FACT

3.1 The Case Tribunal noted the following **undisputed** material facts;

3.1.1 The Respondent was co-opted as a Community Councillor to Sully and Lavernock Community Council in May 2017. He resigned from this role in September 2020.

3.1.2 The Respondent signed a Declaration of Office and Undertaking regarding the Code of Conduct on 27th June 2017.

3.1.3 The Respondent did not attend any training in relation to the Code of Conduct or in relation to the use of social media during his period of office.

3.1.4 The Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019 about three high profile UK politicians, the contents of which are not in dispute.

3.2 The Case Tribunal found the following in relation to the **disputed** material facts;

Allegation 1

3.2.1 That the Respondent was acting in a private capacity when he posted the three public Facebook messages in question. Certain Facebook posts sent by the Respondent did refer to the Relevant Authority, however the Facebook posts referenced in **Allegation 1** were not sent in this context. No evidence had been provided as to whether the Respondent's Facebook profile referred to his Community Council status.

3.2.2 That although the Facebook posts were written in the context of sharing political views on Facebook, the comments complained of went far beyond what could reasonably be considered to be political expression. It was however straightforward to separate the political debate from the comments which were the subject of **Allegation 1**. The comments were inflammatory and an expression of views which were extreme, threatening in nature and promoted violence towards individuals. The comments could not be dignified by the description of political expression.

3.2.3 That even if the Respondent was not aware of the status of his posts at the time of posting, despite the visible icon of a globe which showed that it was public, the Respondent was at the very least, reckless to that fact and the Tribunal found that on the balance of probabilities the Respondent was aware of their public status. He was well versed in the use of social media and sent regular and frequent posts and was reckless as to the consequences. In one of his posts not related to the Allegation, he had stated; "I will get another Facebook ban for saying it...". His responses to the written interview questions demonstrated that Respondent had little concern for whether his page was public or private.

3.2.4 The Case Tribunal considered that high profile politicians, by entering public life, lay themselves open to close scrutiny and indeed mockery and sarcasm. They were expected to possess thick skins and display a greater degree of tolerance than ordinary citizens, however such tolerance should not have to extend to personal, inflammatory and egregious comments which comprised of threats or inciting extreme violence and death from other politicians, albeit acting in their private capacity, including at a Community Councillor level. The comments were personal, disturbing and gratuitous verbal attacks, not political expression.

Allegation 2

3.2.5 That the Respondent failed to comply with the Ombudsman's requests for information with regard to the change in his privacy settings. The Panel found that on the balance of probability, the Respondent's initial response that Facebook had confirmed that the settings had been private since 2013 was not a candid response and was written to attempt to minimise the nature and impact of the Facebook posts.

3.2.6 The Case Tribunal considered that the Respondent's subsequent responses contained a variety of excuses and no evidence or detail was forthcoming as to any relevant discussion with Facebook to confirm that the

Respondent's Facebook posts had been private since 2013. There was reference to a discussion with Facebook but the Respondent said that he had "got nowhere" in that instance. He then stated that he did not know how to check any change of settings that took place in 2013, although he was clearly an experienced user of Facebook and the Tribunal did not consider that this was an entirely candid response. Further to guidance supplied by the Ombudsman's Investigator, the Respondent failed to reply. Finally, in reply to written interview questions, the Respondent provided yet another explanation, stating that his settings had been "strangely changed" to public by a third party.

3.2.7 In conclusion the Panel considered that the Respondent had deliberately avoided providing information and full and frank responses to the reasonable requests of the Ombudsman's Investigating Officer in completing the investigation.

4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

4.1 The Code of Conduct for Members

4.1.1 The relevant parts of the Code are as follows;

Allegation 1

Paragraph 2(1)(d) of the Code states; "...You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7."

Paragraph 6(1)(a) of the Code states; "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

Allegation 2

Paragraph 6(2) states; "You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers."

4.2 Article 10 ECHR Considerations in relation to Allegation 1

4.2.1 Article 10 of the European Convention on Human Rights states as follows;

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,

in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

4.2.2 The Case Tribunal adopted the following three-stage approach formulated in *Sanders v Kingston* [2005] EWHC 1145 in relation to **Allegation 1** and the three Facebook posts;

(i) Did the Respondent’s conduct breach Paragraph 6(1)(a) of the Code of Conduct?

(ii) Would the finding in itself comprise of a prima facie breach of Article 10?

(iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

4.3 Case Tribunal’s Decision – Allegation 1

Paragraph 6(1)(a) of the Code

4.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent failed to comply with Paragraph 6(1) of the Code for the following reasons;

Conduct within private capacity

4.3.2 In accordance with Paragraph 2(1)(d) of the Code, Members must observe the Code at all times and in any capacity in respect of conduct which could reasonably be regarded as bringing a Councillor’s office or authority into disrepute and it therefore applied regardless of the fact that the Respondent was acting in his private capacity.

4.3.3 The Case Tribunal were mindful of the Ombudsman’s Guidance in this respect which states that;

- “...as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the code apply to you at all times.”

-It also refers to the significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter; “Even if you do not refer to your role as Councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

- “As a Member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your Council.”

- "Inappropriate e-mails to constituents or posts on social media might well bring the office of member into disrepute".

4.3.4 The Case Tribunal was mindful of the case of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 which set out the very limited circumstances in which the relevant Code in would apply in England where a Member was acting in his private capacity. The position in Wales can be distinguished however, as the legislation has spelt out in clear terms what is covered by the Code in Wales. It extends unequivocally to conduct in private life in relevant circumstances. Section 52 of the Localism Act 2011 also omits reference to "in performing his duties" in Wales in relation to the undertaking to observe the Code which Members must sign.

4.3.5 The three Facebook posts in this case were all extreme and gratuitous in referring to violence or methods of killing in relation to three high-profile politicians. Even if the comments were glib, reckless or expressed to be part of perceived normalisation of such language on social media platforms, the Case Tribunal was satisfied that it was of a sufficiently serious nature that it could reasonably be regarded as bringing the Respondent's office and authority into disrepute;

(i) In relation to the Facebook post of 10 January 2019, the Respondent implies a wish that the subject of the post is hanged. He concedes that his comment was "a bit strong".

(ii) The post of 9 March again had no reasonable alternative reading. The Respondent was expressing a wish the subject of the post to be the subject of an atrocity.

(iii) The Respondent had argued that in relation to the 11 March post that the comment, "Get me a gun" was a reference to the Respondent turning a gun on himself. The Case Tribunal considered that this was an artificial construction of the plain meaning of the words in the context of the previous comment, that he wished to shoot the subject of the post.

4.3.6 The Respondent posted public comments on a frequent and regular basis which came to the attention of a member of the public and the Relevant Authority's Monitoring Officer and prompted a complaint in the light of the Respondent's public role as a Community Councillor. As an outspoken public figure, many in the community would have been aware that the Respondent was a Councillor and the three Facebook posts would have adversely reflected on both his role and his authority.

4.3.7 The Principles governing the conduct of elected and co-opted members of local authorities in Wales, which reflect and expand the "Nolan Principles" include the principles of "Integrity" and of "Leadership" whereby; "Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority". The Respondent's conduct had fallen well below the standards of conduct in public life which the Nolan Principles and the Code seek to uphold.

4.3.8 The Case Tribunal concluded that the three Facebook posts which are the subject of **Allegation 1** were so egregious, inflammatory and violent, that they offended against all notions of peace, safety, decency and democracy within society. In view of their extreme and public nature, the Case Tribunal had no difficulty in finding that the contents of the posts could reasonably be regarded as bringing the Respondent's office and also his authority into disrepute (quite apart from bringing the Respondent as an individual into disrepute).

Article 10(1) ECHR

4.3.9 Despite the finding that the Respondent breached Paragraph 6(1)(a) of the Code, the Case Tribunal nevertheless considered that the finding did comprise of a prima facie breach of Article 10 in that the finding could be deemed to restrict his right to freedom of expression.

Article 10(2) ECHR

4.3.10 The Case Tribunal were of the view that freedom of expression is a cornerstone of democracy and should not be readily displaced in any balancing exercise with competing rights of individuals, particularly of public figures who are expected to have "thick skin". The Case Tribunal gave extremely careful consideration to this issue, cognisant that anything which impeded political debate should be exercised with extreme caution.

4.3.11 As the Respondent's posts had been made in a private capacity and the Case Tribunal had found that they did not comprise of political expression, they did not attract the enhanced protection afforded to politicians. The Tribunal nevertheless concluded that even if enhanced protection had applied, the comments were so extreme and egregious, that the finding of a breach of the Code would nevertheless have been justified.

4.3.12 Article 10(2) makes it clear that the freedom of expression carries with it duties and responsibilities and may be subject to restrictions such as those contained in the Code (which are prescribed by law) and are necessary in a democratic society, in the interests of; "public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others."

4.3.13 The Case Tribunal noted that although the three Facebook posts which formed the subject of **Allegation 1** were made during the course of otherwise political exchanges, the comments themselves stood out as being quite distinct from that exchange and introduced a different and disturbing tone to the exchange.

4.3.14 As to the Respondent's argument that Facebook had its own code of conduct, the Case Tribunal stated that Member behaviour was governed by the statutory Code of Conduct by which Members had undertaken to abide and not by any procedure or code operated by a social media platform which may or may not identify threatening comments.

4.3.15 In conclusion, the three Facebook posts had been found by the Case Tribunal to be so extreme and egregious that, despite the fact that freedom of expression was a fundamental human right, there were necessary limits. The posts went well beyond what could be reasonably tolerated in a democratic society. It was necessary for the public interest in proper standards of conduct by Members of local authorities to be upheld by a finding that the Respondent had breached Paragraph 6(1)(a) of the Code, in order to safeguard public safety and the reputation and rights of others.

4.4 Case Tribunal's Decision – Allegation 2

Paragraph 6(2) of the Code

4.4.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that the Respondent had failed to comply with Paragraph 6(2) of the Code for the following reasons;

4.4.2 The Case Tribunal had reached the finding of fact that the Respondent had deliberately avoided answering the Ombudsman's reasonable requests in his Investigating Officer's efforts to complete the investigation in accordance with the Ombudsman's statutory powers.

4.4.3 It inevitably followed that there had therefore been a breach of Paragraph 6(2) of the Code.

5. FINDINGS IN RELATION TO SANCTION

5.1 The Case Tribunal considered all the facts of the case and concluded by unanimous decision that the Respondent should be disqualified for 15 months from being or becoming a member of Sully and Lavernock Community Council or of any other relevant authority within the meaning of the Local Government Act 2000 for the following reasons;

5.2. The Case Tribunal carefully considered the current Sanctions Guidance of the Adjudication Panel for Wales in particular and noted the public interest considerations as follows in paragraph 44;

- "The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.

5.3 The Case Tribunal also considered paragraph 47 of the Guidance with regard to former Councillors which reads as follows;

- “In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...”

5.4 The Case Tribunal considered that the facts leading to breach of the Code in relation to **Allegation 1** were particularly serious and were of the view that if the Respondent had not resigned and remained in office, it would not have considered that suspension was a sufficient sanction to recognise the extremely serious nature of the breach.

5.5 The Case Tribunal had regard to sanctions imposed in previous cases. It was also mindful that the comments were directed at individuals who were national political figures, rather than officers of the Relevant Authority or members of the local community. The public figures would be unlikely to become aware of, or be directly affected by, the comments directed at them. The Case Tribunal nevertheless considered that as this was an extremely serious breach, the sanction was proportionate in all the circumstances.

5.6 In conclusion, the Case Tribunal considered that the Sanction imposed was the minimum necessary to uphold the standards of conduct in public life and maintain confidence in local democracy. It reflected the fact that the behaviour demonstrated that the Respondent was unfit for public office and required a significant period of time in order to reflect on his conduct before contemplating re-entering local politics.

5.7 With regard to **Allegation 2**, the Case Tribunal considered that the lack of full co-operation and compliance with the Ombudsman’s requests during investigation and lack of candour was a matter of concern, however it did not consider that a separate penalty should be imposed in relation to this breach.

5.8 The Case Tribunal came to the above conclusion having considered the following Mitigating and Aggravating factors which are highlighted in the Sanctions Guidance.

Mitigating Factors;

5.9 The Case Tribunal noted that the Respondent had a relatively short length of service and would have been inexperienced in the role of Community Councillor. There had been no record of a previous breach during this short period of service. The Respondent expressed a minimal amount of regret, for example by referring to his post of 10 January 2019 as “a bit strong”.

Aggravating Factors;

5.10 The Case Tribunal noted that the Respondent’s conduct was blatant and largely unapologetic. He stood by his comments although he regretted that his comments had been public. The behaviour was deliberate, reckless and

repeated and there appeared to be little or no concern for the Code and a lack of understanding or acceptance of the misconduct and any consequences.

5.11 In conclusion, the Case Tribunal found that the three Facebook posts consisted of the expression of views which were not worthy of respect in a democratic society, and were incompatible with human dignity and conflicted with the fundamental rights of others.

5.12 Article 10 ECHR Considerations

5.12.1 The Case Tribunal recognised that the sanction comprised of a prima facie breach of Article 10 in that the finding could be deemed to restrict the Respondent's right to freedom of expression.

5.12.2 It considered however that the sanction of disqualification was a penalty prescribed by law and was of a length which was proportionate bearing in mind the interests of public safety and the need in a democratic society to prevent disorder or crime, for the protection of health or morals and for the protection of the reputation or rights of others in a democratic society.

5.12.3 The Case Tribunal recognised that disqualification would breach the Respondent's Article 10 rights. It was satisfied however that disqualification for 15 months was the minimum necessary to recognise the seriousness of the Respondent's breach of the Code. The sanction was necessary in this case in order to maintain the integrity of the Nolan principles as extended in the Welsh context as well as the Code of Conduct for Members, but also to protect others from gratuitous, offensive personal comment and 'hate speech' and to protect the health, safety and rights of others.

5.13 Sully and Lavernock Community Council and its Standards Committee is notified accordingly.

5.14 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed



Date 12/01/2021

C Jones
Chairperson of the Case Tribunal

S Hurds
Panel Member

G Jones
Panel Member

CEREDIGION COUNTY COUNCIL

Report to: Ethics and Standards Committee

Date of meeting: 19 May 2021

Title: Update on the Public Services Ombudsman matters - Consultation on revisions of Code of Conduct Guidance's

Purpose of the report: To update the Committee on the current position

The Public Services Ombudsman for Wales released 2 new draft Guidance documents on the Code of Conduct for members of County and Community/Town Councils on the 5th February. The Ethics and Standards Committee members provided a response to the consultation through comments via email and a workshop held on 4th March. The draft guidance was also shared with the group leaders. Ceredigion submitted a response to the consultation comprising of comments from the Ethics and Standards Committee, Group Leaders and the Monitoring Officer.

The final guidance on the Code of Conduct for members of County and Community/Town Councils has not been published by the Public Services Ombudsman for Wales at the time of this report.

Recommendation(s): To note the current position.

Reasons for decision: The Ethics and Standards Committee shall be kept informed of developments in relation to publication of the final guidance.

Contact Name: Lisa Evans
Designation: Scrutiny and Standards Officer
Date of Report: 26 April 2021
Acronyms:

The Code of Conduct

for members of local authorities in Wales

**Guidance from the
Public Services Ombudsman for Wales**
for members of county borough councils,
fire and rescue authorities,
national park authorities and
police and crime panels

Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,¹ fire and rescue authorities, national park authorities and police and crime panels in Wales. I have issued separate guidance for members of community and town councils.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.²

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

The guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclose and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted downloading it from your authority’s website or contacting your Monitoring Officer.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Monitoring Officer and to make a decision as to the most suitable course of action.

