

# Public Document Pack



Cyngor Sir  
**CEREDIGION**  
County Council

Neuadd Cyngor Ceredigion, Penmorfa,  
Aberaeron, Ceredigion SA46 0PA  
[ceredigion.gov.uk](http://ceredigion.gov.uk)

19 August 2024

Lisa Evans

01545574177

Dear Sir / Madam

I write to inform you that a Meeting of the Ethics and Standards Committee will be held HYBRID - NEUADD CYNGOR CEREDIGION, PENMORFA, ABERAERON / REMOTELY VIA VIDEO CONFERENCE on Friday, 23 August 2024 at 10.00 am for the transaction of the following business:

- 1. Apologies**
- 2. Declaration of personal/prejudicial interest**
- 3. Confidential item**

The Monitoring Officer has determined that Category 8 of the Access to Information Procedure Rules applies to the following report (Enclosure 2, 3 and 4 of item 4). Her view on the public interest test (having taken account of the provisions of Rule 11.8 of the Council's Access to Information Rules) was that to make this information public would disclose information relating to a particular individual and would allow information to enter the public domain before the individual has had an opportunity to make representations in respect of it. These factors in her view outweigh the public interest in disclosing the information at this stage.

Members are asked to consider these factors when determining the public interest test, which they must decide when considering whether:

- the exempt item should remain exempt, and
- to exclude the public from the meeting.

- 4. CONSIDERATION OF REPRESENTATIONS AND FINAL DETERMINATION OF A REPORT PREPARED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES UNDER SECTION 71(2)(C) OF THE LOCAL GOVERNMENT ACT 2000 - REF: - 202201455/202202498 into alleged breach of Powys County Council & Bannau Brycheiniog National Park Authority Code of Conduct for Members by Cllr/Former Councillor Iain McIntosh (Pages 3 - 554)**

Enclosure 2, 3 and 4 relating to the item above is not for publication as it contains exempt information as defined in paragraph 12 of Part 4 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to information) (Variation) (Wales) Order 2007. If,

following the application of the Public Interest Test, the Council resolves to consider this item in private, the public and press will be excluded from the meeting during such consideration, in accordance with Section 100B(2) of the Act. Members will be requested, when dealing with the items, to consider whether to exclude the public and press from the Meeting.

Members are reminded to sign the Attendance Register

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

A handwritten signature in black ink, appearing to read 'L Edwards', written in a cursive style.

**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.

## CYNGOR SIR CEREDIGION COUNTY COUNCIL

**Report to:** Ethics and Standards Committee

**Date of meeting:** 23 August 2024  
10am

**Title:** CONSIDERATION OF REPRESENTATIONS AND FINAL DETERMINATION OF A REPORT PREPARED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES UNDER SECTION 71(2)(C) OF THE LOCAL GOVERNMENT ACT 2000 –

**REF: - 202201455/202202498**

**into alleged breach of Powys County Council & Bannau Brycheiniog National Park Authority Code of Conduct for Members by Cllr/Former Councillor Iain McIntosh**

**Report for:** Decision

### **Background**

1)The Public Services Ombudsman for Wales has investigated a complaint **into alleged breach of Powys County Council (PCC) & Bannau Brycheiniog National Park Authority (BB NPA)' Code of Conduct for Members by Cllr/Former Councillor Iain McIntosh** (case ref. 202201455/202202498)

2. The Ombudsman's report of her investigation dated 20/11/23 (**Enclosure 3**) pursuant to S69 of the Local Government Act 2000 has, in accordance with s71 (2) of the Local Government Act 2000, been referred to the respective Councils' Monitoring Officer.

The Subject of the referral was: Promotion of equality and respect  
[Code of Conduct - Public Services Ombudsman for Wales](#)

3. Regulation 3 (2) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001/2281 (the Regulations) provides that the Monitoring Officer must consider the report and make recommendations to the Standards Committee.

4. On 1/5/24, the case was considered by the Ceredigion Ethics and Standards Committee ("the Committee"):

[\(Public Pack\)Agenda Document for Ethics and Standards Committee, 01/05/2024 10:00 \(ceredigion.gov.uk\)](#)

## 5. Initial determination

In accordance with Regulation 7 of the 2001 Regulations, on 1/5/24, the Committee considered the Ombudsman's Investigation Report dated 20th November 2023 (**Enclosure 3**) in respect of both PCC & BB NPA, and determined in respect of both matters that there is evidence which might amount to a failure to comply with the Code of Conduct and that the Councillor, being a:

“person who is the subject of the investigation report should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he has failed, or may have failed, to comply with the ..... code of conduct.”

### **Committee also resolved:**

- that the Procedures to be adopted by the Ethics and Standards Committee in carrying out its functions and making its determination be those incorporated in Part 5 Doc. S of Ceredigion County Council's Constitution, (**Enclosure 1**).
- to note the acceptance by the Monitoring Officer of the transfer of this case from the Powys County Council Standards Committee.
- to note the acceptance by the Monitoring Officer of the transfer of this case from the Bannau Brycheiniog National Park Authority Standards Committee
- A further meeting would be arranged on 8th July 2024 to determine the matter.

6)In accordance with the Step 3 of the Procedures (parag 25), following the initial determination hearing on 1/5/24 ,the Member/Former Member was given an opportunity to make representations, and to provide additional information-these are contained within **Enclosure 2**

7)In accordance with Step 3 of the Procedures (parag 27), following the initial determination hearing on 1/5/24 ,the Ombudsman was given an opportunity to respond to the make representations-these contained within **Enclosure 4**

## **8)Current Position**

8.1)In accordance with Step 4 of the Procedures the Committee is now required to take account of the following principles:

“30) The Ethics & Standards Committee:

- a) may, in accordance with the requirements of natural justice, conduct the meeting in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.
- b) It must so far as appears to it appropriate seek to avoid inflexibility in its proceedings.

- c) decide factual evidence on the balance of probabilities.
- d) consider any criteria established to assist the Committee to ensure consistency in decisions.

33) The hearing will be held in public unless the Ethics & Standards Committee is persuaded that there is a good reason to exclude the public.”

8.2) Committee is required to consider the following Stages:

### **First Stage: Preliminary Issues**

From the Hearings Procedures:

“37) The Ethics & Standards Committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the

pre-hearing process. Including:

- a) Whether public or press should be excluded from the hearing or parts of it
- b) Any new matters arising since the agenda was prepared
- c) If any new evidence or matter is raised that could have been raised before the hearing, the assumption will be that it will not be allowed unless there is good reason to do so.
- d) whether there is good reason hearing should proceed in absence of any party, reasons offered for any absence and to satisfy itself that all parties were properly notified of the hearing date. Alternatively, to adjourn the hearing.
- e) To make arrangements to dispose of the matter fairly, in the event that the Committee is satisfied that any party (after receiving medical evidence) is unable to attend and is likely to be unable to attend for a long time.
- f) No cross-examination of witnesses will be allowed. Questions must be directed through the Chair. “

### **8.3) Procedures**

By Regulation 8 of the 2001 Regulations it is for the Committee itself to decide the practice and procedure to be followed in exercising its functions under the Regulations.

The Monitoring Officer recommends that the procedures to be adopted by the Ethics and Standards Committee in carrying out its functions and making its determination be those incorporated in Part 5 Doc. S of Ceredigion County Council’s Constitution, attached to this Report (**Enclosure 1**).

It is these procedures that the Committee should have regard to when considering this case

### **8.4)Public Interest test**

In line with the requirement for openness and transparency in relation to the function and duties of the Committee, the hearing will be held in public unless the Committee resolves, having considered the public interest test, that the hearing (or any part of it) should be held in private at any stage.

Parag 33) Hearings Procedures:

“The hearing will be held in public unless the Ethics & Standards Committee is persuaded that there is a good reason to exclude the public.”

The Monitoring Officer has determined that Category 12 of the Access to Information Procedure Rules applies to the following:

- Enclosure 3:PSOW report 20/11/23 & Appendices
- Enclosure 3: PSOW Summary 20/11/23
- Enclosure 2:Correspondence from Member/former Member:

1. 12/5/24,
2. 14/5/24 12.45
3. 14/5/24 19:23
4. 22/5/24
5. 11/6/24
6. 22/7/24
7. 23/7/24

- Member -medical report
- Enclosure 4:Correspondence with PSOW:  
Letter 17/5/24  
email 17/5/24

Committee will need to consider the public interest test, as to whether the hearing should be heard in public in private, or alternatively, whether the hearing should be held in public save that when considering parts of the documentation above the Committee will enter into private session should it deemed in the public interest at any stage

Ground 12:Information relating to an individual including sensitive information relating to health/medical

The Committee will need to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information

The public interest will be assessed on a case by case basis having regard to all relevant factors, to ensure a proper balance is achieved between the right to know, the right to personal privacy and the delivery of effective government.

The Monitoring Officer' view on the public interest test (having taken account of the provisions of Paragraph 10.5 &10.7 of the Council's Access to Information Rules) was that to make this information public at this stage would:

- would allow disclosure of sensitive information regarding the member/former member' health/medical condition which would be a disproportionate and unwarranted intrusion into the private life of the member

It is considered that due to this factor, the public interest in maintain the information outweighs the public interest in disclosing the information at this stage.

Committee is requested to consider these factors when determining the public interest test, which they must decide when considering whether:

- the exempt item should remain exempt, and
- to exclude the public from the meeting.

Therefore the documents above are not for publication at this stage as they contain exempt information as defined in paragraphs 12 of Part 4 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to information) (Variation) (Wales) Order 2007:  
Information relating to an individual

The Committee may enter into private session should it deemed in the public interest at any stage

If, following the application of the Public Interest Test, the Committee resolves to consider these documents in private, the public and press will be excluded from the meeting during such consideration, in accordance with Section 100B(2) of the Act.

### **8.5) Witnesses**

Committee will need to consider:

- a. whether to permit the Member to call any necessary witness(es) of fact and character
- b. whether it wishes to call any other necessary witness(es) of fact

to assist the Committee in its final determination.

The Ombudsman does not wish to call any witnesses.

### **8.6) Health/Medical matters**

Committee will need to consider any relevant health/ medical matters and whether this will impact on the procedures

The Member/former has raised medical issues in correspondence and by way of a report (Enclosure 2)

### **8.7 Attendance**

i)The Member/former Member has confirmed that he will be attending the hearing in person

ii)The Ombudsman has confirmed that the following representatives will attend:

- Matthew Phelps- Investigation officer
- Annie Ginwalla

### **8.8 Representations**

The Member/former Member has provided correspondence/documentation for consideration by the Committee. Enclosure 2

The Ombudsman has provided correspondence-Enclosure 4

**8.8)** That Committee will need to note the contents of the PSOW letter dated 14/5/24 (**Enclosure 3**)

**8.9)** Committee will consider format of remainder of the hearing

### **9) Second Stage- Making findings of fact**

From the Hearings Procedures:

“38) The Ethics & Standards Committee will then consider whether or not there are any significant disagreements about the facts contained in the investigation report.”

