

Due to the current heightened security level at all our premises, Members are reminded to wear their identity badges whilst attending meetings. Any visitors must produce photographic identification at Reception.

## **FIRE & RESCUE AUTHORITY SUMMONS**

### **STANDARDS COMMITTEE**

You are required to attend a meeting of the South Wales Fire & Rescue Authority Standards Committee to be held on **Starleaf – Access Code: 4516985188** on **Monday 7 February 2022 at 1630 hours**.

**Please ensure you join the meeting 15 minutes prior to meeting time.**

**Any issues please contact 01443 232000.**

### **A G E N D A**

1. Roll Call
2. Apologies for Absence
3. Declarations of Interest

Members of the Standards Committee are reminded of their personal responsibility to declare both orally and in writing any personal and/or prejudicial interest in respect of matters contained in this agenda in accordance with the provisions of the Local Government Act 2000, the Fire & Rescue Authority's Standing Orders and the Members Code of Conduct

4. To receive the minutes of:
  - Standards Committee held on Monday 1 February 2021 3
5. Independent Review of the Ethical Standards Framework 11
6. Public Services Ombudsman for Wales – Annual Report and Accounts 2020/21 69

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**Signature of Proper Officer:**



## **MEMBERSHIP**

Cllr	G	Holmes	Labour
Cllr	A	Roberts	Labour
Cllr	J	Williams	Conservative
Mr	R	Alexander	Independent Lay Member
Mr	S	Barnes	Independent Lay Member
Mr	D	Fussell	Independent Lay Member
Mr	G	Hughes	Independent Lay Member
Dr	M	Kerbey	Independent Lay Member

## SOUTH WALES FIRE & RESCUE AUTHORITY

### MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON MONDAY 1 FEBRUARY 2021 16:30 hours VIRTUALLY VIA STARLEAF

#### 91. PRESENT:

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Mr G Hughes		Independent Lay Member
Mr R Alexander		Independent Lay Member
Mr S Barnes		Independent Lay Member
Dr M Kerbey		Independent Lay Member
Councillor J Williams	16:42	South Wales Fire & Rescue Authority
Councillor A Roberts		South Wales Fire & Rescue Authority

#### APOLOGIES:

Mr D Fussell	Independent Lay Member
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#### ABSENT:

Councillor J Harries	South Wales Fire & Rescue Authority
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**OFFICERS PRESENT:** DCO S Chapman – Monitoring Officer, Ms S Watkins – Deputy Monitoring Officer

The Monitoring Officer advised that, due to the necessity for virtual meetings during the Covid pandemic it was not possible for members of the public to attend. Therefore, all Fire and Rescue Authority meetings, including the Standards Committee meeting, are being recorded. This will enable members of the public to access the meeting should they wish to.

Cllr. Williams queried whether F&RA Members were aware of the Independent Remuneration Panel for Wales (IRPW) Annual Report. The Monitoring Officer confirmed that the IRPW Annual Report was presented to F&RA members at their meeting in December.

#### 92. DECLARATIONS OF INTEREST

No declarations of interest were made.

The Chair queried how practical it is to expect declarations of interest to be made orally and in writing.

The Monitoring Officer explained that in addition to the general declarations of interest made on commencement in role (and reviewed each year for FRA members) declaration of interests must be given orally at the meeting, with written declaration submitted via email. It was noted that declaration of interests

was required only in respect of items relevant to the agenda that were being considered at each meeting.

### **93. MINUTES OF PREVIOUS MEETING**

The minutes of the Standards Committee meeting held on 3 February 2020, were received and accepted as a true record of proceedings.

#### **93.1 MATTERS ARISING**

- 93.1.1 With reference to 85.1.2 of the minutes the Monitoring Officer confirmed that all members of the F&RA had received a copy of the 'Social Media Guidance for Councillors'.
- 93.1.2 With reference to 85.1.2 of the minutes the Monitoring Officer confirmed that the clause *'Individuals had 20 working days to raise an appeal to the Ombudsman's Office'* was included but it was noted there was discretion outside of this time period.
- 93.1.3 With reference to 85.1.4 of the minutes the Monitoring Officer confirmed that Committee Members' disappointment in relation to not progressing with the Network of Standard Committee members was relayed to herself as requested. She confirmed that this year's Standards Conference is scheduled to take place in October, it is hoped that this issue may be covered within that Conference as well as other areas identified by Members such as training and development, equalities training, etc.
- 93.1.4 With reference to 86.2 Mr Alexander confirmed that he forwarded his request to the Vale of Glamorgan Council, although he had not received any response. Mr Alexander advised he would chase up.
- 93.1.5 With reference to 87.2 the Monitoring Officer confirmed that there is no requirement for the Standards Committee to produce an annual report.
- 93.1.6 With reference to 90.3 the Monitoring Officer advised that due to the Covid pandemic, consideration has not yet been given to training courses for Members. She confirmed that should there be any areas of training not covered within the Standards Conference consideration will be given to providing training by officers and specialists within the Service such as Equalities Training.

Mr Alexander emphasised the importance of training advising that it is fundamental to the way the Committee works. He acknowledged that the practicalities of providing training during the Covid pandemic would have been difficult, but advised that he is aware of a number of Standards Committees who still received training virtually. He added that he would not wish for training opportunities to be lost as we move out of lockdown.

The Chair agreed with Mr Alexander's comments and queried whether virtual training has been carried out for fire and rescue service staff during the pandemic. The Monitoring Officer confirmed that the Authority has a statutory duty to ensure skills and competency training for operational staff is provided, this has been the main focus during the pandemic. She added that face to face risk critical training has taken place but has taken more resources as groups need to be smaller, also recruits course capacity have been halved due to social distancing restrictions.

The Chair acknowledged the requirement for physical training to take place but queried whether any virtual training has taken place such as diversity training. The Monitoring Officer confirmed that diversity training and other areas of training such as data protection are carried out electronically via a training platform.

The Chair queried whether virtual training for members is being carried out by other organisations. The Monitoring Officer was unaware of any training being provided, but agreed to enquire with partners.

93.1.7 With reference to 90.6 of the minutes, the Monitoring Officer confirmed that the reporting of a complaint by the Monitoring Officer of a Fire & Rescue Authority to a Monitoring Officer of a County Council would depend on the nature of the complaint. The Fire & Rescue Authority would deal with a complaint made against a member specifically in relation to their role as a Fire & Rescue Authority member. There would be a requirement to report the complaint to the Members home authority if there was an overlap and/or it in some way related to their role as a local authority member.

93.1.8 With reference to 90.7 of the minutes the Monitoring Officer confirmed that Committee members will receive notification

of any complaints received, but was pleased to confirm no complaints had been receive this year.

#### **94. ADJUDICATION PANEL FOR WALES ANNUAL REPORT 2019-20**

The Monitoring Officer presented the Adjudication Panel for Wales (APW) Annual Report 2019-20.

Members felt that the presentation of data within the APW report was very confusing with the Chair commenting that the number of references and number of appeals did not seem to add up. It appears there have been no appeals since 2016/17, yet there has been five references within the last three years. The Monitoring Officer advised that the Panel have a limited remit, dealing with the most serious of references. It was also highlighted that cases will not always be concluded in the same year as they are referred.

The Monitoring Officer highlighted the case studies as an opportunity for learning.

#### **RESOLVED THAT**

Members noted the Adjudication Panel for Wales Annual Report 2019-20.

#### **95. ADJUDICATION PANEL FOR WALES PRACTICE DIRECTION**

The Monitoring Officer advised Members of the content of the practice direction in relation to processes of the APW.

The Monitoring Officer noted that the APW are being more proactive in issuing guidance and direction, with this being the first practice direction they have issued.

#### **RESOLVED THAT**

Members agreed to note the Adjudication Panel for Wales Practice Direction.

#### **96. ADJUDICATION PANEL FOR WALES PRESIDENTIAL GUIDANCE**

The Deputy Monitoring Officer advised Members of the APW Presidential Guidance issued in September 2020.

Mr Barnes was interested to note that the Monitoring Officer can choose to appear and assist tribunals in a neutral role.

The Chair queried whether the Monitoring Officer would in fact be the Prosecuting officer at these tribunals.

The Monitoring Officer confirmed that the Monitoring Officer would not be the Prosecuting Officer in these instances, these are generally references from the Public Services Ombudsman. The only instance where a Monitoring Officer would have difficulty in assisting in a neutral role would be if the Monitoring Officer instigated the complaint and it was in relation to themselves.

## **RESOLVED THAT**

Members noted the Adjudication Panel for Wales Presidential Guidance.

### **97. INDEPENDENT REMUNERATION PANEL FOR WALES' DRAFT ANNUAL REPORT – FEBRUARY 2021**

The Deputy Monitoring Officer brought to Members' attention the relevant sections of the Independent Remuneration Panel for Wales (IRPW) Draft Annual Report that relates to payments to Members of Welsh Fire & Rescue Authorities.

She drew member's attention to the recommendation that increases be made to the basic salary for F&RA members' for 2021/22. Also of note, the Panel has reviewed the contribution allowed to members when providing formal or informal care to members of their household. Clarification has been requested whether this applies to an individual living in the same home.

Mr Alexander advised that the Remuneration Board for Welsh Parliament have determined that costs for informal care arrangements cannot be claimed unless there are invoices to support it, thus, care cannot be provided by a family member through an informal arrangement.

The Monitoring Officer thanked Mr Alexander for this information, advising that when seeking clarification from IRPW on this specific issue they have advised they would provide further information after the consultation period had closed and they had considered the responses.

The Monitoring Officer confirmed that the draft IRPW Annual report is published in November and was reported to F&RA members at their December meeting. She confirmed that the final version of the IRPW annual report has not yet been published.

Mr Kerbey queried whether there is a requirement for members to undergo training prior to being able to attend meetings. The Monitoring Officer confirmed that all members undertake induction training but it is not a statutory requirement that this be undertaken prior to them attending a meeting. She further advised that wherever possible bespoke training relevant to the F&RA is provided to members, also ensuring they are not duplicating training already provided by their home authorities.

Mr Alexander was interested to note that one individual appears to hold membership of the IRPW and the APW, noting this made reference to “cross ticketing”. The Chair commented that he would expect any vacancies to be filled via open competition. The Monitoring Officer agreed to make discreet enquiries as to if this was one and the same person.

## **RESOLVED THAT**

- 97.1 Members agreed to note the extract of the Remuneration Panel for Wales’ Draft Annual Report, attached at Appendix 1, which provides details of payments to Members of Welsh Fire & Rescue Authorities.

## **98. PUBLIC SERVICES’ OMBUDSMAN FOR WALES – ANNUAL REPORT AND ACCOUNTS 2019/20**

The Deputy Monitoring Officer presented Members with extracts from the Annual Report and Accounts for the Public Services’ Ombudsman for Wales for the year ending 31 March 2020, in respect of Members’ Code of Conduct matters.

## **RESOLVED THAT**

Members noted the content of the report.

## **99. PUBLIC SERVICES’ OMBUDSMAN FOR WALES – CODE OF CONDUCT CASEBOOK**

The Monitoring Officer presented to Members the Public Services’ Ombudsman for Wales Code of Conduct Casebook, issue 23.

The monitoring Officer advised that the Code of Conduct Casebook is published on a quarterly basis, but due to the pandemic she suspects this has been delayed. She will investigate whether there are any due to be published for 2020.

## **RESOLVED THAT**

- 99.1 Members noted the content of the Ombudsman Code of Conduct Casebook, issue 23, published by the Public Services’ Ombudsman for Wales.
- 99.2 The Monitoring Officer investigate whether Code of Conduct Casebooks are due to be published for 2020.

## **100. STANDARDS CONFERENCE WALES: OCTOBER 2021**

The Monitoring Officer advised Members that this year's Standards Conference Wales will be held virtually in October 2021, date to be confirmed. Further details to be provided as they are received.

The Monitoring Officer advised that with the Conference being held virtually, it is hoped to accommodate more attendees. Earlier comments regards social media training will be taken on board and fed through as relevant

The Chair commented that holding the Conference virtually negates the need for travelling which is always a benefit but also suggested hybrid groups at certain locations as a way forward to cater for some individuals who prefer some face to face contact.

The Monitoring Officer will raise the option of forming hybrid groups with the organisers.

Mr Alexander agreed with the Chair's suggestion of hybrid groups at a number of locations, requesting that thought be given to actual locations by the organisers, and that early notification of Conference arrangements be received by members.

Mr Alexander added that it is his understanding that the contract of the current Ombudsman has been extended due to the pandemic, adding that the appointment of a new Ombudsman later this year could see opportunities for change for the future.

### **RESOLVED THAT**

100.1 Members noted the revised timing and format of the conference.

100.2 The Monitoring Officer will raise the option of forming hybrid groups with the organisers

100.3 The Monitoring Officer to provide further details once received from the organisers.

## **101. NOTING OF COMPLAINTS**

The Chair noted that previous minutes do not note that no complaints had been received and felt that this should be highlighted within the minutes.

The Monitoring Officer agreed to add to the minutes of this meeting.

**RESOLVED:**

The Monitoring Officer to note within the previous minutes and the minutes of this meeting that no complaints had been received for the year.

**102 TRAINING NEEDS – UPDATE PLAN**

Mr Alexander reiterated the importance of training for members, adding that he would not like to attend next year's Committee meeting and there be no progress reported.

The Chair noted Mr Alexander's comments and requested that the Monitoring Officer circulate a proposed training plan to members by the end of April.

**RESOLVED:**

Monitoring Officer circulate a proposed training plan to members by the end of April.

**103. VIRTUAL MEETINGS**

Mr Barnes endorsed the virtual format of the meeting adding that he had previously requested his virtual attendance at these meetings. The Monitoring Officer advised that legislation had not been in place to allow virtual attendance, and that emergency legislation was passed to allow virtual attendance due to the Covid pandemic. She advised that the current legislation is due to expire end of May at which time new legislation is due.

The Chair reiterated his preference for a hybrid model which could be utilised for this Committee with the meeting being held at FSHQ for members of the public to attend, with virtual attendance by Committee members should they wish.

**THIS REPORT IS NOT EXEMPT AND IN THE PUBLIC DOMAIN**

**SOUTH WALES FIRE & RESCUE AUTHORITY**

AGENDA ITEM NO 5  
7 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF TEMPORARY DIRECTOR OF CORPORATE SERVICES

**INDEPENDENT REVIEW OF THE ETHICAL STANDARDS FRAMEWORK**

**THIS REPORT IS FOR INFORMATION**

REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

REPORT PRESENTED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

**SUMMARY**

An independent review of the Ethical Standards Framework for Local Government was commissioned to ensure that it remained fit for purpose, was open and transparent, and that it commanded the confidence of all involved with the framework. The findings and recommendations of the first phase of the review is attached at Appendix 1 to this report.

**RECOMMENDATIONS**

That the Standards Committee consider and note the contents of the report.

**1. BACKGROUND**

- 1.1 In March 2021, the Minister for Housing and Local Government announced their intention to commission an independent review of the Ethical Standards Framework for Local Government (ESF). ESF was established by the Local Government Act 2000. The review sought to ensure that it remained fit for purpose, was open and transparent, and that it commanded the confidence of all involved with the framework.
- 1.2 The Independent Consultant commissioned to undertake the review aimed to report to Welsh Government Ministers by the end of June 2021 with the intention that any agreed changes were to be made ahead of the Local Government elections in May 2022.
- 1.3 The review is to be undertaken in two phases. The findings and recommendations of the first phase of the review is attached at Appendix 1 to this report. The second phase of the review will focus on working with

partners and stakeholders to deliver any changes to the ESW that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

- 1.4 The report following the second phase of the review be presented to the Standards Committee when available.

## **2. ISSUE**

- 2.1 The review took evidence on a wide range of topics, looking at, amongst others, the following issues:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff;
- consideration of the current sanctions and whether they are still appropriate

- 2.2 A range of consultees were involved including the Monitoring Officer of South Wales Fire & Rescue Authority.

## **3. IMPLICATIONS**

### **3.1 Community and Environment**

Equality, Diversity and Inclusion	No
Welsh Language	No
Well-Being Of Future Generations (Wales) Act	No
Socio Economic Duty	No
Sustainability / Environment / Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No
Impact Assessment	No

### **3.2 Regulatory, Strategy and Policy**

Legal	Yes
Financial	No
Procurement	No

Corporate Risk	No
Information Management	No
Data Protection / Privacy	No
Health, Safety and Wellbeing	No
Governance & Audit	Yes
Service Policy	No
National Policy	No

- 3.2.1 The Service can expect to be consulted on any proposed changes to the ESW as and when these are received from Welsh Government. The expectation is that these changes shall be in place and operational by the date of the next Welsh Local Government elections in May 2022.

### 3.3 Resources, Assets and Delivery

Human Resources and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

## 4. EVALUATION & CONCLUSIONS

- 4.1 The outcomes of the review can be seen in the attached Appendix 1 under the following headings:

- An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.
- Mandatory training on the Code of Conduct for all members of principal councils and community councils.
- Increased use of local resolution of complaints.
- Extended powers for the Public Services Ombudsman for Wales.
- Changes to the powers and processes of the Adjudication Panel for Wales.
- Consideration of the role of Standards Committees, including their role in relation to town and community councils and whether the

establishment of sub committees has had any impact on the process of supporting community councils and dealing with complaints.

- An analysis of the arrangements and protocols in place within authorities to support Members and staff in preventing the need for issues to: a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.
- Consideration of the current sanctions and whether they are still appropriate.
- Accessibility of the ESW.

## 5. RECOMMENDATIONS

- 5.1 That the Standards Committee consider and note the contents of the report.

<b>Contact Officer:</b>	T/ACO Geraint Thomas T/Director of Corporate Services	
<b>Background Papers</b>	<b>Date</b>	<b>Source/Contact</b>
Local Government Ethical Standards Framework : Review	14 October 2021	<a href="https://gov.wales/local-government-ethical-standards-framework-review">https://gov.wales/local-government-ethical-standards-framework-review</a>
<b>Appendices</b>		
Appendix 1	Independent Review of the Ethical Standards Framework in Wales	

# Independent Review of the Ethical Standards Framework in Wales

**Richard Penn**  
**Independent Consultant**

**July 2021**

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# 1 Executive summary

- 1.1 In March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the ethical standards framework for local government in Wales that was established by the Local Government Act 2000 and which has remained largely unchanged to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework. I was commissioned to undertake this review with the aim to report to Welsh Government Ministers by the end of June 2021. The intention is for any agreed changes to be made ahead of the local government elections in May 2022.
- 1.2 The review was to include:
- an audit of the Codes of Conduct adopted by authorities;
  - an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
  - whether the framework is still fit for purpose;
  - the role of Standards Committees;
  - an analysis of the arrangements and protocols in place to support members and staff;
  - consideration of the current sanctions and whether they are still appropriate.
- 1.3 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome and met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.
- 1.4 The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 1.5 The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and viewed by many as far superior to that currently used in English local government. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations being significantly reduced. The outcome of this first phase of the review builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. The already high ethical standards in Welsh local government would be further enhanced as a result.

- 1.6 My key findings and recommendations for change are detailed in Section 5 of this report and are summarised below:

- ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.

- ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

- ***Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements***

The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision. However, I have proposed a number of amendments to the Code:

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.

- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

*'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'*

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately.

- **Increased use of local resolution of complaints**

The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

- **Restricted reporting orders**

The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask for amendments to the Appeal Tribunal

procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

- ***Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

- There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.
- ***An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

- ***Consideration of the current sanctions and whether they are still appropriate***

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, there is support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

- **Accessibility of the ethical standards framework**

The ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, a member of the public would have great difficulty in finding helpful information if they wished to complain, particularly if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. If the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

## 2 Background and methodology

- 2.1 At a meeting of the Partnership Council for Wales on 1 March 2021 the then Minister for Housing and Local Government discussed a range of issues connected to the implementation of the Local Government and Elections (Wales) Act 2021. One of the issues discussed was her intention to commission an independent review of the ethical standards framework. Council Leaders agreed this was timely in light of the changes to the framework set out in the Act and the time which has elapsed since the framework was first established.
- 2.2 The ethical standards framework in Wales was established by the Local Government Act 2000 and has remained largely unchanged, though there have been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016. The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.
- 2.3 The Local Government and Elections (Wales) Act 2021 which received Royal Assent on 20 January 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. There are a number of provisions which are fundamental to greater transparency and openness between local Councils and communities, and the Act includes measures to combat bullying and harassment amongst elected members and Council staff.
- 2.4 Since the framework was established the Welsh Government has continuously set out its commitment to equality and diversity, including through the making of the Well-being of Future Generations Act 2015. Most recently the Government has published the Gender Equality Review and is currently consulting on its new Race Equality Action Plan.
- 2.5 It is with this new legislation and policies in mind that Welsh Government concluded that the ethical standards framework needed to be reviewed to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework.
- 2.6 In taking this work forward it was seen to be essential to ensure that the local government family in Wales is fully involved in the review and informs the outcome. This should include, but not exclusively, local government members (Principal and Community Councils), monitoring officers, standards committees, heads of democratic services, the Welsh Local Government Association (WLGA), Lawyers in Local Government, One Voice Wales, Society of Local Council Clerks, the Public Services Ombudsman for Wales and citizens/representative organisations. This involvement needed to be demonstrated as part of the outcome of this work.

2.7 The following were the key components of delivery:

- an audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could / should be made to the current arrangements.
- consideration of the role of standards committees, including their role in relation to Community Councils and whether the establishment of sub-committees has any impact on the process of supporting Community Councils and dealing with complaints.
- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and authorities' approach to addressing concerns.
- consideration of the current sanctions and whether they are still appropriate.

2.8 The review will take place in two phases:

- The first phase involved engagement with partners to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase was to be a roadmap for building on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published will also be explored as part of this work.
- Phase two of the work will focus on working with partners and stakeholders to deliver the necessary changes.