¹ In legislation, ‘community council’ includes a ‘town council’.

² Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging. As before, it excludes guidance which only relates to community and town councillors, as this is included in the separate guidance I have issued for such councillors.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the quarterly “Code of Conduct Casebook”, which is on my website at www.ombudsman.wales


I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.

As a member, you will be offered training on the Code, from a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements for dealing with ‘member versus member’ complaints, which have proved very effective as a means of resolving many of these cases.

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in

these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

We should continue to work collaboratively to drive up standards in public life and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities.

A handwritten signature in black ink, appearing to read 'Nick Bennett', enclosed within a thin black rectangular border.

Nick Bennett
Public Services Ombudsman for Wales

xxxxx 2021

This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed members of:

- county and county borough councils
- fire and rescue authorities
- national park authorities
- police and crime panels in Wales

Acknowledgement

I would like to thank the legal services department of Ceredigion County Council for the use of its flowchart on interests which are appended to this guidance.

Separate guidance is available for members of community and town councils.

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1 Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)³ which all relevant authorities were required to adopt.⁴

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.⁵

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils⁶ are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees.

³ Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

⁴ Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

⁵ Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

⁶ A county or county borough council in Wales

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

Investigations: Assessing the Public Interest

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person

- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two-stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.⁷ In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee

⁷ Calver, R (on the application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).

that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician’s right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook', which summarises cases I have investigated, is available on my website at www.ombudsman.wales.

Local Resolution Process

Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the Council's Monitoring Officer for consideration under this process, in the first instance.

In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

Local resolution can also play an important role within community councils where, all too often, low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

Standards Committee

The Standards Committee established by your authority is responsible for promoting and maintaining high standards of conduct by the authority's members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or your authority's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the authority. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in

standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.

Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an ‘interim case tribunal’, which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an ‘appeals tribunal’ is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).

Further information about the role and procedures of the Adjudication Panel and its tribunals can be found on its website: www.adjudicationpanel.gov.wales

The Principles

The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council’s resources and equality and respect for others.

Members elected to local authorities give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your authority, and which will give your communities confidence in the way that your authority is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument⁸ and are replicated below.

1. Selflessness

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on themselves or to improperly confer an advantage or disadvantage on others.

2. Honesty

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

3. Integrity and Propriety

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

4. Duty to Uphold the Law

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

5. Stewardship

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

⁸ The Conduct of Members (Principles) (Wales) Order 2001, SI 2002 No. 2276 (W.166)

6. Objectivity in Decision-making

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

7. Equality and Respect

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

8. Openness

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

9. Accountability

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

10. Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Model Code of Conduct, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**.

Deciding when the Code applies to you See paragraphs 2 and 3

Consider conduct in your
public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your authority. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your authority, some of the provisions of the Code apply to you at all times.

When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time. Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your authority (paragraph 2(1)(a)-(c)).

- **At any time**, if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct (paragraph 3(a)). When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: www.gov.uk/government/organisations/charity-commission).

If you are acting as a representative of your authority on another body, for example on the board of a housing association, which does not have a code of conduct relating to its members, you must comply with your authority's own Code unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at www.wlga.wales or by calling 029 2046 8600.

If you are nominated by your authority as the director of a company (a stock transfer housing association for example) you are obliged to act in the best interests of the company. If it has a code of conduct for its directors, you must abide by it. If it does not, you must comply with your authority's Code, except on the rare occasions where it conflicts with any legal obligations the company may have.

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

Example 1 – compliance with another body's code (paragraph 3(a))

A member was nominated by a County Borough Council to serve as a board member of a stock transfer housing association. The Chief Executive of the housing association copied all board members into a confidential email to the Chief Executive of the Council. The Councillor admitted sending the email to the local press and said that he had done so because he felt that his duty as a councillor over-rode his duty as a board member of the housing association. The Councillor was found to have breached paragraph 3(a) of the Council's Code by disclosing the e-mail in breach of the board's own code of conduct. He was also found to have brought his office and authority into disrepute by making a misleading statement that "he recently had to withdraw" from the board of the housing association when he had been removed with immediate effect for the serious breach of confidentiality.

Example 2 – official capacity and misuse of resources (paragraphs 2 and 7)

An online poll about a person accused of murder which contained inappropriate language was set up using a member's council-provided laptop, internet access and his council email address. The member said he personally had not set up the poll. The Adjudication Panel found that, as the Council had provided him with the laptop, he was responsible for it and its proper use. He also made disparaging comments about housing benefit claimants on his Facebook page when responding to a request for advice in his councillor role. The Adjudication Panel rejected his assertion that the comments had been made in a personal capacity, finding that the member had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.

Example 3 – official capacity (paragraph 2)

A member had sent, and encouraged an officer of the Council with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Adjudication Panel rejected arguments that the member had been acting in an entirely personal capacity. It found that the member could not divorce himself from his role as the officer's quasi-employer and that, when sending or encouraging the officer to send the messages during working hours, he was acting in his official capacity.

2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

Equality

See paragraph 4(a)

You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion. This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

Example 4

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

Example 5

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy and the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

When undertaking your role as a member, you must show respect and consideration for others. I expect members to afford the public, colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the ECHR provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

“Political” comments are not confined to those made within the Council chamber and, for example, include comments members may generally make on their authority’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

I may also decline to investigate a complaint where the member has raised “political” issues with officers. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example Chief Executives or Heads of Services, will also be expected to have a greater degree of robustness.

Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

Example 6

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code; and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack in some form or other on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR. The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

Example 7

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out". The member was referred to the Adjudication Panel for Wales.

The Panel found that the member had breached paragraph 4(b) in that he had failed to show respect and consideration for others. It also found that his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

Example 8

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing, the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

Bullying and harassment
See paragraph 4(c)

**Consider your conduct
from the other
person's perspective**

You must not use any bullying behaviour or harass any person including other members, council officers or members of the public.

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health. This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) of the Code, very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Local authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

Example 9

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so, as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to

use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

Example 10

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

Compromising the impartiality of officers of the authority See paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council. You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code. I would encourage you to adhere to any protocol developed by your authority that deals with relationships between members and officers.

Example 11

The son and daughter-in-law of a member of a County Borough Council were neighbours of a family who were tenants of the Council. Complaints had been made about the family's conduct. The member contacted officers of the Council regarding the family's occupancy of the council property and its impact on his son's family on a number of occasions, sometimes outside office hours. The calls were made in his role as an elected member and he had direct access to officials because he was a member. He received a warning from the Deputy Monitoring Officer as to his conduct, which emphasised the powerful position elected members occupy when dealing with members of staff.

Despite this he continued to contact officers about the matter, including requesting an officer to visit his family "there and then" and accusing an officer of "tipping off" the family being complained about that noise monitoring equipment was being installed.

The Adjudication Panel for Wales found that the conduct of the member was a persistent course of conduct over a period of 6 months, intended to bring undue pressure upon council officers. It found that, through his actions, he had sought to compromise the impartiality of officers of the Council. It also found that the member had failed to show respect and consideration for others and that his actions amounted to harassment and he had used his position improperly to promote the interests of his own family. Given the accumulative nature of his dealings with officers and his making a false allegation that an officer had "tipped off" the family, he had also brought the office of member into disrepute.

Example 12

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

Disclosing confidential information

See paragraph 5(a)

You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:

- **you have the consent of the person authorised to give it**
- **you are required by law to do so.**

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at www.ico.org.uk or by calling 0303 123 1113. As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked 'confidential'. On other occasions, this will not be the case, but you must not disclose them even if they are not marked as confidential. If you are in any doubt, always ask your Monitoring Officer.

As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. These reports have usually been assessed by the author as containing sensitive information, following expert legal advice. The sensitivity of the information may decline over time, but you are strongly urged to take proper legal advice before disclosing it. Similarly, legal advice, whether provided by external lawyers or your authority's in-house legal staff, is almost always covered by legal privilege and should not be disclosed.

I expect information provided to members during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

Example 13

A member of a County Borough Council who sat on the Council's adoption panel disclosed to a third party details of a person who had applied to the panel to adopt a child and the outcome of the application. He could only have become aware of the information he disclosed by virtue of his membership of the panel. The Adjudication Panel found that the member had disclosed confidential information in breach of the Code.

Example 14

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

Preventing access to information

See paragraph 5(b)

You must not prevent any person from accessing information which they are entitled to by law.

This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.org.uk or by calling 0303 123 1113; or for specific queries, you should ask your Monitoring Officer.

Information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your authority may be required to release it in response to a request. If you do not provide the information to the relevant officer of your authority on request, you will be in breach of the Code.

Your authority needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to your authority's relevant officer to allow the authority to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

Example 15

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

Disrepute See paragraph 6(1)(a)

Any conduct unbecoming of a member can constitute disrepute

You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time. As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your authority as a whole. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer, as this may also constitute disrepute (see also paragraph 6(2)).

Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

You must also conduct yourself in an appropriate manner with others within the confines of a council's building, regardless of whether your conduct is likely to be in the public domain.

Example 16

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself by misrepresenting the purchase as being on behalf of the Council and his abusive behaviour towards the staff had brought the office of member into disrepute.

Example 17

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

Reporting criminal behaviour See paragraph 6(1)(b)

The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your authority (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour. Such matters should be reported through your authority's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your authority's Monitoring Officer.

Reporting breaches of the Code See paragraph 6(1)(c)

If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer. There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible.

Your Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your Monitoring Officer may suggest that the matter would be more appropriately dealt with through the authority's local resolution process.

In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach, I will use the two-stage test that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint, including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to ask@ombudsman.wales or via the website at www.ombudsman.wales. A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

Vexatious complaints See paragraph 6(1)(d)

You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.

You must not make complaints against other members, your authority's officers or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by

political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and, as I have explained, may also be a breach of the Code. You must report well-founded alleged breaches to your Monitoring Officer - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should therefore avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about, for example, when you may disagree with a member's approach to your authority's business or their role as member. Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

Example 18

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

Co-operating with investigations

See paragraph 6(2)

You must co-operate with an investigation when it is being conducted by me or by your Monitoring Officer using our statutory powers. Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and your Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, you are expected to give priority to their investigations to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be, a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

Example 19

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales. During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

Using your position improperly See paragraph 7(a)

You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.⁹ This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

⁹ In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraphs 6(1)(a) and (b). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

Example 20

A member of a County Council had requested that land in his ownership in Village A be included as suitable for development in the Council's Local Development Plan (LDP). When the Council was considering suitable settlement areas for inclusion in the LDP, officers recommended that land in the neighbouring village (Village B) be included in the draft plan instead. Despite having received very clear advice from the Council's Monitoring Officer on his prejudicial interest, the member emailed the Council's planning policy officer and outlined a number of arguments which he claimed favoured the inclusion of his land in Village A as opposed to the land in Village B. At the relevant time the draft plan had been disclosed to members of the Council on a confidential basis and had not been disclosed publicly.

The Adjudication Panel found that, by sending the email, the member had breached paragraph 7(a) of the Code by attempting to use his position improperly for his own advantage. At the hearing, he sought to apportion blame on the Council's Monitoring Officer for failing to advise and train him properly on the Code, when this clearly was not the case. His actions also brought his office and the Council into disrepute.

Example 21

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this

amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

Example 22

A member of a County Borough Council made representations to council officers on behalf of a constituent about matters relating to the purchase by the constituent of a parcel of Council-owned land through a tender process. This included the removal of a restrictive covenant which rendered the land of little value to the constituent given his intention to develop it. The member volunteered in evidence before the Council's Standards Committee that his involvement was a possible way of mitigating legal costs for his constituent. Throughout his involvement, the member failed to disclose that he had a close personal association with the constituent, who he had known for 40 years and regarded as a close personal friend who he saw almost daily. The Standards Committee found that the member had breached paragraph 7(a) (and other paragraphs) of the Code in that through his interventions he had sought to use his position improperly to confer an advantage upon and avoid a disadvantage for his friend. This would potentially create a disadvantage for any member of the public who might wish to express an interest in the land had it been on the open market (as the absence of the restriction would have required), especially the lower bidder in the original tender process.

Using the authority's resources See sub-paragraphs 7(b)(i) – (iv)

You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply at all times. Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority.

Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times. It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your authority, for example, your authority's Information Security Policy.

You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.

Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

Example 23

A member of a County Council was found in breach of the Code for making improper use of his council-issued computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local

newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council's equipment in breach of the Code and had brought the office of member into disrepute.

Example 24

A member of a County Borough Council was found by the Adjudication Panel to have breached the Code by using his council-issued mobile phone excessively for private purposes. Whilst limited personal use was permitted under the Council's IT policy, a bill in excess of £1000 was incurred in respect of private calls which the member had made.

Reaching decisions objectively

See paragraph 8(a)

When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and consider the issues objectively, having regard to any relevant advice of your authority's officers. During the decision-making process, you must act fairly and take proper account of the public interest.

In some decisions, such as those taken by planning committees or where you are participating in the consideration of a ward matter, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

Pre-determination, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

Section 78 of the Local Government (Wales) Measure 2011 prohibits a member of an overview or scrutiny committee meeting from voting on a question at a meeting if, before the meeting, the member has been given a party whip relating to the question.

In order for me to investigate complaints of “whipping” of votes by political groups, there must be written evidence or other corroborative evidence available of the whip. Suppositions based upon the voting patterns of particular groups will not be sufficient evidence of a whip.

Considering advice provided to you and giving reasons See paragraph 8(b)

You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your authority.

You must have regard to all of the advice you receive from your authority’s officers, especially advice from the Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Legal Officer, where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. This is a complex area and there are provisions within other legislation which underpin it but, in general, it goes well beyond a requirement to simply consider and reject advice if it is not welcome.

I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so.

It is worth reflecting also that this places a considerable onus on statutory officers to consider their formal advice carefully, and again, where they believe it is likely to be contentious, to keep a record of it. There may be isolated cases where advice is given to a member which, when followed, leads to a breach of the Code. In investigating such cases, if the evidence suggests that there has been a breach, I would generally regard the flawed advice as a factor in mitigation, rather than as evidence that no breach occurred.

It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice.

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected, but it is not confined to these.

As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.

In reaching decisions where the advice is not provided by the statutory officers, you should still have regard to the advice provided by officers and take it into account in reaching your decision. You may also wish to have regard to other advice you have received and, of course, to the position adopted by a political group of which you are a member. In some circumstances, such as planning decisions, you must not vote on the basis of a "whip" imposed by your group. In others, it is reasonable to do so but you should avoid having an entirely closed mind prior to a debate. Again, whatever the reasons for voting against officer advice, it is highly advisable to record them.

Example 25

A member of a County Council who chaired a council meeting refused to allow the Council's Monitoring Officer to advise members during a debate about the Council's "Annual Letter" from the then Wales Audit Office. Also, when the Monitoring Officer did manage to intervene to express grave concerns about the way in which the proceedings were being conducted, the member failed to have regard to the limited advice the Monitoring Officer was allowed to offer and simply said that he "noted her comments".

The member was found to have breached paragraph 8(a)(iii) of the Code. The Adjudication Panel took into account the member's full apology and expressions of remorse for his behaviour and indicated that had the member not already accepted his wrongdoing it would have imposed a greater sanction than it did.

Expenses

See paragraph 9(a)

You need to follow the law and your authority's requirements in claiming expenses and allowances. If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming, for example, for childcare.

Example 26

A member of a County Borough Council was alleged to have used the Child/Dependent Care Allowance to pay his wife to look after their daughter. During the investigation, it transpired that he had paid his adult son (from a previous marriage) a regular weekly income to care for the child as and when required. The member was able to provide proof of the payments through receipts and cheque counterfoils. In view of this, there was no evidence of any failure on the part of the member to comply with the Code.

