

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