2.9 I am a former Chief Executive of two major local authorities in England, and amongst the other posts that I have held since returning home to Wales I was the first NAW Commissioner for Standards from 2000 to 2012.

- 2.10 I welcomed the opportunity lead this review and to collect the widest possible evidence about the strengths and weakness of the current ethical standards framework from those involved in the operation of the framework, how it might be improved and how the requirements of the recent legislation will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 2.11 I was required to produce a report on the review with my findings, conclusions and any relevant recommendations.
- 2.12 I was referred initially to a range of documents in the public domain and in the course of my review I received a large number of other relevant documents, most of which are in the public domain but a number of which were submissions by individual consultees.
- 2.13 My investigation has included a review of all of these documents together with interviews with a wide range of stakeholders involved in the operation of the ethical standards framework in Wales.
- 2.14 I met with:

#### **Welsh Government officials**

Deputy Director, Local Government Democracy Division

Head of Democracy, Diversity and Remuneration Branch

Former Head of the Ethics and Regulations Team

Policy lead, Ethical Standards Framework

Head of Local Government Partnerships Policy

Local Government Partnerships Policy - Community Councils & Regulation

Head of Fire & Rescue Services Branch, Community Safety Division

Head of Landscape & Outdoor Recreation, Economy, Skills and Natural Resources

Head of Welsh Tribunals Unit

#### **Welsh Local Government Association**

Head of Policy (Improvement and Governance)

Policy and Improvement Officer (Democratic Services)

### **One Voice Wales**

Chief Executive

Deputy Chief Executive and Resources Manager

### **Society of Local Councils Clerks**

Wales Policy Liaison Officer

### **Public Services Ombudsman for Wales**

Ombudsman

Director of Policy, Legal and Governance

### **Adjudication Panel for Wales**

APW President

### **Monitoring Officers**

Monitoring Officer of Caerphilly County Borough Council

Monitoring Officer of Cardiff Council

Monitoring Officer of Ceredigion County Council

Monitoring Officer of Conwy County Borough Council

Monitoring Officer of Denbighshire County Council

Monitoring Officer of Flintshire County Council

Monitoring Officer of Gwynedd Council

Monitoring Officer of Monmouthshire County Council

Monitoring Officer of Powys County Council

Monitoring Officer of Rhondda Cynon Taf County Borough Council (written submission)

Monitoring Officer of Vale of Glamorgan Council

Monitoring Officer of Wrexham County Borough Council

Meeting of Monitoring Officers Group

### **Fire and Rescue Authorities**

Monitoring Officer of South Wales Fire and Rescue Authority

### **National Park Authorities**

Monitoring Officer of Pembrokeshire Coast National Park Authority

### **Chairs of Standards Committees**

Mid and North Wales Forum for Chairs of Standards Committees

Chair of Cardiff Standards Committee

Chair of Rhondda Cynon Taff Standards Committee

Chair of Vale of Glamorgan Standards Committee

Chair of Mid and West Wales Fire and Rescue Authority Standards Committee

- 2.15 I thank all those that I interviewed as part of this review for their willingness to share with me openly and comprehensively their experience and their professional observations, opinions and conclusions about the operation of the ethical standards framework in Wales, and what needs to change to ensure that the framework is fit for purpose.

### 3 The current ethical standards framework for local government in Wales

- 3.1 Part III of the Local Government Act 2000 (the 2000 Act) sets out an ethical standards framework for local government in Wales. It created a power for the National Assembly for Wales to issue a Model Code of Conduct to apply to members and co-opted members of all relevant authorities in Wales (a county/county borough council; community council; fire and rescue authority; and a national park authority). This power was transferred to Welsh Ministers by the Government of Wales Act 2006. In 2008 (as amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.
- 3.2 **The Model Code of Conduct** sets out what is required of all elected members in respect of appropriate standards of conduct in public office. For example, the Code requires members to show respect and consideration for others and not to use bullying behaviour or to harass any person. Councillors must act objectively and in the public interest, having regard to the advice of officers, and they must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent or unless required by law to do so.
- 3.2.1 The Local Government Act 2000 empowered the National Assembly to issue principles which those elected to relevant authorities must have regard to when undertaking their role. The Code of Conduct is based on these principles which are designed to promote the highest possible standards of conduct. These principles draw on the 7 Principles of Public Life which were set out in the Nolan Report 'Standards of Conduct in Local Government in England, Scotland and Wales'. Three more principles were added to these: '*a duty to uphold the law*', '*proper stewardship of the Council's resources*' and '*equality and respect for others*'. The current principles were set out in a statutory instrument (1. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166))
- 3.2.2 Members elected to relevant authorities give generously of their time and commitment for the benefit of their communities. The 10 principles provide a framework for channelling that commitment in a way which will reflect well on the Councillor and their authority, and give the local community confidence in the way that the authority is governed.
- 3.2.3 The individual sections of the Code of Conduct are designed to support the implementation of the 10 Principles of Public Life as detailed below.

#### 1. Selflessness

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

#### 2. Honesty

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

### 3. Integrity and propriety

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

### 4. Duty to uphold the law

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

### 5. Stewardship

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

### 6. Objectivity in decision-making

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

### 7. Equality and respect

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

### 8. Openness

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

### 9. Accountability

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

### 10. Leadership

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

- 3.2.4 The Principles are not part of the Model Code of Conduct and failure to comply with the Principles is not of itself indicative of a breach of the Code. However, it is likely that, for example, a failure to adhere to the Principle concerning 'equality and respect' would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.
- 3.2.5 All relevant authorities in Wales were required to adopt the Code in its Model form in its entirety, but could make additions to the Code provided these were consistent with the Model Code. This was intended to give certainty both to elected members and to the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for those elected members who serve on more than one authority and for the general public.
- 3.2.6 All elected members, when they sign the Declaration of Acceptance of Office, confirm that they will comply with their Council's Code of Conduct. It is the member's personal responsibility to ensure that they understand their obligations under the Code and act in a way which shows that they are committed to meeting the high standards of conduct that are expected of them as a member. Ultimately, as a member, they are responsible for the decisions they take and can be held to account for them. However, this does not imply that they can take decisions which breach the Code or which are contrary to advice simply because the decision is theirs to take.
- 3.2.7 The Public Services Ombudsman for Wales has issued very helpful guidance to assist Councillors in deciding when the Code of Conduct applies to them:

- Conduct in public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply when he or she is acting as an elected member or acting as a representative of the Council. However, as there may be circumstances in which a member's behaviour in private life can impact on the reputation and integrity of the Council, some of the provisions of the Code apply at all times. When reaching a decision as to whether the Code applies at a particular time the Ombudsman has regard to the particular circumstances and the nature of the conduct at that time.

- When does the Code apply?
  - whenever a member acts in an official capacity, including whenever they are conducting the business of their authority or acting, claiming to act, or give the impression that they are acting, in their official capacity as a member or as a representative of their authority.
  - at any time, if the member conducts themselves in a manner which could reasonably be regarded as bringing their office or their authority into disrepute or if they use or attempt to use their position to gain an advantage or avoid a disadvantage for themselves or any other person or if they misuse their authority's resources.

- where a member acts as a representative of their Council on another relevant authority, or any other body, they must, when acting for that other authority, comply with their Council's Code of Conduct. When nominated by their Council as a trustee of a charity they are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission.
- if a member is acting as a representative of his or her Council on another body, for example on an event committee, which does not have a Code of Conduct relating to its members, the member must comply with their Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.
- if a member refers to them self as Councillor, the Code will apply. This applies in conversation, in writing, or in the use of electronic media. There has been a significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter. If the member refers to their role as a Councillor in any way or comments that they make are clearly related to that role then the Code will apply to any comments that are made there. Even if the member does not refer to their role as a Councillor, the comments may have the effect of bringing their office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code. The Welsh Local Government Association has produced useful guidance on social media entitled 'Social Media: A Guide for Councillors'. The guidance aims to provide members with a clearer idea about how they can use social media, the possible pitfalls and how to avoid them.
- if a member is suspended from office for any reason, they must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while they are suspended.

3.3 The ethical standards framework in Wales is intended to promote high standards of conduct by Councillors. The **Standards Committees** of principal councils established under section 53 of the 2000 Act have a key role in this regard. They are made up of independent lay members together with elected members of the authority with an independent member as Chair.

3.3.1 The 'general functions' of a Standards Committee are:

- promoting and maintaining high standards of conduct by members of the authority;

and

- assisting members to observe the Code of Conduct adopted by the Council

3.3.2 A Standards Committee also has the following 'specific functions':

- advising the authority on the adoption or revision of a Code of Conduct;

- monitoring the operation of the Code of Conduct;

and

- advising, training or arranging training for members on matters relating to the Code of conduct.

3.3.3 Under other provisions of the 2000 Act, Standards Committees also consider applications by members for dispensation to participate in business for which they have a prejudicial interest. They consider and adjudicate on alleged breaches of the Code of Conduct following investigation by the Public Services Ombudsman or, less often, the relevant Monitoring Officer. Although there has been a tendency for some Committees to see the latter as their key role, their primary focus should be on proactive measures to support members of their Council to maintain appropriate standards of conduct and thereby avoid breaches of the Code. Standards Committees do this through a variety of means, such as working with political group leaders, attending and monitoring Council meetings and reporting annually to Councils on their activities and the standards of conduct within the authority.

3.3.4 The Standards Committee of a principal Council also exercises the above functions in respect of members of Town and Community Councils in its area. However, subject to consultation with those Councils in its area, a sub-committee may be established to undertake all the functions of a Standards Committee in relation to Community Councils. Standards Committees of principal Councils are required to assist members and co-opted members of Community Councils in their area to observe the Code of Conduct, and to arrange for advice and training to be provided. Whilst Community Councillors do not act on decision-making bodies such as Planning Committees they are called upon to take decisions on the allocation of funding from the Council's precept and to offer guidance, drawing on valuable local knowledge, to the County Council about the impact of planning applications. It is imperative that Community Council members are fully aware of the Code of Conduct and its implications for their decision-making and whether they should be involved in making a decision.

3.3.5 When a case is referred to a Standards Committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. Hearings are normally conducted in public unless there are valid reasons for not doing so to promote public confidence in standards in public life. Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke,

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

3.3.6 A member subject to a sanction may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a Standards Committee

3.4 **The Public Services Ombudsman** for Wales has powers to investigate allegations that individual Councillors in Wales have failed to comply with their Council's Member Code of Conduct. A complaint about a failure to comply with the Code of Conduct must be made direct to the Ombudsman, who will decide whether it is appropriate to investigate the matter.

3.4.1 Where the Ombudsman considers a complaint warrants investigation, the investigation will usually be undertaken by the Ombudsman. However, the Ombudsman has powers to refer complaints to the appropriate local authority Monitoring Officer for investigation and determination by the local Standards Committee. The Ombudsman may refer a report on the outcome of an investigation by his office to the relevant Standards Committee or, generally in more serious cases, the Adjudication Panel for Wales.

3.4.2 The Public Services Ombudsman for Wales investigates complaints that members of relevant authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code the Ombudsman uses a two-stage test:

- the first stage is to establish whether there is direct evidence that a breach of the Code actually took place. The level of proof that is required is 'on the balance of probabilities'
- if that first evidential stage is met, at the second stage the Ombudsman considers whether an investigation or a referral to a Standards Committee or the Adjudication Panel for Wales is required 'in the public interest'. Public interest factors include:
  - the seriousness of the breach
  - whether the member deliberately sought personal gain for themselves or another person at the public expense
  - whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
  - whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
  - whether there is evidence of previous similar behaviour on the part of the member

- whether the investigation or referral to a Standards Committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a Standards Committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (the Ombudsman takes account of the outcomes of previous cases considered by Standards Committees across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a Standards Committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

3.4.3 These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case. The Ombudsman has a wide discretion as to whether to begin or continue an investigation. He has revised the two-stage test adopted by his predecessor in order to provide greater clarity on how he will usually exercise his discretion and to secure a degree of consistency and certainty in the decisions that he reaches.

3.4.4 When the Ombudsman has investigated a complaint he may refer the matter to a relevant Standards Committee or to the Adjudication Panel for Wales for determination. This will depend on the nature of and individual circumstances of the alleged breach. When issuing his report the Ombudsman reflects on and analyses the evidence gathered and draws his conclusions as to whether it is likely that a breach of the Code has occurred. However, the authority and responsibility to make a determination of breach rests solely with a Standards Committee or the Adjudication Panel for Wales.

### 3.5 **Local Resolution Process**

Most principal councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there are a number of Community Councils that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code of Conduct or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Ombudsman about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- 3.5.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

### 3.6 **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent tribunal established under Part III of the Local Government Act 2000 that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

- 3.6.1 The Adjudication Panel for Wales has two statutory functions in relation to breaches of the Code of Conduct:

- to form Case or Interim Case Tribunals to consider references from the Public Service Ombudsman for Wales following his investigation of allegations that a member has failed to comply with their authority's Code of Conduct;

and

- to consider appeals from members against the decisions of local authority standards committees that they have breached the Code of Conduct in Appeal Tribunals.

### 3.6.2 The Adjudication Panel for Wales' procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended);

and

- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

3.6.3 The Adjudication Panel for Wales operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the Panel are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the Adjudication Panel for Wales clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Panel. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

3.6.4 Anyone wishing to respond to a reference from the Public Services Ombudsman for Wales or to make an application for permission to appeal to the Adjudication Panel for Wales must complete and send the relevant form to the Panel. At an Adjudication Panel for Wales Hearing the Panel is composed of a legally qualified chairperson and two lay members. Legally qualified members can also sit as a lay member. Panel Hearings are normally held in public and take place close to the authority area. The Adjudication Panel for Wales publishes its decisions on its website. Decisions of Case Tribunals can be appealed on limited grounds to the High Court, and permission to appeal to the High Court must first be sought from the High Court.

3.6.5 When the Public Services Ombudsman refers a case to the Adjudication Panel for Wales its role is to determine whether a member has breached the Code and whether a sanction should be imposed. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

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

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

### 3.7 The role of the **Monitoring Officer** of a principal council

The Monitoring Officer is an officer employed by the County or County Borough Council. Among many other things they advise and assist County Councillors. Monitoring Officers may offer some training and advice to Community Councils in their area. The Monitoring Officer has a significant role in the local resolution process outlined earlier and they will also work closely in advising the Council's Standards Committee.

### 3.8 The role of the **Clerk** of a Community Council

The Clerk has a complex role and advises Community Councillors on relevant legislation, including matters relating to the Code of Conduct and on the Council's Standing Orders. The Clerk will work closely with the Chair to ensure that appropriate procedures are followed at meetings and that all necessary information is available to Councillors so that they may make informed decisions. Clerks may approach their relevant County or County Borough Council's Monitoring Officer for advice and support.

- 3.8.1 The Clerk is an employee of the Council and is not required to abide by the Code of Conduct. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Public Services Ombudsman for Wales cannot consider complaints regarding the performance of the Clerk as this is a matter for the Council as the Clerk's employer.

### 3.9 **Complaints to the Public Services Ombudsman for Wales**

- 3.9.1 In 2019/20 the Public Services Ombudsman received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

	2019/20	2018/19
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	231	282

- 3.9.2 This decrease in 2019/20 related almost wholly to the reduction in complaints made by or against members of Community Councils. The Ombudsman found this encouraging and suggested in his Annual Report for 2019/20 that standards of conduct of members of

these bodies may be improving and/or that the local resolution of issues may be taking place with good effect. Nevertheless, he is still receiving complaints in respect of a small number of Community Councils which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues. When I spoke with him he exemplified this by referring to one complaint he had received that one member of a Community Council had been clicking his biro aggressively at another member. 18% of the Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. The Ombudsman has, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

- 3.9.3 In 2019/20 135 of the 231 complaints considered by the Public Services Ombudsman for Wales concerned Community Councillors, a welcome 18% reduction from the 190 complaints about Community Councilors considered by the Ombudsman in 2018/19. However, whilst the Ombudsman hoped that this was a sign that standards of conduct in Community Councils in particular was improving, and although the Ombudsman's Annual Report for 2020/21 is not yet published, when I spoke with him he gave me advance notice of a 47% rise in the number of complaints he received in 2020/21. He also told me that the early indications are that there will be a further significant increase in the current year (2021/22). He expressed concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view mandatory training of all Councillors combined with increased local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
- 3.9.4 As in previous years, the majority of the Code of Conduct complaints received during 2019/20 related to matters of '*promotion of equality and respect*' (49%) and '*disclosure and registration of interests*' (17%). The Ombudsman expressed concern that these themes continue to dominate and that there has been a year on year increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of principal councils/County and County Borough Councils or Community Councils. He considers that members could benefit from training or refresher training on these subjects although his impression from investigations is that many members of Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.
- 3.9.5 The Ombudsman's view, endorsed by all of those I met with during my review, is that Code of Conduct training is essential to becoming a 'good Councillor', and that members should undertake this training as soon as they become elected/co-opted and that there should be regular refreshment on the provisions and requirements of the Code of Conduct. There is currently no statutory obligation for members of Community Councils to complete such training although they are required to comply with the Code.
- 3.9.6 In 2019/20, 202 or approximately 86% of all Code of Conduct complaints were closed after assessment against the Public Services Ombudsman's two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%). The remaining complaints taken forward to

investigation represented the most serious of the complaints received.

- 3.9.7 During the Ombudsman's investigation, evidence gathered is reviewed to assess whether it remains in the public interest to continue the investigation. Where it appears that investigating a matter is no longer in the public interest, the decision is made by the Ombudsman to discontinue that investigation. Sometimes the investigation finds no evidence of a breach. Finally, when an investigation is concluded, the Ombudsman can determine that '*no action needs to be taken*' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour may be suggestive of a breach of the Code and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned. The Ombudsman made one or the other of these above determinations in 85% of the Code of Conduct investigations in 2019/20.
- 3.9.8 In cases which cannot be concluded in this manner or which point to serious breaches of the Code, it is necessary for the Ombudsman to refer the case to a relevant local Standards Committee or to the Adjudication Panel for Wales for consideration. In 2019/20 5 referrals were made, 2% of all the Code of Conduct complaints that were closed, compared to 8 or 3% in 2018/19. In 2019/20 these referrals were:
- 4 referrals to Standards Committees
  - 1 referral to the Adjudication Panel for Wales
- 3.9.9 The Adjudication Panel for Wales or the relevant local Standards Committee considers the evidence, together with any defence put forward by the member concerned. It then determines whether a breach of the Code has occurred and if so, what penalty, if any, should be imposed.
- 3.9.10 The 4 referrals to Standards Committees in 2019/20 concerned behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct indicating bullying behaviour towards an employee of a contractor of the authority. When the 2019/20 Annual Report was published, the Adjudication Panel for Wales was considering an appeal on the issue of sanction only in that case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. When the 2019/20 Annual Report was published, these two referrals were awaiting determination.
- 3.9.11 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing their authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

3.9.12 Between 2016/17 and 2018/19, the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 88% of referrals by the Ombudsman. In 2019/20 Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by the Ombudsman. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice the Ombudsman's investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

3.9.13 As is clear from these statistics above, the Public Services Ombudsman for Wales makes referrals to a Standards Committee or the Adjudication Panel for Wales only in a very small number of cases, and he does not believe that the case referrals are indicative of a wider decline in member conduct in Welsh local government. Nevertheless, the outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them. Even when the Ombudsman does not refer a case, the investigation is used as an opportunity to promote good practice, and the members investigated are reminded of their obligations under the Code and, where relevant, further training or engagement with the authority to prevent further possible breaches is proposed. Members are also sometimes made aware that the matter could be taken into consideration in the event of any future complaints of a similar nature. The Ombudsman is clear in his report that it is important that innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned should be deployed.

## 4 My findings

4.1 In the course of my review I have met with most of those individuals and organisations that are involved in the operation of the ethical standards framework in Wales. The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and a large number of those that I consulted proposed that '*if it ain't broke don't fix it*'. Many respondents commented that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being significantly reduced, and that the already high ethical standards in Welsh local government could be further enhanced.

### 4.2 The Model Code of Conduct

4.2.1 Clear, relevant, and proportionate Codes of Conduct are central to maintaining ethical standards in public life. Codes of Conduct were identified by the Committee on Standards in Public Life in its first report in 1995 as one of the essential 'strands' in promoting and maintaining ethical standards in public life, at a time when many public sector organisations did not have them. Codes of Conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

4.2.2 The power to issue a Code of Conduct was transferred to Welsh Ministers by the Government of Wales Act 2006, and in 2008 (amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt. In Wales, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a Councillor behaves in a way that could '*reasonably be regarded as bringing [their] office or [their] authority into disrepute*'. This includes any time a Councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. As noted earlier, the Public Services Ombudsman for Wales has also issued guidance of the application of the Code of Conduct to social media use.

4.2.3 I was required as part of this review to conduct an audit of the Codes of Conduct adopted by all the relevant authorities in Wales against the Model Code to identify any local variances and to consider whether the ten 'principles' of conduct are still relevant and whether the Model Code of Conduct needs updating. This would include identification of areas where improvements could/should be made. The Monitoring Officers of all

principal councils, National Parks Authorities, and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a County Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half of local authorities also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

- 4.2.4 Paragraph 17 of the Model Code requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's monitoring officer, or in relation to a Community Council, to the authority's 'proper officer' of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations but a number of authorities have specified a threshold beyond which there must be a declaration. This ranges from £21 to £100 and there is agreement that the threshold should be specified in the Code to ensure consistency across Wales.
- 4.2.5 I was also required to explore options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Local Government and Elections (Wales) Act 2021 to stop Councillors' addresses being published. As I understand it, the law requiring the publication of the home addresses of Councillors was changed in the Local Government and Elections (Wales) Act 2021 so Councils will no longer do this from May 2022. This is for the safety and privacy of members, and reflects the fact that email or phone is now a more usual way of contacting members. However, Regulations issued under the Local Government Act 2000 still require members to include their home address in the Council's Register of Interests so the legislation is not in alignment. There is agreement that the Code of Conduct should not require Councillors to disclose their home address to declare the home address, and that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

*'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'*

- 4.2.6 The Public Services Ombudsman has raised an issue in relation to the definition of '*person*', a term frequently used in the Model Code of Conduct. A '*person*' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Ombudsman has had to rely on the definition in the Interpretation Act 1978 which is '*a body of persons corporate or unincorporate*'. The Ombudsman has been challenged when he has tried to use his powers to obtain information from a company or a charity and he has to threaten and or use powers to formally bring criminal proceedings and or contempt proceedings under current legislation for failing to cooperate with the investigation by the Ombudsman. So a clear definition of what is meant by a '*person*' on the face of the legislation or in the Model Code would be beneficial.