Gifts and hospitality

See paragraph 9(b)

It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so. Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your authority. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code.)

3 Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Monitoring Officer for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached two flowcharts at Appendix 1 and 2 which Ceredigion County Council's former Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.

Guidance on registering interests is at Section 4.

Personal Interests
See paragraph 10

Do you have a link or close connection to the item to be considered?

While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it. Most members know that you need to disclose personal interests at meetings, but there are other occasions, such as when speaking to your authority's officers about the matter concerned, when you may also need to do so.

Listed below are some questions that you should ask yourself when deciding if you have an interest:

Do I have a personal interest?

You have a personal interest in any business of your authority, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area
5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
7. any land let by your authority to a firm in which you are a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your authority
9. any of the following in which you have membership or hold a position of general control or management:
 - public authority or body exercising functions of a public nature
 - company, industrial and provident society, charity or body directed to charitable purposes
 - body whose main role is influencing public opinion or policy
 - trade union or professional association
 - private club, society or association operating in your authority's area
10. any land in your authority's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest; however, if in doubt, consult your Monitoring Officer.

Matters affecting your well-being or financial position

If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward or, for members of authorities which do not have wards (for example, national parks), in your authority's area, you have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

What is “a body exercising functions of a public nature”?

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether a body meets that definition:

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function, for example, a care home with residents supported by social services?
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority, for example, a private company collecting refuse for the authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer ‘yes’ to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition are health bodies, council-owned companies exercising public functions and school governing bodies. If you need further information or specific advice on this matter, please contact your Monitoring Officer.

What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

Who is a close personal associate?

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Monitoring Officer.

What if I belong to an authority without wards or electoral divisions?

If you are a member of an authority that does not have wards or electoral divisions, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you or one or more of your close personal associates, **more than** it

would affect other people in your authority's area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority's area.

“Twin hatted” members

If you are a member of both a community council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

Obviously, if the planning application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

Example 27

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public

perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

Example 28

A member of a County Borough Council made numerous representations to his Council's officers on behalf of a constituent who was involved in the purchase of Council-owned land that was being sold by way of a tender process. The member and constituent were long-standing close personal friends, having been acquainted for some 40 years. The constituent stood to gain financially from the member's intervention. The Adjudication Panel found that the member did not consider (as required by paragraph 10(1) of the Code) whether he had a 'personal interest' when he spoke, wrote and attended meetings about the land; and he did not disclose the existence and nature of the interest in breach of paragraph 11. The Panel found that the member's personal interest was so significant as also to be a 'prejudicial interest'. The Panel, therefore, found that the member also failed to comply with paragraph 14 of the Code, in that he should not have made oral or written representations or attended meetings to discuss the matter on behalf of his constituent.

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or reasonably ought to be aware of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

What to do when you have a personal interest See paragraph 11

Once disclosed you can stay & participate if your interest is not prejudicial

When you have a personal interest in any business of your authority, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

If you are attending a **meeting**,¹⁰ you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

Key point: You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

If you are making a decision as part of an **executive or board**, you must make sure that the written record of that decision (for example, minutes of a cabinet meeting) includes details of your interest.

¹⁰ The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present (other than political group meetings), not just formal meetings of the authority. For example, it can include an informal meeting of a member and officer.

If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.

If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

Example 29

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

Prejudicial Interests

See paragraph 12

Do I have a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest and:

- the matter does not fall within one of the exempt categories of business (see below), or
- the exempt categories do not apply because the matter relates to a licensing or regulatory matter (see paragraph 12(3)).

What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (for example, your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or electoral division affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

Does the matter fall within one of the exemptions?

See paragraph 12(2)

You will not have a prejudicial interest if the business falls within one of a number of exemptions which are set out below.

The business relates to:

- another relevant authority (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school

- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school that child attends
- decisions about statutory sick pay, if you receive or are entitled to receive it from your authority
- an allowance, payment or pension for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

These exemptions will **not** apply where the business you are considering is about determining an approval, consent, license, permission or regulation (see paragraph 12(3)). I consider these descriptions to refer to a narrow category of decisions, such as granting planning consent and licensing decisions. A wider interpretation of approval, for example, would cover almost every aspect of your authority's business and was clearly not intended.

If one of the exemptions applies you are **not** regarded as having a prejudicial interest. You still must disclose your personal interest **but you are allowed to participate in the item under discussion.**

Example 30

Two members of a County Borough Council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation, one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests. The other member had, despite receiving

advice on the declaration of interests, falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of paragraphs 11 and 14 of the Code to be serious ones.

Example 31

A Standards Committee determined that the circumstances in which a member's membership of a local organisation had ended, resulting in an acrimonious and ongoing dispute between her and the organisation (including solicitors' letters for the recovery of a debt) constituted a close personal association. It found that the nature of this association meant that the member had a prejudicial interest and that she had failed to declare this and withdraw from numerous meetings when a financial donation to the organisation had been discussed.

Overview and Scrutiny Committees See paragraph 13

Please note: this section does not apply to fire and rescue authorities, and national park authorities.

You have a prejudicial interest in any business before an overview and scrutiny committee or sub-committee meeting where both of the following requirements are met:

- that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees
- you were a member of that decision-making body at that time and you were present at the time the decision was made or action taken.

If the overview and scrutiny committee is checking a decision which you were involved in making, you may be called to attend the meeting to give evidence or answer questions on the matter, and you may do so provided it is acting under its statutory powers.

What to do when you have a prejudicial interest See paragraph 14

You must declare your interest and withdraw from the room

If you have a prejudicial interest in any aspect of your authority's business, you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.

Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

Key point: If you have a prejudicial interest in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

Example 32

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

Do I have a statutory right to speak to the meeting?

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. However, in limited circumstances, legislation may provide you with a right to speak (for example, licensing hearings and standards hearings) which the Code recognises. If so, you will be allowed to exercise that right to speak. Your Monitoring Officer should be able to confirm whether this is relevant to your case.

If I do not have a statutory right, will I be allowed to speak to the meeting?

The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. The Code also provides the right to submit written representations to the public meeting in these circumstances. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. You may not, however, take part in the discussion or observe the vote.

When must I leave the place where the meeting is held?

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately when the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

Example 33

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel

found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, you must leave the room during the debate and vote.

What if I am summoned to attend a scrutiny committee to discuss business in which I have a prejudicial interest?

If you are asked to attend by the committee exercising its statutory powers, then you may attend and participate in the meeting.

Example 34

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her; the member having entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

Executive or cabinet roles

Please note: this section will not apply to fire and rescue authorities or national park authorities, unless in the latter case there are executive arrangements in place.

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority may make other arrangements as set out in sections 14-16 of the Local Government Act 2000. This means that the decision can be taken by an officer, another cabinet member, the full executive, or a committee of the executive.

Although you have a prejudicial interest in a matter, you may be able to make representations, answer questions and give evidence as long as a member of the public would have the same rights, but you are barred from decision-making about that matter individually or in cabinet.

You also should not participate in any early consideration of it, or exercise any delegated powers in relation to it. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence.

Dispensations

If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

Standards committees have powers under regulations made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

You can apply in writing to your authority's Standards Committee for a dispensation to speak and/or vote on a matter on one or more of the following grounds:

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion)
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business is being considered by an overview or scrutiny committee and you do not have a pecuniary interest
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your authority's area

- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority. If failure to grant a dispensation will result in an authority or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

4 Registration of Personal Interests

See paragraph 15

Key points

All members of relevant authorities have to provide a record of their personal interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.

You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

The categories of personal interest set out in paragraph 10(2)(a) of the Code that you must register include:

- your job(s) or business(es)
- the name of your employer or people who have appointed you to work for them

- the name of any person who has made a payment to you in respect of your election or expenses you have incurred in carrying out your duties
- the name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company
- any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register
- any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use
- any other bodies to which you were elected, appointed or nominated by the authority
- your membership or position of control or management in:
 - any bodies exercising functions of a public nature (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union
 - any private club, society or association operating within your authority's area.

Sensitive information See Paragraph 16

Key points

You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.

‘Sensitive information’ is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Monitoring Officer within 28 days asking them to include the information in the register.

Gifts and hospitality See Paragraph 17

Key points

You must register any gifts or hospitality worth more than the amount specified by your authority that you receive in connection with your official duties as a member and the source of the gift or hospitality.

You must register the gift or hospitality and its source within 28 days of receiving it. Like other interests in your register of interests, you may have a **personal interest** in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person and then decide whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your authority’s gifts and hospitality policy.

Is the gift or hospitality connected to my official duties as a member?

You should ask yourself, “would I have been given this if I was not a member of the authority?” If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

What if I do not know the value of a gift or hospitality?

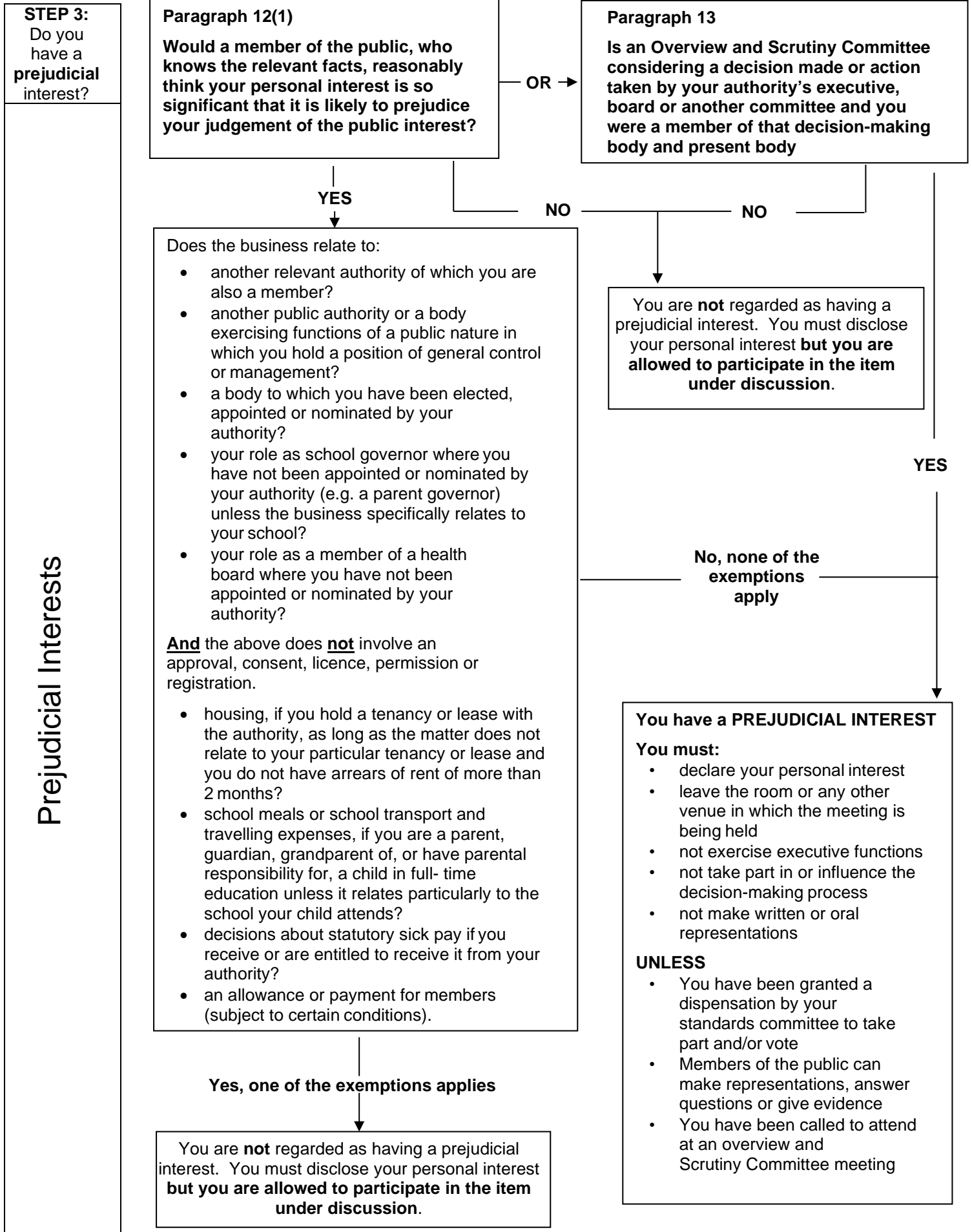
The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.

<p>STEP 1 Does the Code apply?</p>	<p>Are you:</p> <ul style="list-style-type: none"> conducting the business of your authority? acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority? acting as your authority's appointee or nominee on any other body without its own code of conduct? 	
<p>STEP 2 Do you have a personal interest?</p>	<p>The Code does apply. Continue to Step 2.</p>	<p>The Code does not apply. No further action required.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Personal Interests</p>	<p>Paragraph 10(2)(a) Does the business relate to or is it likely to affect:</p> <ol style="list-style-type: none"> your employment or business? your employer, firm or company? any person, other than your authority, who has paid towards your election or expenses as a member? any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area? any contract that your authority makes with your company or a company in which you hold shares? (as described in 4) any land in which you have an interest? any land let by your authority to your company? (as described in 4) any body to which you have been elected or appointed by your authority? any: <ul style="list-style-type: none"> public authority or body exercising functions of a public nature? company, industrial and provident society, charity or body directed to charitable purposes? body whose main role is influencing public opinion or policy? trade union or professional association? private club, society or association operating in your authority's area in which you have membership or are in a position of general control or management? or any land in your authority's area which you have a license to occupy for at least 28 days? 	<p>Paragraph 10(2)(c) Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area):</p> <ul style="list-style-type: none"> your well-being or financial position? the well-being or financial position of any person who lives with you or with whom you have a close personal association? the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association? any company in which any person who lives with you or with whom you have a close personal association owns shares? any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.
	<p>If YES, you have a PERSONAL INTEREST</p> <p>You must:</p> <ul style="list-style-type: none"> declare your interest and the nature of that interest: <ul style="list-style-type: none"> at meetings when making written representations when making oral representations (and confirm it in writing within 14 days) consider if you have a prejudicial interest (see Appendix 2) 	<p>If NO, you do not have a personal interest</p> <ul style="list-style-type: none"> If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest Otherwise, no further action is required

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



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The Code of Conduct

for members of local authorities in Wales

**Guidance from the
Public Services Ombudsman for Wales**
for members of community and town councils

Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,¹ fire and rescue authorities, national park authorities and police and crime panels in Wales.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.²

This version of my guidance is aimed at community and town councillors (referred to throughout this guidance as community councillors). It differs in parts from my separate guidance to county councillors and members of other relevant authorities, as it recognises and is tailored to the different nature of the role that community councillors undertake in their communities.

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

Where councillors, clerk and chair of the council work together effectively as a team, they combine energies and skills to deliver real benefits to the community they serve. Good working relationships, mutual respect and an understanding of their different roles are vital. Conflict between these key players, especially during meetings in front of the press and public can damage the council and undermine its relationship with the people served by the council.

¹ In legislation, ‘community council’ includes a ‘town council’.

² Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

This guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your Council by contacting your Clerk.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Clerk and to make a decision as to the most suitable course of action. The Monitoring Officer of the principal council³ for the area will also be able to provide advice if the matter is complex and your Clerk is unable to do so.

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the “Code of Conduct Casebook”, which is on my website at www.ombudsman.wales


I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.

³ A county or county borough council in Wales

As a member you will be offered training on the Code whether from your Clerk, a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements that may be in place for dealing with complaints about their fellow members, which are proving an effective means of resolving many of these cases.