9.1) That Committee will consider the report of the Public Services Ombudsman dated 20/11/23 (**Enclosure 3**) and the PSOW Decision Summary 20/11/23 (**Enclosure 3**), and related documentation

### **10)Third stage: Deciding whether the Member has failed to comply with the Code**

From the Hearings Procedures:

45) The Ethics & Standards Committee will then consider whether, based on the facts it has found, the Member has failed to comply with the Code taking into account the Ombudsman’ report, any oral/written representations and any witness evidence

### **11) Fourth stage: Action to be taken**

If relevant, the Committee will need to decide what action to be taken

For Committee Members information, attached at Enclosure 1 are the Adjudication Panel for Wales Sanction Guidelines

### **12) THE OMBUDSMAN INVESTIGATION REPORT**



12.1 A copy of the Ombudsman's Report dated 20/11/23 in respect of the Conduct of the Member/former Member was provided to Committee Members prior to the Standards Committee initial determination meeting on the 1/5/24. Members of the Committee are requested to bring their copy of the report with them to this meeting.

12.2 Similar facts arise from the investigation relating to Powys County Council and Bannau Brycheiniog National Park authority, as shown in the report.

### **13)The Member/former member**

13.1The Member/former has expressed his wish to call an individual as a witness of fact and character.  
No statement has been provided

13.2 1The Member/former has raised health medical issues in correspondence and by way of medical report (Enclosure 2)

## **RECOMMENDATIONS**

### **That Committee considers:**

1The Procedure for dealing with allegations made against Councillors and referred to the Committee is set out in Enclosure 1.

2 the Public Interest test, as set out above.

3 Any preliminary procedural issues including any the medical issues, and supporting correspondence and determine any preliminary issues, and directions for progressing to an effective final hearing.

4 Any facts in dispute in relation to all written evidence provided and make a finding of fact (**Second Stage paras 38-44** )

5)Whether, based on the facts it has found, the Member has failed to comply with the Code, and confirm their decision (**Third Stage -paras 45-51**)

6)If Committee has found that the Member has failed to comply with the Code, what action to be taken (**Fourth Stage 4 paras 52-55** ) having taken into account any representations made by the Member/Former member and the Ombudsman.

**Reasons for decision:**

To comply with the requirements under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

**Wellbeing of Future Generations:**

Has an Integrated Impact Assessment been completed? If, not, please state why.

Not required

**Summary of Integrated Impact Assessment:**

Long term: n/a  
Collaboration: n/a  
Involvement: n/a  
Prevention: n/a  
Integration: n/a

**Appendices:**

**Monitoring Officer documents:**

1 – Ceredigion County Council Hearings Procedure for dealing with allegations made against Councillors

2 – Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 & The Local Government (Standards Committees, Investigations, Dispensations and Referral)(Wales) (Amendment) Regulations 2016

3) Councillors Code of Conduct for Members

4) Adjudication Panel for Wales Sanction Guidelines

**Enclosure 1: Correspondence from Ombudsman :**

1. Letter 14/5/24

**Enclosure 2:**

**Exempt/redacted information**

**Correspondence from member/former member:**

Letters/emails:

1. 12/5/24,
2. 14/5/24 12.45

3. 14/5/24 19:23
4. 22/5/24
5. 11/6/24
6. 22/7/24

Medical information:  
2011 report

**Enclosure3: Enclosure 3**  
**Exempt/redacted information**

Ombudsman report 20/11/23  
& Appendices

PSOW Summary 20/11/23

**Enclosure 4 Enclosure 4**  
**Exempt/redacted information**

**Correspondence from Ombudsman:**

1. Letter 17/5/24
2. email 17/5/24

**Contact Name:** Elin Prysor

**Designation:** Monitoring Officer

**Date of Report:** 29/7/24

**Acronyms:**

PSOW: Public Services Ombudsman for Wales

PCC: Powys County Council

BBNPA: Bannau Brycheiniog National Park authority

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## **Ethics & Standards Committee**

**The investigation of a complaint against Cllr Iain McIntosh,  
Member of Powys County Council & former Member  
Bannuau Brycheiniog National Park Authority  
Referral from Ombudsman: ref:202201455/ 202202498**

**Hearing 23/8/24 10am**

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## **ETHICS & STANDARDS COMMITTEE**

### **DEALING WITH COMPLAINTS REFERRED TO THE ETHICS & STANDARDS COMMITTEE & HEARINGS PROCEDURES**

#### **Introduction**

1. This document sets out the procedure that the Council's Ethics & Standards Committee will follow where it is required to make decisions about the conduct of Councillors following investigations by the Public Services Ombudsman for Wales or the Council's Monitoring Officer under Part III of the Local Government Act 2000 and any related regulations.
2. If there is any conflict between this document and any statutory requirements then those statutory requirements will prevail.
3. Subject to any express provision in the Regulations, the practice and procedure for exercising its functions under Regulations, shall be for the Ethics and standards Committee to decide.

#### **Interpretation**

4. In this procedure:
  - (a) 'the Act' means the Local Government Act 2000 Part III
  - (b) 'the Council' means Ceredigion County Council
  - (c) 'the Code of Conduct' means the Code of Conduct for Members adopted by the Council or the town/community councils within the Council's area in 2008 (and as amended in 2016), in accordance with Section 51 of the Act.
  - (d) 'the Complainant' means any person who made any allegation which gave rise to the investigation
  - (e) Co-opted members means persons appointed by the Council to sit as independent or lay members on its Governance and Audit or its Ethics & Standards Committee
  - (f) the 'Investigating Officer' means the person who conducted an investigation into any alleged breach of the Code of Conduct and produced the investigation report, being either the Ombudsman (or a person acting on his or her behalf) or the Monitoring Officer
  - (g) an 'investigation report' means a report on the outcome of an investigation into any alleged breach of the Code of Conduct produced either by the Ombudsman under s69, 70 or s71(2) of the Act or by the Monitoring Officer under the Regulations.
  - (h) 'the Member' means any person who is the subject of an investigation into any alleged breach of the Code of Conduct

- (i) 'the Monitoring Officer' means the officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989
- (j) 'the Ombudsman' means the Public Services Ombudsman for Wales
- (k) 'the Regulations' means the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001/2281 as amended (SI 2016/85),
- (l) 'the Standards Officer' means the officer for the time being appointed by the Council to support the work of the Ethics & Standards Committee
- (m) the 'Advising Officer' means the Monitoring Officer, Deputy Monitoring Officer the Standards Officer or some other suitably qualified person.

### Summary of the procedure

- 5) Under **section 69** of the Act, the Ombudsman may investigate any alleged breach of the Code of Conduct by members or co-opted members (or former members or co-opted members) of the Council or a community council in the Council's area.
- 6) Under **section 70(4)** of the Act, where the Ombudsman ceases such an investigation before it is completed:
  - a) they may refer the matters which are the subject of the investigation to the Monitoring Officer.
  - b) The Monitoring Officer will then investigate those matters in accordance with the Regulations before reporting and, if appropriate, making recommendations to the Ethics & Standards Committee. See detailed procedure below in section 17.
- 7) Under **section 71(2)** of the Act, where the Ombudsman decides after investigating that it is appropriate, they will:
  - a) produce a report on the outcome of the investigation and send it to the Monitoring Officer and the Council's Ethics & Standards Committee.
  - b) The Monitoring Officer will then consider the report of the Ombudsman in accordance with the Regulations, before, if appropriate, making recommendations to the Ethics & Standards Committee.
  - c) See detailed procedure below in section 17.
- 8) The Ethics & Standards Committee will then make an initial determination (Reg. 7) either:
  - a) that there is no evidence of any failure to comply with the Code of Conduct,  
or
  - b) that the Member must be invited to make representations, either orally or in writing, in respect of the findings of the investigation and any allegation they have failed to comply with the Code of Conduct.
- 9) Where the Member is invited to make representations, the Ethics & Standards Committee will convene a hearing to consider any response made by the Member.



### **Determination of the Ethics and Standards Committee**

10) After considering any representations, the Ethics & Standards Committee must determine (Regulation 9(1)) that:

- (a) there is no evidence of any failure to comply with the Code of Conduct and that therefore no action needs to be taken in respect of matters which are the subject of the investigation;
- (b) the Member or co-opted member (or former member or co-opted member) has failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
- (c) the Member or co-opted member (or former member or co-opted member) has failed to comply with the Code of Conduct and should be censured, or
- (d) the Member or co-opted member (or former member or co-opted member) has failed to comply with the Code of Conduct and should be suspended or partially suspended from being a member or co-opted member of his/her authority for a period not exceeding six months.

and take any such action accordingly.

11) Where an appeals tribunal drawn from the Adjudication for Wales makes a recommendation that a different penalty should be imposed (Reg. 12), the Ethics and Standards Committee must also determine whether or not it should uphold its original determination or accept the recommendation.

### **Investigations by the Monitoring Officer (referrals under section 70(4) of the Act)**

12) Where the Ombudsman ceases their investigation before it is completed and refers the matters which are the subject of the investigation to the Monitoring Officer under section 70(4) of the Act, the Monitoring Officer must:-

- a) conduct an investigation; and
- b) report, and if appropriate make recommendations to the Council's Ethics & Standards Committee

13) The Monitoring Officer will investigate in accordance with the Regulations and may follow such procedures as they consider appropriate in the circumstances of the case.

14) After concluding an investigation, the Monitoring Officer must:

- (a) produce a report on the findings of their investigation and, if appropriate, may make recommendations to the Ethics & Standards Committee,
- (b) send a copy of the report to the Member, and
- (c) take reasonable steps to send a copy of the report to the Complainant.

15) The Ethics & Standards Committee will consider the Monitoring Officer's report and any recommendations in accordance with the procedure set out in section 17 below.

### **Investigations by the Ombudsman (referrals under section 71(2) of the Act)**

- 16) Where the Ombudsman completes their investigation and sends a report to the Monitoring Officer and the Council's Ethics & Standards Committee under section 71(2) of the Act, the Monitoring Officer must:
- a) consider the Ombudsman's report and,
  - b) if appropriate, make recommendations to the Council's Ethics & Standards Committee.
- 17) The Ethics & Standards Committee will consider the Ombudsman's report together with any recommendations made by the Monitoring Officer in accordance with the procedure set out below.

### **Step 1 - Ethics & Standards Committee – Initial Determination Hearing**

18) After the Monitoring Officer has:

- a) produced an investigation report in accordance with paragraph 14; or
- b) considered the Ombudsman's investigation report in accordance with paragraph 16.

a meeting of the Ethics & Standards Committee will be convened as soon as possible.