#### 4.2.7 Paragraph 4a of the Model Code of Conduct requires that a member must:

*‘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’*

There is concern that this provision does not include all protected characteristics, and the view from consultees is that even though no problems have resulted as yet from the narrow coverage of this provision it should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

#### 4.2.8 It is clear that there is the potential for breaches of the Code of Conduct resulting from the extensive and increasing use being made by elected members of a range of social media. The Welsh Local Government Association has produced useful guidance on social media in *‘Social Media: A Guide for Councillors’*. The guidance provides members with advice about how to use social media, the possible pitfalls and how to avoid them. It reminds members that whenever something is posted on social media it becomes a publication, and is effectively made a broadcast in the public domain that is subject to both the Code of Conduct and to various laws. The WLGA guidance reminds members that the Code of Conduct applies to members whenever they are *‘Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority’*, and the Code applies if a member conducts them self *‘in a manner which could reasonably be regarded as bringing your office or your authority into disrepute’*. If a member can be identified as a Councillor when using social media, either by the account name or how they are described or by what they comment on and how they comment, the requirements of the Code of Conduct apply. If a member says something that could be regarded as bringing their office or authority into disrepute the Code applies even if the member is not apparently acting in an official capacity or does not identify him or herself as a member. The Ombudsman’s guidance states that:

*‘Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute’*, and in the same way that you are required to act in Council meetings or in your communities you should:

- show respect for others - do not use social media to be rude or disrespectful
- not disclose confidential information about people or the Council
- not bully or intimidate others - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- not try to secure a benefit for yourself or a disadvantage for others

- abide by the law on equality - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010, even as a joke or *'tongue in cheek'*

This helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.

#### 4.2.9 Criminal convictions

6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. It states:

*(You must) '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)'*

In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened until the Monitoring Officer's DBS checks have identified convictions or the matter has been reported in the press. The Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

### 4.3 Training for Councillors

- 4.3.1 Without exception, every individual or organisational representative that I met in the course of this review expressed the view that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. As was demonstrated in the audit of the Codes of Conduct adopted by all the relevant authorities mandatory training on the Code of Conduct is already a requirement of more than half of the principal councils so this would not be a controversial development for members of principal councils. However, although all members of Community Councils are currently required under the 2004 Order to be bound by the Code of Conduct it may be seen as a matter of controversy for them to be required also commit to training without due notice so advice that this is the case could be provided to all those considering standing for

election. Alternatively, it may be easier to amend the Code of Conduct to require those subject to the Code to undergo appropriate training on the Code.

- 4.3.2 If initial and refresher training on the Code is made mandatory there will need to be consideration of how that training can be resourced and delivered. At the moment many Monitoring Officers provide training on the Code of Conduct not only to their own members but also to members of Community Councils in the area. Some of the larger Community Councils arrange the training themselves, often using the training materials developed by One Voice Wales on the Code of Conduct and wider governance matters. Sometimes One Voice Wales provides the training direct but this has resource implications particularly for the smaller Community Councils.

#### 4.4 **Standards Committees and Independent Chairs**

- 4.4.1 I met with a number of Independent Chairs of Standards Committees and also attended a meeting of the North Wales Forum for Chairs of Standards Committees in the course of this review. I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Community Councils in their area. In a number of authorities the Independent Members of the Committee attend meetings not only of their own Council but also meetings of the Community Councils in their area, recording their assessment of the meeting generally and the conduct of members specifically and feeding this assessment back to the Clerk and Chair of the Community Council. They stand ready to intervene if necessary to assist the Council and its Clerk to deal with challenging and inappropriate behaviour by members of that Council and, in one case, the Independent Chair monitors the situation in particularly problematic Community Councils in his or her area and intervenes to 'police' the behavior of the members involved.
- 4.4.2 There needs to be a consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the local situation for the principal authority concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- 4.4.3 The Local Government and Elections (Wales) Act 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. The Act includes a number of provisions which are fundamental to greater transparency and

openness between local Councils and communities, as well as measures to combat bullying and harassment amongst elected members and Council staff. These provisions include:

- a new duty on leaders of political groups in principal councils to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- a requirement for the group leader(s) to co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct across the Council
- new functions for Standards Committees to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties
- a requirement for the Standards Committee to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards. This report at the end of each financial year should describe how the Committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the Council. The Council will be obliged to consider the report within three months of its receipt. This new duty will help to ensure that all Standards Committees adopt good practice and that standards issues are considered regularly (at least annually) by all Council members.
- a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include provision of training on the Code of Conduct at appropriate intervals.

4.4.4 There is seen to be a need for initial training of members of Standards Committee members, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The initial training should be refreshed immediately prior to a case being heard as well.

4.4.5 There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and that the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently would encourage consistency of approach and the adoption of best practice across Wales.

- 4.4.6 The Public Services Ombudsman for Wales accepts that there is a need for more references back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to *'nip things in the bud'* at a local level.
- 4.4.7 I was asked as part of my review to consider whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of its Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

#### 4.5 **Community Councils**

- 4.5.1 There is agreement by all those that I met in the course of the review that local resolution combined with the mandatory training of all members has the potential to provide a means for resolving many issues locally before they get out of hand, and to prevent low-level complaints and 'grumbles' about fellow members turning into formal complaints to the Ombudsman that he either has to deal with or refer back for local consideration. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime must remain in place to deal with instances of serious misconduct.
- 4.5.2 Many of those I have spoken with expressed serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Community Councils. In particular, conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some Councils to retain members and Council officers. Less serious, but nonetheless disruptive behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of Council business. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Community Councils that have given rise to a disproportionate number of complaints in the past. His approach is that bullying and harassment, or lack of respect will simply not be tolerated. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and

inappropriate behaviour, including advice on formulating an effective complaint. This guidance for members of Community Councils emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration.

#### **4.6 Local resolution of complaints**

4.6.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

4.6.2 Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. This provides guidance relevant to Town and Community Councils in formulating and operating such protocols. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

#### **4.7 The Public Services Ombudsman for Wales**

4.7.1 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which Town and Community Councillors operate. Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the

operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of Standards Committees and the Adjudication Panel for Wales. The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

- 4.7.2 Section 69 of the 2000 Act empowers the Public Services Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority's Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman's attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by Standards Committees and the Adjudication Panel for Wales when exercising their respective functions.

#### 4.7.3 The two-stage Public Interest Test

The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman's discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of Town and Community Councils. The Ombudsman has continued to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The Ombudsman considers that the involvement of Standards Committees in applying the two-stage test is impractical, not least as it may be perceived as prejudicing the later consideration of any report of a subsequent investigation that has been referred back to a Committee. It would probably also require primary legislation to make this a function of a Standards Committee or some other person or body. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by Monitoring Officers. However, Monitoring Officers raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively. There is also a reluctance on the part of Monitoring Officers to be involved in the investigation of complaints against members of their own authorities for understandable reasons.

- 4.7.4 A number of consultees expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken, and the validity of the two-stage test was also questioned. The first stage of the test was considered to be objective and based on reasonably clear criteria. However, the second stage 'public interest' test was considered to be subjective and based mainly on the Ombudsman's opinion. It was suggested that the 'public interest' test should be applied by a wider 'audience' appointed for the purpose, such as the Standards Committee of the principal council for the area. There was also concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. The exercise of the Ombudsman's discretion more towards referral than at present would be welcome.
- 4.7.5 There is a concern that the investigations undertaken by the Ombudsman take too long, linked to a concern that the power to suspend the member concerned whilst the investigation is being carried out is not being exercised by the Adjudication Panel for Wales though a referral by the Ombudsman. This can mean that a member facing serious allegations of a criminal nature may still be able to act as a Councillor with potential implications for the safeguarding of members of the public, other Councillors and employees of the local authority. The Ombudsman responded to the concerns about the length of some investigations by pointing to the unavoidable delays resulting from the unavailability of witnesses and the need to gather evidence that had not been included as part of the initial complaint. He also reiterated his concern that too much of his organisation's time and limited resources is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation.

## 4.8 The Adjudication Panel for Wales

- 4.8.1 The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the practices that apply to the Panel. The Panel is a creature of statute created by the Local Government Act 2000 but since devolution the underpinning of the Panel's powers and processes result from a mixture of the LGA 2000 and a variety of Welsh Regulations, particularly The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and The Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (both amended). The Regulations were drafted by the Welsh Government, and it would be for Welsh Government to deliver any policy amendments. In addition, 'practice directions' need the approval of the First Minister and while it is for the President of the Panel to set out new procedures or changes for Appeal Tribunals, the First Minister must agree any changes. Presidential Guidance is a matter for President but it is not legally binding.

### 4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel's work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

#### 4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

#### 4.8.4 Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally. This is seen to avoid delay with the Panel procedure and allow both the accused member and the Tribunal to obtain additional evidence easily.

#### 4.8.5 Appeal Tribunal procedure

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. Service should be by first class post with deemed service rules in place and Panel should be given the express ability to anonymise witnesses. There is a grey area on the subject of witness summons – Case Tribunals expressly have the power to do this through the relevant Regulations but the Regulations for Appeal Tribunals say that the Panel President determines this with the consent of the First Minister. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

#### 4.8.6 Case Tribunal procedure

The Panel President considers that the Regulations are outdated in several respects. Service should be by first class post with deemed service rules in place, the ability to anonymise witnesses is required, and there is a Regulation that says Hearings can only be postponed with seven days notice given to the accused member. The ability to have part public and part private hearings is not expressly permitted currently.

#### 4.8.7 Permission to appeal procedure

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well – it only allows delegation of her power to another legal member if she is absent whereas she would prefer to have discretion about delegation, such as when the accused member is known to her, it requires her to make a decision within 21 days with an extension of time if further information is required but it is not clear from when the new deadline applies, and does not give the Public Services Ombudsman any opportunity to make submissions to the Panel. A Hearing is possible if there are special circumstances, but no extension of time is given to effectively allow this. The President proposes minor amendments to make the process more balanced and sensible.

#### 4.8.8 Sentencing powers

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or

- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

Monitoring Officers have confirmed that they would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

#### 4.8.9 Interim Case Tribunals

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high. This view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The fact is that the Ombudsman has never applied for such a Hearing. The process is lengthy and the LGA 2000 does not explain sufficiently what is required to deal with such hearings. The intention in the Act appears to be to allow an accused member to be suspended for six months (it is unclear whether this is one term of suspension or if it can be renewed on application) while the Ombudsman investigates if that Councillor through their role was interfering with the investigation or if for some other reason it was necessary to suspend on an interim basis. The issue has arisen several times where Councillors are being prosecuted for historic sex offences and there is a strong feeling from Monitoring Officers and Standards Committees that it is inappropriate to continue to remunerate a Councillor who is facing such charges, and that his or her continued activities as a Councillor could endanger members of the public, other Councilors or members of staff. A member who is charged with criminal offences is innocent until proven guilty, and in order for the Ombudsman to make an interim referral there would need to be strong evidence that it is in the public interest for a suspension to be imposed, particularly if the offences are historical. This could be met if, for example, there is evidence that the member represents a risk to the public at large or to a particular group in the locality. A neutral act of suspension akin to the practice in employment matters pending hearings taking place would provide some assurance to the public and to local authorities on the risk that the member concerned could reoffend or misuse their position/standing in the local community whilst being investigated or awaiting criminal trial. In addition, an Interim Case Tribunal would follow the same process as a full Case Tribunal, which means it would take at least three months to have a Hearing, and the Hearing would require a full Panel which would then present difficulties in constituting a new Panel for the final Hearing. There is no assistance in the legislation about how to manage such Hearings and 'public interest' is not defined. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with

the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

*'Where it appears to the Interim Case Tribunal that:*

- a) if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b) and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*
- and*
- c) and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

## **5 Conclusions and recommendations**

5.1 I welcomed the opportunity to lead this review and to collect the widest possible evidence

from those involved in the operation of the ethical standards framework about strengths and weakness of the current framework, how it might be improved and how the requirements of the recent legislation as it relates to ethical standards will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

- 5.2 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome. This involvement needed to be demonstrated as part of the outcome of this work. I have met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.
- 5.3 The first phase of the review involved engagement with those individuals and representatives of organisations to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published have also been considered.
- 5.4 The following were required as key components of delivery:
- *An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances*
  - *An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements*
  - *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.*
  - *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.*
  - *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the*

significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

**5.5.3 *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.***

The consensus is that the current framework is fit for purpose, works well in practice and a number of those that I consulted proposed that *'if it ain't broke don't fix it'*. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate - and superior to the Code of Conduct used in English local government - and not in need of major revision.

However, I have proposed a number of amendments to the Model Code of Conduct in respect of:

- Paragraph 17 of the Model Code that requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the 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. The Code does not specify any threshold for such declarations and a number of authorities have specified a threshold beyond which there must be a declaration. The threshold should be specified in the Code to ensure consistency across Wales.
- The law requiring the publication of the home addresses of Councillors has changed recently so Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. There is agreement that the Code of Conduct should not require Councillors to disclose their home address, and it is proposed that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

*'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'*

- A *'person'* is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Public Services Ombudsman has had to rely in conducting his investigations on the definition in the Interpretation Act 1978 which is *'a body of persons corporate or unincorporate'*. This has caused problems, and it is considered that a clear definition of what is meant by a *'person'* on the face of the legislation or in the Model Code would be beneficial.
- There is concern that the provision in Paragraph 4a of the Model Code of Conduct which requires that a member must:

*'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'*

does not include all protected characteristics. This provision should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

- The potential for breaches of the Code of Conduct as a result of the extensive and increasing use being made by elected members of a range of social media is a matter of concern. The helpful guidance on the use of social media by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened and the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

Every individual or organizational representative that I met proposed that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. The Local Government and Elections (Wales) Act 2021 includes a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include training on the Code of Conduct at appropriate intervals. If initial and refresher training on the Code is made mandatory for all councillors there

will need to be consideration of how that training can be resourced and delivered.

- **Increased use of local resolution of complaints**

Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. Members may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal authority's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Consideration should be given to whether the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

There is concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman has had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. Greater use of the Ombudsman's discretion for referral than is the case at present would be welcomed by Monitoring Officers and Chairs of Standards Committees. The Ombudsman is sympathetic to the view expressed by some of those I spoke with that his investigations take too much time and that too often quite serious complaints are simply not dealt with. He has expressed his concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the processes that apply to the work Panel.

- **Restricted reporting orders**

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically. The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well and proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are limited and the President would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England. The Public Services Ombudsman and Monitoring Officers have confirmed their support for this.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high, and this view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a

test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

*'Where it appears to the Interim Case Tribunal that:*

- a. if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b. and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*

*and*

- c. and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

#### **5.5.4 *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

I was struck by the variation in the way that Standards Committees in Wales see their remit and at the different roles played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs

seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Town and Community Councils in their area. There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, but accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

The Local Government and Elections (Wales) Act 2021 includes a number of provisions that will have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.

There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently that would encourage consistency of approach and the adoption of best practice across Wales.

The Public Services Ombudsman for Wales accepts that there is a need for more reference back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to '*nip things in the bud*' at a local level.

I reviewed whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of the Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Town and Community Councils that have given rise to a disproportionate number of complaints in the past, and guidance prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and inappropriate behaviour. This is an issue that may be mitigated to some extent by a requirement for mandatory training of councillors and greater use of local resolution procedures, but it is a serious problem that will continue to need to be monitored and addressed where necessary by local Standards Committees and Monitoring Officers

**5.5.5 *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

**5.5.6 *Consideration of the current sanctions and whether they are still appropriate***

Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

A member subject to a sanction by a Standards Committee may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination.

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, the Public Services Ombudsman and Monitoring Officers confirmed their support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

#### **5.5.7 Accessibility of the ethical standards framework**

Although this was not an issue raised by any of those that I consulted there is nevertheless a concern that the ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, based on my own experience of searching principal Council websites as well as the Welsh Government website for information about the Code of Conduct, or the work of Standards Committees or how to complain about the conduct of a councillor, a member of the public would have great difficulty in finding helpful information if they wished to complain. And of course not every member of the public has internet access, and some members of the public have particular difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group' such as the traveler community or because of language problems. I have no practical recommendation about how this should be addressed but if the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

- 5.6 The second phase of the review will focus on working with partners and stakeholders to deliver any changes to the ethical standards framework that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

**Richard Penn**

**Independent Consultant**

**July 2021**



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**SOUTH WALES FIRE & RESCUE AUTHORITY**

AGENDA ITEM NO 6  
7 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF HEAD OF CORPORATE SUPPORT

**PUBLIC SERVICES OMBUDSMAN FOR WALES – ANNUAL REPORT AND ACCOUNTS 2020/21**

**THIS REPORT IS FOR INFORMATION**

REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

REPORTED PRESENTED BY HEAD OF CORPORATE SUPPORT

**SUMMARY**

This report presents Members with extracts from the Annual Report and Accounts for the Public Services Ombudsman for Wales for the year ending 31 March 2021, in respect of Members' Code of Conduct matters.

**RECOMMENDATIONS**

It is recommended that Members note the content of the report.

**1. BACKGROUND**

- 1.1 The Annual Report is a combined report addressing matters relating to the dual functions of the Public Services Ombudsman for Wales (the Ombudsman). The link to the full annual report can be found at <https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-Report-and-Accounts-2020-21-Delivering-Justice-FINAL.pdf> . Relevant extracts are attached at Appendix 1. The Executive Summary of the report can be found at Appendix 2.

**2. ISSUE**

- 2.1 There are three main roles to the role of the Ombudsman, which are to investigate complaints about public service providers in Wales, consider complaints about breaches of the Code of Conduct by elected Members, and driving systemic improvement of public services.
- 2.2 With particular reference to Members' Code of Conduct complaints, the Ombudsman may consider complaints about the behaviour of:

- County and County Borough Councils
- Community Councils
- Fire & Rescue Authorities
- National Park Authorities
- Police & Crime Commissioners and Police & Crime Panels

- 2.3 The Annual Report details the performance of the Ombudsman office over the year, provides an update on developments that may have occurred and also delivers any key messages arising from their work carried out during the year.
- 2.4 The Annual Report sets out the workloads that have been dealt with by the Ombudsman office during 2020/21, and breaks this workload down into the number of enquiries received and the number of complaints received. It also breaks down the complaints by those received about public services (public body complaints) and those received in relation to Code of Conduct complaints, which this Committee is concerned with.
- 2.5 The number of Code of Conduct complaints in 2020/21 was 535, an increase of 47% compared to the previous year. Of these, 308 were taken forward for investigation. Complaints about Members of National Parks (2) and Fire Authorities (1) have remained low.

	2020/2021	2019/2020	
Complaints taken forward for investigation	308	231	33% increase
Complaints about Members of Fire Authorities	1	0	100% increase

- 2.6 Of those complaints, the highest number once again related to the promotion of equality and respect (55% compared to 49% in 2019/20); 14% related to the failure to disclose or register interests (17% last year also); 4% related to accountability and openness (11% in 2019/20); 12% related to integrity (up from 10% last year); and 8% related to duty to uphold the law (7% last year). 10 cases were referred to the local Standards Committee (6) or the Adjudication Panel for Wales (4), a 100% increase on the previous year.

Subject of Code of Conduct complaints	2020/2021	2019/2020
Accountability and openness	4%	11%
Disclosure and registration of interests	14%	17%
Duty to uphold the law	8%	7%
Integrity	12%	10%
Objectivity and propriety	5%	2%
Promotion of equality and respect	55%	49%
Selflessness and stewardship	2%	3%

- 2.7 Further statistical data is contained within the Annual Report. However, in general terms, the nature of the complaints were weighted towards those around equality and respect, followed by failure to register or declare interests, and then issues relating to integrity, accountability and openness, which again largely mirrors the position of the previous year.
- 2.8 In 2020/21, 92% of all Code of Conduct complaints were closed after assessment against the two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is higher than the previous year (86%). Of the complaints in 2020/21, the majority (255) were closed under this outcome and a further 10 were withdrawn. These include decisions where there is no prima facie evidence of a breach of the Code and it is not in the public interest to investigate.
- 2.9 The remaining 24 complaints (representing the most serious of the complaints received) were taken to investigation. 5 were discontinued. Of the 19 remaining investigations, 47% (9) were deemed to have no action necessary and 53% (10) were referred.
- 2.10 All the Code of Conduct complaints received were assessed against a two-stage test. Considering whether:
- A complaint is supported by direct evidence that is suggestive that a breach has taken place.
  - It is in the public interest to investigate that matter. Public interest can be described as “something which is of serious concern and benefit to the public”.
- 2.11 Although fewer cases are being referred for investigation, of those that are, the Ombudsman are finding evidence suggestive of a breach of the Code of Conduct in more cases. This suggests that the Ombudsman are using the two-stage test to good effect and identifying more of the most serious cases at the assessment stage.