Despite a recent reduction in the number of complaints I have received about community councillors, I continue to be concerned about the number of low-level, tit-for-tat complaints which border on frivolity, or which are motivated by political rivalry or clashes of personality, rather than true Code of Conduct issues. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest. I take a very dim view of complaints of this nature and have, where appropriate, advised members that making a complaint which is frivolous, vexatious or malicious is itself a breach of the Code.

We should continue to work collaboratively to drive up standards and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities.

A handwritten signature in black ink, appearing to read 'Nick Bennett', enclosed in a thin black rectangular border.

Nick Bennett
Public Services Ombudsman for Wales

xxxxx 2021

This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed members of community and town councils in Wales.

Separate guidance is available for elected, co-opted and appointed members of county councils, fire and rescue authorities, national park authorities and police and crime panels in Wales.

Acknowledgement

I would like to thank the legal services department of Rhondda Cynon Taf County Borough Council for the use of its flowchart on interests.

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1 Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)⁴ which all relevant authorities were required to adopt.⁵

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.⁶

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils are required to assist members and co-opted members of community and town councils in their area to observe the Code, and to arrange for advice and training to be provided. Such training may be provided by Monitoring Officers or by One Voice Wales, the representative body for community and town councils in Wales. One Voice Wales has developed bespoke training on the Code tailored to the needs of community and town council members, which has been endorsed by local authority Monitoring Officers.

I expect all members to attend training and take advice on conduct matters where it is offered.

⁴ Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

⁵ Local Authorities (Model Code of Conduct) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

⁶ Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

Whilst community councillors do not act on decision-making bodies such as planning committees, you will be called upon to take decisions on the allocation of funding from your precept and to offer guidance, drawing on your valuable local knowledge, to the County Council about the impact of planning applications. It is imperative, therefore, that you are fully aware of the Code and its implications for your decision-making and indeed, whether you should be involved in making a decision. In light of this, I recommend training on the Code for all new councillors as early in their term of office as possible and all councillors should undertake refresher training from time-to-time.

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately, as a member, you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from your Council's Clerk or other officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

Investigations: Assessing the Public Interest

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential stage is met, at the second stage I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below.

These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two-stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.⁷

In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local Standards Committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

⁷ Calver, R (on application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician's right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook,' which summarises cases I have investigated, is available on my website www.ombudsman.wales.

In this guidance I have tried, where possible, to use examples of cases which have been referred to me and which are relevant to community and town councils. Where this has not been possible, I have given examples of theoretical scenarios that indicate how the Code may be breached while you are undertaking your role.

Local Resolution Process

Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints.

Local resolution can also play an important role within community and town councils where, all too, often low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils' to support councils in resolving minor disputes in a way which is proportionate to

the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

Typically, complaints which can be dealt with through local resolution will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am likely to refer the matter back to the Council's Clerk for consideration under the local resolution protocol, where this has been adopted by the Council. In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the Council and the Council's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Clerk to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

Standards Committee

The Standards Committee established by the Principal Council for your area is responsible for promoting and maintaining high standards of conduct by members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or the principal council's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the principal council. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant council's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that council for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.

Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an 'interim case tribunal', which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an 'appeals tribunal' is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).

The Role of the Clerk

The Clerk is employed by your Council and undertakes a number of tasks including providing administrative support to the Council, advising on the development and implementation of policies and procedures and taking action to implement the Council's decisions. The Clerk has a complex role which may entail having to act as a project manager, personnel director, public relations officer and finance administrator. The Clerk acts in a supporting role for you and your fellow councillors and is the person you should turn to in the first instance if you need any advice. The best councils will have a Clerk and councillors who work as a team within a culture of mutual respect and consideration to serve their community. The Clerk is not just a secretary and is not at the beck and call of the Chair or individual members of the Council; the Clerk is answerable only to the Council as a whole. Whilst you may question the advice you are given by the Clerk, you must do so in a constructive and objective manner.

The Clerk will be able to advise councillors on relevant legislation, including matters relating to the Code and the Council's standing orders. The Clerk will work closely with the Chair of the Council to ensure that appropriate procedures are followed at meetings and that all necessary information is available to councillors so that they may make informed decisions. If necessary, Clerks may approach the relevant principal council's Monitoring Officer (see below) for advice.

The Clerk also plays an important role in facilitating the operation of the Model Local Resolution Protocol, where adopted, in conjunction with the Chair or Vice Chair of your Council.

The Clerk is an employee of the Council and is not required to abide by the Code. However, the Clerk and other Council employees are subject to a separate code of conduct set out in the 'Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001'. Under Section 82 of the Local Government Act 2000, the terms and conditions of appointment of the Council's employees are deemed to incorporate this Code. Any issues

regarding the performance of the Clerk or other employees are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of your Council's employees; this is a matter for the Council as the employer.

The Role of the Monitoring Officer

The Monitoring Officer is employed by the Principal Council for the area. Among other things, the Monitoring Officer has an important role in ensuring the lawfulness and fairness of decision-making by the Principal Council. The Monitoring Officer also contributes to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee and members of the Council.

Monitoring Officers endeavour to provide support and guidance to community and town councils on matters of conduct, which may include the provision of training. However, this can have significant resource implications, particularly in areas with high numbers of community and town councils, and you should always ask your Clerk in the first instance for any guidance or information. The Monitoring Officer may be able to provide information if your Clerk is unavailable or you need assistance with a more complex query.

The Principles

The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report "Standards in Public Life". Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others.

Members of community and town councils give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your Council, and which will give your communities confidence in the way that your Council is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument⁸ and are replicated below.

1. Selflessness

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on themselves or to improperly confer an advantage or disadvantage on others.

2. Honesty

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

3. Integrity and Propriety

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

4. Duty to Uphold the Law

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

5. Stewardship

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

⁸ The Conduct of Members (Principles) (Wales) Order 2001, SI 2001 No. 2276 (W.166)

6. Objectivity in Decision-making

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

7. Equality and Respect

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

8. Openness

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

9. Accountability

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

10. Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Model Code of Conduct, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and I encourage members to have regard to them at all times.

Deciding when the Code applies to you See paragraphs 2 and 3

Consider conduct in your
public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your Council. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the Code apply to you at all times.

When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time.

Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your Council (paragraph 2(1)(a)-(c)).

- **At any time**, if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your Council's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct (paragraph 3(a)). When you are nominated by your Council as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: www.gov.uk/government/organisations/charity-commission).

If you are acting as a representative of your Council on another body, for example on an event committee, which does not have a code of conduct relating to its members, you must comply with your Council's own Code unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at www.wlga.wales or by calling 029 2046 8600.

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

Example 1

A complaint was received that a councillor was intoxicated and behaving inappropriately at a street party. It was established that the councillor did not have to undertake any action on behalf of the Council at the party. In my view, therefore, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way only paragraph 6(1)(a) (disrepute) of the Code applied at the time. Whilst her behaviour may have been considered inappropriate by some, it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute, so was not indicative of a breach of paragraph 6(1)(a). I did not investigate this complaint.

Example 2

Whilst acting in a personal capacity, a member of a county council was convicted of criminal offences relating to a failure to maintain accurate animal records and the disposal of animal carcasses. The Standards Committee determined that, due to the seriousness of the convictions, the member had brought the authority into disrepute in breach of paragraph 6(1)(a).

2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

Equality

See paragraph 4(a)

You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion. This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your Council may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your Council's fulfilment of its positive duties under equality laws. Such conduct may cause your Council to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

Example 3

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

Example 4

A member of a county borough council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found the failure to understand and appreciate the officer's right to privacy, the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

When undertaking your role as a member, you must show respect and consideration for others. I expect members to afford the public colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the European Convention on Human Rights (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

“Political” comments are not confined to those made within council meetings and, for example, include comments members may generally make on their Council’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

I may also decline to investigate a complaint where the member has raised “political” issues with officers, for example, the Clerk to a council. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, such as the Chief Executive of a Principal Council, will also be expected to have a greater degree of robustness. However, I am concerned about the number of complaints I have received which allege inappropriate

behaviour by some community councillors towards their Council's Clerk. Given the very scale and nature of community and town councils, there is a distinction to be made about the role and status of a Chief Executive or other senior officer in a Principal Council and that of a Clerk. I will consider carefully any complaints of alleged inappropriate behaviour by members towards Clerks, and will investigate those complaints which are supported by appropriate evidence that a member has gone beyond what might be regarded as reasonable challenge.

Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

Example 5

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member, because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code, and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack, in some form or other, on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR.

The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

Example 6

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out".

The Adjudication Panel found that the member had breached paragraph 4(b) of the Code in that he had failed to show respect and consideration for others. It also found that his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

Example 7

The Chair of a Community Council raised a complaint at a meeting of the Council that he had not seen the text of a letter prior to it being issued (as previously agreed) in his name by the Clerk. The Chair was unhappy with the content of the letter when he eventually saw it. It was alleged that it was inappropriate for him to have raised the matter, without notice, in a public forum and in doing so he had upset and publicly humiliated the Clerk. A Standards Committee concluded that it was not inappropriate for the member to raise the issue in a public meeting so that his views could be publicly identified. The Standards Committee considered that his line of questioning and approach did not demonstrate a failure to show respect and consideration for the Clerk, but were intended to ensure that the Council's interests were protected and his concerns about the content of the letter were addressed. The Standards Committee, therefore, found no breach in relation to this aspect of the complaint.

(See paragraph 4(c) below for further examples)

Bullying and harassment

See paragraph 4(c)

**Consider your conduct
from the other
person's perspective**

You must not use any bullying behaviour or harass any person including other councillors, council officers (the Clerk or Proper Officer) or members of the public.

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

Example 8

A Community Councillor disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. The Councillor used disrespectful and abusive language and behaved in a bullying and intimidating manner towards Council Civil Enforcement Officers on four occasions. He also sought to use his position as a councillor improperly in relation to a parking offence. A Standards Committee found that the Councillor had breached paragraph 4(c) of the Code, as he had pursued a course of conduct of threatening behaviour towards the County Council employees. The Standards Committee also established that the Councillor breached paragraphs 4(b), 7(a) and 6(1)(a) of the Code.

Example 9

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) of the Code, very senior officers within principal councils can be involved in robust discussion with members and be well placed to put their own point of view forcefully. However, the same is not necessarily true of the Clerk in the context of community and town councils and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Your Council should have an appropriate mechanism for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

The Adjudication Panel for Wales and standards committees have made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

Example 10

During the discussion of an unrelated matter, a member of a Community Council raised in a public meeting of the Council questions about the Clerk which were personal and focused on the Clerk's remuneration, expenses, hours worked and other occupations. This was in contravention of the Council's standing orders, which provided that any questions relating to, among other things, the appointment, conduct and remuneration of any person employed by the Council should not be considered until the Council had decided whether or not the press and public should be excluded.

A Standards Committee found that it was not appropriate for the member to have raised the matter, which should have been considered in private, in a public meeting. The Standards Committee concluded that the member had caused the Clerk embarrassment and upset and had demonstrated a lack of respect and consideration for her, in breach of paragraph 4(b) of the Code. The action by the member was not a sustained course of conduct, but a one-off event directed at an individual in a weaker position of power. As such, it could also reasonably be regarded as bullying, in breach of paragraph 4(c) of the Code.

Example 11

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

Example 12

I received a complaint that a member of a Town Council had acted in a disrespectful and bullying manner towards the Council's Clerk when questioning the accuracy of minutes and advice given at meetings of the Council. Witnesses were divided on whether the member's manner could be described as argumentative and obstructive, or plain talking and professional, but the general consensus was that he communicated with everyone in this way and did not appear to be doing so only to the Clerk.

It is not my role to inhibit robust political debate. Following my analysis of the evidence, I was not persuaded that there was evidence to suggest that the content of the discussions at the meetings was inappropriate. There was no evidence of behaviour which was personal, rude or abusive towards the Clerk. I was also not persuaded that the tone and content of the emails which concerned Council business, although challenging and questioning at times, would amount to disrespectful or bullying behaviour. I, therefore, concluded that no action needed to be taken.

Compromising the impartiality of officers of the authority

See paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council. You should not approach anyone who works for, or on behalf of, the Council with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code, which may affect your ability to participate in some matters being considered by the Council (see section 3 of this guidance).

You can legitimately question officers in order to understand, for example, their reasons for proposing the Council acts in a particular way or to clarify the content of a report they have written. However, you must not try to force them to act differently, change their advice, or alter the content of a report, if doing so would prejudice their professional integrity and neutrality.

Hypothetical Scenario

The Clerk is responsible for allocating allotments from a waiting list, the allotments are very popular and vacancies very rarely arise. The Clerk advised the Council that an allotment had become vacant and that they would consult the list and allocate the allotment to the person who had been waiting the longest in accordance with the Council's allotment allocation procedure. A Councillor's father had been waiting for an allotment for almost seven years.

The Councillor approached the Clerk after the meeting and asked to see the list. He noted that one person was ahead of his father by only one month. The Councillor asked the Clerk to give the vacant allotment to his father, he said that as so much time had elapsed since his father and the other person had applied, the other person was unlikely to question who was first and, in any event, it would not be difficult to retype the list. The Councillor suggested that in return for this favour he would encourage the Council to look favourably on the charity suggested by the

Clerk when it came time to decide where to allocate funds raised at a fun day the following month. I would regard this as indicative of a breach of paragraph 4(d) of the Code.

Example 13

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

Disclosing confidential information See paragraph 5(a)

You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:

- **you have the consent of the person authorised to give it**
- **you are required by law to do so.**

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at www.ico.org.uk or by calling 0303 123 1113. As a community councillor you may have sight of information of a confidential or sensitive nature, such as personal or commercially sensitive information. You must also be mindful that, as a councillor, you hold a position of trust and you may find that members of the public will provide you with information that should be regarded as confidential. You should always confirm (where possible obtain an agreement

in writing) that you have the person's permission to disclose such information before doing so. As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. Similarly, legal advice is almost always covered by legal privilege and should not be disclosed.

Example 14

Community Councillor S received an email from another councillor regarding the employment of the caretaker, which was marked 'confidential'. Councillor S disclosed the email to the caretaker's wife and information in the email was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that this was indicative of a breach of paragraph 5(a) of the Code by Councillor S.

Example 15

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

I expect information provided to a member during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

Preventing access to information See paragraph 5(b)

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your Council which they have a right to access. To find out more

about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.org.uk or by calling 0303 123 1113; or for specific queries, you should ask your Clerk.

Any information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your Council may be required to release it in response to a request. If you do not provide the information to the Clerk or other person dealing with the information request when asked, you will be in breach of the Code.

Your Council needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to the person dealing with the information request to allow the Council to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

Example 16

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

Disrepute
See paragraph 6(1)(a)

**Any conduct
unbecoming of a member
can constitute disrepute**

You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time. As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.

Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

Example 17

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself, by misrepresenting the purchase as being on behalf of the Council, and his abusive behaviour towards the staff had brought the office of member into disrepute.

Example 18

A member of a County Borough Council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10 year-old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published, she telephoned the Councillor who she said was abusive towards her during the call. In a subsequent email exchange, the Councillor told her that she had “[failed] to take ANY responsibility for allowing your 10yr old child out alone”, that her “ill-educated in the highway code son” was to blame and said “don’t you dare try and shift your inadequacies as a parent upon me”.

The Adjudication Panel found the member had failed to show respect and consideration to the complainant through the use of inappropriate language and by making unfounded and serious allegations based his limited knowledge of the facts, in breach of paragraph 4(b). Through its aggressive tone, threatening nature and serious allegations contained in the email, the member has also brought the office of member into disrepute, in breach of paragraph 6(1)(a).