A copy of the investigation report, together with the Monitoring Officer's recommendations (if any), will be sent to each of the members of the Ethics & Standards Committee.

- 19) Notice of the time and place of the meeting will be given in accordance with Part VA of the Local Government Act 1972, as amended by the Regulations.
- 20) If the investigation report is produced by the Ombudsman, the Monitoring Officer will advise the Ethics & Standards Committee, as Advising Officer.
- 21) If the investigation report is produced by the Monitoring Officer, the Standards Officer or some other suitably qualified person will advise the Ethics & Standards Committee, as Advising Officer.
- 22) The business of the Ethics & Standards Committee Initial Determination hearing will be limited to:
- a) considering the investigation report
  - b) and the Monitoring Officer's recommendations (if any) and
  - c) to making an initial determination either:-
    - i. that there is no evidence of any failure to comply with the Code of Conduct, or
    - ii. that the Member should be invited to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that they have failed, or may have failed, to comply with the Code of Conduct.

### **Step 2 - After the first meeting of the Ethics & Standards Committee**

23) Where the Ethics & Standards Committee decides that there is no evidence of any failure to comply with the Code of Conduct, the Standards Officer will accordingly notify the Member, the Complainant and the Ombudsman. See 22(c)(i) above.

24) Where the Ethics & Standards Committee decides that the Member must be invited to make representations, the Standards Officer will notify the Member of the Committee's Initial determination decision and the procedure which the Committee proposes to adopt to receive and consider any representations that they may wish to make. See 22(c)(ii) above and Step 3 below.

### **Step 3 - Preparing for the hearing to consider the Member's representations**

25) (A) The Standards Officer, in consultation with the Chair of the Ethics & Standards Committee, will write to the Member to propose a date for a hearing to consider any representations that the Member may wish to make and to ask the Member to complete and return a questionnaire within 14 days, to confirm whether they:

- (a) Intend to attend the hearing
- (b) want to make representations, whether orally or in writing and if so, to include any written representations in his or her response
- (c) disagree with any of the findings of fact in the investigation report, and if so, which matters they disagree with and the reasons for any disagreements;
- (d) wishes to represent themselves or be represented at the hearing by a legal representative or any other person, in accordance with the Regulations
- (e) wants to give evidence to the Ethics & Standards Committee, either orally or in writing;
- (f) wants to call relevant witnesses to give evidence to the Ethics & Standards Committee, and if so to identify those witnesses, and confirm if they are witnesses of fact or character
- (g) wants any part of the meeting to be held in private, and if so, explain the reasons
- (h) wants any part of the investigation report or other relevant documents to be withheld from the public, and if so, explain the reasons;

25(B) The Investigating Officer will be expected to attend the Hearing to present the report and explain any matters within it (unless the Committee has agreed that this is not necessary).

26) The Standards Officer will notify the Investigating Officer of the proposed hearing date and ask whether they will be attending the hearing. Two alternative dates should be kept in reserve.

27) The Standards Officer will send a copy of the Member's response under paragraph 25 to the Investigating Officer and will ask them to confirm in writing within 7 days whether they:

- (a) have any comments on the Member's response
- (b) want to be represented at the hearing;
- (c) want to call relevant witnesses to give evidence to the Ethics & Standards Committee; and if so to identify those witnesses
- (d) want any part of the meeting to be held in private; if so, provide reasons
- (e) want any part of the investigation report or other relevant documents to be withheld from the public; if so provide reasons

28) The Standards Officer will write to the members of the Committee, the Member and the Investigating Officer at least 14 days before the hearing to:

- (a) confirm the date, time and place for the hearing;
- (b) summarise the allegation(s);
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the Member or the Investigating Officer will attend or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the investigation report, any relevant documents, the Member's response and any further response from the Investigating Officer; and
- (h) outline the proposed procedure for the hearing.
- (i) seek confirmation if they intend to attend the hearing
- (j) provide evidence upon which they intend to rely

29) The following information will be sent to the members of the Committee, the Member and the Investigation Officer in advance of the hearing (and any other relevant documents):

- Investigating Officers report
- Member's response
- Any further response from the Investigating Officer
- An outline of main facts agreed /not agreed
- List of witnesses

- Whether the member will be attending the hearing and whether they will be represented
- Procedure for the hearing.

## **Step 4 - The Hearing Procedure**

### **Principles**

30) The Ethics & Standards Committee:

- a) may, in accordance with the requirements of natural justice, conduct the meeting in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.
- b) It must so far as appears to it appropriate seek to avoid inflexibility in its proceedings.
- c) decide factual evidence on the balance of probabilities.
- d) consider any criteria established to assist the Committee to ensure consistency in decisions.

31) The Member or the Investigating Officer may be represented or accompanied whether or not legally qualified but if in any particular case the Ethics & Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.

32) The Ethics & Standards Committee may take legal advice from a Council officer appointed for this purpose at any time during the meeting or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the Member and the Investigating Officer if they are present.

33) The hearing will be held in public unless the Ethics & Standards Committee is persuaded that there is a good reason to exclude the public.

34) The intention is that all parties to the hearing are able to participate in the full knowledge of the matters under investigation, ensuring that the proceedings are fair, transparent and impartial.

35) The procedure at the meeting shall be as set out below, subject to the Chair making such changes as they think fit in order to ensure a fair and efficient hearing.

### Introduction

36) The Chair of the Ethics & Standards Committee will introduce those persons present and will explain the manner and order of proceedings including any physical arrangements.

### First stage: Preliminary procedural issues

- 37) The Ethics & Standards Committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process. Including:
- a) Whether public or press should be excluded from the hearing or parts of it
  - b) Any new matters arising since the agenda was prepared
  - c) If any new evidence or matter is raised that could have been raised before the hearing, the assumption will be that it will not be allowed unless there is good reason to do so.
  - d) whether there is good reason hearing should proceed in absence of any party, reasons offered for any absence and to satisfy itself that all parties were properly notified of the hearing date. Alternatively, to adjourn the hearing.
  - e) To make arrangements to dispose of the matter fairly, in the event that the Committee is satisfied that any party (after receiving medical evidence) is unable to attend and is likely to be unable to attend for a long time.
  - f) No cross-examination of witnesses will be allowed. Questions must be directed through the Chair.

Second stage: Making findings of fact-

38) The Ethics & Standards Committee will then consider whether or not there are any significant disagreements about the facts contained in the investigation report.

39) If there is a disagreement as to the facts:-

- (a) the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the investigation report.
- (b) the Investigating Officer may call any necessary supporting witnesses to give evidence, with the Ethics & Standards Committee's permission and the Committee shall give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer and question any witness through the Chair.
- (c) the Member will then be invited to present their case and make representations in support of his or her version of the facts.
- (d) the Member may call any necessary witnesses to give evidence, with the Ethics & Standards Committee's permission and the Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.

40) At any time, the Ethics & Standards Committee may question any of the people involved or any of the witnesses through the Chair.

41) If the Member disagrees with any relevant fact in the investigation report, without having given prior notice of the disagreement, they must give good reasons for

not mentioning it before the hearing. If the Investigating Officer is not present, the Ethics & Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:

- (a) continue with the hearing, relying on the information in the investigation report
- (b) allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
- (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if they are not already.
- (d) The Investigating Officer, followed by the Member, will have an opportunity to sum up.

42) At the conclusion of the representations as to matters of fact, the Ethics & Standards Committee will retire to deliberate in private on the representations along with the Advising Officer.

43) The Committee will also consider if it is required to proceed to the third stage. It is a majority decision.

44) The Ethics & Standards Committee will reconvene as a public meeting and the Chair of the Ethics & Standards Committee will announce their findings of fact. The Member, Investigating Officer and witnesses will be invited back to the meeting.

#### Third stage: Deciding whether the Member has failed to comply with the Code

45) The Ethics & Standards Committee will then consider whether, based on the facts it has found, the Member has failed to comply with the Code.

46) The Ethics & Standards Committee will invite the Investigating Officer to make representations as to whether or not, based on the facts the Committee has found, the Member has failed to comply with the Code of Conduct.

47) The Ethics & Standards Committee will invite the Member to respond to the representations of the Investigating Officer and to make representations as to whether or not, based on the facts the Committee has found, they have failed to comply with the Code of Conduct.

48) The Ethics & Standards Committee may, at any time, question anyone involved on any point they raise in their representations.

49) The Member will be invited to make any final relevant points and offer any mitigation.

50) The Ethics & Standards Committee will retire to deliberate in private along with the Advising Officer on the representations and decide on the balance of probabilities whether or not the Member has failed to comply with the Code of

Conduct. This will be a majority decision. The Advising Officer will not take part in any vote.

51) The Ethics & Standards Committee will reconvene as a public meeting and the Chair of the Ethics & Standards Committee will announce the decision whether there is a breach of the Code. This will be a majority decision. The Advising Officer will not take part in any vote.

Fourth stage: Action to be taken

52) If the Ethics & Standards Committee decides that the Member has not failed to comply with the Code of Conduct, it will

- a) formally record that there is no evidence of any failure by the Member to comply with the Code of Conduct and that therefore no action needs to be taken.
- b) The Ethics & Standards Committee can still consider whether to make any recommendation to the Council to avoid similar situations occurring again

53) If the Ethics & Standards Committee decides that the Member has failed to comply with the Code of Conduct it will invite the Member and the Investigating Officer to make representations as to:

- (a) whether or not the Committee should apply a sanction; and
- (b) what form any sanction should take.

54) The Ethics & Standards Committee will retire along with the Advising Officer to deliberate in private on the representations, to consider sanctions.

55) The available Options are that:

- a) no action needs to be taken in respect of the failure to comply with the Code of Conduct,
- b) the Member should be censured or
- c) the Member should be suspended or partially suspended from being a member or co-opted member of his or her authority for a period not exceeding six months.

This will be a majority decision. The Advising Officer will not take part in any vote.

56) The Ethics & Standards Committee will reconvene and the Chair of the Ethics & Standards Committee will announce its decision.

57) After making a decision the Ethics & Standards Committee will instruct the Standards Officer to:

- a) confirm the decision and
- b) the reasons for the decision in writing, and to send a copy of the written decision (including details of the Member's right of appeal) to the Member,



the Complainant and the Ombudsman as soon as reasonably practicable, and in accordance with the Regulations

### **Miscellaneous Matters**

#### **Failure to make representations / attend the hearing**

58) If the Member fails to make representations, the Ethics & Standards Committee may:

- a) unless it is satisfied that there is sufficient reason for such failure, consider the investigation report and make a determination in the Member's absence; or
- b) give the Member a further opportunity to make representations

59) If a party fails to be present or represented at a hearing, the Ethics & Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence -

- a) hear and decide the matter in the party's absence; or
- b) adjourn the hearing.