### 3. IMPLICATIONS

#### 3.1 Community and Environment

Equality, Diversity and Inclusion	No
Welsh Language	No
Well-Being Of Future Generations (Wales) Act	No
Socio Economic Duty	No
Sustainability / Environment / Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No

Impact Assessment	No
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### 3.2 Regulatory, Strategy and Policy

Legal	No
Financial	No
Procurement	No
Corporate Risk	No
Information Management	No
Data Protection / Privacy	No
Health, Safety and Wellbeing	No
Governance & Audit	No
Service Policy	No
National Policy	No

### 3.3 Resources, Assets and Delivery

Human Resources and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

## 4. RECOMMENDATIONS

4.1 It is recommended that Members note the content of the report.

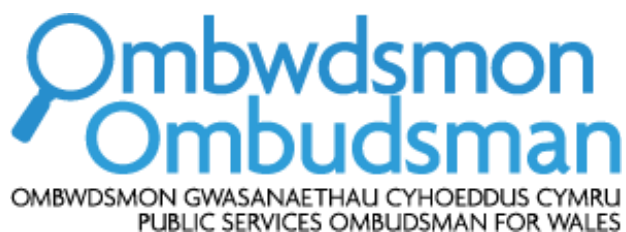
<b>Contact Officer:</b>	Sarah Watkins Head of Corporate Support	
<b>Background Papers</b>	<b>Date</b>	<b>Source / Contact</b>
Delivering Justice The Public Services Ombudsman for Wales Annual Report and Accounts 2020/21		<a href="https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-Report-and-Accounts-2020-21-Delivering-Justice-FINAL.pdf">https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-Report-and-Accounts-2020-21-Delivering-Justice-FINAL.pdf</a>
Delivering Justice The Public Services Ombudsman for Wales Annual Report and Accounts 2020/21 Executive Summary		<a href="https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-report-2020-21-Executive-Summary-FINAL.pdf">https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-report-2020-21-Executive-Summary-FINAL.pdf</a>
<b>Appendices</b>		
Appendix 1	Annual Report and Accounts 2020/21	
Appendix 2	Annual Report and Accounts 2020/21 Executive Summary	



# Delivering Justice

The Public Services Ombudsman for Wales

Annual Report and Accounts  
2020/21



## **Annual Report and Accounts 2020/21**

**of the Public Services Ombudsman for Wales**

**for the year ended 31 March 2021**







Laid before the Welsh Parliament under paragraphs 15, 17 and 18 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019

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## Key Messages

	We have continued to deliver for those who have suffered injustice during the pandemic.
	We are proactive, helping the public sector improve during challenging times.
	We embrace learning and welcome feedback.
	We strive to ensure and promote equality and diversity.
	We pull together and support each other.
	We are accountable and transparent about our performance and use of resources.

## Foreword

### Justice Remotely

Like most of you, I have spent an unanticipatedly large amount of this year working from home, remotely. In fact, this foreword is the first annual report to be composed from my living room.



The coronavirus pandemic has presented all public bodies with new challenges, not least the massive challenges to health and care services, which continue as I write this. My thoughts are with all those servants of the public, the key workers who have not had the option of home working through this crisis.

All our staff have been enabled to work remotely successfully, and I am very grateful to our IT team for facilitating that change so effectively. I am also mindful of the need to thank those small numbers of corporate services and casework support colleagues, who have been going into the office to ensure that certain tasks, dealing with the mail and scanning documents, have continued throughout. We have maintained our service throughout, picking up calls and receiving complaints, whilst also making sure that the office followed the highest standard of social hygiene and distancing.

We saw the first ever substantial reduction in complaints and enquiries coming to the office. However, surprisingly, Code of Conduct complaints about local elected members increased by some 47% during the pandemic. There were high-profile cases, including substantial sanctions applied to individual members in Cardiff and Merthyr. In a year where Handforth Parish Council became a social media viral phenomenon, the office was involved in direct training of a couple of town councils to make sure that they were fully aware of the expectations of the Code and the need to maintain high standards in local public life. We also revised our Code of Conduct guidance.

I am also very grateful to all staff for reducing our case load, continuing to assess, investigate and close complaints during pressing times, lowering our caseload in readiness for the post-pandemic increase in complaints that we are

now experiencing. At the year-end, our case load was lower than any time since 2017, approximately 16% lower than this time last year.

We also worked hard to reduce ageing cases, with only 12 cases over 12 months old - a massive achievement given the challenges faced not only by the office but by bodies in our jurisdiction.

We also made great progress with our new proactive powers, with our first own initiative investigation of homelessness services in Wales launched in January. I was delighted to launch the consultation with the support of Michael Sheen at the Chartered Institute of Housing Tai conference in September 2020. We also used extended own initiative powers in a range of cases including the prostate cancer treatment of 16 patients in North Wales.

The journey to achieving new powers was a basic goal of my period of office. Over the summer of 2020 I was able to write the story from 2014 to 2020 and it was published in the Journal of Social Welfare and Family Law. You can read a version of this story on the [International Ombudsman's Institute's website](#).

Local Authority Complaints Standards came into force on 1 April 2021, and Health Board Complaints Standards from 1 June 2021. Complaints standards training has now been made available to all local authorities in Wales and most health boards. Our work in the housing sector is well under way with a very successful webinar facilitated by TPAS Cymru. Training has been provided to organisations that generate approximately 95% of our complaint volumes, a great achievement under the circumstances.

We published 6 public interest reports in the year as well as our second Equality and Human Rights casebook. Two special reports on Cardiff Council and Powys Health Board raised compliance failures. We continued to engage with the Ombudsman Association, the International Ombudsman Institute, and the Public Service Ombudsman Group, in order to gain insight into how our peers were coping with the pandemic. I was also delighted to address the Administrative Justice Council event on a 'Manifesto for Ombudsman Reform' which provided the opportunity to promote Welsh reforms and share good practice with the broader Ombudsman community. This year the office published **At Your Service**, my fifth thematic report, this time focusing on good practice identified from our casework.

Independent research from Beaufort Research demonstrated that public awareness of the office was higher than ever, having increased by 13% since 2012, and it was higher in North Wales than any other part of Wales. Over-all 85% of respondents felt it was easy to contact the office. However, we remain concerned as an organisation that the proportion of complaints from ethnic minorities and disabled people has reduced and this year we plan specific outreach activities to counter this.

Coronavirus has impacted on us all. At one point in December, despite homeworking, we had 1 in 15 staff infected compared to a rate of 1 in 65 of the public. Some of our clinical and professional advisers were also ill and sadly a valued and highly respected social services adviser lost his life to the virus. Our thoughts are with his family and friends.

As a people-based business, we were delighted to see new talent with diverse backgrounds in audit, insurance and the police join our Audit and Risk and Advisory Committees. Our culture continues to develop, we were delighted to receive Silver Fair Play employer status from Chwarae Teg. This year, in the wake of Black Lives Matter we published our first Race and Ethnicity at Work Charter.

We also took the step of recruiting our first HR Business Partner, a move intended to build on the values-based culture that we have striven to build over the years, but which now seems even more essential as remote working becomes an increasingly likely feature of the 'new normal'.

In January I was privileged and very pleased to see the Senedd vote 48-2 in favour of extending my term of office to March 2022.

Despite all the challenges of the past year, I genuinely feel that this annual report reflects well on the office and our people, and I hope that the following year brings greater 'normality' to all our lives, and less (though not no) working from my front room.

**Nick Bennett**

**Public Services Ombudsman for Wales**

## Snapshot of the Year

### April

'Justice Mislaid' Thematic Report published.



### June

Started our virtual 'walk' from Pencoed to Bangor to promote staff wellbeing during the pandemic.



### August

Race and Ethnicity at Work Charter launched.  
Wellbeing sessions launched for staff.



### October

2 x Public Interest reports published on inadequate health care.



### December

2 x Public Interest reports on failures to implement recommendations from the Ombudsman and missing referral times for treatment.



### February

Welsh Language Standards came into operation.



### May

Investigations into GP and Primary Care cases resumed following positive engagement with the BMA.



### July

Certified Investigative training for case work staff completed.



### September

Complaints Standards training begins for local authorities.



### November

Health Board Complaints Standards launched.



### January

Own Initiative investigation into Homelessness started.  
2 x Public Interest Reports on failings to provide suitable end-of-life care and diagnosis.



### March

'Good Practice' Thematic report published and Public Interest reports on failings in clinical clarity and decision-making and application of lawful planning procedures.



## Our Key Performance Indicators

We measure our performance against a challenging set of Key Performance Indicators (KPIs). The table below presents an overview of our KPIs. We discuss these figures in more detail throughout this Report. You can navigate to the relevant sections of the Report by clicking on the KPI title in the table below.

Key Performance Indicators	2020/21 Target	2020/21	2019/20
<b>1. <a href="#">Complaints about public bodies - decision times</a></b>			
Decision that a complaint is not within jurisdiction < 3 weeks	90%	94%	95%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks	90%	85%	92%
Where we seek early resolution, decision within 9 weeks	90%	88%	94%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	65%	67%
Complaints about public bodies which are investigated – cases closed			
Cases closed within 12 months	85%	52%	81%
<b>2. <a href="#">Code of Conduct complaints – decision times</a></b>			
Decision taken not to investigate within 6 weeks	90%	90%	93%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	76%	86%
Code of Conduct complaints which are investigated - cases closed			
Cases closed within 12 months	90%	50%	88%
<b>3. <a href="#">Customer satisfaction</a>*</b>			
Easy to find PSOW	91 / 98%	85 / 97%	85 / 97%
Service received helpful	63 / 83%	62 / 91%	62 / 91%
Clear explanation of process and decision	65 / 89%	63 / 96%	63 / 96%

\*The results are presented for all respondents (the first figure) as well as those satisfied with the outcome (the second figure).

Key Performance Indicator	2020/21 Target	2020/21	2019/20
<b>4. <a href="#">Compliance</a></b>			
% of recommendations made, due and complied with by public service providers in the year	N/A	74%	72%
Number of compliance visits	6	7	4
<b>5. <a href="#">HR</a></b>			
Completion of PRDP (appraisal) reviews	100%	100%	100%
Employee response to staff survey*	N/A	*	92%
<b>6. <a href="#">Staff training</a></b>			
% of staff achieving target number of days of continuing professional development	95%	77%	93%
<b>7. <a href="#">Staff attendance</a></b>			
Average number of days lost through sickness per member of staff	6.5	3.0	9.0
% of working days lost through staff sickness	2.5%	1.14%	3.4%
% of working days lost through short term sickness	1%	0.62%	1.0%
% of working days lost through long term sickness	1.5%	0.52%	2.4%
<b>8. <a href="#">Financial</a></b>			
Cash repaid to Welsh Consolidated Fund	< 3%	0.4%	1.0%
Unit cost per case	£700	£674	£669
Support costs as percentage of budget	< 5%	4.1%	4.3%
External Audit Opinion on Accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts
Internal Audit Opinion on internal controls	Substantial Assurance	Substantial Assurance	Substantial Assurance
<b>9. <a href="#">Complaints about us</a></b>			
Number of complaints received	N/A	26	36
Number of complaints upheld	N/A	5	7
<b>10. <a href="#">Sustainability</a></b>			
Waste (kg)	26,000	3,988	26,996
Electricity (kWh)	104,000	71,668	104,521

\*No staff survey was carried out this year.

Our casework trends help to highlight some possible changes in performance of public bodies and conduct of elected members. Compared to 2019/20, this year:

<b>16%</b>	We received 16% fewer complaints about public bodies. It is likely that Covid-19 has affected both the number and type of complaints we have received this year.
<b>22%</b>	We saw a 22% fall in new complaints about Health Boards. It is likely that this reduction was as a result of the impact of the pandemic on health services.
<b>20%</b>	We intervened in 20% of the complaints about public bodies, the same as last year. We also referred 3% of complaints about breaches of the Code of Conduct to a Standards Committee or the Adjudication Panel for Wales.
<b>47%</b>	We received 47% more allegations of breaches of the Code of Conduct.

We also work to ensure that we offer the best possible service and that we are accessible to all people who need us. In 2020/21:

<b>51%</b>	51% of respondents to our customer satisfaction survey were satisfied with the service received. This is a reduction on last year's figures.
<b>99%</b>	However, approval rises to 99% amongst those satisfied with the outcome of their complaint.

## Our work at a glance

**61%**

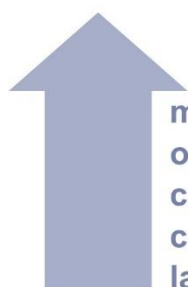
of people contacting us were provided with advice or directed to other sources of help.



**3,774**  
enquiries



**2,409**  
complaints



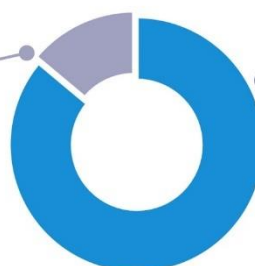
**47%**

more Code of Conduct complaints compared to last year.

### Complaints about

**14%**

Code of Conduct breaches.



**86%**

public bodies.

### Closed complaints about public bodies



**Assessments**

**212** resolved early with the public body

**346** out of our jurisdiction

**658** unable to investigate\*

**471** were made to us prematurely

### Investigations

**248**

### Closed complaints about Code of Conduct breaches

**10** were withdrawn.

**255** closed after initial consideration.



**Assessments**

### Investigations

**24**

During the year we have continued to engage intensely with Local Authorities as part of our Complaints Standards role to drive improvement in public services.

### **Delivering Justice: Reference 202003819**

As a result of the pandemic, a Council required a parent to wear a face mask during contact with his children. He said he was exempt from wearing a mask on health grounds. The Council asked him to provide evidence of his medical condition and, if not wearing a mask, required him to remain 3 metres away from his children during contact. The Council's guidance on Face-to-Face Contact appeared to treat all individuals refusing to wear a face covering in the same way and failed to take account of individual circumstances. This resulted in the complainant being treated differently from others as a result of his condition. The Council agreed to review its guidance to consider whether it complied with Welsh Government Regulations and Guidance and equalities and human rights legislation and amendments were made to the policy.

## **Code of Conduct complaints**

### **New Code of Conduct complaints**

This year we received 535 new Code of Conduct complaints (an increase of 47%) and we took forward for investigation 308 complaints.

<b>Body</b>	<b>2020/21</b>	<b>2019/20</b>
Town and Community Councils	167	135
County and County Borough Councils	138	96
National Parks	2	0
Fire Authorities	1	0
<b>Total</b>	<b>308</b>	<b>231</b>

Whilst complaints about members of National Parks and Fire Authorities have remained low, Town and Community Council complaints have increased by 23.7% and County and County Borough Councils complaints by 43.8%. The latter appears to be of particular concern. However, it should be noted that we received 35 complaints about 1 County Council member. Several investigations are ongoing in respect of those complaints.

Within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

Where we receive, ‘tit for tat’ complaints we will engage with the Council and the Monitoring Officer of the principal authority to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We have provided training with Monitoring Officers to town and community council which are responsible for a disproportionately high number of complaints to our office.

We categorise the subject of the Code of Conduct related complaints based on [the Nolan Principles](#), which are designed to promote high standards in public life. The table below shows the proportion of complaints received under each principle when compared to 2019/20:

Subject	2020/21	2019/20
Accountability and openness	4%	11%
Disclosure and registration of interests	14%	17%
Duty to uphold the law	8%	7%
Integrity	12%	10%
Objectivity and propriety	5%	2%
Promotion of equality and respect	55%	49%
Selflessness and stewardship	2%	3%

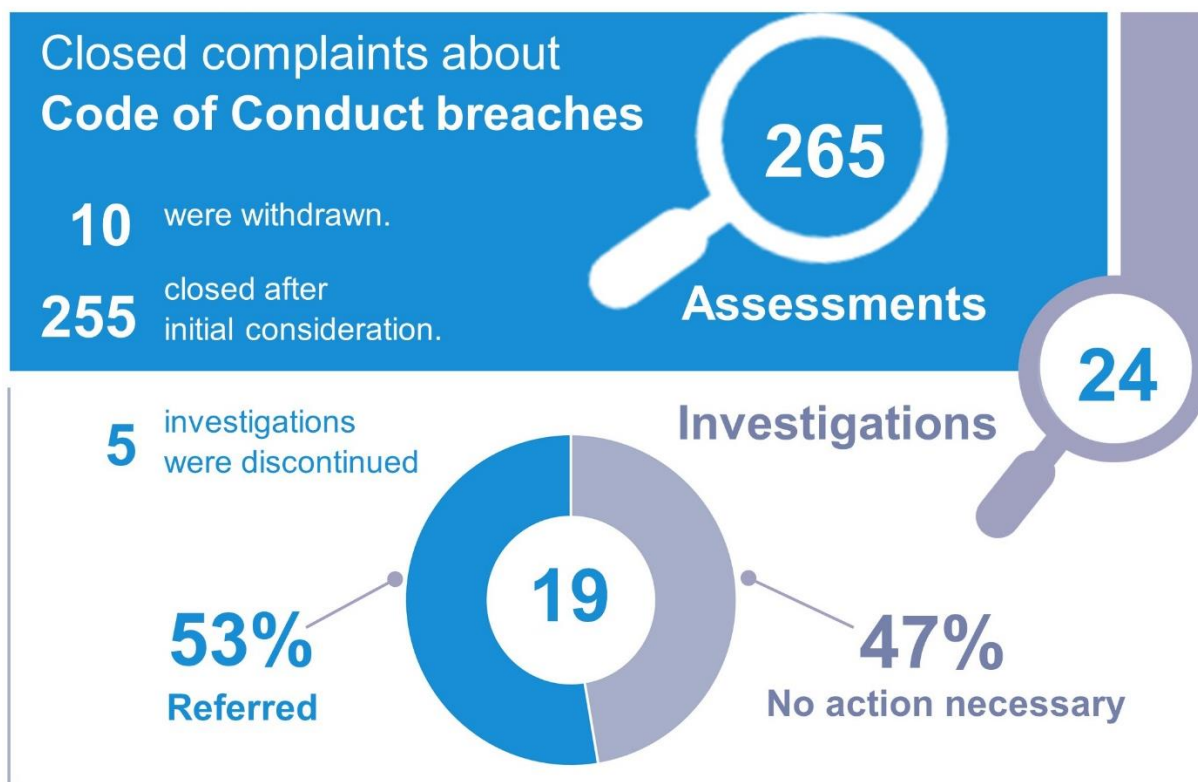
The themes ‘promotion of equality and respect’ (55%) and ‘disclosure and registration of interests’ continue to dominate. There is an annual increase in the number of complaints where bullying behaviour is being alleged.

Code of Conduct training is essential to becoming a ‘good councillor’. Our impression from investigations is that many members of Town and Community Councils often do not take up training opportunities offered on the Code of Conduct. Whilst there is no statutory obligation for members to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

## Closed Code of Conduct complaints

This year we closed 289 Code of Conduct complaints. This represented a 23% increase compared to the previous year. Despite the significant increase in the number of complaints received, closures have almost matched that number.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2020/21.



All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- A complaint is supported by direct evidence that is suggestive that a breach has taken place.
- It is in the public interest to investigate that matter.

Public interest can be described as “something which is of serious concern and benefit to the public”.

In 2020/21, we closed 92% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is higher than the previous year (86%).

The remaining 8% (24) complaints taken forward to investigation represented the most serious of the complaints received. Of these, 10 complaints were referred to the local standards committee or the Adjudication Panel for Wales, a 100% increase on the previous year.

When an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This can be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made such determinations in 58% (14) of the Code of Conduct investigations this year, a significant decrease on the previous year (85%). This reflects that although fewer cases are being referred for investigation, of those that are, we are finding evidence suggestive of a breach of the Code of Conduct in more cases. This suggests that we are using our two-stage test to good effect and identifying more of the most serious cases at the assessment stage.

Cases which feature serious breaches of the Code, are referred to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2020/21 we made 10 referrals (3%) of all the Code complaints that we closed. This is an increase from 2% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'.

## Referrals

In 2020/21 we made:

- 6 referrals to Standards Committees.
- 4 referrals to the Adjudication Panel for Wales.

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

There were 6 referrals to the Standards Committees this year. At the time of writing 5 are yet to be concluded. The matter which has already been considered related to a former member of Laleston Community Council who used Council funds for personal items. The Standards Committee issued a censure, the only sanction available to it as the member had resigned. A Standards Committee also considered 2 cases which were referred to it in the previous year, relating to 2 members of Conwy Town Council who had failed to disclose an interest in business relating to a member of staff who had made a bullying complaint against them which had not been resolved at the time of the events. Both members were suspended for 1 month.

There were 4 referrals to the Adjudication Panel for Wales. 2 have already been considered. The first concerned the conduct and behaviour of a member in relation to their failure to disclose their personal and prejudicial interests and their actions towards a member of staff. In this case the member of Merthyr Tydfil County Borough Council was suspended for 7 months. The second related to Facebook posts made by a member of Sully and Lavernock Community Council, which contained extreme and gratuitous violent references about female politicians. The member was disqualified for 15 months. Two other referrals have been made and are yet to have been considered by the Adjudication Panel.

In 20/21 the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 100% of our referrals.

## Lessons

Despite the increase, we make referrals only in a very small number of complaints. The increase in the number of complaints referred for further consideration in respect of potentially serious breaches of the code last year, is of concern and suggests there has been some decline in member conduct. Of the complaints referred for hearing which are yet to be determined, it is concerning that the complaints suggest disreputable conduct and that some members may have misused their positions as members.

Nevertheless, our investigations and the outcomes of these case referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

We are currently trialling a change in process which we anticipate will reduce the time taken to decide whether a complaint should be investigated and improve overall investigation times. Where appropriate, we also want to give members the opportunity to account for their own actions, even when we do not refer a case for hearing because it does not meet our public interest test.

We use our investigation as an opportunity to promote good practice and training opportunities for members. We have revised and consulted upon our Code of Conduct Guidance for members of local authorities in Wales. [The revised Guidance can be found here.](#)

The new duties in the Local Government & Elections Act 2021 bring welcome additions to the ethical framework, which should help encourage greater local ownership and accountability for conduct matters, when these provisions come into force in May 2022.

We look forward to contributing to the Welsh Government's review of the ethical framework, which in Wales has been in operation for approaching 20 years.