Example 19

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

Reporting criminal behaviour See paragraph 6(1)(b)

The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your Council (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour. Such matters should be reported through your Council's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your Council's Clerk. The Principal Council's Monitoring Officer may also be able to provide advice.

Reporting breaches of the Code See paragraph 6(1)(c)

If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer of the principal Council. There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should seek the advice of your Clerk or consult the Monitoring Officer as soon as possible.

The Clerk or Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or a technical one, or where there is no clear evidence that a breach occurred, your Clerk or Monitoring Officer may advise you of the likely threshold I will set in deciding whether an investigation is appropriate. In the most serious of cases the Clerk or Monitoring Officer may, as an exception, decide to refer matters to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

If your Council has adopted the Model Local Resolution Protocol for low-level complaints, your Clerk or the Monitoring Officer may suggest that the matter would be more appropriately dealt with through that process. The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach, I will use the two-stage test which I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to ask@ombudsman.wales or via the website at www.ombudsman.wales. A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

Vexatious complaints

See paragraph 6(1)(d)

You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.

You must not make complaints against other members, your Council's officers or people working on behalf of your Council which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the Council's local resolution process, if there is one in place.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and may also be a breach of the Code. You must report well-founded alleged breaches to the Monitoring Officer of the Principal Council - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should also avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about.

Example 20

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

This aspect of the Code has been a particular problem within community and town councils. In the past, it has been necessary for my predecessor to correspond with the Clerk of a council in relation to their mutual concerns about the number of complaints received in respect of its members. As previously stated, I too have had concerns about the number of low-level, tit-for-tat complaints that are still being received from community councillors in particular. Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and their councils and, more generally, can harm public confidence in our elected members. At the extreme, they can also have such an adverse impact on relations within the Council as whole as to render it incapable of conducting its business effectively. Where it becomes apparent that repeated member against member complaints are being made to my office, I would urge those councils to reflect on the culture which has resulted in these complaints and consider how this behaviour might be changed to avoid such complaints.

Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

I appreciate that it can be frustrating if a member of the public makes repeated complaints against you which you consider to be vexatious or frivolous in nature. They are not subject to the Code and I am required to consider each complaint on its own merit. However, it is unlikely that such complaints would pass my two-stage test and be accepted for investigation.

Co-operating with investigations See paragraph 6(2)

You must co-operate with an investigation when it is being conducted by me or by the Monitoring Officer of the Principal Council for the area using our statutory powers. Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone

calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and the Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

Example 21

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales.

During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and he made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

Using your position improperly See paragraph 7(a)

You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.⁹ This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community and town councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraphs 6(1)(a) and (b). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

⁹ In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

Example 22

A Councillor was a 'joint co-ordinator' of a community group. The Councillor did not notify the Council of her position in this group. She took part in the consideration of, and voted on, the decision to negotiate a new lease in respect of a workshop used by the community group. A Standards Committee found that she had used her position on the Council improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the Council. She was found in breach of paragraph 7(a) of the Code.

Example 23

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

Example 24

A member of a Town Council wrote to the Welsh Government indicating that an application for a loan in respect of a 'Community Hub' project, supported by the Council, should not go ahead as the matter was subject to further discussion. The correspondence was signed by the member using the title Deputy Mayor of the Council. As a consequence, the Welsh Government made further enquiries of the Council and required it to submit a further loan application, which resulted in further work and expense for the Council.

During the course of my investigation the member claimed the correspondence was sent in a personal capacity. It was an accepted fact that the Community Hub would include facilities which would be in direct competition with the business interests of the member. In my view, the Welsh Government was unlikely to have acted upon the member's communication had it not been under the impression that the author was representing the Council.

A Standards Committee considered that the communication was designed to have an impact on the project. Whereas some of the motivation may have been to protect the public interest, the Committee considered the member had gone about it in an inappropriate manner which gave the impression that he was acting in his own business interests. The Committee concluded that the member had attempted to use his position improperly to gain an advantage in breach of paragraph 7(a) of the Code.

Using the Council's resources See sub-paragraphs 7(b)(i) – (iv)

You must only use or authorise the use of the resources of the Council in accordance with its requirements and the law. These sub-paragraphs also apply at all times. If your Council provides you with access to resources (for example telephone, computer and other IT facilities), you must only use these resources for carrying out your Council business and any other activity which your Council has authorised you to use them for.

You must be familiar with the rules made by your Council applying to the use of these resources.

Failure to comply with your Council's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your Council's resources, you must take care to ensure that this is allowed by your Council's rules.

Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

You must make sure you use the Council's resources for proper purposes only. These sub-paragraphs apply at all times. It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the Council's resources, you must have regard, if applicable, to any guidance issued by your Council, for example, your Council's Information Security Policy.

Example 25

A member of a County Council was found in breach of the Code for making improper use of his council-owned computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council equipment in breach of the Code and had brought the office of member into disrepute.

Reaching decisions objectively See paragraph 8(a)

When taking part in meetings of your Council, or when arriving at decisions relating to the Council's business, you must do so with an open mind and consider the issues objectively. During the decision-making process, you must act fairly and take proper account of the public interest.

Most decisions taken by a community or town council relate to local matters and funding of local projects. Although the amounts of money being spent are smaller than at county level, all decisions must be taken on the basis of the facts in front of you. You must not have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

Pre-determination, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

Considering advice provided to you and giving reasons See paragraph 8(b)

You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your Council.

You must have regard to all of the advice you receive from your Clerk or other officers of the Council. The Clerk is usually also the 'Proper Officer'¹⁰ and it is part of their role to research the policy, guidelines and legislation relevant to advice given when taking decisions.

It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the Clerk all of the information they need to take into account when giving you advice.

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

As a matter of good practice, where you disagree with the Clerk's recommendations in making a decision, you should give clear reasons for your decision. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes.

Expenses See paragraph 9(a)

You need to follow the law and your Council's requirements in claiming expenses and allowances. If you are in any doubt about your entitlements, or the proper way to claim, you should ask your Clerk for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming for.

¹⁰ The 'proper officer' is an officer appointed by the Council to exercise particular functions (ref: Section 270(3), Local Government Act 1972).

Gifts and hospitality

See paragraph 9(b)

It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so. Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your Council. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

3 Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Clerk for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached a flowchart to this guidance, based on a document prepared by Rhondda Cynon Taf County Borough Council, which is designed to take you through the questions that you should ask when deciding whether you have an interest. It is for illustration purposes only and is not definitive.

Guidance on registering interests is at Section 4.

Personal Interests
See paragraph 10

Do you have a link or close connection to the item to be considered?

While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it. Most members know that you need to disclose personal interests at meetings, but as you will read below, there are other occasions, such as when speaking to the Clerk about the matter concerned, when you may also need to do so.

Listed below are some questions that you should ask yourself when deciding if you have an interest:

Do I have a personal interest?

You have a personal interest in any business of your Council, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your Council's area
5. any contract that your Council makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your Council's area (this is especially important in all planning matters including strategic plans)
7. any land let by your Council to a firm in which you're a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your Council
9. any of the following in which you have membership or hold a position of general control or management:
 - public authority or body exercising functions of a public nature
 - company, industrial and provident society, charity or body directed to charitable purposes

- body whose main role is influencing public opinion or policy
 - trade union or professional association
 - private club, society or association operating in your Council's area
10. any land in your Council's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest; however, if in doubt, consult your Clerk or the Monitoring Officer of the Principal Council for area.

Matters affecting your well-being or financial position

If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward, or the Council's area if it does not have multiple wards, you have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

What is “a body exercising functions of a public nature”?

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

When conducting community or town council business, it is likely that you will be acting on a body which is exercising functions of a public nature. You may also be doing this if you have been appointed to act on behalf of the Council on a community project or interest group.

What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

Who is a close personal associate?

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Clerk or the Monitoring Officer of the Principal Council.

“Twin hatted” members

If you are a member of both a community or town council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community or Town Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community or Town Council meeting that you would be looking at the matter afresh when you consider it at the Planning Committee meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community or Town Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

Obviously, if the planning application was one submitted by the Community or Town Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

Example 26

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk’s remuneration package. The member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member’s relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members’ ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

What to do when you have a personal interest See paragraph 11

Once disclosed you can stay & participate if your interest is not prejudicial

When you have a personal interest in any business of your Council, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

If you are attending a **meeting**,¹¹ you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your Council's Clerk. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you are making **written representations** (including by email, text etc) to a member or officer of your Council regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

Key point: You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

¹¹ The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present, not just formal meetings of the council. For example, it can include an informal meeting of a member and officer.

If the Monitoring Officer of the principal council for the area has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.

If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

Example 27

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

Prejudicial Interests See paragraph 12

Do I have a prejudicial interest?

Do not be swayed by what you think - consider what a member of the public would reasonably think

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public

interest. There are exemptions to this which are contained in paragraph 12(2) of the Code, although many of them are unlikely to apply to business undertaken by a community or town council.

What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in the consideration and decision on whether to support a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of your ward or Council area (if your Council does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

Community councillors do not have a prejudicial interest in decisions made by their Council in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value does not exceed £500. Furthermore, community councillors who have been appointed to the community group or voluntary organisation concerned by their Community Council, for example, to the board of a community hall, will not have a prejudicial interest in decisions made by their Council in respect of any grants, loans or other financial assistance in relation to that body. If, on the other hand, you are on such a board in another capacity and have not been appointed by your Council, then you will have a prejudicial interest.

What to do when you have a prejudicial interest See paragraph 14

If you have a prejudicial interest in any aspect your Council's business you must not take part in the consideration of that business, or make representations about it, except in the circumstances described below.

Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

Key point: If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

This is unless you have obtained a dispensation from the relevant standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your Council for this purpose. However, where you attend a meeting you must immediately leave the

room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must also not write or make any oral representations about the matter, except in the circumstances above relating to representations by the public.

Example 28

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

Do I have a statutory right to speak to the meeting?

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your Council's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. The Code also provides the right to submit written representations to the public meeting in these circumstances. You may not, however, take part in the discussion or observe the vote.

When must I leave the place where the meeting is held?

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately after the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Clerk before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

Example 29

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

Example 30

A Standards Committee found that a member of a Town Council with a personal and prejudicial interest sought to influence a decision about a project being considered by the Council, when he participated in a discussion at a Council meeting, in breach of paragraphs 14(1)(a) and (c) of the Code. It also found that the member's participation in the discussion constituted oral representations in breach of paragraph 14(1)(d); and he had made written representations to the Clerk and the Welsh Government in an attempt to derail the project, in breach of paragraph 14(1)(e).

What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your Council is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your Council. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

Example 31

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her. The member had entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

Dispensations

If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

Standards committees have powers under regulations¹² made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

You can apply in writing to the Principal Council's Standards Committee for a dispensation on one or more of the following grounds:

- at least 50 per cent of the Council or Committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- the nature of your interest is such that your participation would not harm public

¹² Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001 No. 2279 (W.169)

- confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your Council's area
- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the Council. If failure to grant a dispensation will result in a council or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

4 Registration of Personal Interests

See paragraph 15

Key points

Community and town councils are required to maintain and publish electronically a record of its members' interests in a public register of interests. It must also be available for public inspection at reasonable hours. This record is maintained by the 'Proper Officer', usually your Clerk.

Unlike members of principal councils and other relevant authorities, as a community councillor you do not need to register pecuniary and other interests set out in paragraph 10(2)(a) of the Code upon taking up office. However, you may find that your Council has adopted this requirement as a matter of good practice.

You must, however, register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your Council's Clerk. As indicated in the guidance on paragraph 11 of the Code, your Clerk will have arrangements in place for this. **Even when you have registered a personal interest, you must still disclose the existence and nature of the interest each and every time before you participate in any business to which it relates.**

Where you become aware of a change to a registered personal interest, you must register that change by providing written notice to your Clerk within 28 days.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

Sensitive information

See Paragraph 16

Key points

You may be exempt from having to disclose and register certain information in your Council's register of interests if the Monitoring Officer of the Principal Council for the area agrees that it is 'sensitive information'.

'Sensitive information' is information the disclose of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

You should provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Council's Clerk within 28 days asking them to include the information in the register.

Gifts and hospitality

See Paragraph 17

Key points

You must notify your Clerk of any gifts or hospitality worth more than the amount specified by your Council that you receive in connection with your official duties as a member, and the source of the gift or hospitality, within 28 days.

Like other interests in your register of interests, you may have a personal interest in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person, and then decide

whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your Council's gifts and hospitality policy.

Is the gift or hospitality connected to my official duties as a member?

You should ask yourself, "would I have been given this if I was not on the Council?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Clerk.

You do not need to notify your Clerk of gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your Council). However, you should always notify your Clerk of any gift or hospitality if it could be perceived as something given to you because of your position or if your Council requires you to do so.

What if I do not know the value of a gift or hospitality?

The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

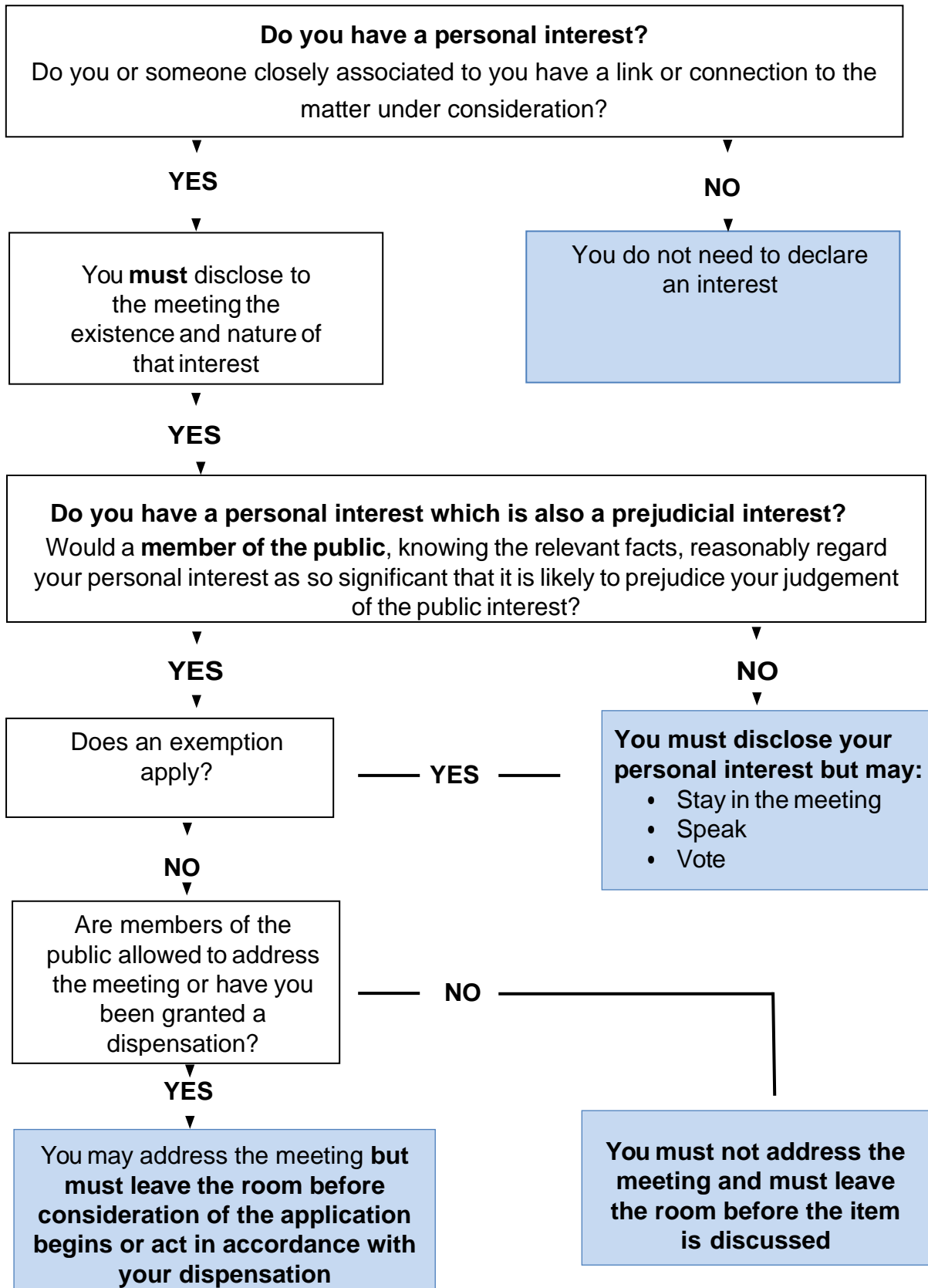
You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your Council or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Appendix

Declaration of personal and prejudicial interests

Questions to ask yourself. If in doubt you should ask your Clerk or your Monitoring Officer.