#### **Illness or incapacity**

60) If the Ethics & Standards Committee is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the hearing and that the party's inability is likely to continue for a long time, the Ethics & Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter.

#### **Suspension**

61) A period of suspension or partial suspension (suspended from doing part of their Council work) will commence on the day after:

- a) the expiry of the time allowed to lodge a notice of appeal to an appeals tribunal under the Regulations (i.e. within 21 days of receiving notification of the Ethics & Standards Committee's determination);
- b) receipt of notification of the conclusion of any appeal in accordance with the Regulations;
- c) a further determination by the Ethics & Standards Committee made after receiving a recommendation from an appeals tribunal under the Regulations,

whichever occurs last.

#### **Referral to an Appeals Tribunal**

62) Where the Ethics & Standards Committee determines that the Member has failed to comply with the Code of Conduct, the Member may appeal against the determination to an appeals tribunal drawn from the Adjudication Panel for Wales. Leave to appeal is required in accordance within the Regulations.

63) An appeals tribunal may:

- a) endorse the decision of the Ethics & Standards Committee,
- b) refer a matter back to it recommending it impose a different penalty,
- c) or overturn the decision.

64) If:

- a) the Ethics & Standards Committee determines that the Member failed to comply with the Code of Conduct;
- b) the Member appeals to an appeals tribunal drawn from the Adjudication Panel for Wales; and
- c) the said tribunal refers the matter back to the Ethics & Standards Committee with a recommendation that a different penalty be imposed,

the Ethics & Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the appeals tribunal and will determine whether or not it should uphold its original determination or accept the recommendation.

65) After making its determination the Ethics & Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision to the Member, the Complainant, the Ombudsman and the president of the Adjudication Panel for Wales as soon as reasonably practicable.

### **Publication of the Ethics & Standards Committee's report**

66) The Ethics & Standards Committee will cause to be produced within 14 days after:

- a) the expiry of the time allowed to lodge a notice of appeal under the Regulations, or
- b) receipt of notification of the conclusion of any appeal in accordance with the Regulations, or
- c) a further determination by the Ethics & Standards Committee made after receiving a recommendation from an appeals tribunal under the Regulations,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Ombudsman, the Monitoring Officer, the Member and take reasonable steps to send a copy to the Complainant.

67) Upon receipt of the report of the Ethics & Standards Committee, the Monitoring Officer shall:

- a) for a period of 21 days publish the report on the Council's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
- b) supply a copy of the report to any person on request if they pay such charge as the Council may reasonably require, and

- c) not later than 7 days after the report is received from the Ethics & Standards Committee, give public notice, by advertisement in newspapers circulating in the area and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

### **Costs**

68) The Ethics & Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

Legislation

Local Government Act 2000-Part III:

<https://www.legislation.gov.uk/ukpga/2000/22/part/III/chapter/III>

Code of Conduct for Members:

Legal & Governance Services/Democratic Services

13/6/22

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**WELSH STATUTORY INSTRUMENTS**

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**2001 No. 2281****Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001****Functions of the Standards Committee**

7. After receiving a report and any recommendations from the monitoring officer, or a report from a Local Commissioner in Wales together with any recommendations of the monitoring officer, the Standards Committee must determine either:

- (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned and must notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Local Commissioner in Wales accordingly; or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant authority's code of conduct.

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WELSH STATUTORY INSTRUMENTS

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**2016 No. 85**

**The Local Government (Standards Committees,  
Investigations, Dispensations and Referral)  
(Wales) (Amendment) Regulations 2016**

**Amendments to the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001**

**3.—(1)** The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 are amended as follows.

(2) In regulation 2 (interpretation) in the appropriate place insert—

““community sub-committee” (*“is-bwyllgor cymunedol”*) means a sub-committee appointed by a Standards Committee of a local authority under section 56 of the 2000 Act;”;

““joint committee” (*“cyd-bwyllgor”*) means a committee established by two or more relevant authorities under section 53(1) of the 2000 Act;”;

““section 54A sub-committee” (*“is-bwyllgor adran 54A”*) means a sub-committee appointed by a Standards Committee under section 54A(1) of the 2000 Act;”;

““Standards Committee” (*“Pwyllgor Safonau”*) means—

- (a) a Standards Committee of a relevant authority;
- (b) a joint committee;
- (c) a section 54A sub-committee; or
- (d) a community sub-committee;”.

(3) In regulation 3 (functions of monitoring officers) after paragraph (2) insert—

“(3) Subject to paragraph (4), the monitoring officer of a relevant authority may make arrangements to make a report, or recommendations, in accordance with paragraphs (1)(b) and (2) to the Standards Committee of another relevant authority.

(4) The monitoring officer of a relevant authority (“A”) may not make arrangements under paragraph (3) to make a report, or recommendations, to the Standards Committee of another relevant authority (“B”) unless the chairperson of the Standards Committee of A has consented in writing.”

(4) In regulation 5 (restrictions on disclosure of information), in paragraph (1)—

- (a) at the end of sub-paragraph (e) insert “or”;
- (b) omit sub-paragraph (f).

(5) In regulation 6 (reports), at the end of paragraph (a) insert “or, in accordance with arrangements made under regulation 3(3), to the Standards Committee of another relevant authority”.

(6) For regulation 7 (functions of the standards committee) substitute—

“7.—(1) After receiving a report and any recommendations from a monitoring officer, or a report from the Public Services Ombudsman for Wales together with any recommendations of a monitoring officer, a Standards Committee must determine either:

- (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned and give notice to that effect to:
    - (i) the person who is the subject of the investigation;
    - (ii) the person or persons making the allegation which gave rise to the investigation; and
    - (iii) the Public Services Ombudsman for Wales; or
  - (b) that a person who is the subject of the investigation must be invited to make representations, either orally or in writing, in respect of the findings of the investigation and of any allegation of a failure to comply with the relevant authority's code of conduct.
- (2) A Standards Committee may make arrangements for the functions specified in paragraph (1) to be exercised by the Standards Committee of another relevant authority.”
- (7) After regulation 7 (functions of the standards committee) insert—

**“Reports or Recommendations referred to another Standards Committee**

- 7A.—**(1) Where a monitoring officer under regulation 6 (reports) or a Standards Committee under regulation 7 (functions of the Standards Committee) makes arrangements under regulation 3(3) or 7(2), the monitoring officer or Standards Committee making such arrangements must give the notice described in paragraph (2) to:
- (a) the person or persons who is or are the subject of investigation;
  - (b) the person or persons making the allegation of misconduct giving rise to the investigation; and
  - (c) the Public Services Ombudsman for Wales.
- (2) The notice to which paragraph (1) refers must include the following:
- (a) a statement that the matter has been referred to another relevant authority's Standards Committee for determination;
  - (b) the name of the other relevant authority; and
  - (c) the reason why the matter has been referred to the Standards Committee of the other relevant authority.”
- (8) In regulation 8 (procedure and powers of standards committee)—
- (a) in paragraph (5), for “the relevant authority” substitute “a relevant authority”;
  - (b) in paragraph (6), in sub-paragraph (b) omit “or (b)”.
- (9) In regulation 9 (determinations of the standards committee)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (c), for “the relevant authority” substitute “a relevant authority”;
    - (ii) in sub-paragraph (d), after “six months” insert “or, if shorter, for the remainder of that person's term of office”;
  - (b) for paragraph (3) substitute—
 

“(3) After making a determination in accordance with paragraph (1) or (2) the Standards Committee must notify:

    - (a) the person or persons who is or are the subject of the investigation;
    - (b) the person or persons making the allegation of misconduct giving rise to the investigation;
    - (c) the Public Services Ombudsman for Wales; and



- (d) where the Standards Committee has made its determination pursuant to arrangements with the monitoring officer or Standards Committee of another relevant authority, the Standards Committee of that authority.”;
- (c) after paragraph (4) insert—
  - “(5) Notice given under paragraphs (3) and (4) must include reasons for the determination.”
- (10) In regulation 10 (right of appeal)—
  - (a) in paragraph (1), after “that person may” insert “seek permission to”;
  - (b) in paragraph (2)—
    - (i) for “The appeal” substitute “The application for permission to appeal”;
    - (ii) for the words from “to this address” to “CF10 3NQ” substitute “to the president of the Adjudication Panel for Wales”;
  - (c) in paragraph (3)—
    - (i) for “notice of” where it first appears substitute “notice seeking permission to”;
    - (ii) for sub-paragraph (b) substitute—
      - “(b) whether or not permission to appeal is granted, the person seeking permission to appeal consents to the appeal being conducted by way of written representations.”;
  - (d) after paragraph (3) insert—
    - “(4) An application for permission to appeal is to be decided by the president of the Adjudication Panel for Wales or a member of the panel nominated by the president of the Adjudication Panel to exercise this function.
    - (5) Unless the president or the person nominated considers that special circumstances render a hearing desirable, the decision on whether to grant permission to appeal is to be made in the absence of the parties.
    - (6) The president of the Adjudication Panel for Wales or the nominated panel member may, in writing, request further information from the parties.
    - (7) The further information requested in paragraph (6) must be submitted to the president of the Adjudication Panel for Wales or the nominated panel member within a period of 14 days from the date on which the request for further information is received.
    - (8) In reaching a decision on whether to grant permission to appeal, the president of the Adjudication Panel for Wales or the nominated panel member must have regard to whether the appeal or part of it has a reasonable prospect of success.
    - (9) The president of the Adjudication Panel for Wales or the nominated panel member must decide whether to grant permission to appeal and give notice of the decision no more than 21 days after receipt of the application for permission to appeal, or where further information has been requested under paragraph (6), no more than 14 days after the end of the period specified in paragraph (7).
    - (10) The president of the Adjudication Panel for Wales or the nominated panel member must notify the decision in paragraph (8) to:
      - (a) the person seeking permission to appeal;
      - (b) the Public Services Ombudsman for Wales; and
      - (c) the Standards Committee which made the determination that is the subject of the application for permission to appeal.

(11) If permission to appeal is refused the notice given under paragraph (9) must also include the reasons for that decision.

(12) If permission to appeal is granted the president of the Adjudication Panel for Wales or the nominated panel member must refer the matter to an appeals tribunal.”

(11) In regulation 11 (appeals), in paragraph (2)—

- (a) for “the deputy president” substitute “a nominated panel member”;
- (b) for “or deputy president” substitute “or the nominated panel member”.

# CEREDIGION COUNTY COUNCIL



# CODE OF CONDUCT FOR MEMBERS

**Adopted by Council 21<sup>st</sup> April 2016**

**Effective from 20<sup>th</sup> May 2016**

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## INTRODUCTION

Part III of the Local Government Act 2000 (“the 2000 Act”) established a new ethical framework for local government in Wales.