## Timeliness

We are conscious of the need to deliver a timely service. We need to investigate thoroughly, consider the views and comments of complainants and public bodies and draw on professional advice when needed.

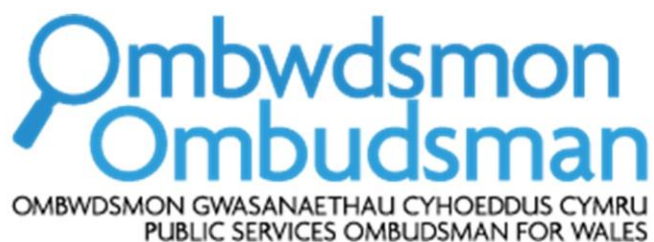
2020/21 proved to be a hugely challenging year. The pandemic affected the ability of public bodies to engage with us on complaints. The switch to our staff working at home was achieved smoothly, but this, coupled with disruption to normal schooling and childcare arrangements of staff, has also affected our ability to progress our casework. We temporarily suspended ongoing health and GP investigations during the early weeks of the pandemic and, mindful of the pressures on public services in the early stages of the pandemic, did not commence new investigations between April and June. This has significantly affected our performance, particularly on the time to start an investigation and to complete our work. The table below shows performance during the year 2020/21.

Key Performance Indicators	2020/21 Target	2020/21	2019/20
Complaints about public bodies - decision times			
Decision that a complaint is not within jurisdiction < 3 weeks.	90%	94%	95%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks.	90%	85%	92%
Where we seek early resolution, decision within 9 weeks.	90%	88%	94%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received.	80%	65%	67%
Complaints about public bodies which are investigated - cases closed.			
Cases closed within 12 months.	85%	52%	81%
Code of Conduct complaints - decision times.			
Decision taken not to investigate within 6 weeks.	90%	92%	91%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received.	90%	76%	86%
Code of Conduct complaints which are investigated - cases closed.			
Cases closed within 12 months.	90%	50%	88%

We measure timeliness from the time we receive sufficient information from the complainant. This is so that our reported performance reflects the experience of complainants. However, it also means that our performance is affected by any delays on the part of public bodies, or our clinical advisers to respond to us, as well as the timeliness of our own work. In 2020/21, these factors have had more than impact usual.

We reported last year on the increased complexity of health complaints and on ongoing older cases that would affect our ability in 2020/21 to meet our target of 85% of maladministration or service failure cases closed within 12 months. In 2020/21 we closed only 52% of investigated maladministration/service failure complaints within 12 months. For Code of Conduct cases this was 50%. We have, however, worked hard during 2020/21 to complete investigations, particularly for older cases. Our year-end complaints caseload was 403, compared with 439 at the end of 2019/20, and our open caseload included only 12 cases over 12 months at the year-end. We recognise the importance of timeliness to complainants, Councillors and public bodies, and we will have a continued focus on this in the year ahead.

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# Delivering Justice

The Public Services Ombudsman for Wales

## Annual Report and Accounts

2020/21

Executive Summary

## Message from the Ombudsman.

The coronavirus pandemic has presented all public bodies with new challenges, not least the massive challenges to health and care services. My thoughts are with all those servants of the public, the key workers who have not had the option of home working through this crisis.



We have maintained our service throughout, with staff enabled to work remotely. I am very grateful for our teams in facilitating and accepting change so effectively.

We saw the first substantial reduction in cases but in contrast code of conduct complaints about local elected members have increased. We have revised our Code of Conduct Guidance and were involved in training for some town councils about the Code. Complaints standards for local authorities and health boards are now in place, with training being provided to organisations that generate 95% of our complaints.

Despite all the challenges of the past year, I genuinely feel that this annual report reflects well on the office and our people, and I hope that the following year brings greater 'normality' to all our lives.

**Nick Bennett**

**Public Services Ombudsman for Wales**



## About us

We have three main roles:

- handling complaints about public service providers.
- considering complaints about breaches of the Code of Conduct by elected members.
- driving systemic improvement of public services.

We are independent of all government bodies and the service we provide is free of charge.

## Contact us

1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ  
0300 790 0203

[ask@ombudsman.wales](mailto:ask@ombudsman.wales)  
<https://www.ombudsman.wales/>

We have continued to deliver for those who have suffered injustice during the pandemic.



61%

of people contacting us were provided with advice or directed to other sources of help.



3,774  
enquiries



2,409  
complaints

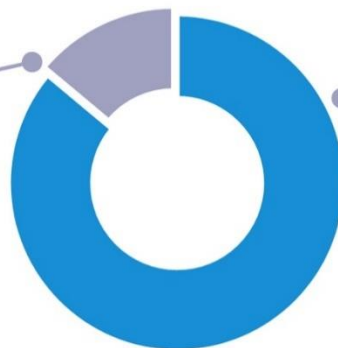
47%

more Code of Conduct complaints compared to last year.

### Complaints about

14%

Code of Conduct breaches.



86%

public bodies.

We strive to be a fair independent, inclusive and responsive complaints service. We continued to deliver justice to the people of Wales by handling complaints about maladministration by public bodies and allegations of breaches the Code of Conduct by elected members.

The Covid-19 pandemic had an impact on the number of enquiries and complaints we have received and closed in 2020/21.

14%

We had 14% fewer contacts in 2020/21

16%

We received 16% less complaints about public bodies

21%










We received 21% less complaints about the NHS

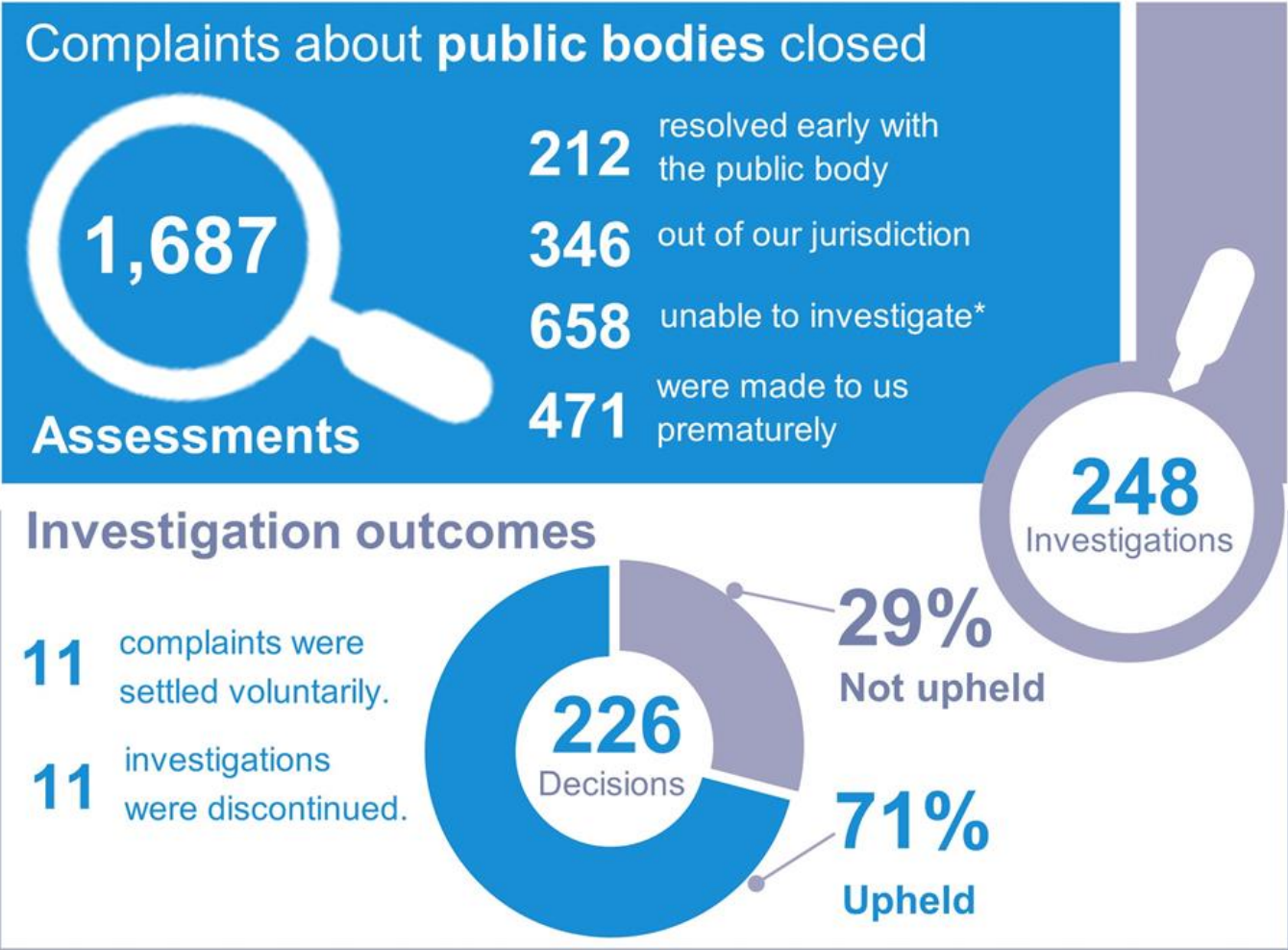
11%

We received 11% less complaints about local authorities

12%

We closed 12% fewer cases in 2020/21

New complaints about public bodies		2020/21		2019/20
 <p>We developed a constructive dialogue with the public bodies we investigate to understand their position during the pandemic. This was to make sure it would work for everyone and to make sure we were maintaining a service for complainants. This dialogue has continued over the year, and we have adapted as public bodies have too.</p>	Health	39%		41%
	Housing	13%		15%
	Complaint handling	9%		9%
	Social services	9%		8%
	Planning and building control	7%		7%
	Covid-19	3%		0%
	Other	20%		18%



\*Reasons ‘Unable to investigate’: more than 12 months since awareness of hardship or injustice; the complainant has access to alternative legal remedy; there is no evidence of maladministration; unable to achieve the outcome sought; not proportionate; no direct hardship or injustice suffered.

## New complaints about Code of Conduct breaches

2020/21



2019/20



Town and  
Community  
Council

complaints have increased by 23.7% and County and County Borough Councils complaints by 43.8%. We received 35 complaints about 1 County Council member. Several investigations are ongoing in respect of those complaints.

Promotion of equality and respect	55%		49%
Disclosure and registration of interests	14%		17%
Accountability and openness	4%		11%
Integrity	12%		10%
Duty to uphold the law	8%		7%
Selflessness and stewardship	2%		3%
Objectivity and propriety	5%		2%

## Closed complaints about Code of Conduct breaches

**10** were withdrawn.

**255** closed after initial consideration.

265

Assessments

24

**5** investigations were discontinued

Investigations

**53%**  
Referred

19

**47%**  
No action necessary

## We intervened in (upheld, settled or resolved early) 20% of complaints about public bodies, the same as last year.

We referred 3% of our code of conduct complaints to local standards committee or the Adjudication Panel for Wales, up from 2% in the previous year.

1045

recommendations issued to public bodies.

£62k

of financial redress recommended.

2

special reports issued.

20%

of our recommendations highlighted retraining or process reviews. This can lead to significant improvement in public services.

85%

compliance with recommendations due during the year.

Here is an example from our casework of the types of recommendations we make to help deliver justice:

The Ombudsman found shortcomings in Betsi Cadwaladr University Health Board's assessment, investigation and diagnosis of Mr D's brainstem stroke, until it was too late for treatment options to be considered. The investigation found that the loss of the opportunity to have potential treatment options discussed was a significant injustice.

The Ombudsman recommended that the Health Board should:

- Apologise to Mr D and Mrs D.
- Make a financial redress payment of £1,500.
- Share the report with the doctors involved in the interests of improving their clinical practice.
- Develop an action plan to address the failings identified in the report within 3 months

## We also continued to share our findings through public interest reports, casebooks, thematic reports and annual letters to the bodies in our jurisdiction.

We issued:

8 public interest and special reports

Health



6

Planning



1

Social care



1

1 thematic report

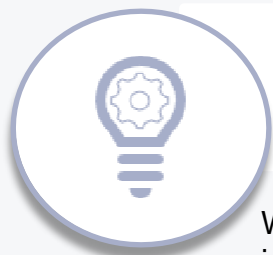
"At Your Service: A Good Practice Guide"



We published our second Equality and Human Rights Casebook



Each year, we send letters on to health boards and local authorities concerning the complaints we have received and considered during. They provide these bodies with information to help them improve both their complaint handling and the services that they provide.



## We are proactive, helping the public sector improve during <sup>101</sup>challenging times.

We made large strides in launching our new proactive powers to drive systemic improvement



We issued our Model Complaints Handling Policy and guidance to Local Authorities and Health Boards



We continued the development of standardised data reporting for Public Bodies in Wales.



We provided 90 virtual training sessions to public bodies across Wales



We started four extended own initiative investigations, one of which has been concluded



We re-launched our first own initiative investigation at the Chartered Institute of Housing TAI Cymru conference



## We embrace learning and welcome feedback

**205**

review cases were closed

**9%**

of the reviews identified we could do more, often as a result of new evidence provided by complainant

**32**

complaints about us were closed.

**22%**

of these were upheld or partially upheld.

**51%**

of all complainants questioned were satisfied with our customer service...

...rising to

**99%**

amongst those satisfied with the outcome of their complaint.



## We strive to ensure and promote accessibility, equality and diversity

**87%**

of our customers questioned found it easy to contact us.

**3**

Sounding boards were run to understand the needs of our stakeholders.

Cymraeg

We now comply with most of the Welsh Language Standards



We adopted a Race and Ethnicity at Work Charter



We appointed an Autistic Champion to raise awareness of neurodiverse issues.



We maintained the silver FairPlay Employer level for gender equality.



## We pull together and support each other



We provided a range of wellbeing activities to support staff during the pandemic

**77%**

of staff completed 28 or more hours of continuing professional development.

We saw the average percentage of working days lost through staff sickness drop to

**1.1%**



We reduced our median Gender Pay Gap from 21% in 2019 to 5% in 2021.



## We are accountable and transparent about our performance and use of resources

Our budget of **£5.1m** comprised of...

**£4.1m** from the Senedd

**£974k** from a Pension Fund surplus repayment

Our unit cost per case was **£674**

**91%** of our budgeted funding for new powers (£330k) was spent on implementation



We attended two scrutiny sessions with the Senedd.



We reduced our energy usage by 31%.



We reduced our office waste by 85%.



We maintained close links with colleagues in the UK, Europe and around the world.

**182kg** of CO<sub>2</sub> emissions were avoided.

**THIS REPORT IS NOT EXEMPT AND IN THE PUBLIC DOMAIN**

**SOUTH WALES FIRE & RESCUE AUTHORITY**

AGENDA ITEM NO 7  
7 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF TEMPORARY DIRECTOR OF CORPORATE SERVICES

**PUBLIC SERVICE OMBUDSMAN FOR WALES – UPDATED GUIDANCE ON THE CODE OF CONDUCT**

**THIS REPORT IS FOR INFORMATION**

REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

REPORT PRESENTED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

**SUMMARY**

This report informs the Standards Committee of the Public Service Ombudsman for Wales' consultation on the revised guidance and associated consultation setting out Members' obligations under the Code of Conduct.

**RECOMMENDATIONS**

That Members note the content of the report.

**1. BACKGROUND**

- 1.1 The Public Service Ombudsman for Wales (the Ombudsman) released draft guidance documents on the Code of Conduct in February 2021. There are two elements to the role of the Ombudsman which are to consider complaints about public service providers in Wales and to consider complaints that members of local authorities have breached their Authority's Members' Code of Conduct.
- 1.2 The statutory guidance set out at Appendix 1 is issued by the Ombudsman under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed Members of:
  - County and County Borough Councils
  - Community Councils
  - Fire Authorities
  - National Park Authorities
  - Police and Crime Panels

- 1.3 The purpose of the guidance is to provide Members with a general understanding of the Code and its requirements. The guidance provides an introduction to the Code and its enforcement. It outlines Members' obligations under the Code, referencing specific paragraphs for further information and deals with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively.
- 1.4 The Summary Report of the Consultation on the Revised Guidance on the Local Government Member Code of Conduct is also attached at Appendix 2.

## **2. ISSUE**

- 2.1 The revised guidance outlines Members' duties under the Code and explains the test applied by the Ombudsman when deciding whether to investigate an alleged breach of the Code. It also includes examples drawn from cases considered by the Ombudsman, local Standards Committees and the Adjudication Panel for Wales, and reflects on issues of concern and recent trends.

## **3. IMPLICATIONS**

### **3.1 Community and Environment**

Equality, Diversity and Inclusion	No
Welsh Language	No
Well-Being Of Future Generations (Wales) Act	No
Socio Economic Duty	No
Sustainability / Environment / Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No
Impact Assessment	No

### **3.2 Regulatory, Strategy and Policy**

Legal	No
Financial	No
Procurement	No
Corporate Risk	No
Information Management	No
Data Protection / Privacy	No
Health, Safety and Wellbeing	No
Governance & Audit	Yes
Service Policy	No
National Policy	No

3.2.1 Fire & Rescue Authorities are required to adopt a code of conduct encompassing the provisions of the model code. The Code of Conduct for South Wales Fire & Rescue Authority is contained within the Authority's Constitution. The constitutional documents for the Authority can be found on this [link](#). The Principles of Member Conduct and the Members' Code of Conduct are contained in Appendix 1 of the Authority's General Standing Orders [link](#) (page 21 of the document).

### 3.3 Resources, Assets and Delivery

Human Resources and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

## 4. RECOMMENDATION

4.1 That Members note the content of the report.

<b>Contact Officer:</b>	T/ACO Geraint Thomas T/Director of Corporate Services
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Background Papers	Date	Source/Contact
The Code of Conduct for Members of Local Authorities in Wales	17 May 2021	<a href="https://www.ombudsman.wales/wp-content/uploads/2021/05/Code-of-Conduct-Guidance-CC-CBC-NPA-PCP.pdf">https://www.ombudsman.wales/wp-content/uploads/2021/05/Code-of-Conduct-Guidance-CC-CBC-NPA-PCP.pdf</a>
Summary Report of Consultation on Revised Guidance on the Local Government Member Code of Conduct	17 May 2021	<a href="https://www.ombudsman.wales/wp-content/uploads/2021/05/Consultation-Summary-Report.pdf">https://www.ombudsman.wales/wp-content/uploads/2021/05/Consultation-Summary-Report.pdf</a>
Constitutional documents for South Wales Fire & Rescue Authority		<a href="https://www.southwales-fire.gov.uk/publications/constitutional-documents/">https://www.southwales-fire.gov.uk/publications/constitutional-documents/</a>
General Standing Orders	27 June 2016	<a href="https://www.southwales-fire.gov.uk/app/uploads/2020/07/General-Standing-Orders-from-27.06.16.pdf">https://www.southwales-fire.gov.uk/app/uploads/2020/07/General-Standing-Orders-from-27.06.16.pdf</a>

<b>Appendices</b>	
Appendix 1	The Code of Conduct for Members of Local Authorities in Wales
Appendix 2	Summary Report of Consultation on Revised Guidance on the Local Government Member Code of Conduct

## APPENDIX 1

# **The Code of Conduct**

## for members of local authorities in Wales

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

## Preface

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

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

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

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

<sup>1</sup> In legislation, ‘community council’ includes a ‘town council’.

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

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

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

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

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

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

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

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

During the course of my review of this guidance, the Welsh Government announced that it was commissioning a review of the local government ethical framework. My team and I look forward to contributing to that review and I will revisit this guidance in light of its outcome, when known.

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a large, sweeping flourish at the end.

Nick Bennett  
Public Services Ombudsman for Wales  
May 2021

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

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

## Acknowledgement

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

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

First published April 2010. This edition published May 2021.

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## 1 Introduction

- 1.1 The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>3</sup> which all relevant authorities were required to adopt.<sup>4</sup>
- 1.2 For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>5</sup>
- 1.3 Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.
- 1.4 Standards committees of principal councils<sup>6</sup> are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees. Sanctions guidance issued by the President of the

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

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

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

<sup>6</sup> A county or county borough council in Wales

Adjudication Panel for Wales indicates that a refusal, or failure, to attend available training on the Code will be regarded by its tribunals as an aggravating factor when assessing the sanction to be applied to a member found to have breached the Code.

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

### **Investigations: Assessing the Public Interest**

- 1.6 It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test..
- 1.7 At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

### 1.8 Public interest factors include:

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

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

## Legal Precedents

- 1.10 When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup>
- 1.11 In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.
- 1.12 In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards

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

officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

- 1.13 One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician's right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.
- 1.14 I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.
- 1.15 Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook', which summarises cases I have investigated, is available on my website at [www.ombudsman.wales](http://www.ombudsman.wales)

## Local Resolution Process

- 1.16 Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. In some cases, the arrangements also cover complaints made about members by officers. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me

about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the authority's Monitoring Officer for consideration under this process, in the first instance.

- 1.17 In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.
- 1.18 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.
- 1.19 When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.
- 1.20 Local resolution can also play an important role within community councils where, all too often, low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly

encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

1.21 An overview of the complaints process is at Appendix 1 to this guidance.

## Standards Committee

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

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

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

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

- 1.25 A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.
- 1.26 The Local Government and Elections (Wales) Act 2021 (the 2021 Act), which received Royal Assent on 20 January 2021, places new duties on the standards committee of a county and county borough council in Wales which come into force from 5 May 2022. The committee will have the additional function of monitoring and providing support to political group leaders in principal councils in undertaking their new duty, under the 2021 Act, to promote high standards of conduct by members of their group. Each standards committee will also be required to make an annual report to their authority describing how the committee's functions have been discharged and providing an overview of conduct matters generally within the authority. The 'Explanatory Notes' to the 2021 Act indicate that the requirement on a principal council's standards committee to make a report includes a requirement to make a report to any community and town councils in its area.