Contact us

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CF35 5LJ

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Fax: 01656 641199
Email: ask@ombudsman.wales
Follow us on Twitter: @OmbudsmanWales

Further information about the service offered by the
Public Services Ombudsman for Wales can also be found at
<http://www.ombudsman.wales>

CEREDIGION COUNTY COUNCIL

- Report to:** Ethics and Standards Committee
- Date of meeting:** 19 May 2021
- Title:** Ethics and Standards Committee Annual Report, 2020/21
- Purpose of the report:** To present the draft Ethics and Standards Committee Annual Report for consideration, prior to presenting to Council

Introduction

A draft of Ethics and Standards Committee Annual Report, 2020/21 has been prepared and is attached(Appendix A)

Committee is requested to consider the draft report and make such changes as it considers appropriate, prior to the presentation of the report at full Council.

Future requirements

From May 2022, the presentation of an annual report to the Authority as soon as practicable after the end of each financial year (meaning period of 12 months ending with 31 March) in respect of that year, will become a statutory requirement, pursuant to S63 **Local Government & Election (Wales) Act 2021**. S63 amends Part 3 of the Local Government Act 2000 (“the 2000 Act”): Duty of standards committee to make annual report.

In future, the annual report will have to describe how the committee’s functions have been discharged during the financial year.

In particular, the report will have to include a **summary** of—

- a) what has been done to discharge the general and specific functions conferred on the committee by section 54 or 56 of the 2000 Act, namely its functions including:
- promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and
 - assisting members and co-opted members of the authority to observe the authority’s code of conduct.
 - advising the authority on the adoption or revision of a code of conduct,
 - monitoring the operation of the authority’s code of conduct, and
 - advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority’s code of conduct.

b) reports and recommendations made or referred to the committee under Chapter 3 of the 2000 Act. This will include:

- PSOW references to Monitoring Officer

c) action taken by the committee following its consideration of such reports and recommendations;

d) notices given to the committee under Chapter 4 of the 2000 Act, This will include:

- Adjudication Panel for Wales (APW) recommendations.

These matters are set out in Appendix A.

In addition, from May 2022, the annual report must also include the committee's assessment of the extent to which leaders of political groups of the Council have complied with their duties under section 52A(1) of the 2000 Act (as inserted by S62 of the 2021 Act) as well as its own duties, during the financial year.

These are to:

1)(a) must take reasonable steps to promote and maintain high standards of conduct by the members of the group, and

(b) co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

2) have regard to any guidance about their functions issued by the Welsh Ministers.

The annual report should also make reference to the way the committee has discharged its new functions (set out in S62):

of—

(a) monitoring compliance by leaders of political groups on the council with their duties under section 52A(1), and

(b) advising, training or arranging to train leaders of political groups on the council about matters relating to those duties."

The annual report may also include recommendations to the authority about any matter in respect of which the committee has functions.

The Council must consider each annual report made by its standards committee before the end of 3 months beginning with the day on which the authority receives the report.

Recommendation(s): **The Committee approves the draft Ethics and Standards Committee Annual Report, 2020/21 (Appendix A), prior to presentation to Council.**

Appendices: **Appendix A – Draft Ethics and Standards Annual Report, 2020/21**

Statutory background: **Local Government Act 2000
Local Government & Election (Wales) Act 2021**

Background documents: **None**

Reporting Officer: Dana Jones, Democratic Services and Standards Officer

Date: 09 April 2021

Ethics and Standards Committee



Cyngor Sir
CEREDIGION
County Council

Annual Report 2020/21

The Ten General Principles of Public Life

<p>Selflessness – Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.</p>	<p>Personal judgement – Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.</p>
<p>Honesty and integrity – Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.</p>	<p>Respect for others – Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority’s statutory officers and its other employees.</p>
<p>Objectivity – Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefit.</p>	<p>Duty to uphold the law – Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.</p>
<p>Accountability – Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.</p>	<p>Stewardship – Members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.</p>
<p>Openness – Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.</p>	<p>Leadership – Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.</p>

“Nolan Committee on Standards in Public Life”

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1

Foreword by the Chair of the Committee

I am pleased to present the annual report of the Ethics and Standards Committee, covering the period 1st April 2020 to 31st March 2021. This has been a strange and exceptional year for our Committee, as for the Authority in general. The constraints caused by the pandemic have meant that we have had to put aside our plans to continue our programme of training and updating Councillors – including members of Town and Community Councils – on the Code of Conduct. However, I would like to reassure the Authority and the public that this remains a priority for the future, when the current constraints on communication are lifted.

This year, the Committee has met on only two occasions, on 5th August and 19th November, at which we were able to make a timely response to all applications by members for Dispensation to participate on issues in which they had a prejudicial interest. We were also able to keep abreast of standards and compliance issues reported by the Public Services Ombudsman and the Adjudication Panel for Wales.

On a personal note, as this will be my last report as Chair of the Committee, I would like to thank my fellow members, the Monitoring Officer and all the officers who have provided us with valuable and expert support. I offer my best wishes to my successor in the Chair, and to the two new members who will replace Rif Winfield and myself in September 2021.

Hywel Wyn Jones
2020/21 Chair of the Ethics and Standards Committee

2

Terms of Reference of the Ethics & Standards Committee & Vision Statement

The Council has established an Ethics and Standards Committee in accordance with the Standards Committee (Wales) Regulations 2001 (2001/2283) (as amended (2006/1849), 2007/951).

COMPOSITION

Membership

The Ethics and Standards Committee is composed of nine members. Its membership comprises of:

- Five 'independent' members, who are not Councillors or Officers or the spouse of a Councillor or an officer of this Council or any other relevant authority as defined by the Regulations, appointed in accordance with the procedure set out in the Regulations;
- Two County Councillors [other than the Leader of the Council and any member of the Cabinet];
- Two members of Town and Community Councils wholly or mainly in the Council's area ('Community Committee members')

Term of Office

- Independent members are appointed for a term of not less than four nor more than six years. They may be re-appointed for one further consecutive term not exceeding four years. The term of office of one Independent Member was extended during 2019/20.
- Members of the Council who are members of the Ethics and

Standards Committee have a term of office until the start of the next local government election following their appointment. This will end in May 2022 .

- Community Council Committee members would have a term of office until the next ordinary local government election following their appointment. This will end in May 2020.

Quorum - A meeting of the Ethics and Standards Committee shall only be quorate when:

- at least three members are present, and;
- at least half the members present (including the Chairperson) are Independent Members.

Community Committee Members - A Town/Community Committee member shall not take part in the proceedings of the Ethics and Standards Committee when any matter relating to their Community Council is being considered;

Chairing the Committee

- An Independent Member must chair the Ethics and Standards Committee.
- The Chair and Vice-Chair are elected by the Members of the Ethics and Standards Committee for whichever is the shorter of the following periods:-
 - a period of not less than four nor more than six years, or
 - until the term of office of that person as an independent member of the Ethics and Standards Committee comes to an end

If the Chair is absent from a meeting of the Ethics and Standards Committee then the Vice Chairperson of the Committee, if present, shall preside.

If both the Chair and the Vice-Chair of the Ethics and Standards Committee are absent from a meeting of that Committee, such independent member of the Ethics and Standards Committee as the members of the Committee present shall choose who shall preside.

VISION STATEMENT

“Our Vision is that the people of Ceredigion will have trust and confidence that all those elected to office in Local Government in our

county will work to the highest ethical and moral standards in serving their community”

DRAFT

3

Roles and Functions of the Ethics and Standards Committee

The Ethics and Standards Committee had the following roles and functions:

- promoting and maintaining high standards of conduct by Councillors,
- assisting the Councillors, Co-opted Members and church and parent governor representatives to observe the Members' Code of Conduct;
- advising the Council on the adoption or revision of the Members' Code of Conduct;
- monitoring the operation of the Members' Code of Conduct;
- advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- granting dispensations to Councillors, Co-opted Members and church and parent governor representatives from requirements relating to interests, as set out in the **Members' Code of Conduct 2016 edition; Section (81(4) & (5) of the Local Government Act 2000 and the Standards Committees (Grant of Dispensation)(Wales) Regulations 2001 (2001/2279).**
- dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that officer by the Public Services Ombudsman for Wales; as set out in (section 73(1) **Local Government Act 2000, Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001)) (2001/2281) (as amended; 2009/2578), and the Local Government (Standards Committee, Investigations,**

**Dispensations and Referral) (Wales) (Amendment)
Regulations 2016 (2016/85).**

- the exercise of the above in relation to the Community Councils wholly or mainly in its area and the members of those Community Councils;(Section 56(1) Local Government Act 2000) to appoint an appeals panel of three, with a majority of independent members, one of whom would act as Chairperson, with regard to complaints made by members of the public under the Council's complaints procedure

Examples of the type of work carried out by the Ethics and Standards Committee may include:

- involvement in developing training materials on the Code, including a flowchart summarising the main provision of the code
- attendance at and participation in training session on the Code for both the County Council and Community Councils
- attendance at Council and Committee meetings to observe proceedings
- the introduction of procedures which allow Councillors to attend Committee meetings to present an application for dispensation in person

4

Membership of the Committee

Membership of the Ethics and Standards Committee 2020/21



1st April 2020– 31st March 2021




Committee Member	Term of Office	Term as Chair & Vice Chair
Mr Hywel Wyn Jones (Chair) Independent Member	2/09/17-26/09/21	Chair:22/02/19-26/09/21 in line with term of office
Mrs Caroline White (Vice-Chair) Independent Member	01/08/13-01/08/19. Extended by Council on 1/8/19: 1/8/19-30/7/23	Vice-Chair 22/02/18-01/08/19. Extended by ES Committee on 12/7/19: up to 21/2/22
Mr Rif Winfield Independent Member	27/09/17-26/09/21	
Ms Carol Edwards Independent Member	22/02/18-21/02/24	
Mr John Weston Independent Member	22/02/18-21/02/24	
Councillor Dai Mason Ceredigion County Council	05/05/17- Local Government elections May 2022	
Councillor Odwyn Davies Ceredigion County Council	05/05/17-	

	Local Government elections May 2022.	
Councillor Julian Evans (Community Council Representative)	05/05/17- Local Government elections May 2022	
Councillor Gill Hopley (Community Council Representative)	05/05/17- Local Government elections May 2022	

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Members of the current Ethics & Standards Committee

 <p>Mr Hywel Wyn Jones (Chair)</p>	<p>Hywel Wyn Jones is a former Administrative Secretary of the University of Wales, Aberystwyth. For ten years he was a member of the Standards Committee of Dyfed-Powys Police Authority (with a term as Chairman). Hywel has served as an Independent Member of Ceredigion County Council Ethics and Standards Committee since 2012, and as its Chair from February 2018. Hywel is also Chair of the Standards Committee of Mid & West Wales Fire and Rescue Authority.</p> <p>Hywel' term of office will end on 26/9/21</p>
 <p>Mrs Caroline White (Vice-Chair)</p>	<p>Caroline White is a retired teacher. Caroline's 26-year teaching career included many whole school management responsibilities, latterly as Assistant Head. Caroline was appointed as an Independent Member of the Ethics and Standards Committee in August 2013 and was elected as Vice-Chair, from February 2018.</p>

 <p>Mr Rif Winfield</p>	<p>Rif Winfield has enjoyed a career in the political, commercial and voluntary sectors. He was an elected Borough Councillor in 1972.</p> <p>Rif was a founding Director of Ceredigion Association for Voluntary Organisations for 17 years including Chairman.</p> <p>Rif has been an Independent Member of the Ceredigion Ethics & Standards Committee since 2011.</p> <p>Rif' term of office will end on 26/9/21</p>
 <p>Mrs Carol Edwards</p>	<p>Carol Edwards qualified as a Chartered Librarian from the Librarian College in Aberystwyth. worked for Clwyd County Council, Ysbyty Llwynhelyg (as a medical librarian)and then back to Aberystwyth at the National Library for Wales for over 20 years, and as Head of Department from 2010-2013.</p> <p>Carol is currently a Governance Manager and Clerk of the Board of Trustees for the National Library for Wales.</p> <p>Carol was appointed as a Member of the Ethics & Standards Committee in February 2018.</p>
 <p>Mr John Weston</p>	<p>John Weston was a Town Planner, and was then employed by the WAO as a performance auditor, retiring in 2013; undertaking audits within Councils in Wales and also with Welsh Police and Fire and Rescue services.</p> <p>John was appointed as an Independent Member of the Ethics & Standards Committee from February 2018.</p>



**Cllr Dai Mason
(Ceredigion County
Council)**

Dai Mason was a design engineer at IBERS, and then a Company Director in the entertainment/ travel industry.

School Governor.

Currently Ceredigion County Councillor since 2012 representing the Trefeurig Ward. Chairman of Ceredigion County Council 2016/17.

Appointed to the Ethics & Standards Committee in May 2012.



**Cllr Odwyn Davies
(Ceredigion County
Council)**

**Odwyn Davies is a farmer.
Ceredigion County Councillor since 1999 representing the Llangybi Ward.
Former joint Leader of Llangybi area, Urdd Gobaith Cymru.
Member of the Ethics & Standards Committee since May 2012.**

 <p>Dr Julian Evans (Community Council representative)</p>	<p>Julian Evans was a Dental Surgeon from 1978, and ran his own practice until retirement in 2008.</p> <p>New Quay Town Council Councillor (Mayor 5 times since 1982.</p> <p>Ceredigion County Council Councillor representing New Quay ward (1995-1999)</p> <p>Member of the magistrate's selection committee, former part-time firefighter. Former School Governor. Chair of the Ceredigion branch of One Voice Wales.</p> <p>Appointed to the Ethics & Standards Committee in 2017.</p>
 <p>Cllr Gill Hopley (Community Council representative)</p>	<p>Gill Hopley enjoyed a successful career in retail and fashion design from 1987 until her retirement in 2016.</p> <p>New Quay Town Councillor since 1991 (and mayor on several occasions).</p> <p>Ceredigion County Councillor representing the New Quay ward from 1999 until 2017. Chairman of Ceredigion County Council 2015.</p> <p>Appointed to the Ethics & Standards Committee in 2017.</p>

When does the Ethics & Standards Committee meet?

The Ethics & Standards Committee has scheduled meetings. Meetings can also be convened at other times in exceptional circumstances.

5

The Committee's Work in 2020/2021

1. APPLICATIONS FOR DISPENSATION

2018/19

The Committee had considered 21 applications from County and Community and Town Councillors during the year.

Of these:

- 9 applications were from County Councillors and
- 13 Community and Town Councillors

2019/20

The Committee had considered 15 applications from County and Community and Town Councillors during the year.