Section 49(2) of the Act provides that the National Assembly for Wales may specify the principles which are to govern the conduct of elected and co-opted members of County Councils and Community Councils in Wales. The principles are contained in the Conduct of Members (Principles) (Wales) Order 2001 and are reproduced on pages 4 and 5. These principles articulate the fundamental values of public service that underpin the conduct of local government members.

Section 50 of the Act provides that the National Assembly may issue a model code as regards the conduct which is expected of elected and co-opted members of County Councils and Community Councils in Wales. Section 50 also enables the Assembly to revise any such model code which has been issued. The model code must be consistent with the principles referred to above.

The Conduct of Members (Model Code of Conduct) (Wales) Order 2001, which came into force on 28 July 2001, prescribed a model code as regards the conduct expected of elected and co-opted members of County Councils and Community Councils. Following a review of the operation of the model code, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (“the 2008 Order”) was made on 20 March 2008 and introduced a revised model code of conduct.

The Local Government Act 2000 provides that County Councils and Community Councils must adopt a Code of Conduct, which includes each of the provisions contained in the model code of conduct, within 6 months from the date on which the Order was made. Ceredigion County Council resolved on 17 April 2008 to adopt the revised model code as its own Code of Conduct with effect from 5 May 2008.

The Local Authorities (Model Code of Conduct (Wales) (Amendment) Order 2016 (No. 2016/84) came into effect on 1st April 2016. These Regulations amend Part III Local Government Act 2000, and consequential provisions in the Local Government (Democracy) (Wales) Act 2013.

The 2016 Order amended the Model Code of Conduct for local government members, set out in the 2008 Order.

In accordance with Section 51 of the 2000 Act, all relevant authorities (including county and community councils) must within 6 months of the date of the 2016 Order was made, adopt the revised Code of Conduct.

On 21<sup>st</sup> April 2016, Ceredigion County Council resolved to adopt the revised Model Code with effect from 20<sup>th</sup> May 2016.

All elected and co-opted members of County Councils and Community Councils must give an undertaking to abide by the code that their authority has adopted.

## **THE PRINCIPLES GOVERNING THE CONDUCT OF ELECTED AND CO-OPTED MEMBERS OF LOCAL AUTHORITIES IN WALES**

*(These do not form part of the Code but are included for completeness).*

### **Selflessness**

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

### **Honesty**

2. 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.

### **Integrity and Propriety**

3. 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.

### **Duty to Uphold the Law**

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

### **Stewardship**

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

### **Objectivity in Decision-making**

6. 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.

### **Equality and Respect**

7. 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.

### **Openness**

8. 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.

### **Accountability**

9. 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.

### **Leadership**

10. 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.



# CODE OF CONDUCT FOR MEMBERS OF CEREDIGION COUNTY COUNCIL

## PART 1 INTERPRETATION

1. (1) In this code —

**“co-opted member”** (*“aelod cyfetholedig”*), in relation to a relevant authority, means a person who is not a member of the authority but who —

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question which falls to be decided at any meeting of that committee or sub-committee;

**“meeting”** (*“cyfarfod”*) means any meeting —

- (a) of the relevant authority,
- (b) of any executive or board of the relevant authority,
- (c) of any committee, sub-committee, joint committee or joint sub-committee of the relevant authority or of any such committee, sub-committee, joint committee or joint sub-committee of any executive or board of the authority, or
- (d) where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990<sup>(1)</sup>,

and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority;

**“member”** (*“aelod”*) includes, unless the context requires otherwise, a co-opted member;

**“registered society”** means a society, other than a society registered as a credit union, which is —

- (a) a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014; or
- (b) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969;

**“register of members interests”** (*“cofrestru o fuddiannau'r aelodau”*) means the register established and maintained under Section 81 of the Local Government Act 2000

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<sup>(1)</sup> S.I. 1990/1553 as amended by S.I. 1991/1389; S.I. 1993/1339; S.I. 1998/1918; and S.I. 1999/500.

**“relevant authority”** (“*awdurdod perthnasol*”) means —

- (a) a county council,
- (b) a county borough council,
- (c) a community council,
- (d) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004<sup>(2)</sup> or a scheme to which section 4 of that Act applies,
- (e) a National Park authority established under section 63 of the Environment Act 1995<sup>(3)</sup>;

**“you”** (“*chi*”) means you as a member or co-opted member of a relevant authority; and

**“your authority”** (“*eich awdurdod*”) means the relevant authority of which you are a member or co-opted member.

**2.** In relation to a community council —

- (a) “proper officer” (“*swyddog priodol*”) means an officer of that council within the meaning of Section 270(3) of the Local Government Act 1972(5); and
- (b) “standards committee” (“*pwylgor safonau*”) means the standards committee of the county or county borough council which has functions in relation to the community council for which it is responsible under section 56(1) and (2) of the Local Government Act 2000.

## PART 2 GENERAL PROVISIONS

**2.** (1) Save where paragraph 3(a) applies, you must observe this code of conduct —

- (a) whenever you conduct the business, or are present at a meeting, of your authority;
- (b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;
- (c) whenever you act, claim to act or give the impression you are acting as a representative of your authority; or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

(2) You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales.

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<sup>(2)</sup> 2004 c.21.  
<sup>(3)</sup> 1995 c.25.

3. Where you are elected, appointed or nominated by your authority to serve —
  - (a) on another relevant authority, or any other body, which includes a Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or
  - (b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
  
4. You must —
  - (a) carry out your duties and responsibilities 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;
  - (b) show respect and consideration for others;
  - (c) not use bullying behaviour or harass any person; and
  - (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.
  
5. You must not —
  - (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
  - (b) prevent any person from gaining access to information to which that person is entitled by law.
  
6. (1) You must —
  - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
  - (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty);
  - (c) report to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;
  - (d) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.

(2) 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.

**7. You must not —**

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of your authority —
  - (i) imprudently;
  - (ii) in breach of your authority's requirements;
  - (iii) unlawfully;
  - (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;
  - (v) improperly for political purposes; or
  - (vi) improperly for private purposes.

**8. You must —**

- (a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by —
  - (i) the authority's head of paid service;
  - (ii) the authority's chief finance officer;
  - (iii) the authority's monitoring officer;
  - (iv) the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

**9. You must —**

- (a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
- (b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

## PART 3 INTERESTS

### *Personal Interests*

- 10.(1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.
- (2) You must regard yourself as having a personal interest in any business of your authority if —
- (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;
- (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.

### ***Disclosure of Personal Interests***

- 11.(1)** 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.
- (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; or
  - (b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should

disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.

- (3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.
- (4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any requirements identified by your authority's monitoring officer or in relation to a community council, your authority's proper officer from time to time but, as a minimum containing -
  - (a) details of the personal interest;
  - (b) details of the business to which the personal interest relates; and
  - (c) your signature.
- (5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.
- (6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.
- (7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

### ***Prejudicial Interests***

- 12.(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business—
- (a) relates to —
    - (i) another relevant authority of which you are also a member;
    - (ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
    - (iii) a body to which you have been elected, appointed or nominated by your authority;
    - (iv) your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;
    - (v) your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;
  
  - (b) relates to —
    - (i) the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;
    - (iii) the functions of your authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;
    - (iv) the functions of your authority in respect of an allowance or payment made in accordance with the provisions of Part 8 of the Local Government (Wales) Measure 2011(6), or an allowance or pension provided under section 18 of the Local Government and Housing Act 1989(7)
  
  - (c) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.
- (3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.



### ***Overview and Scrutiny Committees***

- 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.

### ***Participation in Relation to Disclosed Interests***

- 14.** (1) Subject to sub-paragraphs (2), (2A), (3) and (4), 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 —
    - (i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or
    - (ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;
  - (b) not exercise executive or board functions in relation to that business;
  - (c) not seek to influence a decision about that business;
  - (d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and
  - (e) 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.
- (2) Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

- (2A) Where you have a prejudicial interest in any business of your authority you may submit representations to a meeting in relation to that business, provided that the public are allowed to attend a meeting for the purpose of making representations, answering questions or giving evidence relating to the business, whether under a statutory right or otherwise.
- (2B) When submitting written representations under sub-paragraph (2A) you must comply with any procedure that your authority may adopt for the submission of such representation.
- (3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if —
- (a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or
  - (b) you have the benefit of a dispensation provided that you —
    - (i) state at the meeting that you are relying on the dispensation; and
    - (ii) before or immediately after the close of the meeting give written notification to your authority containing —
      - (aa) details of the prejudicial interest;
      - (bb) details of the business to which the prejudicial interest relates;
      - (cc) details of, and the date on which, the dispensation was granted; and
      - (dd) your signature.
- (4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.

## **PART 4**

### **THE REGISTER OF MEMBERS' INTERESTS**

#### ***Registration of Financial and Other Interests and Memberships and Management Positions***

#### **Registration of Personal Interests**

15. (1) Subject to sub-paragraph (4), you must, within 28 days of —
- (a) Your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or

(b) your election or appointment to office (if that is later),

register your personal interests, where they fall within a category mentioned in paragraph 10(2)(a), in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(2) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any new personal interest falling within a category mentioned in paragraph 10(2)(a) register that new personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(3) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any change to a registered personal interest falling within a category mentioned in paragraph 10(2)(a), register that change in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

(4) Sub-paragraphs (1), (2) and (3) do not apply to sensitive information determined in accordance with paragraph 16(1).

(5) Sub-paragraphs (1) and (2) do not apply if you are a member of a relevant authority which is community council when you act in your capacity as a member of such an authority.

(6) You must, when disclosing a personal interest in accordance with paragraph 11 for the first time, register that personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

### ***Sensitive information***

- 16.** (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) is no longer sensitive information, notify your authority's monitoring officer or in relation to a community council, your authority's proper officer asking that the information be included in your authority's register of members' interests.
- (3) In this code, "sensitive information" ("*gwybodaeth sensitif*") means information whose availability for inspection by the public creates, or is likely

to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

### ***Registration of Gifts and Hospitality***

- 17.** You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority<sup>(4)</sup>, provide written notification to your authority's monitoring officer or in relation to a community council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage.

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<sup>(4)</sup> Ceredigion County Council resolved on 17 April 2008 to specify a value of £21.



## Sanctions Guidance

**Issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000.**

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### **Foreword by the President**

I am pleased to introduce our new *Sanctions Guidance* which sets out the approach to be taken by case, appeal and interim case tribunals of the Adjudication Panel for Wales in order to reach fair, proportionate and consistent decisions on the sanctions that should be applied in relation to an individual's breach of the local Code of Conduct.