### Political Group Leaders

- 1.27 As mentioned above, the 2021 Act also introduces a new duty on political group leaders in a county or county borough council to take reasonable steps to promote and maintain high standards of conduct by members of their group. In doing so, a group leader must co-operate with the standards committee when exercising its functions. In turn, a standards committee must ensure group leaders have access to advice and training to support them in undertaking their new duties and to monitor group leaders' compliance with those duties. A group leader who fails to comply with the new duty in a meaningful way may potentially be regarded as bringing their office into disrepute, in breach of paragraph 6(1)(a) of the Code

## Adjudication Panel for Wales

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

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

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

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

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

- 1.32 Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).
- 1.33 Further information about the role and procedures of the Adjudication Panel and its tribunals, including guidance on sanctions, can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

## The Principles

- 1.34 The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these Principles which are designed to promote the highest possible standards. These Principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the authority’s resources and equality and respect for others.
- 1.35 Members elected to local authorities give generously of their time and commitment for the benefit of their communities. The Principles provide a framework for channelling your commitment in a way which will reflect well on you and your authority, and which will give your communities confidence in the way that your authority is governed.
- 1.36 The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. Paragraph 2(2) of the Code states that you should read it together with the Principles, which are prescribed in a separate statutory instrument<sup>8</sup>. For ease of reference, they are replicated below.

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

**1. Selflessness**

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

**2. Honesty**

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

**3. Integrity and Propriety**

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

**4. Duty to Uphold the Law**

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

**5. Stewardship**

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

**6. Objectivity in Decision-making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may

properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

## **7. Equality and Respect**

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

## **8. Openness**

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

## **9. Accountability**

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

## **10. Leadership**

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

1.37 The Code is consistent with, and provides for the practical application of, these Principles. The Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**. Given the close association between the Principles and the Code, if you follow the Principles as a basis for your conduct, you are less likely to behave in a way that will constitute a failure to comply with the Code.

## Deciding when the Code applies to you

See paragraphs 2 and 3



- 1.38 Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your Council. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a authority. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your authority, some of the provisions of the Code apply to you at all times.
- 1.39 When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time. Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

### When does the Code apply?

1.40 The Code applies:

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your authority or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your authority (paragraph 2(1)(a)-(c)).
- **At any time**, if you conduct yourself in a manner which could **reasonably** be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

- 1.41 Where you act as a representative of your authority on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)).

When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

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

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

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

- 1.45 If you are nominated by your authority as the director of a company (a stock transfer housing association for example) you are obliged to act in the best interests of the company. If it has a code of conduct for its

directors, you must abide by it. If it does not, you must comply with your authority's Code, except on the rare occasions where it conflicts with any legal obligations the company may have.

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

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

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

**Example 2 – official capacity and misuse of resources (paragraphs 2(1)(b) and 7)**

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

had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.

**Example 3 – official capacity (paragraph 2(1)(b))**

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

**Example 4 – personal capacity and disrepute (paragraphs 2(1)(d) and 6(1)(a))**

A Community Councillor, whilst acting in a personal capacity, posted a number of messages on Facebook about high-profile politicians which the Adjudication Panel found were extreme, threatening and which promoted violence towards the subjects of the messages. The Panel noted that whilst politicians were expected to possess "thick skins" and display a greater tolerance than ordinary citizens, such tolerance should not have to extend to personal, inflammatory and egregious comments such as those that had been posted. The Panel found the comments were not 'political expression', which might be afforded protection under the ECHR, and were sufficiently serious in nature as to bring the office of member and the Council into disrepute in breach of paragraph 6(1)(a).

The Panel found that, in accordance with paragraph 2(1)(d) of the Code, the requirement in paragraph 6(1)(a) for the Councillor not to bring his office or authority into disrepute applied, regardless of the fact that he was acting in a personal capacity. As the comments were made in a private capacity and did not comprise political expression, they did not attract the enhanced protection afforded to politicians under the ECHR. However, the Panel

concluded that even if enhanced protection had applied, the comments were so extreme and egregious that a finding of a breach of paragraph 6(1)(a) of the Code would nevertheless have been justified.

## 2 General obligations under the Code of Conduct

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

### Equality See paragraph 4(a)



- 2.2 **You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.
- 2.3 You should at all times seek to avoid discrimination. There are four main forms of discrimination:
- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
  - Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
  - Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
  - Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

- 2.4 The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.
- 2.5 You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.
- 2.6 You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your authority into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

### **Example 5**

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

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

### **Example 6**

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy, and the wide dissemination of private medical information and speculation about the

progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) (equality of opportunity) of the Code.

## Treating others with respect and consideration

See paragraph 4(b)

Political comments can attract Article 10 rights

- 2.7 **When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.
- 2.8 Article 10 of the (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.
- 2.9 Your freedom of expression as an elected member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.
- 2.10 "Political" comments are not confined to those made within a council chamber and, for example, include comments members may generally make on their authority's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a "thicker skin", as has been stipulated by the High Court.

- 2.11 I may also decline to investigate a complaint where the member has raised “political” issues with officers. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example Chief Executives or Heads of Services, will also be expected to have a greater degree of robustness.
- 2.12 Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.
- 2.13 When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### **Example 7**

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

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

### **Example 8**

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

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

### **Example 9**

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession of her rented council property, sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing,

the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

### **Example 10**

At a meeting purportedly arranged to discuss Cabinet matters, the Leader of a County Borough Council instead took the opportunity to challenge the performance of the Council's Chief Executive. He did this in front of another member of the Council and members of the Council's management team, who were subordinate to the Chief Executive. The Adjudication Panel noted the Leader made no attempt to abide by the Council's protocol covering member / officer relations. He did not give the Chief Executive any indication prior to the meeting that he intended to raise performance issues. The Panel concluded that the Leader's conduct towards the Chief Executive was inappropriate and hectoring and amounted to a failure to show respect and consideration, in breach of paragraph 4(b) of the Code).

**Bullying and harassment**  
See paragraph 4(c)

Consider your conduct from  
the other person's perspective

**You must not use any bullying behaviour or harass any person including other councillors, council officers (the Clerk or Proper Officer) or members of the public.**

2.14 Harassment is repeated behaviour which upsets or annoys people.

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

2.15 When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied.

Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

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

- 2.17 The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.
- 2.18 Local authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.
- 2.19 The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 11**

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

and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

### Example 12

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

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



**2.20 You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your authority.** You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them to carry out their duties in a biased or partisan way. They

must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

- 2.21 Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.
- 2.22 If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code. I would encourage you to adhere to any protocol developed by your authority that deals with relationships between members and officers.

### **Example 13**

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

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

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

### **Example 14**

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

**Disclosing confidential information**  
See paragraph 5(a)



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

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

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

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

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

### **Example 15**

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

### Example 16

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

### Preventing access to information See paragraph 5(b)



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

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

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

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

### Example 17

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

**Disrepute**  
See paragraph 6(1)(a)

 Any conduct unbecoming of a member can constitute disrepute

- 2.31 You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your authority as a whole. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer, as this may also constitute disrepute (see also paragraph 6(2)).
- 2.32** When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Leader, an Executive Member of Committee Chair, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their authority into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their authority into disrepute.

- 2.33 Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.
- 2.34 Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.
- 2.35 You must also conduct yourself in an appropriate manner with others within the confines of your authority's building, regardless of whether your conduct is likely to be in the public domain.

### **Example 18**

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

### **Example 19**

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The

Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code

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



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

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



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

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

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

- 2.40 In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.
- 2.41 The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.
- 2.42 In determining whether to investigate a complaint of a breach, I will use the two-stage test that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.
- 2.43 To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### **Vexatious complaints** See paragraph 6(1)(d)



- 2.44 **You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.**
- 2.45 You must not make complaints against other members, your authority's officers or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and

where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

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

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

### Example 20

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

## Co-operating with investigations

See paragraph 6(2)



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

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

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

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

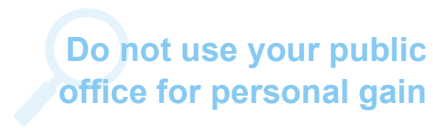
### **Example 21**

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

### **Example 22**

During the course of an investigation into alleged inappropriate messages posted on Facebook by a Community Councillor, the member concerned failed to provide information to my office about historic changes made to the privacy settings on his account. He claimed to not know how to do so, and did not respond when sent advice by my office on how to access his activity log. The Adjudication Panel found the member had been less than candid about his ability to check any change of settings on his account, when he was clearly an experienced user of Facebook. The Panel found the Councillor had deliberately avoided providing information and full and frank responses to the reasonable requests of my office, in breach of paragraph 6(2) of the Code.

## Using your position improperly See paragraph 7(a)



- 2.52 You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**
- 2.53** Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.
- 2.54** The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act, then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraph 6(1)(a). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

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

### **Example 23**

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

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

### **Example 24**

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) (respect and consideration) and 6(1)(a) (disrepute) of the Code.

### Example 25

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

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

 Only use resources for lawful and permitted purposes

- 2.55 You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from officers), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.
- 2.56** You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

## Using resources for proper purposes only

See sub-paragraphs 7(b)(v) and (vi)

Do not use resources for private or political purposes

- 2.57 **You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your authority, for example, your authority's Information Security Policy.
- 2.58 You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.
- 2.59 Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

### Example 26

A member of a County Council was found in breach of the Code for making improper use of his council-issued computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council's equipment in breach of the Code and had brought the office of member into disrepute.

### Example 27

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

### Reaching decisions objectively See paragraph 8(a)



- 2.60 **When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and consider the issues objectively, having regard to any relevant advice of your authority's officers.** During the decision-making process, you must act fairly and take proper account of the public interest.
- 2.61 In some decisions, such as those taken by planning committees or where you are participating in the consideration of a ward matter, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.
- 2.62 **Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

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

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

### Considering advice provided to you and giving reasons

See paragraph 8(b)



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

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

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

- 2.68 It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice
- 2.69 If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.
- 2.70 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected, but it is not confined to these.
- 2.71 As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.
- 2.72 In reaching decisions where the advice is not provided by the statutory officers, you should still have regard to the advice provided by officers and take it into account in reaching your decision. You may also wish to have regard to other advice you have received and, of course, to the position adopted by a political group of which you are a member. In some circumstances, such as planning decisions, you must not vote on the basis of a "whip" imposed by your group. In others, it is reasonable to do so but you should avoid having an entirely closed mind prior to a debate. Again, whatever the reasons for voting against officer advice, it is highly advisable to record them.

### Example 28

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

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

### Expenses See paragraph 9(a)



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

### Example 29

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

## Gifts and hospitality

See paragraph 9(b)



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

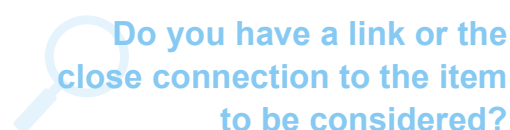
## 3 Personal and prejudicial interests

- 3.1 The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.
- 3.2 Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.
- 3.3 In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Monitoring Officer for advice. However, the decision on what course of action should be taken remains with you.

3.4 To provide some further assistance, I have attached two flowcharts at Appendix 2 and 3 which Ceredigion County Council's former Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.

3.5 Guidance on registering interests is at Section 4.

### Personal Interests See paragraph 10



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

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

#### **Do I have a personal interest?**

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

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area

5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
7. any land let by your authority to a firm in which you are a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your authority
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes
  - body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your authority's area
10. any land in your Council's area which you have a license to occupy for at least 28 days
11. any person with whom you have a close personal association.

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

## Matters affecting your well-being or financial position



Will your well-being or that of a close associate be effected?

- 3.10 If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward or, for members of authorities which do not have wards (for example, national parks), in your authority's area, you have a personal interest.
- 3.11 Examples of decisions of this kind include, but are not limited to, obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have also included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

## What is "a body exercising functions of a public nature"?



Does the body carry out a public service?

- 3.12 The phrase "a body exercising functions of a public nature" has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether a body meets that definition:
- Does that body carry out a public service?
  - Is the body taking the place of local or central government in carrying out the function, for example, a care home with residents supported by social services?
  - Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority, for example, a private company collecting refuse for the authority?
  - Is the function exercised under legislation or according to some statutory power?
  - Can the body be judicially reviewed?

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

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

Is your quality of life affected?

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

**Who is a close personal associate?**

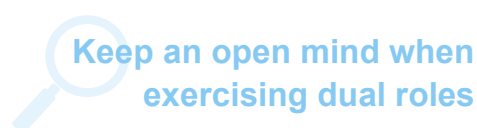
Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

- 3.15 Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community. It also does not include a person, such as a close relative, with whom you have become estranged and it would be unreasonable for you to have knowledge of their business or other interests, or the potential impact on their well-being of a matter considered by your authority.
- 3.16 Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Monitoring Officer.

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

- 3.17 If you are a member of an authority that does not have wards or electoral divisions, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you or one or more of your close personal associates, **more than** it would affect other people in your authority's area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority's area.

### "Twin hatted" members



- 3.18 If you are a member of both a community council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.
- 3.19 If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.
- 3.20 Obviously, if the planning application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on "what to do if you have a prejudicial interest" below.

### **Example 30**

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### **Example 31**

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

## What if I am not aware of my personal interest?

Disclose what you know

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

## What to do when you have a personal interest

See paragraph 11

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

- 3.22 When you have a personal interest in any business of your authority, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.
- 3.23 If you are attending a **meeting**,<sup>10</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

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

- 3.24 If you are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.
- 3.25 Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.
- 3.26 **Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.
- 3.27 If you are making a decision as part of an **executive or board**, you must make sure that the written record of that decision (for example, minutes of a cabinet meeting) includes details of your interest.
- 3.28 If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.
- 3.29 If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 32

A Leader of a County Borough Council was present at, and participated in, an inter-agency meeting arranged to discuss locally controversial proposals to provide residential accommodation for young children, potentially with behavioural difficulties, in a property neighbouring his home. The Leader participated in the meetings despite having received advice, from the Council's Monitoring Officer and Chief Executive, that he had a prejudicial interest and should not do so.

The Adjudication Panel found the Leader had a personal interest (which was not contested) and prejudicial interest in the proposal due to the proximity of the property to, and the potential detrimental impact on the value of, the Leader's home. The Panel found that despite saying he was compromised during the course of the inter-agency meeting, the Leader did not disclose a personal interest at the start of the meeting, in breach of paragraph 11(1) of the Code; and did not withdraw from the meeting, in breach of paragraph 14(1)(a). In playing an active role and making representations at the meeting, the Leader attempted, inappropriately, to influence decisions about the proposal in breach of paragraphs 14(1)(c) and (e). In reaching this conclusion, the Panel commented that a decision about any business of the authority for which a member has a prejudicial interest does not need to be a formal decision of the authority that is subject to a vote or to committee approval or other formal process. There are a range of decisions that can be made about a matter. The Panel found that the comments made by the Leader at the meeting were capable of influencing others and any decision made on the proposal, including by the agency proposing to operate the children's home.

The Panel also found that, as a consequence of his prejudicial interest in the matter, the Leader should not have sent an email to the Director of Social Services about the proposal after the inter-agency meeting, in breach of paragraph 14(1)(d). Nonetheless, in doing so, he failed to disclose his personal interest in that email as required by paragraph 11(2)(a) and sought to influence a matter for which he had a prejudicial interest, in breach of paragraph 14(1)(c).

The Panel found that in involving himself in the way that he did, the Leader could reasonably be regarded as bringing his office and the authority into disrepute, in breach of paragraph 6(1)(a).

### Example 33

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

## Prejudicial Interests

See paragraph 12

### Do I have a prejudicial interest?

Do not be swayed by what you think – consider what a reasonable member of the public would think?

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

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

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

 **Would a reasonable member of the public consider you impartial?**

- 3.31 If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.
- 3.32 You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.
- 3.33 The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.
- 3.34 Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.
- 3.35 You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or (electoral division affected by the decision (or authority, if your Council does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

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

### Does the matter fall within one of the exemptions?

See paragraph 12(2)



Are you exempted from having a prejudicial interest?

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

3.38 The business relates to:

- another relevant authority (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school
- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school that child attends

- decisions about statutory sick pay, if you receive or are entitled to receive it from your authority
- an allowance, payment or pension for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

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

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

### **Example 34**

Two members of a County Borough Council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation, one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests. The other member had, despite receiving advice on the declaration of interests, falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of paragraphs 11 (disclosure of interests) and 14 (participation in relation to a disclosed interest) of the Code to be serious ones.

### Example 35

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

### Overview and Scrutiny Committees See paragraph 13



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

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

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

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

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



- 3.43 If you have a prejudicial interest in any aspect of your authority's business you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.
- 3.44 Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.
- 3.45 **Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).
- 3.46 **This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.
- 3.47 In addition, **you must not seek to influence a decision in which you have a prejudicial interest**. This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's

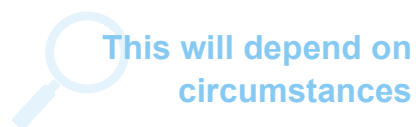
advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

### **Example 36**

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

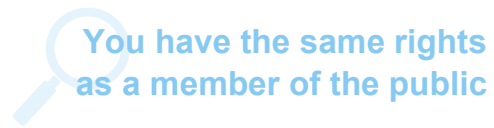
The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding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

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



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

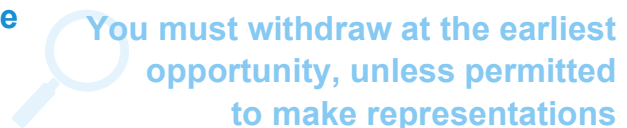
**If I do not have a statutory right, will I be allowed to speak to the meeting?**



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

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

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



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

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

**What does influencing a decision mean?**



3.53 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be

perceived to be capable of influencing the decision-making process. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 37

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

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



- 3.54 If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.
- 3.55 This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

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



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

#### Example 38

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

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

### Executive or cabinet roles



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

3.57 If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in

executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

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

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

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

## Dispensations

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



**You could be granted a dispensation to speak and / or vote on a matter**

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

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

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests

- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion)
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business is being considered by an overview or scrutiny committee and you do not have a pecuniary interest
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your authority's area
- the Committee considers it otherwise appropriate in all the circumstances. When introducing this last category of dispensation in 2016, the Welsh Government suggested, for example, that where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation under this category may enable the member to remain present in a meeting without participating in the business. This does not though limit the scope of this category of dispensation.

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

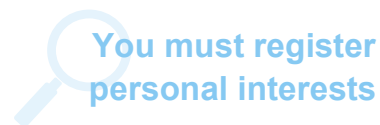
3.64 Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably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

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

## 4 Registration of Personal Interests

See paragraph 15

Key points



- 4.1 All members of relevant authorities have to provide a record of their personal interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.
- 4.2 You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

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

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

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

- your job(s) or business(es)
- the name of your employer or people who have appointed you to work for them
- the name of any person who has made a payment to you in respect of your election or expenses you have incurred in carrying out your duties
- the name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company
- any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register
- any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use

- any other bodies to which you were elected, appointed or nominated by the authority
- your membership or position of control or management in:
  - any bodies exercising functions of a public nature (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union
  - any private club, society or association operating within your authority's area

### **Sensitive information** See Paragraph 16

#### **Key points**



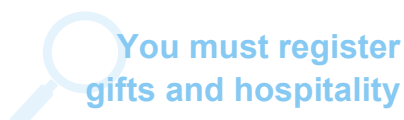
- 4.6 You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.
- 4.7 'Sensitive information' is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).
- 4.8 You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

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

## Gifts and hospitality

### See Paragraph 17

#### Key points



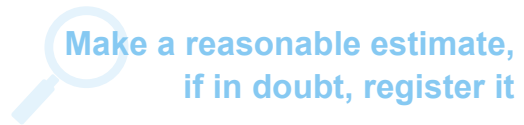
- 4.10 You must register any gifts or hospitality worth more than the amount specified by your authority that you receive in connection with your official duties as a member, and the source of the gift or hospitality, within 28 days.
- 4.11 You must register the gift or hospitality and its source within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

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



- 4.12 You should ask yourself, "would I have been given this if I was not a member of the authority?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.
- 4.13 You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

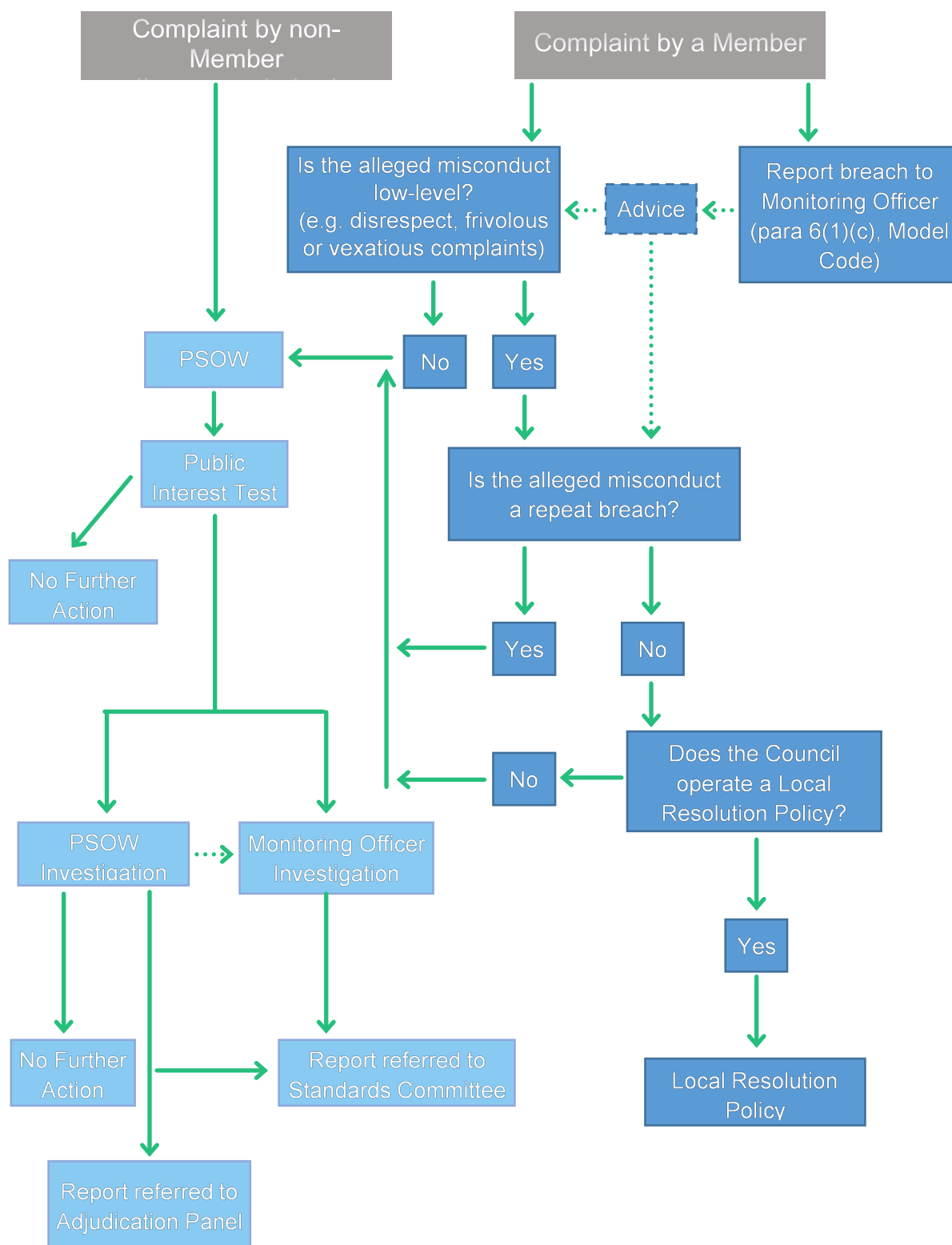
### What if I do not know the value of a gift or hospitality?