Of these:

- County Councillors: 13
- Town & Community Councillors 2

Of these:

- 15 were granted
- 0 was deferred
- 0 was refused
- 0 was withdrawn

2020/21

The Committee had considered 18 applications from County and Community and Town Councillors during the year.

Of these:

- County Councillors: 10
- Town & Community Councillors 8

- 18 were granted
- 0 was deferred
- 0 as refused
- 0 was withdrawn

The grounds upon which the Committee may grant a dispensation are set out in the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 (Reg. 2)

The most common grounds for which the Committee granted dispensations were:

- a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;
- d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business
- f) the participation of the member in the business to which the interests relates is justified by the member's particular role or expertise.

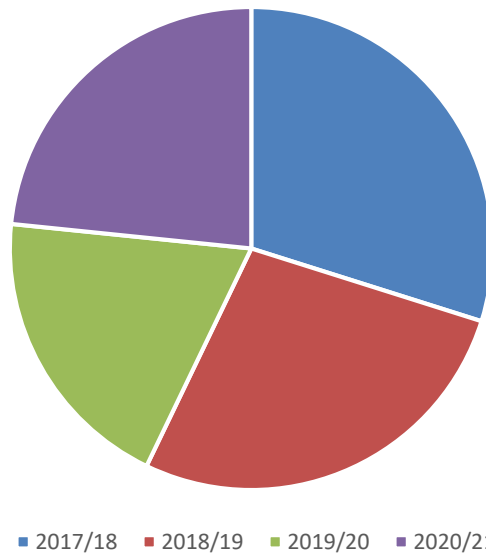
Of the 18 dispensations granted:

- 4 were granted to speak only
- 14 were granted to speak and vote

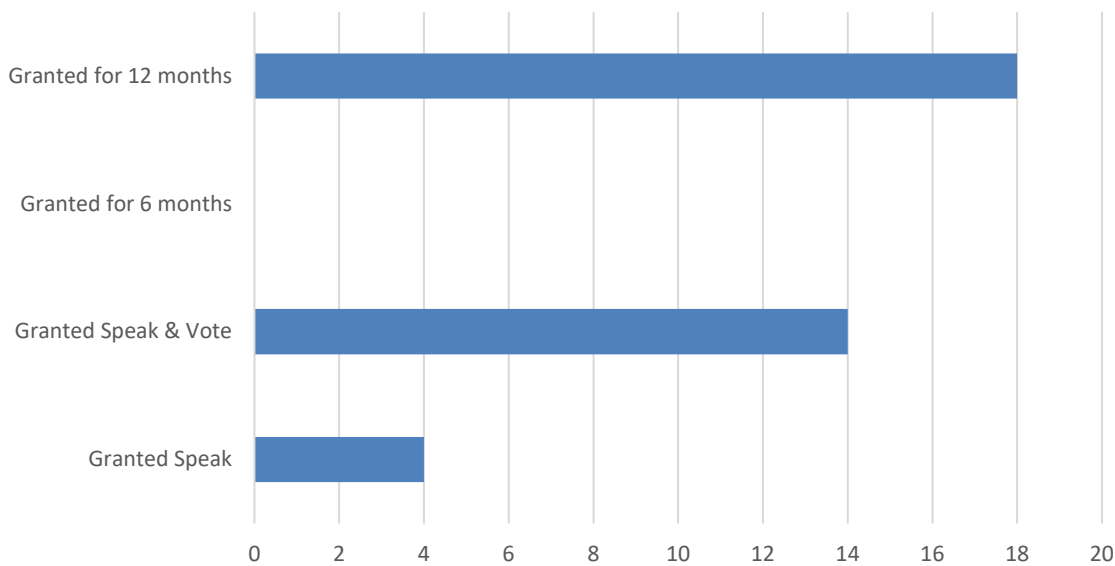
Of the dispensations granted:

- 18 were granted for a term of up to 12 months
- 0 were granted for a term of up to 6 months

Dispensation Applications Received 2017-2021



Overview of Applications granted 2020/2021



Reminders for renewal are not sent to Members. Dispensations lapse automatically at the end of the term. Any applications for extensions of time are treated as new applications in order to ensure that Members properly review the need and grounds for dispensation.

The Committee approaches each application on its merits.

Details of the applications dealt with by the Committee can be viewed as part of the agenda/minutes of the meetings of the Committee which are accessible on Ceredigion County Council's website:

<http://www.ceredigion.gov.uk/your-council/councillors-committees/committees/ethics-and-standards/>

Applicants are encouraged to attend meetings in person.

During 2018/19 2 Members attended Committee in person

During 2019/20 2 Members attended Committee in person.

During 2020/21 4 Member attended the Committee (via video conferencing) (in relation to 13 applications)

2. ADJUDICATION PANEL FOR WALES (APW).

It was reported at the meeting of the 19 November 2020 that there have been a number of documents which had been updated, namely:

- Presidential Guidance: Anonymity
- Presidential Guidance: Disclosure
- Presidential Guidance: The role of the Monitoring Officer in APW proceedings

Members noted the content of these documents.

The Chair provided an overview of the decision report of the Adjudication Panel for Wales in relation to Councillor Neil McEvoy, Cardiff City Council and informed Members that the report was available on the APW website.

3. THE PUBLIC SERVICE OMBUDSMAN FOR WALES (PSOW) CODE OF CONDUCT CASEBOOK

The Monitoring Officer presented the Ombudsman Code of Conduct Casebook Issues to Committee:

- Code of Conduct Casebooks Issue 23 – January 2020

No others were issued during this reporting period.

4. TRAINING

At the meeting of the 05 August 2020, it was agreed that opportunities to deliver training via video conferencing or pre-recorded training be explored by officers.

It was agreed at the meeting on the 19 November 2020, that opportunities to deliver training via video conferencing or pre-recorded training be explored by officers and Town/Community Councils asked if they have any specific training requests in relation to the code and hosting remote meetings.

5. RECRUITMENT OF INDEPENDENT MEMBERS

The Scrutiny and Standards Officer presented the report on the recruitment of two new independent members to the Committee at the meeting held on the 19 November 2020. The current Chair Mr Hywel Wyn Jones and Mr Rif Winfield were appointed initially on 27/9/2011 and reappointed on 27/9/2017. Their respective terms of office will expire on 26/9/2021. These members were not now eligible for reappointment. Consequently it was now necessary to recruit two new independent members to the Ethics and Standards Committee to maintain the Committee's composition, as set out in the Constitution, and as required by legislation.

The Committee AGREED to recommend to Council:

- 1) The job description, person specification and criteria subject to the amendments.
- 2) Membership of the Selection Panel as follows:
 - Chairman of the Council
 - Independent/Lay Panel member (nominated by the Monitoring Officer): Professor John Williams
 - Chair and Vice Chair of the Ethics and Standards Committee (or other independent members nominated by the Monitoring Officer as necessary)
 - Town and Community Council representative nominated by One Voice Wales.

6. WELSH GOVERNMENT CONSULTATIONS – Local Government & Elections (Wales) Act 2021 Regulations to establish corporate joint committees-Part 5

At the meeting of the 19 November 2020, it was reported that the Welsh Government was currently consulting on the draft regulations which would establish four regional Corporate Joint Committees across Wales.

Members of the Ethics and Standards Committee were requested to consider questions 8 (a) (b) and (c) of the consultation document.

It was AGREED that members and staff of a CJC should be subject to a Code of Conduct and that the code should be similar to that of Principal Councils and that all co-opted members be covered by a code i.e. those with and without voting rights. This will form part of the corporate response to the consultation.

7. WORKSHOP

A workshop of the Ethics and Standards Committee Members was held on the 04 March 2021 to discuss the Draft guidance from the Public Services Ombudsman for Wales on the Code of Conduct. Recommendations were sent to the PSOW accordingly.

8. CONCLUSIONS

The Committee had a relatively quiet year due to the Covi-19 pandemic, and were very grateful for the advice and support of the Monitoring Officer, and Standards Officers during the two meetings that were held, and in respect of the consultation exercises.

6

Code of Conduct – Monitoring Officer's Report

1. All County Councillors, Town/Community Councillors and Co-opted Members are required to abide by the **Code of Conduct for Councillors** adopted by the Council which conforms to the mandatory requirements of the Model Code of Conduct issued by the National Assembly for Wales.
2. Complaints relating to an allegation that a County Councillor had breached the Code should be sent to the Ombudsman directly and/or to the Council's Monitoring Officer (MO)
3. The Ombudsman publishes a guidance on the PSOW website on how to make a complaint about an elected member on a Factsheet.
4. The WLGA has e-learning training modules available for Councillors on the All Wales Academy, including Ethics and Standards (Councillor Development), and Social Media Guidance.
5. The Adjudication Panel for Wales (APW) published a Sanctions Guidance during 2019
6. The PSOW may decide that the MO should investigate a complaint, or may ask the Council's Ethics & Standards (ES) Committee to make a determination. Options available to the ES Committee include no further action, censure and suspension for up to 6 months.
7. If the Ombudsman investigates an allegation of a breach of the Code and concludes that a breach has occurred The Ombudsman will forward a report of his findings to the Monitoring officer and to the Councillor concerned.
8. If the Ombudsman considers that the breach is serious it may be forwarded to the Adjudication Panel for Wales who has the power to disqualify a councillor for up to 5 years.

9. The Local Government & Elections (Wales) Act 2021 received Royal Assent during 2020/21. S62 of the Act sets out additional duties for political group leaders, to uphold standards of conduct, effective from May 2022.

MONITORING OFFICER'S REPORT

1.Complaints received

PREVIOUS YEARS

2018/2019

The Monitoring Officer considered 17 complaints against Members in relation to the Code of Conduct.

Of these:

- 13 were against County Councillors
- 4 were against Town/ Community Councillors.

The table below shows an analysis of complaints received:

County Councillors	
Member on Member	0
Public on Member	9
Officer on Member	4
Self-referrals to PSOW	0
	Total: 13
Town/ Community Councillors	
Member on Member	0
<u>Public on Member</u>	4
	Total: 4

2019/2020

The Monitoring Officer considered 13 complaints against Members in relation to the Code of Conduct.

Of these:

- 11 were against County Councillors
- 2 were against Town/ Community Councillors.

The table below shows an analysis of complaints received:

County Councillors	Complaints received
Member on Member	0
Public on Member	3
Officer on Member	8
Self-referrals to PSOW	0
	Total: 11
Town/ Community Councillors	
Member on Member	2
Public on Member	2
	Total: 13

CURRENT YEAR: 2020/2021

The Monitoring Officer considered 23 complaints against Members in relation to the Code of Conduct.

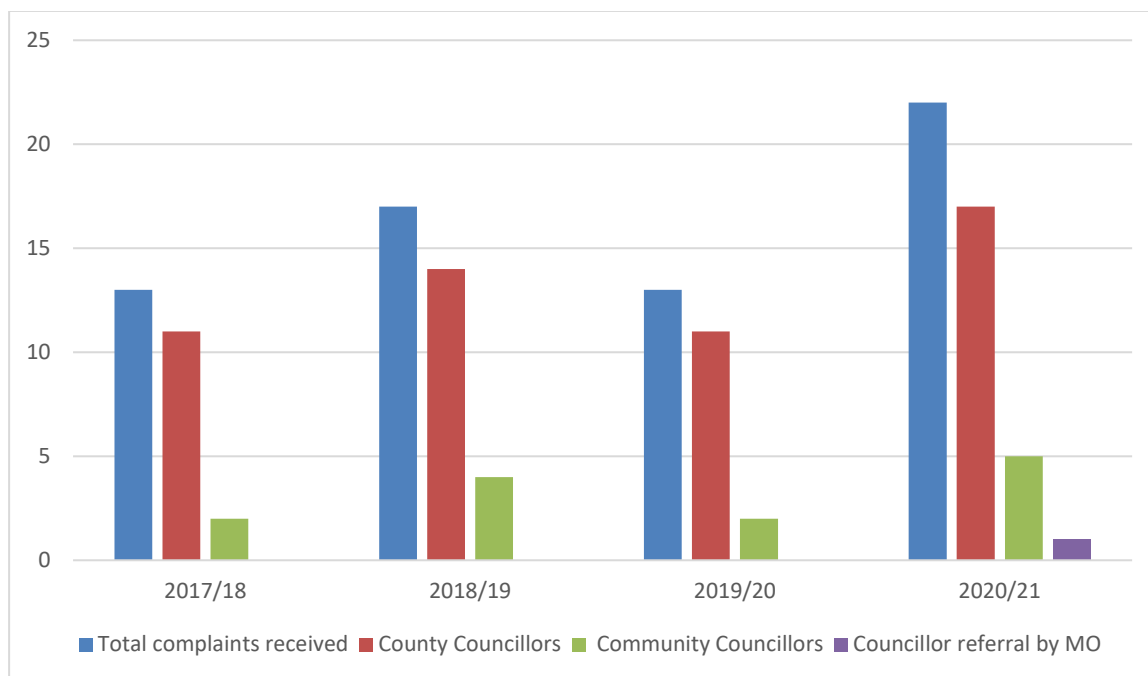
Of these:

- 17 were against County Councillors
- 5 were against Town/ Community Councillors.

Source of complaints:

County Councillors	Number of complaints received
Member on Member	1
Public on Member	11
Officer on Member	4
Self-referrals to PSOW	0
Clerk of Town/Community Council	1
	Total: 17
Town/ Community Councillors	
Member on Member	1
Public on Member	4
Self-referrals to PSOW	0

Total	
Councillor referral by Monitoring Officer	1



It should be noted that complaints by Officers against Members are not always made directly by the Officer concerned, who may not wish to pursue a formal complaint. Where concerns are drawn to the attention of the Monitoring Officer/Chief Executive, those cases will be dealt with by the Monitoring Officer (and if appropriate the Chief Executive) who may make enquiries and provide advice/action as appropriate.

The Monitoring Officer will investigate as necessary.

2. PSOW Notifications

The MO received notifications of the following complaints:

PREVIOUS YEARS

2018/19

Of the complaints received:

7 x from the PSOW.

These resulted in:

	County Council	Town/ Community Council
	4	3
Of these: Declined to Investigate/Closed after initial consideration:	2	3
Investigation: Discontinued:	0 1	0 0
No evidence of breach:	1	

No further action: 0

Of those investigated:

- 0 resulted in sanctions and
- 0 resulted in no sanction

Sanctions/actions included: advice given to member to modify behaviour

2019/20

The PSOW reported 6 complaints

	County Council	Town/ Community Council
Of these: Declined to Investigate/Closed after initial consideration:	5 5	1 0

Investigation: Discontinued: No further action necessary	0 0 0	1 0 1
No evidence of breach: Technical breach	0 1	0 0

Of those investigated:

- 0 resulted in sanctions and
- 0 resulted in no sanction .”

CURRENT YEAR 2020/21

The PSOW reported 4 complaints

	County Council	Town/ Community Council
Of these: Declined to Investigate/Closed after initial consideration:	2 2	2 x
Investigation: Discontinued: No further action necessary	1 0 0	2 1 0
<u>Ongoing:</u> <u>Recorded as pre-</u> <u>assessment</u>	1	1
Outcomes:		

No evidence of breach	0	0
Technical breach	1	
Breach	0	

Of those investigated:

- **0 resulted in sanctions**
- **1 resulted in no sanction**

**For Information:
PSOW Annual report 2020/21:**

E. Code of Conduct Complaints Closed

County/County Borough Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Ceredigion	-	-	-	-	-	-	-	-

F. Town/Community Council Code of Complaints

Town/Community Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
	-	-	-	-	-	-	-	-

This information is not available at date of writing this report

3.Nature of Complaints

2017/18-2019:

The majority of complaints against County Councillors related to:

- Bullying
- Lack of respect/ consideration/ courtesy for others

- Lack of impartiality
- Improper use of delegated powers
- Conflict of interest
- Standards of Conduct, including inappropriate parking, delay in paying Council Tax
- Using position to gain an advantage
- Disclosure of confidential information
- Failure to reply to an enquiry
- Acting without authority
- Improper use of delegated power
- Failure to disclose personal/prejudicial interests
- Standards of conduct eg inappropriate parking, comments made in meetings and inappropriate communication
- Attempting to compromise officers impartiality
- Social Media postings by Councillors eg complaints about officers and services.
- Development Control Committee decisions.

