

CEREDIGION COUNTY COUNCIL

Report to: **Ethics and Standards Committee**

Date of meeting: **17 January 2022**

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

Purpose of the report: **To review and update the Ethics and Standard hearings procedures**

Background

The “Dealing with Complaints referred to the Ethics & Standards Committee & Hearings Procedures” 2010 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.

Current position

The Independent Review of the Ethical Standards Framework in Wales report (para 1.6) recommended that training be undertaken by Standards Committees on how to hold hearings, to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The report points out that the PSOW accepts the needed for more reference back to Standards Committees when he declines to investigate complaints.

A review of the document has been undertaken to take account of changes in the Regulations (in 2016) and also a comparison of the procedures in place in other authorities to ensure the Council’s current procedures are current, fit for purpose. The revised document Proposed changes are shown in red in Appendix A.

Recommendation(s): **That the Ethics and Standards Committee considers the revised Hearing Procedure document (Appendix 1) and recommends approval by Council**

Reasons for decision: To ensure that the Standards Procedure is up to date and fit for purpose.

Contact Name: Elin Prysor
Designation: Monitoring Officer
Date of Report: 20 December 2021
Acronyms:



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
- 6) 'the Regulations' means the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 as amended (xx),
- (k) 'the Standards Officer' means the officer for the time being appointed by the Council to support the work of the Ethics & Standards Committee

4)Summary of the procedure

1))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.

2)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 5) below.**

3)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 6) below.**

d)The Ethics & Standards Committee will then make an initial determination (**Reg. 7**) either:

- i)that there is no evidence of any failure to comply with the Code of Conduct, or
- ii)that the Member **must be invited** the opportunity 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.**

d)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

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

- i) 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;
- ii) 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;
- iii) 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
 - iv) 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.

(2) 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

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

1) 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

2) The Monitoring Officer will investigate in accordance with the Regulations and may follow such procedures as he or she considers appropriate in the circumstances of the case.

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

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

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

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

- 7) 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.
- 8) 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**.

7) Step 1-Ethics & Standards Committee – Initial Determination Hearing

1) After the Monitoring Officer has:

- a. produced an investigation report in accordance with paragraph **10**;
or
- b. considered the Ombudsman's investigation report in accordance with paragraph **12**

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.

2) 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**

3) If the investigation report is produced by the Ombudsman, the Monitoring Officer will advise the Ethics & Standards Committee, **as Advising Officer**.

4) 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**.

5) The business of the Ethics & Standards Committee **Initial Determination** hearing will be limited to:

- i) considering the investigation report
- ii) and the Monitoring Officer's recommendations (if any) and
- iii) to making an initial determination either:-

- (a) that there is no evidence of any failure to comply with the Code of Conduct, or
- (b) 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.

9) Step 2-After the first meeting of the Ethics & Standards Committee

1)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 8(a) above**

2)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 8(b) above and Step 3 below**

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

- 1) 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;**

1(B) the Committee will decide whether the Investigating Officer should be asked to attend the Hearing to present the report and explain any matters within it.

- 2) 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.**
- 3) The Standards Officer will send a copy of the Member's response under paragraph **20** 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**
- 4) 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**
- 5) The following information will be sent of the mamebrs of teyh Committee, The member and the Investigation Officer in advance of the hearing:

 - **Investigating Officers report**
 - **Mamebrs response**
 - **Any further response from the Investigating Officer**

- An outline of main facts agreed /not agreed
- List of witnesses
- Whether the member will be at the hearing and whether represented
- Procedure for the hearing.

Step 4 The hearing-Procedure

Principles

The Ethics & Standards Committee:

1)

- 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.
- It must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings.
- decide factual evidence on the balance of probabilities.
- consider any criteria established to assist the Committee to ensure consistency in decisions.

2) 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.

3)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.

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

4) 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

4)The procedure at the meeting shall be as set out below, subject to the Chair making such changes as he or she thinks fit in order to ensure a fair and efficient hearing.

Introduction

1The 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

- 2) 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:
- Whether public or press should be excluded from the hearing or parts of it
 - Any new matters arising since the agenda was prepared
 - 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.
 - 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.
 - 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 long time.
 - No cross-examination of witnesses will be allowed. Questions must be directed through the Chair.

Second stage: Making findings of fact-

- 3) The Ethics & Standards Committee will then consider whether or not there are any significant disagreements about the facts contained in the investigation report.
- 4) 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.
 - (c) the Member will then be invited to present their case and make representations in support 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.
- 5) At any time, the Ethics & Standards Committee may question any of the people involved or any of the witnesses.

6) If the Member disagrees with any relevant fact in the investigation report, without having given prior notice of the disagreement, he or she 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 he or she is not already.
- (d) **The Investigating Officer and Member will have an opportunity to sum up.**

- 7) At the conclusion of the representations as to matters of fact, the Ethics & Standards Committee will retire to deliberate in private on the representations,
- 8) The **Ethics & Standards Committee will reconvene and** the Chair of the Ethics & Standards Committee will announce their findings of fact.

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

- 9) The Ethics & Standards Committee will then consider whether, based on the facts it has found, the Member has failed to comply with the Code.
- 10) 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.
- 11) 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, he or she has failed to comply with the Code of Conduct.
- 12) The Ethics & Standards Committee may, at any time, question anyone involved on any point they raise in their representations.
- 13) The Member will be invited to make any final relevant points **and offer any mitigation**
- 14) The Ethics & Standards Committee will retire to deliberate in private on the representations and decide whether or not the Member has failed to comply with the Code of Conduct.
- 15) **The Ethics & Standards Committee will consider what sanction is required.**

16) The Ethics & Standards Committee will reconvene and the Chair of the Ethics & Standards Committee will announce their findings.

Fourth stage: Action to be taken

17) 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

18) 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.

19) The Ethics & Standards Committee will retire to deliberate in private on the representations to consider sanctions and decide either that:

20)

- (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.

21) The Ethics & Standards Committee will reconvene and the Chair of the Ethics & Standards Committee will announce their decision.

22) After making a decision 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 (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

a) Failure to make representations / attend the hearing

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

- i. 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
- ii. give the Member a further opportunity to make representations

23) 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.

b) Illness or incapacity

24) 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.

3) Suspension

25) A period of suspension or partial suspension 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

26) 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 may be required in accordance with the Regulations.**

27) An appeals tribunal may endorse the decision of the Ethics & Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the decision.

28)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.

29)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

30)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.

31)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 he or she pays 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

32)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

2021.

MO 20.12.21