- 4.14 The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.
- 4.15 The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

## Appendix 1

## Code of Conduct Complaints Overview



\* Note: an officer considering a complaint should take advice from the Council's Monitoring Officer / Clerk about the relevance of the Council's member / officer relations policy, or local resolution policy, before exercising their right to complain to the Public Services Ombudsman for Wales.

## Personal Interests

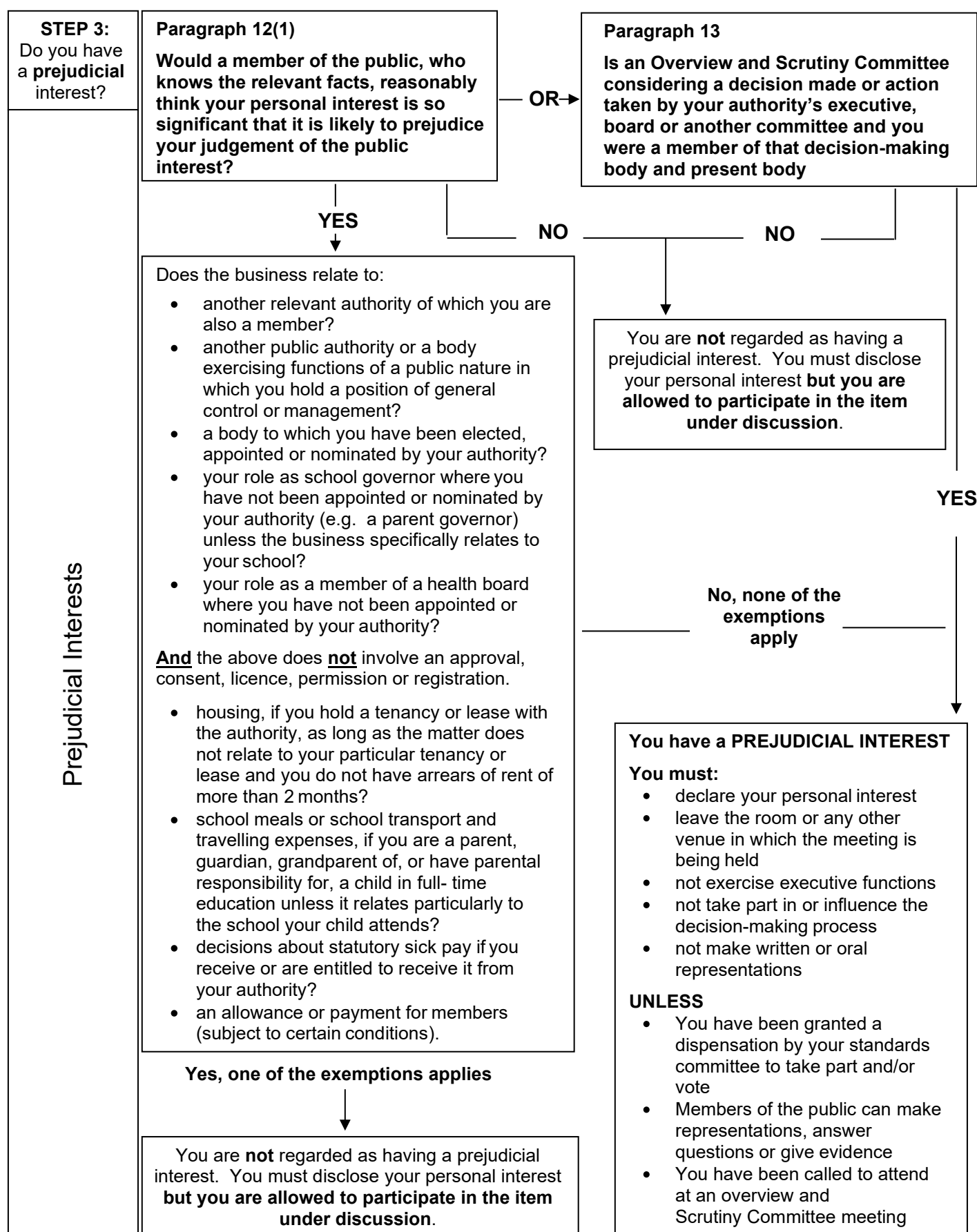
**Questions to ask yourself. If in doubt you should ask your Monitoring Officer.**

<b>STEP 1</b> Does the Code apply?	<b>Are you:</b> <ul style="list-style-type: none"> <li>conducting the business of your authority?</li> <li>acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority?</li> <li>acting as your authority's appointee or nominee on any other body without its own code of conduct?</li> </ul>	
<b>STEP 2</b> Do you have a personal interest?	The Code <b>does</b> apply. Continue to Step 2.	The Code <b>does not</b> apply. No further action required.
<b>Personal Interests</b>	<b>Paragraph 10(2)(a)</b> Does the business relate to or is it likely to affect: <ol style="list-style-type: none"> <li>your employment or business?</li> <li>your employer, firm or company?</li> <li>any person, other than your authority, who has paid towards your election or expenses as a member?</li> <li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li> <li>any contract that your authority makes with your company or a company in which you hold shares? (as described in 4)</li> <li>any land in which you have an interest?</li> <li>any land let by your authority to your company? (as described in 4)</li> <li>any body to which you have been elected or appointed by your authority?</li> <li>any:               <ul style="list-style-type: none"> <li>public authority or body exercising functions of a public nature?</li> <li>company, industrial and provident society, charity or body directed to charitable purposes?</li> <li>body whose main role is influencing public opinion or policy?</li> <li>trade union or professional association?</li> <li>private club, society or association operating in your authority's area</li> </ul>               in which you have membership or are in a position of general control or management? or             </li> <li>any land in your authority's area which you have a license to occupy for at least 28 days?</li> </ol>	<b>Paragraph 10(2)(c)</b> Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area): <ul style="list-style-type: none"> <li>your well-being or financial position?</li> <li>the well-being or financial position of any person who lives with you or with whom you have a close personal association?</li> <li>the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association?</li> <li>any company in which any person who lives with you or with whom you have a close personal association owns shares?</li> <li>any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.</li> </ul>
	<b>OR</b>	
	<b>If YES, you have a PERSONAL INTEREST</b>  <b>You must:</b> <ul style="list-style-type: none"> <li>declare your interest and the nature of that interest:               <ul style="list-style-type: none"> <li>at meetings</li> <li>when making written representations</li> <li>when making oral representations (and confirm it in writing within 14 days)</li> <li>consider if you have a prejudicial interest (see Appendix 3)</li> </ul> </li> </ul>	<b>If NO, you do not have a personal interest</b>  <ul style="list-style-type: none"> <li>If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest</li> <li>Otherwise, <b>no further action is required</b></li> </ul>

## Appendix 3

## Prejudicial Interests

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



## Contact us

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Public Services Ombudsman for Wales can also be found at  
<http://www.ombudsman.wales>

## Public Services Ombudsman for Wales

### Summary Report of Consultation on Revised Guidance on the Local Government Member Code of Conduct

#### 1. Background

1.1 The Local Government Act 2000 (“the 2000 Act”) created a new ethical framework for local government in Wales. It included powers for the Welsh Parliament (as it is now known) to issue a model Code of Conduct for members and co-opted members (with voting rights) of ‘relevant authorities’ in Wales. For this purpose, a relevant authority is a county or county borough council, a community council, a fire and rescue authority, a national park authority and (by virtue of regulations<sup>1</sup> made by the UK Government in 2012) a police and crime panel.

1.2 The current model Code of Conduct is set out in the Local Authorities (Model Code of Conduct) (Wales) Order 2008, as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016.

#### Public Services Ombudsman for Wales’ Powers

1.3 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales (“the Ombudsman”) to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which community councillors operate.

1.4 Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of standards committees and the Adjudication Panel for Wales (“the Adjudication Panel”). The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

1.5 Section 69 of the 2000 Act empowers the Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority’s Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman’s attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by standards committees and the Adjudication Panel when exercising their respective functions.

<sup>1</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

## 2. Engagement

2.1 During the course of the review, informal engagement was undertaken with local government representative bodies and key stakeholders to enable them to input their views at an early stage. Subsequently, draft revised guidance was published for consultation between 3 February and 21 March 2021. A number of responses were received after the deadline, but were taken into account.

2.2 A total of 29 responses were received, broken down as follows:

County / County Borough Councils (includes standards committees' responses)	9
Community Council	11
Fire and Rescue Authorities (standards committee response)	1
Councillors / Officers	6
Representative / Professional Bodies	1
Others	1

2.3 This report is a summary of the responses received. It does not capture every point made, but all responses have been fully considered in the course of finalising the guidance.

## 3. Summary of Responses

3.1 In general, those responding to the consultation welcomed the revised guidance, which was described as being clear and easily understood. Responses welcomed the greater clarity on the operation and interpretation of certain aspects of the Code, as well as the additional illustrative examples taken from recent cases considered by standards committees and the Adjudication Panel.

3.2 It was suggested in two responses that the guidance for community councillors was too long and may deter such councillors from reading it in the detail required.  
**Response:** Members are required to give a written undertaking to observe the Code when taking office. All members, new and old, have a responsibility to read and understand their obligations under the Code. The Ombudsman's guidance is intended as a reference document which members may turn to from time-to-time when they need guidance on specific aspects of the Code. As such, it supplements the training on the Code offered to members through local arrangements.

3.3 A summary of the main comments received on specific aspects of the draft guidance are addressed in section 4 below.

3.4 A number of those responding took the opportunity to raise concerns about wider aspects of the operation of statutory ethical framework and member conduct issues more generally. As such, they were not directly relevant to the content of the Ombudsman's guidance on the Code, but nonetheless are addressed in the following paragraphs of this section.

## Two-stage Public Interest Test

3.5 The guidance describes the ‘two-stage’ test adopted by the Ombudsman when determining whether to investigate an allegation that a member has failed to comply with the Code of Conduct.

3.6 One response to the consultation expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken. The validity of the two-stage test was questioned. The first stage was considered to be objective and based on reasonably clear criteria. However, the second stage ‘public interest’ test was considered to be subjective and based on the Ombudsman’s opinion. It was suggested that the test should be applied by a wider “audience” appointed for the purpose, such as the standards committee of the principal council for the area. Another response said the low number of referrals to standards committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of standards committees to maintain public confidence in members. The exercise of the Ombudsman’s discretion more towards referral than at present would be welcome.

3.7 **Response:** The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman’s discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of community and town councils. The Ombudsman continues to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The involvement of standards committees in applying the test is impractical, not least as it may be perceived as prejudicing their later consideration of any report of a subsequent investigation. It may also require primary legislation to make this a function of such a committee or other persons. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by monitoring officers. However, some monitoring officers have raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively.

## Impact of Inappropriate Behaviour at Meetings

3.8 Several responses expressed concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of community and town councils, in particular. Conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some councils to retain members and council officers. Less serious, but nonetheless disruptive

behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of council business.

**3.9 Response:** The Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer. The guidance makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. Bullying and harassment, or lack of respect will not be tolerated. The guidance for members of community and town councillors emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help councils in avoiding or tackling bullying, harassment and inappropriate behaviour, including advice on formulating an effective complaint.

**3.10** In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of monitoring officers, the Ombudsman has engaged with a number of councils that have given rise to a disproportionate number of complaints in the past. The adoption of a Local Resolution Protocol has the potential to provide a means for resolving issues locally before they get out of hand. The Ombudsman was pleased to work with One Voice Wales on the development of a model protocol to provide guidance relevant to community and town councils in formulating and operating such protocols. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime is in place to deal with instances of serious misconduct.

### Interim Suspension

**3.11** One town councillor suggested that the introduction of a process enabling the immediate suspension for up to six months of a member accused of bullying, pending the outcome of an investigation, would lead to a rapid improvement in behaviour generally. **Response:** The ethical framework already enables the Ombudsman to make an interim report to the Adjudication Panel in cases where there is prima facie of a serious breach that could lead to the disqualification of the member concerned, if proved, and it is in the public interest to suspend or partially suspend the member immediately. Any change to these powers would require primary legislation, which is a matter for the Welsh Government.

### Welsh Government Review of the Ethical Framework

**3.12** It was questioned whether it was appropriate to review the guidance at a time when the Welsh Government had announced a review of the ethical framework.

**Response:** The review of the guidance was underway and nearing completion before the Welsh Government's wider review was announced. The Ombudsman looks forward to contributing to that review and will consider whether any revisions to the Code of Conduct guidance are required when its outcome is known.

### Local Government and Elections (Wales) Act 2021

**3.13** A number of responses suggested that reference should be made in the guidance to the provisions of the above Act, which introduce new duties on standards

committees and political group leaders in relation to conduct matters. **Response:** The new legislation was not enacted until 20 January 2021 and the relevant provisions do not come into force until 5 May 2022. Now that the content and timing of the new legislation has been confirmed, the guidance has been amended to include references to the new duties.

## 4. Comments on the Draft Guidance

### 4.1 General Points

#### Case Examples

4.1.1 It was noted that summaries of Adjudication Panel cases are contained in the guidance. It was suggested that the name of the member and their authority, the sanction imposed, tribunal reference number and weblink to the decision should be included. **Response:** It is not the Ombudsman's practice effectively to 'name and shame' in this guidance. The examples illustrate particular aspects of the Code featuring in any given case and, taken individually, do not necessarily provide a full picture of the circumstances of the case, especially one involving breaches of multiple paragraphs of the Code. Consequently, it would be misleading to reference the sanction imposed, which will reflect the full circumstances of the case involved, including mitigating or aggravating factors. The examples include cases heard by standards committees. While the Adjudication Panel publishes its decision reports on its website, the decisions of standards committees are published for a limited period only. Weblinks would, therefore, require ongoing monitoring and maintenance. Members seeking further advice about aspects of the Code are encouraged to consult the relevant monitoring officer or clerk.

#### Training

4.1.2 A number of responses welcomed the strengthening of the reference to the Ombudsman 'expecting' members to undertake training on the Code of Conduct, including refresher training for experienced members. Whilst one response, from an authority's group leaders, considered this a retrograde and derogatory step, others suggested the guidance should go further and state that members 'must' undertake training, with refresher training taking place within prescribed intervals. A number of responses noted that a requirement to undertake training had been built into the Code adopted by their council. **Response:** The Ombudsman has no powers to require members to undertake training. Provisions in the Local Government and Elections (Wales) Act 2021, when in force, will place a requirement on community and town councils to prepare a training plan. This will provide the means for identifying such members' training needs and opportunities, including on the Code of Conduct. Guidance on sanctions issued by the President of the Adjudication Panel indicates that a refusal, or failure, to attend available training on the Code will be regarded by tribunals as an aggravating factor when assessing the sanction to be applied to a member found to have breached the Code.

4.1.3 It was also suggested that in the case of community councils, the guidance should include an expectation that training will be provided by the clerk or One Voice

Wales, given the limited resources of monitoring officers. **Response:** Standards committees have a statutory obligation to provide or secure training for members of community councils in their area. How this is achieved should be subject to local agreement in light of local needs and resources and may include a mix of training delivered by the clerk, monitoring officer, One Voice Wales or other providers.

4.1.4 Another response questioned why an online form of training and assessment, such as that provided for school governors, is not available. **Response:** This is not a matter for the Ombudsman. As noted above, training is provided through a range of means and could include online training modules. The introduction of a standard online training and assessment system, such as that suggested, would be a matter for the Welsh Government to consider.

## 4.2 Preface

### Complaint data

4.2.1 It was suggested that the point made about complaints to the Ombudsman being dominated by certain types of breach could be illustrated with a simple graphic or table. **Response:** The data would be time sensitive and would not add much to the point that is being made. As noted in the consultation response, up to date data is published each year in the Ombudsman's annual report.

### Sanctions

4.2.2 One response suggested that the Preface should briefly reference the sanctions available for breaches of the Code. **Response:** The sanctions available to standards committees and the Adjudication Panel are set out under the relevant sub-headings in the 'Introduction'. However, a general reference to these powers has been added to the Preface.

## 4.3 Introduction

### Respective roles

4.3.1 The explanation of the respective roles of the Ombudsman, standards committees, Adjudication Panel and (in the community council version) the clerk and monitoring officer was welcomed, but it was considered this could be improved with a diagram illustrating the relationship and the route for making representations that a member had broken the Code. **Response:** A diagram has been appended to the guidance.

### Model Code

4.3.2 It was suggested that the Code, or a summary, could usefully be appended to the guidance. **Response:** The guidance already highlights (in bold) the key features of the model Code under each paragraph. To add the model Code would add to the size of document. Although there is very limited scope to divert from the model Code,

Members should refer to the Code of Conduct adopted by their particular council. This should be available from the monitoring officer or clerk to the community / town council. The Code may also form part of a council's constitution document.

### Public Interest Test – Criteria

4.3.3 In relation to the criteria for assessing the public interest under the two-stage test, it was suggested that emphasis should be placed on the need for there to be 'evidence' of similar previous behaviour. Taking account of previous complaints where there is lack of evidence or where a complaint was dismissed would be against natural justice. **Response:** Added emphasis has been given to the reference to 'evidence' in the guidance. It has also been clarified that account would be taken of previous referrals to a standards committee or the Adjudication Panel where the member was found to have failed to comply with the Code.

### Local Resolution Process

4.3.4 It was suggested that the section on Local Resolution Processes in the community council version of the guidance would benefit from an explanation or example of how it could be put into practice. It was also suggested that such councils should be required to adopt a local process. **Response:** The section on local resolution is subsidiary to the main purpose of the guidance, which is to assist members in understanding their obligations under the Code. The guidance describes the main benefits of local resolution. A model protocol and further guidance is available from One Voice Wales. The Ombudsman has worked closely with monitoring officers and One Voice Wales on the development of local resolution processes, but has no power to require councils to adopt such a process.

4.3.5 Concern was expressed about the role of the clerk in local resolution, including in circumstances where the clerk and chair of the council are in dispute. Clarification was sought on the circumstances when a clerk should report concerns to the Ombudsman, the formal process to be instigated by the clerk and the role of the monitoring officer. **Response:** The model protocol published by One Voice Wales is intended to assist councils in adopting a local process which meets a council's particular needs. The model describes circumstances in which it would be appropriate to refer matters direct to the Ombudsman, such as complaints by the clerk. In relation to the handling of a particular issue of concern, further advice should be sought from One Voice Wales, the monitoring officer of the relevant principal council or from the Ombudsman's office.

4.3.6 It was also suggested that extending local resolution processes to officers would be helpful in dealing with misunderstandings and disagreements with members. **Response:** This is a matter for individual councils. Some councils have adopted this approach alongside their 'member: officer relations protocol'. It is also a feature of the One Voice Wales model protocol for community and town councils.

### Principles of Conduct

4.3.7 The reference to the Principles of Conduct and their relationship with the Code was thought to be confusing and potentially contradictory. **Response:** The guidance has been amended to clarify the relationship.

## 4.4 General Obligations

### Treating Others with Respect

4.4.1 It was suggested that the expectation that a member would need to have a ‘thick skin’ when engaging in political debate should be varied in accordance with the seniority of the member, for example, county councillors should be expected to have thicker skins than community councillors. **Response:** The guidance reflects the legal precedents set by the High Court, including in a judgment concerned with the actions of a community councillor towards his fellow members (one of whom was performing the role of clerk).

### Disrepute

4.4.2 One response pointed to the significance of the disrepute provisions in paragraph 6(1)(a) of the Code, given that they apply to a member in both their official and private capacity. It was considered that there should be a better explanation of what “reasonably be regarded” means in paragraph 6(1)(a) and that the guidance should draw a distinction between conduct that brings the office of member or the authority into disrepute. The guidance should better explain the criteria used to establish a breach, including the nature of the misconduct and the seniority of the member involved. It was suggested that misconduct by senior members (e.g. the Leader) is more likely to bring the authority as a body into disrepute than similar conduct by a member who holds no leadership positions. **Response:** The Ombudsman considers that the test of reasonableness is the same as that for considering whether a member has a prejudicial interest in a matter under paragraph 12(1) of the Code, i.e. would a reasonable member of the public (the person on the ‘Dunvant Omnibus’) in possession of all the facts, reasonably perceive that the member had brought disrepute upon themselves or the authority. Whilst a finding of breach will always be fact sensitive, the point about the seniority of the member is accepted and the guidance now reflects this.