Town/Community Councillors

Complaints included:

- perception of lack of transparency in Council meetings,
- improper meeting procedures eg voting, quorum, failure to adequately record decisions, failure to publish minutes and register of interests
- failure to disclose personal/prejudicial interests
- discrimination

Some of the complaints above were attributable to acts/omissions of clerks.

2019/20

The majority of complaints against County Councillors related to allegations of:

- Social Media postings
- Failure to declare an interest
- Improper use of delegated powers
- Lack of respect/ consideration/ courtesy for officers – including Development Control Committee/Scrutiny meetings
- Lack of respect for the Chair of a public meeting-Scrutiny Committee
- inappropriate comment regarding Officers.

2020/21

- Social Media postings
- Inappropriate behaviour
- Lack of respect/consideration/attitude
- Planning decision
- swearing
- Bringing Council into disrepute
- Poor culture
- Failure to declare interest
- Nuisance/harrassment
- Physical assault
- failure to disclose prejudicial interests
- disclosure of confidential information
- failure to take action

Town/Community Councillors

Complaints against Town/Community Councillors included:

- perception of lack of transparency in Council meetings,
- improper meeting procedures eg voting, quorum, failure to adequately record decisions, failure to publish minutes and register of interests
- failure to disclose personal/prejudicial interests
- Discrimination-sexism, ageism
- Criminal conviction
- Failure to self-report criminal allegations/convictions
- Poor culture
- swearing
- Lack of respect/consideration/attitude
- Threatening behaviour

Some of the complaints above were attributable to acts/omissions of clerks.

4. Monitoring Officer Advice

The Monitoring Officer regularly provides informal advice orally, or in writing to County Councillors on various issues within the Code of conduct including personal/ prejudicial interests. This advice is given orally, or in writing.

Advice can be a preventative measure, or in anticipation of a potential breach, or following a breach in consideration of mitigation. Occasionally advice may be given to Town/Community Councillors. There is an expectation that Town/Community Councillors consult their clerk in first instance.

Queries include advice on:

- meeting process/procedure
- conflicts of interest
- breach of Code of Conduct
- process to make a complaint

Most of Town/Community Councils within the Ceredigion area are subscribed to One Voice Wales from whom clerks can seek advice.

2018-19

The Monitoring Officer issued :

County Councillors

informal advice- numerous/varied. .

- formal advice : 5
- informal warnings: 0
- formal warnings (e-mail/letter): 1

Town/Community Councils

- The Monitoring Officer informal advice issued to clerks:
- informal 5
- formal 0
- Face to face meetings with members of public: 1
- Face to face meeting was undertaken with a Town/community clerk:1
- meeting process/procedure

- conflicts of interest

2019-20

The Monitoring Officer issued :

County Councillors

- informal advice- numerous/varied.
 - formal advice : 3
 - informal warnings: 2
 - formal warnings (e-mail/letter): 1
- Some issues considered by the Monitoring officer relate to pre-emptive advice by the Monitoring officer in relation to disclosures of interest:
X 6.

Sanctions included:

- member apology in writing to the officer or member
- member apology to the officer or member in public meeting

Town/Community Councils

Advice may also be given to clerks to Town/community Councils, by telephone, email or face to face. Most of Town/Community Councils within the Ceredigion area are subscribed to One Voice Wales

The Monitoring Officer informal advice issued to clerks:

- Informal (telephone/email):)2
- meetings with members of public: 0

Queries include advice on:

- Public meeting process/procedure
- conflicts of interest
- conduct of a councillor

2020-21

- informal advice- numerous/varied.
- Some issues considered by the Monitoring officer relate to pre-emptive advice by the Monitoring Officer in relation to disclosures of interest

- formal advice : 4
- informal warnings: 1
- formal warnings (e-mail/letter): 1
- Local Resolution Procedure:1

Advice was also given to o clerks of Town/Community Councils, and members of the public.

5. The Ethics & Standards Committee -Hearing Panels

- There were no Ceredigion County Council Councillor cases referred to Committee during 2020/21.
- There were no Town/Community Council cases referred to Committee during 2020/21.

6.Adjudication Panel for Wales (APW)

- There were no Ceredigion County Council cases referred by the PSOW to the APW during 2020/21.
- There were no Ceredigion Town/Community Council cases referred to the APW during 2020/21.

7. PSOW referrals to the Monitoring Officer for investigation during 2020/21

There were no cases referred to the Monitoring Officer by the Public Service Ombudsman Wales during 2020/21.

2020/21

Summary

- The standard of conduct by Ceredigion County Council Members generally is to be commended.
- There were complaints by Members against Members.
- Whilst bullying, intimidation and/or lack of respect/courtesy continues to be an issue, the relationship between Ceredigion County Council Officers and Members has improved, with less instances of bullying, intimidation and/or lack of respect/courtesy than previously.
- Councillors are largely aware of the need to declare interests, and do so in a timely and appropriate way. Advice is sought from the Monitoring Officer at appropriate times.

- The use of social media as a forum for Councillors making representations/expressing views is continuing to increase. This has occasionally brought the Council into disrepute.
- The Monitoring Officer maintains a recommendation that all Members receive refresher training on social media, as well as data protection (including the responsibility of Councillors as data controllers).
- Despite there being fewer public meetings held during the Covid period, there was a slight increase in the number of applications for dispensations during 2020/21.
- As in previous years, the Monitoring Officer identified that some County Councillors Members would benefit from refresher /additional safeguarding training
- Members continue to be more cognisant of the need to:
 - consider whether they have an interest, and
 - declare any interest in communication/correspondence with officers.

8. Correspondence with Group Leaders

- Consultation on the new draft guidance from the Public Services Ombudsman for Wales on the Code of Conduct was circulated to Group Leaders; together with a summary of changes by email on the 19 February 2021. Comments on its content was requested by the 05 March 2021.
- Adjudication Panel for Wales Notice of Decision relating to Councillor Kevin O'Neill, Leader at Merthyr Tydfil Borough Council was circulated by email on the 12 January 2021. In order to promote the new duty to take reasonable steps to promote and maintain high standard of conduct (from May 2022), it was recommended that the Group Leaders bring the decision to the attention of their group members.

9. Annual update on the Register of Interest

An email dated the 29 April 2020 from the Monitoring Officer was circulated to Members requesting them to carry out an annual review of their Register of Interests Booklet, at the end of the financial year. Members were therefore requested to review the online version of their Register of Interests for the entire year 2019/20 (1/4/19-31/3/20):

- If there were no new interest/changes, Members emailed to confirm "No changes."

- If there were new interests/changes, Members emailed to confirm that there were changes, and provided details of these changes.

The original booklets were re-signed and re-dated and each reply, and booklet were reviewed by the Monitoring Officer

These arrangements are inspected regularly by auditors.

10. Covid 19 – Business grants

All Councillors, and/or co-opted independent members, were requested to make a declaration if they, or anyone involved in the overall running and/or control of a business, (or someone who is a close personal associate of theirs), had, to best of their knowledge, applied for a Business Support Grant, Enhanced Lockdown Grants for businesses or Restrictions Business Fund NDR for businesses grant. All declarations were requested be made by the closing date of the applications.

The following emails were circulated to Members:-

- Covid 19 Business support Grant- 07 July 2020
- Covid 19 Enhanced Lockdown Grants for businesses- 28 October 2020
- Covid 19 Restrictions Business Fund NDR Grants for businesses – 14 December 2020

11. Hospitality Register

During 2020/21 there were no declarations of hospitality from Councillors.

7

Future Priorities

The priority areas the Ethics and Standards Committee to consider in 2021/22

- Code of Conduct Training for County Councillors and Town and Community Councillors - Continue to offer training to clusters of Town and Community Councils whose Clerks and Councillors had not responded to the offer of training and/or who had requested training
- Annual meeting with Political Group Leaders
- Update Members Register of Interest on the new Democratic Services System, Modern.gov
- The Committee adopts a proactive approach to working collaboratively with other relevant standards organisations and keeping up with best practice
- Members of the Ethics and Standards Committee attend Committee meetings of the Council to observe and familiarise themselves with proceedings and conduct.
- Recruitment of two independent members-to be in place by 25/9/21
- Consider and implement changes set out in Local Government & Elections (Wales) Act 2021-matters relevant to the Ethics and Standards Committee:
Part 4 sections S62 Conduct of members imposed additional duties on political group leaders as follows:

County and county borough councils: duties of leaders of political groups in relation to standards of conduct

(1)A leader of a political group consisting of members of a county council or county borough council in Wales—

(a) must take reasonable steps to promote and maintain high standards of conduct by the members of the group, and

(b) must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

(2) In complying with subsection (1), a leader of a political group must have regard to any guidance about the functions under that subsection issued by the Welsh Ministers.

(3) "(2A) A standards committee of a county council or county borough council in Wales also has the specific functions of—

(a) monitoring compliance by leaders of political groups on the council with their duties under section 52A(1), and

(b) advising, training or arranging to train leaders of political groups on the council about matters relating to those duties."

These provisions will become effective from May 2022.

8

Attending the Ethics and Standards Committee / Contact us

Attending meetings of the Ethics and Standards Committee

The Council is keen to see Members of the public attend Ethics and Standards meetings

With the exception of confidential items, all business is held in public.

All of the public agenda papers are published online 3 working days in advance of the meeting <http://www.ceredigion.gov.uk/your-council/councillors-committees/committees/>

Contact us

If you wish to find out more about the Ethics and Standards Committee or make a comment or suggestion, please contact us:

Ethics & Standards
Democratic Services, Neuadd Cyngor Ceredigion, Penmorfa, Aberaeron,
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ethicsandstandards@ceredigion.gov.uk

Council's Monitoring Officer (MO):

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The Ombudsman (PSOW)

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend CF35 5LJ
Telephone: 0300 790 0203 (local call rate)
Fax: 01656 641199
E-mail: ask@ombudsman-wales.org.uk
Website: www.ombudsman-wales.org.uk

DRAFT

CEREDIGION COUNTY COUNCIL

Report to: Ethics and Standards Committee

Date of meeting: 19 May 2021

Title: The Ethics and Standards Forward Work Programme 2021/22

Purpose of the report: To review the current work programme of the Committee

What does the Ethics & Standards Committee do?

The Local Government Act 2000 sets out the functions of the Ethics & Standards Committee as follows:-

- promoting and maintaining high standards of conduct by Councillors
- assisting Councillors to observe the Code of Conduct
- advising the Council on the adoption or revision of the Code of Conduct
- monitoring the operation of the Code of Conduct, and
- advising, training or arranging to train Councillors on matters relating to the Code of Conduct

The Ethics & Standards Committee can also grant dispensations, which permit Councillors who have an interest in a particular item of Council business to continue to take part in that business.

Investigation reports produced by the Ombudsman or the Council's Monitoring Officer on alleged breaches of the Code of Conduct may be referred to the Ethics & Standards Committee for determination.

The Ethics & Standards Committee also exercises the above responsibilities in relation to Town and Community Councils in Ceredigion.

Examples of the type of work carried out by Ceredigion's Ethics & Standards Committee include:

- involvement in developing training materials on the Code, including a flowchart summarising the main provisions of the Code
- attendance at and participation in training sessions on the Code for both the County Council and Community Councils
- attendance at Council and Committee meetings to observe proceedings
- the introduction of procedures which allow Councillors to attend Committee meetings to present an application for dispensation in person
- providing advice to Councillors regarding dispensation applications

The Forward Work Programme

It is proposed that a Forward Work Programme will become a standing item on each agenda of the Committee. This will provide an opportunity for the Committee to review and update the programme of work of the Committee.

A draft Forward Work Programme is attached for consideration (Appendix 1)

Recommendation(s):

1) To agree that a Forward Work Programme be a standing item on each agenda of the Committee, and

2) to consider, review and update the current draft Forward Work Programme (**Appendix 1**)

Contact Name:

Lisa Evans

Designation:

Scrutiny and Standards Officer

Date of Report:

30 April 2021

Acronyms:

Ethics and Standards Forward Work Programme 2021/22

Date	Item
19 May	<p>S 62 Local Government and Election (Wales) Act 2021 Duties of leaders of political groups in relation to standards of conduct</p> <p>To discuss with party leaders the methods of promoting and maintaining high standards by conduct by Members of Ceredigion County Council</p> <p>To consider applications for dispensation from the following Councillors: Councillor Rees-Evans</p> <p>Recruitment of Independent Members- update</p> <p>Update on Code of Conduct matters– Update on recent press articles</p> <p>Corporate Joint Committees (General) (Wales) Regulations 2021</p> <p>Update on Adjudication Panel for Wales matters</p> <p>Update on the Public Services Ombudsman matters-Consultation on revisions of Code of Conduct Guidances</p> <p>Ethics and Standards Committee Annual Report, 2020/21</p> <p>Training</p> <p>To appoint a Chair and Vice-Chair for the Committee</p>
9 July	<p>To consider applications for dispensation from the following Councillors:</p> <p>Grounds for Dispensation-ground e) of the Standards Committee (Grant of Dispensations)(Wales) Regulations 2001</p> <p>Review of Local Dispute Resolution protocol</p> <p>Update on Adjudication Panel for Wales matters</p> <p>Update on the Public Services Ombudsman matters</p>
11 October	<p>To consider applications for dispensation from the following Councillors:</p>

	<p>Update on Adjudication Panel for Wales matters</p> <p>Update on the Public Services Ombudsman matters</p>
17 January 2022	<p>To consider applications for dispensation from the following Councillors:</p> <p>Update on Adjudication Panel for Wales matters</p> <p>Update on the Public Services Ombudsman matters</p>

CEREDIGION COUNTY COUNCIL

Report to: Ethics and Standards Committee

Date of meeting: 19 May 2021

Title: To appoint a Chair and Vice-Chair for the Committee

Purpose of the report: To ensure appropriate succession to the Chair and Vice Chair of the committee

The Committee will be aware that the Term of Office of two of the current independent members, Mr Hywel Wyn Jones and Mr Rif Winfield will end on 26 September 2021.

As such, the term of office of the current Chair, Mr Hywel Wyn Jones 'Chair' will also end on 26 September 2021. The current Chair wishes to relinquish the chairmanship at the end of the 19th May 2021 meeting, so that the Committee can decide on its succession in good time. It is a requirement that the Committee's Chair (and Vice-chair) are appointed from among the independent members of the Committee. The newly recruited independent members will not take up Office until 27 September 2021. As such, the new Chair will have to be appointed from the remaining members (namely Caroline White, John Weston and Carol Edwards).

In the event that the existing Vice-Chair is appointed, there will be a need to consider nominations for a replacement Vice-Chair thereafter, again effective from 20 May 2021.

Proposal

The Committee is asked to nominate the successor Chair at its meeting on 19 May 2021 effective from 20 May 2021.

Recommendation(s):

- 1) That Committee appoints the Chair to the Committee effective from 20 May 2021.
- 2) Depending on outcome of 1) above, that Committee appoints the Vice-Chair to the Committee effective from 20 May 2021.

Contact Name: Elin Prysor
Designation: Monitoring Officer
Date of Report: 6 May 2021
Acronyms:

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