The Guidance has been developed by members of the Adjudication Panel for Wales in consultation with the Public Services Ombudsman for Wales, Monitoring Officers and other interested parties. I would like to thank everyone for their contributions. In publishing this Guidance, I hope it will help all those with whom we share an interest in the Code - most importantly members of county and community councils, fire and rescue authorities, and national park authorities in Wales. I hope it reflects the importance we attach to the role of local members, the value of local democracy and the Adjudication Panel's commitment to promoting the highest standards in public life in Wales.

**Claire Sharp**  
**President, Adjudication Panel for Wales**

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## Introduction

1. This Guidance is issued by the President of the Adjudication Panel for Wales (APW) using powers available to her under the Local Government Act 2000<sup>1</sup>. Its primary purpose is to assist the APW's case, appeal and interim case tribunals when considering the appropriate sanction to impose on a member, or former member, who is found to have breached their authority's Code of Conduct.
2. This Guidance describes:
  - i. the role of the ethical framework and Code of Conduct in promoting high public standards amongst members of councils, fire and rescue authorities, and national park authorities in Wales;
  - ii. the role of the Adjudication Panel for Wales (APW) and the purpose of the sanctions regime;
  - iii. the approach to be taken by its tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of sanctions and this Guidance are built on the values that underpin the Code of Conduct, in particular the fundamental importance of promoting the highest standards in local public life. The Guidance aims to assist tribunals in determining sanctions that are, in all cases, fair, proportionate and consistent.
4. The Guidance is not prescriptive and recognises that the sanction decided by an individual tribunal will depend on the particular facts and circumstances of the case. Any examples should be considered to be by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider in addition to this Guidance other factors that they consider necessary and appropriate. Nor does the Guidance affect the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of relevant sections of this Guidance.
5. In setting out the factors to be considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparent approach for the benefit of all parties involved tribunal proceedings. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal is likely to arrive at its decision on sanction.
6. The Guidance seeks to fulfil a wider role and support all those with an interest in maintaining, promoting and adjudicating on the Code of Conduct. It aims to complement the statutory Guidance published by the Public Services Ombudsman for Wales<sup>2</sup>, confirming the expectations on local members in

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<sup>1</sup> Section 75(10) of the Local Government Act 2000 ("the 2000 Act") provides a power for the President of the Adjudication Panel for Wales to issue guidance on how its tribunals are to reach decisions

<sup>2</sup> The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils:

terms of their conduct and emphasising the central importance of public confidence in local democracy. It should be of value to individual members, Monitoring Officers and Standards Committees of county and county borough councils, fire and rescue authorities, and national park authorities in Wales, and the Public Services Ombudsman for Wales.

7. This Guidance comes into effect on 1 September 2018. It is a living document that will be updated and revised as the need arises, following consultation.

## Standards in Public Life

### The Code of Conduct

8. The Local Government Act 2000 introduced an ethical framework to promote high standards of conduct in public life in Wales. The framework's central mechanism is the Code of Conduct. All local authorities, community councils, fire and rescue authorities and national park authorities in Wales must have in place a Code of Conduct. All elected members and co-opted members (with voting rights) must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their term of office.
9. The Welsh Government has issued a model Code of Conduct<sup>3</sup> in order to ensure consistency across Wales and to give certainty to members and the public as to the minimum standards expected. The model Code is consistent with ten core principles of conduct<sup>4</sup> prescribed by the National Assembly for Wales in 2001, which are themselves derived from the Nolan Committee's Principles for Public Life<sup>5</sup>:
  - i. Selflessness
  - ii. Honesty
  - iii. Integrity and Propriety
  - iv. Duty to Uphold the Law
  - v. Stewardship
  - vi. Objectivity in Decision-making
  - vii. Equality and Respect
  - viii. Openness
  - ix. Accountability
  - x. Leadership

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Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

<sup>3</sup> The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008, as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

[www.legislation.gov.uk/wsi/2016/84/pdfs/wsi\\_20160084\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf) and  
[www.legislation.gov.uk/wsi/2016/85/pdfs/wsi\\_20160085\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf)

<sup>4</sup> The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

[http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi\\_20012276\\_mi.pdf](http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf)

<sup>5</sup> Nolan Report "Standards of Conduct in Local Government in England, Scotland and Wales"



Local codes must incorporate any mandatory provisions of the model Code and may incorporate any optional provisions of the model Code. At this time, all provisions of the model Code are mandatory.

### Expectations on local members

10. Members of county councils, county borough councils, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
  - whenever they are acting or present at a meeting of their authority, claiming to act or giving the impression of acting in an official capacity in the role of member to which they were elected or appointed or as a representative of their authority;
  - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute, or if using or attempting to use their position to gain an advantage or avoid a disadvantage for anyone or if they misuse the authority's resources.
11. Members are expected to engage in any training and access ongoing advice, as the need arises, from their local Monitoring Officer and Standards Committee. Members are also expected to be familiar with and have regard to the Public Services Ombudsman's statutory guidance on the Code<sup>6</sup>. It addresses each of the Code's requirements in order to help members understand their obligations in practical terms. It offers advice on the fundamental ethical principles that many members need to consider on a regular basis – for example, declarations of interest, confidentiality and whether their actions constitute bullying or harassment– in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the Code and the Principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

### Allegations of breach

13. There are non-statutory local protocols in place for low-level member-on-member complaints which do not result in case or appeal tribunals. Allegations that a member's conduct is in breach of the Code can be made to the Ombudsman, who will decide whether to investigate a complaint. If, following an investigation, the Ombudsman finds that there is evidence of a breach of the Code, he can refer his report to the relevant local Standards Committee or to the President of the Adjudication Panel for Wales. The Ombudsman may also refer reports from an ongoing investigation to the President for consideration by an interim case tribunal.

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<sup>6</sup> The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

## **The Adjudication Panel for Wales**

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales<sup>7</sup> as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Code. The Panel's operation is subject to regulation by the Welsh Government.

### ***Case tribunals***

15. Case tribunals are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction (if any).

### ***Appeal tribunals***

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may uphold and endorse any sanction imposed or refer the matter back to the Standards Committee with a recommendation as to a different sanction or overturn the determination of the Committee that there has been a breach of the Code. An appeal tribunal cannot recommend a sanction which was not available to the Standards Committee.

### ***Interim case tribunals***

17. Interim case tribunals are appointed by the President to consider a report, and any recommendation to suspend a member, from the Ombudsman during an ongoing investigation into alleged misconduct. The tribunal is responsible for determining the need to suspend, or partially suspend, the member or co-opted member from the authority or a role within the authority. The maximum duration of the suspension or partial suspension is 6 months. Unlike case and appeal tribunals, suspension by an interim case tribunal is a neutral act, given the ongoing nature of the Ombudsman's investigation.

## **The sanctions regime**

18. The Committee on Standards in Public Life<sup>8</sup> had a key role in developing the ethical framework and identified the need for mechanisms to enforce and punish public office holders who breached the standards expected of them, if the ethical framework was to command public credibility. The purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

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<sup>7</sup> Part III, Local Government Act 2000

<sup>8</sup> Reference to the report on enforcement

- provide a disciplinary response to an individual member's breach of the Code;
- place the misconduct and appropriate sanction on public record;
- deter future misconduct on the part of the individual and others;
- promote a culture of compliance across the relevant authorities;
- foster public confidence in local democracy.

19. The sanctions available to a case tribunal that has found a breach of the Code are<sup>9</sup>:

- a. to take no action in respect of the breach;
- b. to suspend or partially suspend the member from the authority concerned for up to 12 months;
- c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

The sanctions available to an appeal tribunal that has found a breach of the Code are:

- d. censure;
- e. to suspend or partially suspend the member from the authority concerned for up to 6 months.

20. The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.

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<sup>9</sup> Section 79, Local Government Act 2000

## **The Tribunal approach – underlying principles**

21. Tribunals must always have in mind that every case is different and requires deciding on its own particular facts and circumstances. Following a finding that the Code of Conduct has been breached, tribunals must exercise their own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors. They must also ensure that the sanctions take account of the following underlying principles in order to ensure that their decisions support the overall ambitions of the ethical framework, fulfilling the purpose of the sanctions, and are in line with the tribunal's wider judicial obligations.

### **Fairness**

22. The tribunal should take account and seek to find an appropriate balance between the various interests of the Respondent/Appellant, the Complainant, other interested parties to a case, the Ombudsman, the authority, the electorate and the wider public.

### **Public interest**

23. Whilst seeking to ensure that the sanction imposed is appropriate, fair and proportionate to the circumstances of the case, the tribunal should consider the reputation of and public confidence in local democracy as more important than the interests of any one individual.

### **Proportionate**

24. Tribunals will take account of the good practice identified in the Ombudsman's Guidance and Code of Conduct Casebook<sup>10</sup> in order to assist their sense of proportionality when determining the sanction appropriate to the scale and/or nature of the breach.

### **Consistent**

25. Tribunals will aim to achieve consistency in their sanctions in order to maintain the credibility of the ethical framework. They will take account of the good practice identified by the Ombudsman (para.24) in addition to this Guidance and its own previous decisions. Where a tribunal panel has reason to depart from the Guidance, it should clearly explain why it has done so.

### **Equality and impartiality**

26. Fair treatment is a fundamental principle for the Adjudication Panel for Wales and is embedded within individual members' judicial oath. Tribunals must ensure that their processes and practices safeguard their capacity for objective, independent and impartial decision-making, free from prejudice and partiality, in order to uphold their judicial responsibilities.

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<sup>10</sup> <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

## Human Rights (Articles 6 and 10)

27. Tribunals must ensure that their processes and practices respect human rights. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Articles 6 and 10 of the European Convention on Human Rights in their deliberations. These articles enshrine the right to a fair hearing and freedom of expression.

28. Article 10 is a key provision when considering possible breaches of the Code. It provides that:

*“10(1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...”*

*10(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 national security, territorial integrity or 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

29. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable. This protection does not extend to gratuitous or offensive personal comment, nor to ‘*hate speech*’ directed at denigrating colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

30. In their consideration of Article 10, tribunals should apply the three-stage approach established by Mr Justice Wilkie<sup>11</sup> in the case of *Sanders v Kingston (No1)* and which applies to both decision about breach and sanction, as follows:

- i. Can the Panel as a matter of fact conclude that the Respondent’s conduct amounted to a relevant breach of the Code of Conduct?
- ii. If so, was the finding of a breach and imposition of a sanction *prima facie* a breach of Article 10?
- iii. If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

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<sup>11</sup> Wilkie J in the case of *Sanders v Kingston No (1)* [2005] EWHC 1145

### **Case and Appeal Tribunals – determining sanction**

31. A tribunal will decide whether or not a sanction is appropriate after considering the facts of a case and finding that an individual has breached the Code of Conduct. In determining any appropriate sanction, the tribunal's approach should be sufficiently broad so as to accommodate its consideration of the various interests of those involved in the case, any specific circumstances of the individual respondent/appellant, the intended purpose of the sanctions available (in particular, the wider public interest) and the tribunal's wider judicial responsibilities.
32. Case tribunals will decide on the appropriate sanction to impose, if any, and the duration of any such sanction; appeal tribunals will consider the appropriateness of the sanction imposed by the Standards Committee.

### **The five-stage process**

33. Case and appeal tribunals will follow a five step process in determining sanction:
- 33.1 assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)
  - 33.2 identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)
  - 33.3 consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)
  - 33.4 consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions; (para.43)
  - 33.5 confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)

### **Assessing the seriousness of the breach**

34. The relative seriousness of the breach will have a direct bearing on the tribunal's decision as to the need for a sanction and, if so, whether a suspension or partial suspension (of up to 12 months) or disqualification (up to 5 years) is likely to be most appropriate. It is important to bear in mind though that appeal tribunals can only recommend a suspension (partial or full) for up to 6 months and cannot recommend disqualification due to the constraints upon its powers.
35. The tribunal will assess seriousness with particular reference to:
- the nature and extent of the breach, and number of breaches;

- the member's culpability, their intentions in breaching the Code, and any previous breaches of the Code;
- the actual and potential consequences of the breach – for any individual(s), the wider public and/or the council as a whole;
- the extent to which the member's actions have, or are likely to have the potential to, bring his/her office or the relevant authority into disrepute.

36. Examples of the way in which tribunals might weight seriousness include:

- a breach involving deliberate deception for personal gain or discrimination is likely to be regarded as more serious than that involving the careless use of a council email address on a personal social media profile;
- a breach involving the systematic harassment or bullying of a junior officer is likely to be regarded as more serious than instances of disrespectful language in the course of a council debate;
- a breach of confidentiality that results in the disclosure of the address of a looked after child is likely to be regarded as more serious than the disclosure of a planning officer's confidential advice;
- a breach resulting in significant negative reputational damage to the office or authority is likely to be regarded as more serious than an inappropriately worded email to a member of the public.

37. Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority's monitoring officer), the deliberate abuse of confidential, privileged or sensitive information for personal gain or that of a close personal associate, and sexual misconduct, criminal, discriminatory, predatory, bullying and/or harassing behaviour are all likely to be regarded as very serious breaches.

38. A member who is subject to a term of imprisonment for three months or more without the option of paying a fine in the previous five years before their election or since their election is automatically subject to disqualification<sup>12</sup>.

### Choosing the potential sanction

39. Having assessed the relative seriousness of the member's breach of the Code, the tribunal will consider which of the courses of action available to it is most appropriate<sup>13</sup>. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact.

#### **No action**

39.1 The tribunal may decide that, despite the member having failed to follow the Code of Conduct, there is no need to take any further action in terms of sanction. Circumstances in which a tribunal may decide that no action is required may include:

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<sup>12</sup> Section 80(1)(d), Local Government Act 1972

<sup>13</sup> Section 79, Local Government Act 2000

- an inadvertent failure to follow the Code;
- an isolated incident with extremely limited potential for consequential harm;
- an acceptance that a further failure to comply with the Code on the part of the member is unlikely, nor are there any wider reasons for a deterrent sanction;
- specific personal circumstances, including resignation or ill health, which render a sanction unnecessary and/or disproportionate.

39.2 A tribunal that finds a breach of the Code but decides that no action is necessary in terms of sanction, should consider whether there is a need to warn the member as to their conduct and/or seek assurances as to future behaviour. This provides an effective means of placing the member's behaviour on record, reflected in the tribunal's written decision, so that the warning and/or reassurance may be taken into account in the event of the same member being found to have breached the Code in the future. A failure to comply with any assurances given to the tribunal may be brought to the attention of the tribunal in any future hearings.

### ***Suspension for up to 12 months***

39.3 A case tribunal may suspend the member for up to 12 months from the authority(ies) whose Code/s has/have been breached.

39.4 Suspension is appropriate where the seriousness of the breach is such that a time-limited form of disciplinary response is appropriate in order to deter such future action, temporarily remove the member from the authority/a role within the authority, safeguard the standards set by the Code and to reassure the public that standards are being upheld.

39.5 A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions. Tribunals are also reminded that the highest sanction available to local Standards Committees is 6 months' suspension. They should bear this in mind when considering an Ombudsman's referral to the Adjudication Panel, in preference to the local Standards Committee, and when considering an appeal against a local Standards Committee sanction. It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee.

39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:

- the member's action has brought the member's office or authority into disrepute but they have not been found in breach of any other paragraph of the Code (though the most appropriate sanction will depend on the specific facts of each case);



- the breach merits a disciplinary response but, in view of the circumstances of the case, it is highly unlikely that there will be a further breach of the Code;
- the member has recognised their culpability, shown insight into their misconduct, and apologised to those involved.

### ***Partial Suspension for up to 12 months***

- 39.7 The tribunal may impose a partial suspension, preventing the member from exercising a particular function or role (such as being a member of a particular committee or subcommittee or the holder of a particular office) for up to 12 months.
- 39.8 Partial suspension is appropriate where the seriousness of the breach merits a suspension (see above) but the circumstances of the case are such that the member is permitted to continue in public office except for the role/function/activity specifically limited by the suspension.
- 39.9 In the case of a partial suspension, the tribunal will need to decide from what role/function/activity the member is to be suspended and, in the case of membership of more than one authority, the impact of the partial suspension in each relevant authority.
- 39.10 Circumstances in which a partial suspension may be appropriate include:
- the member is capable of complying with the Code in general but has difficulty understanding or accepting the restrictions placed by the Code on their behaviour in a specific area of council/authority activity;
  - the misconduct is directly relevant to and inconsistent with a specific function or area of responsibility held;
  - the member should be temporarily removed or prevented from exercising executive functions for the body to which the Code applies.

### ***Disqualification for a maximum of 5 years***

- 39.11 A case tribunal may disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.
- 39.12 Disqualification is the most severe of the sanctions available to a tribunal. It is likely to be appropriate where the seriousness of the breach is such that a significant disciplinary response is appropriate in order to deter repetition, make clear the unacceptable nature of such conduct in public office, underscore the importance of the Code and to safeguard the public's confidence in local democracy. A disqualification of less than 12 months is unlikely to be meaningful (except in circumstances when the term of office of the member is due to expire during that period or is no longer a member).

39.13 Circumstances in which a tribunal may decide that a disqualification is appropriate may include:

- deliberately seeking personal gain (for her/himself, a family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking to disadvantage another by exploiting membership of the authority and/or the authority's resources;
- deliberately disregarding or failing to comply with the provisions of the Code and continuing to assert the right so to do;
- repeatedly failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a second or subsequent breach, despite a warning and/or having given an assurance as to future conduct in a previous case before an Adjudication Panel for Wales tribunal;
- conduct that calls into question the Respondent's fitness for public office;
- bringing the relevant authority into serious disrepute.

#### **Mitigating and aggravating circumstances**

40. The tribunal will go on to consider how any particular circumstances of the member may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the member's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. This process is likely to have significant bearing on the duration of the sanction, varying the term down or up in line with the mitigating or aggravating factors. Such factors may at times be sufficient to persuade a tribunal that a suspension (if any) may be more appropriate than a disqualification, and vice versa.

41. Tribunals are encouraged to work through the examples set out below but are reminded that these are not exhaustive. Where any mitigating/aggravating factor relates directly to the nature or seriousness of the breach and the tribunal has already considered that factor in its choice of appropriate sanction, care should be taken as to the extent to which that factor is included in mitigation/aggravation. For example:

- if the sanction under consideration is a suspension because the conduct is regarded as a 'one off', this factor should not also be regarded as mitigating unless the 'one off' nature of the breach is so exceptional that it should have a direct bearing on the length of the suspension;

- if the breach is regarded as serious because it includes ‘bringing the authority into disrepute’, this factor should not also be regarded as aggravating unless the disrepute is so exceptional as to have a direct bearing on the length of the disqualification.

42. Tribunals should also take care to respect a member’s legitimate right to appeal and to distinguish protestations or assertions made in the course of exercising that right from those actions that might be regarded as aggravating factors designed to obstruct the processes of the Ombudsman or Adjudication Panel.

### ***Mitigating circumstances***

- i. substantiated evidence that the misconduct was affected by personal circumstances, including health and stress;
- ii. a short length of service or inexperience in a particular role;
- iii. a previous record of good service (especially if over a long period of time);
- iv. the misconduct was a one-off or isolated incident;
- v. that the member was acting in good faith, albeit in breach of the Code;
- vi. the misconduct arose from provocation or manipulation on the part of others;
- vii. the breach arose from an honestly held, albeit mistaken, view that the conduct involved did not constitute a failure to follow the Code, especially having taken appropriate advice;
- viii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- ix. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see paragraphs 27-30 above and Aggravating factor xii below);
- x. self-reporting the breach;
- xi. recognition and regret as to the misconduct and any consequences;
- xii. an apology, especially an early apology, to any affected persons;
- xiii. co-operation in efforts to rectify the impact of the failure;
- xiv. co-operation with the investigation officer and the standards committee/APW;
- xv. acceptance of the need to modify behaviour in the future;
- xvi. preparedness to attend further training;
- xvii. commitment to seeking appropriate advice on the Code in the future;
- xviii. compliance with the Code since the events giving rise to the adjudication.

### **Aggravating factors**

- i. long experience, seniority and/or position of responsibility;
- ii. seeking to unfairly blame others for the member's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or close personal associate) benefit or disadvantage for another;
- iv. deliberate exploitation of public office and/or resources for personal (for her/himself, a family member or close personal associate) or political gain;
- v. abuse or exploitation of a position of trust;
- vi. repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
- vii. dishonesty and/or deception, especially in the course of the Ombudsman's investigation;
- viii. lack of understanding or acceptance of the misconduct and any consequences;
- ix. refusal and/or failure to attend available training on the Code;
- x. deliberate or reckless conduct with little or no concern for the Code;
- xi. deliberately or recklessly ignoring advice, training and/or warnings as to conduct;
- xii. the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others (see paragraphs 27 – 30 above);
- xiii. obstructing and/or failing to co-operate with any Ombudsman's investigation, Standards Committee, and/or the Adjudication Panel for Wales's processes;
- xiv. refusal to accept the facts despite clear evidence to the contrary;
- xv. action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xvi. failure to heed previous advice and/or warnings and to adhere to any previous assurances given as to conduct relevant to the Code.
- xvii. Previous findings of failure to follow the provisions of the Code.
- xviii. Continuing to deny the facts, despite clear evidence to the contrary.

### **Fulfilling the purpose of the sanctions regime**

43. The tribunal may need to consider further adjustments to the chosen sanction or length of sanction in order to achieve an appropriate deterrent effect, for the

individual and/or the wider council membership, or to maintain public confidence. Tribunals will also need to have regard to external factors that may exacerbate or diminish the impact of the chosen sanction.

### ***Public interest***

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.

### ***Eligibility for public office in other relevant authorities***

45. Disqualification will automatically apply to a Respondent's current membership of all authorities to which the Local Government Act 2000 applies, irrespective of whether the other authorities' Codes have been breached. Disqualification will also prevent the Respondent from taking up public office, through election or co-option, on any other authorities to which the Act applies until the expiration of the disqualification period.

46. A suspension will preclude the member from participating as a member of the authority whose Code s/he has been found to have breached but not necessarily any other authorities of which the Respondent/Appellant is a member. Where the facts of a case call into question the member's overall suitability to public office, a disqualification may be more suitable than a suspension.

### ***Former members***

47. 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 can only apply in case tribunals). 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. For appeal tribunals, a censure remains an option.

### ***Financial impact***

48. Tribunals should take into account the financial impact on members of a sanction: during suspension and disqualification, a member will be denied payment of their salary and allowances. The financial impact varies from an annual expenses reimbursement for community councillors to a basic salary

plus expenses for county councillors to the higher salaries paid to leaders of larger councils<sup>14</sup>.

### ***Impact on the electorate***

49. The High Court has recognised that Parliament has expressly provided case tribunals with a power to interfere with the will of the electorate and that such ‘interference’ may be necessary to maintain public trust and confidence in the local democratic process. Tribunals should be confident in their right to disqualify members whose conduct has shown them to be unequal to fulfilling the responsibilities vested in them by the electorate.

50. Suspension has the effect of temporarily depriving the electorate of local representation whereas disqualification triggers a process, either by-election or co-option, to replace the disqualified member.

### ***Timing of local elections***

51. In general, the length of a disqualification should be determined in relation to the nature of the breach and circumstances of the case, and be applied irrespective of the imminence or otherwise of local elections. There may be exceptional times when the duration of a disqualification might have a particularly disproportionate effect on the member. For example: a disqualification of 18 months, imposed in December 2020, would prevent a member from standing for local government election until May 2027, as the period of disqualification would overlap the May 2022 elections by one month. Tribunals should be willing to hear submissions as to why the length of disqualification should be varied, whilst bearing in mind the overriding public interest principle.

### ***Automatic disqualifications***

52. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more (whether suspended or not). That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the case tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification.

### ***Confirming the sanction***

53. Tribunals should confirm their final determination on sanction, notifying the hearing and recording it in the decision notice. Tribunals will make sure that the reasons for their determination, including any significant mitigating and aggravating factors, are included in the full written record of proceedings in order to ensure that the parties and the public are able to understand its conclusions on sanction.

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<sup>14</sup> <http://gov.wales/irpwsb/home/?lang=en>

## Recommendations

54. Case tribunals also have the power to make recommendations<sup>15</sup> to the relevant authority whose Code it has considered about any matters relating to:

- the exercise of the authority's functions
- the authority's Code of Conduct;
- the authority's Standards Committee.

55. The authority to whom the recommendations are made is under a duty to consider them within three months and then prepare a report for the Ombudsman outlining what the action it, or its Standards Committee, has taken or proposes to take. If the Ombudsman is not satisfied with the action taken or proposed, he/she has the power to require the authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them. As such, tribunals are advised to consider their use of this power with care.

## Interim case tribunals – determining sanction

56. Interim case tribunals will decide, after considering a report (including any recommendation) from the Ombudsman on an ongoing investigation into alleged misconduct, whether to suspend or partially suspend, the member or co-opted member from the authority or a role within the authority.

57. Unlike case and appeal tribunals, interim case tribunals are not disciplinary. Interim case tribunals aim to:

- facilitate the Ombudsman's effective and expeditious investigation of the respondent's conduct;
- minimise any disruption to the business of the authority concerned during the investigation;
- maintain the reputation of the authority concerned;
- protect the authority concerned from legal challenge.

58. The powers available to an interim case tribunal<sup>16</sup> are to suspend the Respondent, wholly or partially from being a member or co-opted member of the authority concerned, for not more than six months (or, if shorter, the remainder of the member's term of office). In the case of a partial suspension, the interim case tribunal will need to decide from what activity the respondent is to be suspended.

## Purpose and process

59. Interim case tribunals recognise that no definitive finding has yet been made on the validity of the allegations about the Respondent and that any form of suspension can have a significant impact on a member's role, credibility and finances.

<sup>15</sup> Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

<sup>16</sup> Section 78(1), Local Government Act 2000

60. Interim case tribunals will therefore seek to take the minimum action necessary to ensure the effective completion of the investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The tribunal will only decide on full suspension if its aims cannot be met otherwise.

### ***The nature of the allegation(s)***

61. Interim case tribunals will start by considering the nature of the allegations against the Respondent in order to decide whether, if the allegation were substantiated, a suspension or partial suspension would be an appropriate sanction.

### ***No action***

62. If the tribunal concludes that neither suspension nor partial suspension would follow a finding of breach, it is highly unlikely to make such an order without compelling reasons as to why the Ombudsman's investigation cannot effectively proceed without such action.

63. If the tribunal concludes that a finding on breach would result in a suspension or partial suspension, it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the Ombudsman completing his investigation and referring a final report to the Adjudication Panel for Wales.

### ***Partial Suspension***

64. Partial suspension offers the possibility of safeguarding public confidence in an authority and enabling it to function effectively without depriving the member's constituents of ward representation. Interim case tribunals may wish to draw on the principles that apply to case and appeal tribunals' approach to partial suspension.

65. Partial suspension may be appropriate in circumstances where the allegations are directly relevant to and inconsistent with a specific function or area of responsibility held or the Respondent exercises executive functions for the authority whose Code s/he is alleged to have breached or – the Respondent may be excluded from their specific or executive responsibilities in order to reassure the public whilst not undermining the authority's ability to function effectively or depriving the electorate of their division/ward representation.

### ***Suspension***

66. Suspension is likely to be appropriate if there is a legitimate concern as to any of the following:

- the Respondent may interfere with evidence or with witnesses relevant to the matter under investigation;
- the business of the authority concerned cannot carry on effectively if the Respondent were to continue in office whilst the allegation against him or her



remained unresolved – the tribunal will have particular regard to any breakdown or potential breakdown in relations between the Respondent, other members and/or key staff of the authority;

- the allegations raise issues of such gravity that they jeopardise public confidence in the authority concerned if the Respondent were to continue in office whilst the allegations remained unresolved.

## **Annex: other documents and guidance relevant to tribunals**

Adjudication Panel for Wales : Members Handbook (2017)

Public Services Ombudsman for Wales –The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016)

Equal Treatment Bench Book, Judicial College (as amended)

The Adjudications by Case Tribunals and Interim Case Tribunals (Wales Regulations 2001 No. 2288 (W.176), as amended by the Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)


The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001 No. 2281 (W171), as amended by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 No. 85 (W.39)




Our ref: 202201455 / 202202498

Ask for: Matthew Phelps

Your ref:

 01656 641177

Date: 14 May 2024

 Matthew.Phelps  
@ombudsman.wales

Ms Debby Jones  
Deputy Monitoring Officer  
Powys County Council  
County Hall  
Spa Road East  
Llandrindod Wells  
Powys  
LD1 5LG

**By Email Only**  
debby.jones@powys.gov.uk

Dear Ms Jones

**Code of Conduct complaint made against Councillor Iain McIntosh of Powys County Council by Mrs Dani French**

Dear Ms Jones

I write further to my report on the investigation of a complaint about Councillor McIntosh dated 20 November 2023 and my decision to refer the matter for consideration by the Council's Standards Committee (our case reference 202201455).

The Committee members will be aware of events regarding social media posts made by a former employee of PSOW, Sinead Cook. I personally took the decision to refer this matter to the Standards Committee for consideration, I recognise, however, that the Committee will want to assure itself of the independence, impartiality and integrity of my investigation as part of the hearing process. I have therefore set out below a note outlining my role as decision maker and the role of my staff during the investigation of this case, which I hope is helpful.

As the Committee will be aware from my Report, the complaint was investigated on my behalf by Matthew Phelps, Investigation Officer in our Code of Conduct Team.

Ms Sinead Cook, Code Team Manager, was Mr Phelps' manager from the date of receipt of the complaint 7 June 2022 until 31 August 2023. As the Code Team Leader, Ms Cook was responsible for the file allocation and regular oversight of Mr Phelps' progression of the case until the end of August.

Following Councillor McIntosh's interview with Mr Phelps & Louise Morland (Investigation Officer), the evidence gathered was analysed by Matthew Phelps, Sinead Cook, Claire Beynon (Head of Service Improvement) & Katrin Shaw (Chief Legal Adviser and Director of Investigations).

On 1 September 2023, as happens from time to time in accordance with the operational needs of our office, we rotated our team leaders and Ms Cook moved to manage a different team in PSOW. On this occasion, the rotation occurred as a result of the retirement of a team leader who managed a Public Service Complaints Investigation Team.

I, as Ombudsman considered and approved the draft report for issue to Councillor McIntosh on 25 September 2023.

On 23 October 2023, Mrs Annie Ginwalla became the manager of the Code of Conduct Team. Annie Ginwalla (and, formerly, Sinead Cook) reports to and is line managed by Claire Beynon.

Following receipt of Councillor McIntosh's comments on my draft report, his comments were then considered by Matthew Phelps, Annie Ginwalla and Katrin Shaw before I considered and approved the final report for issue to Councillor McIntosh and to you as Monitoring Officer for consideration by the Standards Committee. As you are aware, I decided that the evidence gathered during my investigation was suggestive of a breach of the Code of Conduct and that the matter should be referred to the Standards Committee to decide whether Councillor McIntosh breached the Code and if so, what sanction, if any should be imposed.

Please would you bring this letter to the attention of the members of the Standards Committee. A copy of this letter has been provided to Councillor McIntosh. As Ceredigion County Council's Standards Committee is to review this referral on behalf of Powys County Council, I would ask if you could ensure that it is brought to the attention of their Standards Committee.

I will also be sharing a version of this letter to the Monitoring Officer for Bannau Brycheiniog National Park Authority (our case reference 202202498) in respect of the referral made to its Standards Committee also.

Yours sincerely

*M.M. Morris.*

**Michelle Morris**

Ombwdsmon Gwasanaethau Cyhoeddus/Public Services Ombudsman

Cc: Councillor Iain McIntosh

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