### Reporting Breaches of the Code

4.4.3 Concern was expressed about the suggestion that monitoring officers may refer complaints to the Ombudsman on behalf of members, as this could lead to a conflict of interest. **Response:** This aspect of the guidance is not new. The guidance acknowledges that this course of action may be taken in exceptional circumstances, but in most cases the member will be advised to refer a complaint themselves.

4.4.4 Guidance was also sought on when a member should self-refer themselves to the Ombudsman in respect of an alleged criminal offence. **Response:** There is no express obligation for a member to self-refer themselves to the Ombudsman due to a potential breach of the Code. The Ombudsman is happy to maintain dialogue with monitoring officers on this aspect of the ethical framework generally and in relation to specific cases.

## Reasons for Decisions

4.4.5 The guidance on paragraph 8(b) of the Code states that, as a matter of good practice, where a member disagrees with officer advice, they should give clear reasons and, if they vote against the advice, ensure those reasons are recorded in the relevant minutes. This was questioned by two community councils. They considered that such an approach was reasonable if it applied to a decision of a council as a whole, but was undesirable if applied to individual councillors. It was considered that minutes could become a verbatim record of meetings, contrary to advice that minutes should record decisions of the council and not individual's reasons for voting one way or another (ref: Local Council Administration 12<sup>th</sup> Edition). **Response:** The 'Good Councillor Guide', published in Wales, states *'It is not necessary to note who said what [at a meeting], although the discussion can be summarised and decisions must be precisely recorded.'* Whilst it is accepted that a balance needs to be struck, this aspect of the guidance on the Code is not new and it is not known to have caused difficulties in the past.

## Gifts and Hospitality

4.4.6 It was suggested this section was insufficiently detailed and gave the wrong impression that members should never accept gifts or hospitality. **Response:** The guidance is consistent with the provisions of the Code. Members should consult their authority's own gifts and hospitality policy for further advice.

## **4.5 Personal and Prejudicial Interests**

### Role of the Clerk / Monitoring Officer

4.5.1 Two responses from community and town councils were concerned about the advice that a member with any doubts about whether they had a personal or prejudicial interest should seek advice from their clerk. It was felt that this could put the clerk in a difficult position and shares a responsibility that lies entirely with the member concerned. Another suggested that monitoring officers do not have the resources to provide advice to community councillors. **Response:** The approach advocated in the guidance is not new. It reflects the reality in many councils where the clerk (as the proper officer) endeavours to provide advice to members on a whole range of issues. In some cases, it may be necessary to seek the professional advice of the principal council's monitoring officer. That said, the Ombudsman is aware that while monitoring offices endeavour to provide support, they are constrained by available resources. The guidance has been amended to indicate that the clerk may be able to offer advice, but if guidance is needed from the monitoring officer, this should be sought in good time prior to a meeting at which the related business is to be discussed. In any event, the guidance makes it clear that the member concerned remains ultimately responsible for the course of action they take.

### Remote Attendance at Meetings

4.5.2 It was suggested that the guidance should be modified to reflect that council meetings are being held remotely, which presents practical difficulties for members to submit signed, written disclosures of interests. **Response:** The guidance reflects the

current requirement of the Code that a member declaring an interest at a meeting for the first time must confirm it in writing before, or immediately after the close of, the meeting in accordance with any requirements of the authority's monitoring officer or clerk. Authorities will need to obtain their own advice, but in the short term it may be possible, for example, for the declaration to be confirmed in an email. Councils may wish to raise this with the Welsh Government during its review of the ethical framework.

4.5.3 A number of responses suggested the section on withdrawing from a meeting needed to reflect circumstances in which members attended meetings remotely over the internet. It said that it could be problematic for members logging out to know when to log back in again. **Response:** The guidance reflects the requirements of the Code. The Ombudsman acknowledges the issue identified, but considers it should be possible to address it through a technological solution. For example, a member declaring a prejudicial interest could be placed in a virtual waiting room by a meeting administrator for the duration of the business giving rise to the interest.

#### Definition of 'Close Personal Associate'

4.5.4 One response noted that the Code does not define what is meant by a 'close personal associate' and suggested that further clarification was required, for example, in relation to close relatives who are estranged. **Response:** The approach taken in the Code recognises that the presence of a close personal association with another person will depend on the nature of the actual relationship. For example, it is recognised that a member who is estranged from a close relative may have no knowledge of their business or other interests. The guidance already sought to address this, but has been modified to make it clearer.

#### Dispensations

4.5.5 One response questioned the revised wording in the guidance relating to the broad power of a standards committee to grant a dispensation '*if the Committee considers it otherwise appropriate in all the circumstances.*' It was also thought the example given – relating to a member's disability – seemed to be restricting the legislative intent. **Response:** The revised wording brings the guidance into line with the wording used in the relevant regulations. When amending the regulations to include the new criteria, the Welsh Government signalled that the power could be used in the way that is described in the example included in the guidance. This does not inhibit the use of the power in other appropriate circumstances.

## **4.6 Registration of Personal Interests**

### Register of Interests

4.6.1 It was suggested that as it is not compulsory for community and town councillors to register certain pecuniary and other interests upon taking up office, the guidance should make it clear that the requirement on such a council to maintain and publish a register of interests could, in practice, mean the council publishes a register that is initially blank. **Response:** This raises a somewhat hypothetical, and potentially arguable, point about the interpretation of Section 81 of the 2000 Act. A council would

need to take its own advice on the issue. It is not a matter for the Ombudsman's guidance on the Code.

4.6.2 Another response suggested that the requirement to register pecuniary and certain other interests within 28 days of taking up office should be extended to members of community councillors. **Response:** This is a matter for the Welsh Government. This has never been a feature of the model Code in Wales since its introduction. The issue was considered afresh when the last substantive review of the Code was undertaken in 2007/08. In general, it was considered disproportionate to apply that requirement to community and town councillors, given the scale of the resources for which they are responsible.

4.6.3 One response suggested that there should be a standard template for registers of interest and a requirement for an annual review and monitoring system, overseen by standards committees. **Response:** These are not matters for the Ombudsman. It may be necessary for the Welsh Government to legislate to introduce a statutory standard form, but monitoring officers and standards committees could themselves develop a standard approach, should they collectively see merit in this. Section 81 of the 2000 Act requires the monitoring officer or community council clerk, as appropriate, to establish and maintain the register. Whilst it is important that registers are reviewed and updated regularly, the Ombudsman has no power to require the adoption of an annual review and monitoring system.

## **Public Services Ombudsman for Wales**

May 2021

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**THIS REPORT IS NOT EXEMPT AND IN THE PUBLIC DOMAIN****SOUTH WALES FIRE & RESCUE AUTHORITY**AGENDA ITEM NO 8  
7 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF HEAD OF CORPORATE SUPPORT

**PUBLIC SERVICES OMBUDSMAN FOR WALES' CODE OF CONDUCT  
CASEBOOK – ISSUES 24 & 25****THIS REPORT IS FOR INFORMATION**REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE  
SERVICES

REPORTED PRESENTED BY HEAD OF CORPORATE SUPPORT

**SUMMARY**

This report presents to Members the Public Services Ombudsman for Wales' Code of Conduct Casebook, issues 24 & 25.

**RECOMMENDATION**

It is recommended that Members note the content of the Ombudsman Code of Conduct Casebook, issues 24 & 25, published by the Public Services Ombudsman for Wales.

**1. BACKGROUND**

- 1.1 The Public Services Ombudsman for Wales produces quarterly Code of Conduct casebooks. Since Members considered Issue 23 of the Code of Conduct Casebook (covering the periods October 2019 to December 2019), the Ombudsman has published two further casebooks (issues 24 & 25) on its website. These are attached to the report at Appendix 1 and Appendix 2.
- 1.2 Members should note that all of the Casebooks are available to be accessed via the Ombudsman website.

**2. ISSUE**

- 2.1 The Standards Committee, as part of its terms of reference, has responsibility to oversee matters relating to the Public Services Ombudsman for Wales (the Ombudsman).

- 2.2 The Ombudsman issue the “Code of Conduct Casebook” bulletins periodically to provide the public with an overview of the work of the Ombudsman.
- 2.3 The Standards Committee review the work of the Ombudsman as a matter of good governance. There have been no findings of a breach of the code against any Members of South Wales Fire & Rescue Authority within the publication(s).
- 2.4 Members of the Standards Committee are requested to note the Code of Conduct Casebook.

### **3. IMPLICATIONS**

#### **3.1 Community and Environment**

Equality, Diversity and Inclusion	No
Welsh Language	No
Well-Being Of Future Generations (Wales) Act	No
Socio Economic Duty	No
Sustainability / Environment / Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No
Impact Assessment	No

#### **3.2 Regulatory, Strategy and Policy**

Legal	No
Financial	No
Procurement	No
Corporate Risk	No
Information Management	No
Data Protection / Privacy	No
Health, Safety and Wellbeing	No
Governance & Audit	No
Service Policy	No
National Policy	No

### 3.3 Resources, Assets and Delivery

Human Resources and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

## 4. RECOMMENDATION

- 4.1 It is recommended that Members note the content of the Ombudsman Code of Conduct Casebook, issues 24 & 25, published by the Public Services Ombudsman for Wales.

<b>Contact Officer:</b>	Sarah Watkins Head of Corporate Support	
<b>Background Papers</b>	<b>Date</b>	<b>Source/Contact</b>
Code of Conduct Casebook Issue 24	December 2020	<a href="https://www.ombudsman.wales/wp-content/uploads/2021/04/CoC-casebook-Full-year-ENG-1.pdf">https://www.ombudsman.wales/wp-content/uploads/2021/04/CoC-casebook-Full-year-ENG-1.pdf</a>
Code of Conduct Casebook Issue 25	November 2021	<a href="https://www.ombudsman.wales/wp-content/uploads/2021/11/Code-of-Conduct-Casebook-Jan-March-2021.pdf">https://www.ombudsman.wales/wp-content/uploads/2021/11/Code-of-Conduct-Casebook-Jan-March-2021.pdf</a>
<b>Appendices</b>		
Appendix 1	Code of Conduct Casebook Issue 24	
Appendix 2	Code of Conduct Casebook Issue 25	

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## Introduction

The Public Services Ombudsman for Wales considers complaints that members of relevant authorities in Wales have breached the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- a) that there is no evidence that there has been a breach of the authority's code of conduct;
- b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers January to December 2020.

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No action necessary	3
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Referred to Adjudication Panel for Wales	10

# Case summaries

## No evidence of breach

There are no summaries in relation to this finding.

## No action necessary

### **Wrexham County Borough Council – Duty to uphold the law** **Case Number: 201804590 – Report issued in January 2020**

The Ombudsman received a complaint about a Member of Wrexham Council. It was alleged that the Members' conduct and behaviour had brought the Council into disrepute in breach of the Code of Conduct. The Ombudsman investigated the matters complained about. Information was provided by relevant parties including the Council. After careful consideration of the evidence obtained during the investigation the Ombudsman determined that it would not be in the public interest to pursue matters further and that no action should be taken in respect of the matters investigated.

### **Pembrey & Burry Port Town Council – Promotion of equality and respect** **Case Number: 201906707 - Report issued in March 2020**

The Ombudsman received a complaint that a Member ("the Member") of Pembrey & Burry Port Town Council ("the Council") had breached the Code of Conduct. It was alleged that the Member did not show respect and consideration for others, used bullying behaviour, and behaved in a manner which could reasonably be regarded as bringing the Council into disrepute. During the early stages of the investigation, the Member provided an account. He said that he believed his actions to have been justified and offered an apology if his assertiveness had been perceived differently by the Complainant. The Ombudsman considered the Member's response and his offer of an apology to be sufficient to resolve the complaint. The Ombudsman, therefore, considered that no action needed to be taken in respect of the matters investigated.

### **St Donats Community Council – Disclosure and registration of interests** **Case Number: 201905525 – Report issued in March 2020**

The Ombudsman received a complaint that a Member ("the Member") of St Donats Community Council ("the Community Council") had breached the Code of Conduct. It was alleged that the Member failed to declare a personal and prejudicial interest when she sat on the Interview Panel during an interview for the role of Co-opted Member of the Community Council. The Ombudsman found that the Member had a personal interest in the interview by virtue of her relationship with the applicant's estranged brother and admittance that there was tension between them. It was the Ombudsman's view that a member of the public, with knowledge of the circumstances, would regard the Member's interest as so significant as to prejudice her judgement of the public interest. The investigation established that the Member was advised by the Clerk that she was not required to declare an interest in the interview. Whilst a decision

to declare an interest is the responsibility of each individual member, it was not unreasonable for the Member to have acted upon the Clerk's advice. The investigation considered whether the Member's failure to declare a personal and prejudicial interest caused any harm and whether it affected the decision to appoint to the role of Co-opted Member. There was no documentary evidence or written record of the interviews. Therefore, the Ombudsman's decision was guided by the fact that the decision to appoint the successful applicant was taken unanimously by the Interview Panel. On the basis of the information available it was not considered that the applicant's application was adversely affected by the Member's presence and involvement in the interview process. In view of these factors it was concluded that the Ombudsman did not need to take further action in the public interest. However, he recommended to the Clerk of the Council that training on members interests and their obligations under the Code of Conduct is provided to the Council.

### **St Harmon Community Council – Disclosure and registration of interests** **Case Number: 201903933 – Report issued in March 2020**

The Ombudsman received a complaint that a member ("the Member") of St Harmon Community Council had breached the Code of Conduct for members ("the Code"). It was alleged that the Member had failed to show respect and consideration to others, and that he had failed to take appropriate action in respect of a personal and prejudicial interest he had in a co-option process the Council undertook.

During the course of the investigation, information was sought from the Council as well as from a number of witnesses. The evidence gathered did not substantiate that the Member's behaviour had demonstrated a failure to show respect and consideration to others such that could be considered a breach of the Code.

The evidence suggested that the Member had failed to take appropriate action in relation to a personal and prejudicial interest he had in the co-option process. However, the Member did not influence the decision taken on co-option in any way, he had already acknowledged, accepted and apologised for his actions and he had taken steps to seek training on his obligations under the Code.

Therefore, the Ombudsman determined that no action needed to be taken in respect of the matters investigated.

### **Carmarthenshire County Council – Integrity** **Case Number: 201900874 – Report issued in March 2020**

The Ombudsman received a complaint that a Member ("the Member") of Carmarthenshire County Council ("the Council") had breached the Code of Conduct. It was alleged that the Member had failed to treat members of staff at the Council with respect and consideration, had breached confidentiality, and had brought the office of Councillor into disrepute in relation to 2 incidents which occurred during the selection process for the Council's new Chief Executive. The first incident was that the Member had deliberately informed the unsuccessful candidate for the post that they had not been successful, thus circumventing the Human Resources ("HR") procedures in place. The second incident was that the Member had ignored a clear instruction that Councillors should not publicise the identity of the successful candidate for 30 minutes.

The Ombudsman interviewed a number of witnesses and found that the evidence suggested the Member had accidentally informed the unsuccessful candidate that they had not been successful and had not intended to circumvent HR procedures. The Ombudsman accepted that the Member had shown remorse and had apologised. The Ombudsman determined that no breaches of the Code had occurred as this had been a genuine error by the Member.

The Ombudsman determined that there was evidence that the Member had ignored a clear instruction not to publicise the identity of the successful candidate, and that this may have amounted to a breach of the Code. The Member had not considered the impact on the candidates, their wider friends and families, or the staff employed by the Council with due respect when publishing the result. Further, the information had been confidential until the proper procedures to publicise it had been completed, which the Member had pre-empted. The Ombudsman determined that these actions were capable of bringing the office of Councillor into disrepute.

However, the Ombudsman was not persuaded that it would be proportionate and in the public interest to make a referral to the Standards Committee, due to the short period of time the information was disclosed before the official announcement and taking into account the opinions of the candidates that the effect on them was limited; however, he considered that it had been appropriate for the matter to be referred to him. The Ombudsman found that no action needed to be taken in respect of the matters investigated.

### **Llantwit Fardre Community Council – Promotion of equality and respect Case Number: 201904216 - Report issued in May 2020**

The Ombudsman received a complaint that a Member ("the Member") of Llantwit Fardre Community Council ("the Council") had breached the Code of Conduct.

It was alleged that the Member made several accusations against serving Community Councillors during a Community Council meeting on 24 September 2019. It was further alleged that the Member then shared a written copy of his address, in which he accused Community Councillors of bullying the former Clerk of the Community Council, with members of the press and public.

The investigation considered the following paragraphs of the Code:

- Paragraph 5(a) – disclosing confidential information.
- Paragraph 6(1)(a) – disrepute.
- Paragraph 6(1)(c) – reporting breaches of the Code to the Monitoring Officer.
- Paragraph 6(1)(d) – vexatious, frivolous or malicious complaints.
- Paragraph 8(a) – having regard to the advice of the authority's officers.

The investigation established that the Member addressed the Community Council at its meeting on 24 September 2019, where members of the press and public were present. There was no evidence to suggest that the Member disclosed confidential information during the meeting.

The investigation found that during his address, the Member made several accusations against other members of the Council. Rather than airing his concerns in public the Member should have raised his concerns through the proper processes available for doing so. Raising accusations in such a public forum when those being accused did not have a fair opportunity to respond could amount to a breach of paragraph 6(1)(a) of the Code of Conduct.

The investigation found that the Member disregarded advice from the Clerk of the Council and that his actions were in breach of paragraph 8(a) of the Code.

When deciding whether to take further action in relation to these possible breaches of the Code of Conduct, the Ombudsman carefully considered whether it was in the public interest for him to do so. The Ombudsman considered recent steps taken by Rhondda Cynon Taf's Monitoring Officer and the Chair of the Council's Standards Committee to meet with the majority of the members of the Council in February to encourage better working relationships within the Council. It was understood that a collective agreement was reached on taking a fresh approach on how to deal with situations where disagreement had previously escalated into personal attacks. The Member was present at this meeting. As the events which were considered as part of this investigation took place some months before the meeting with the Monitoring Officer and Chair of the Standards Committee, it was not in the public interest to pursue this investigation further.

### **Torfaen County Borough Council – Promotion of equality and respect Case Number: 202000681 & 202000667 - Report issued in July 2020**

The Ombudsman received complaints that an elected Member ("the Member") of Torfaen County Borough Council ("the Council") had breached the Council's Code of Conduct for Members ("the Code").

Two Police Community Support Officers ("PCSOs") complained that, on 7 June 2020, the Member approached them at Cwmbran Boating Lake ("the Lake") in an aggressive manner. They said that the Member was shouting and demanding that they dealt with people who were angling at the Lake whilst it was the closed season. They said that the Member did not accept that it was not a policing matter and identified himself as a Councillor to try and use his position to intimidate them.

The Ombudsman received an account from the Member, obtained a witness account from another Councillor who was present at the Lake, and obtained information from Gwent Police. On the balance of probabilities, the evidence indicated that the Member may have breached paragraph 4(b) of the Code by speaking to the PCSOs in a raised voice.

The investigation found that there was no dispute that the Member identified himself as a Councillor. The Member explained that he had done so to explain his knowledge of angling legislation. The Ombudsman found that the Member did contact Gwent Police to seek clarification regarding the enforcement of angling legislation and to raise a concern that the PCSOs had not spoken to, or provided advice, to the anglers as they had informed him.

The Ombudsman did not find sufficient evidence that the Member had displayed bullying and/or harassing behaviour, or that he had brought the authority into disrepute.

The Ombudsman found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue matters further.

The Ombudsman asked the Member to be mindful of how his conduct may be perceived when acting in his role as a Councillor and suggested that he complete refresher training on the Code.

### **Glynneath Town Council – Promotion of equality and respect** **Case Number: 201904472 - Report issued in July 2020**

The Ombudsman received a complaint that a Member ("the Member") of Glynneath Town Council ("the Council") had breached the Council's Code of Conduct ("the Code").

A member of the public complained that when the Member entered Glynneath Town Hall ("the Hall") on 20 September 2019 she had been aggressive and shouted at them, and that the Member had threatened to "put paid" to their Hall Hire Agreement with the Council.

The Ombudsman obtained conflicting witness statements from 3 members of the public, as well as the complainant and the Member. On balance, the evidence obtained suggested that the Member may have breached paragraph 4(b) of the Code by shouting at the member of the public.

The Ombudsman did not find sufficient evidence that the Member had displayed bullying behaviour, or that they had brought their authority into disrepute. Furthermore, there was no supporting evidence that the Member had threatened the complainant's future hire of the Hall, nor had the Member acted on such a threat.

The Ombudsman found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue further enquiries into the matter, given the conflicting nature of the evidence obtained.

The Ombudsman recommended to the Council that it should arrange training on the Code for its Members as soon as is practicable.

### **Tywyn Town Council – Promotion of equality and respect** **Case Number: 201900952 - Report issued in September 2020**

An officer of Tywyn Town Council ("the Council") complained that a member had written a disrespectful letter to a third party.

The Ombudsman's investigation considered whether the content of the letter may have breached paragraphs 4(b) and 6(1)(a) of the Code of Conduct for members ("the Code").

The member asserted that they were not acting in their capacity as member when writing the letter. However, the Ombudsman found that, as the letter referred to Council business, it was reasonable to conclude that the member gave the impression they were acting in their capacity as a member of the Council when they wrote the letter. The Ombudsman found that the majority of the comments made by the member were political in nature.

However, the member's comments to the third party recipient of the letter were considered to be disrespectful. Whilst the Ombudsman considered that those comments were suggestive of a breach of paragraph 4(b) of the Code, having taken into consideration the information provided by the recipient and the wider evidence available, he did not consider it would be proportionate or in the public interest for any further action to be taken.

The Ombudsman did not consider that there was evidence to suggest that the content of the letter sent by the member was suggestive of a breach of paragraph 6(1)(a) of the Code.

**Mumbles Community Council – Duty to uphold the law**  
**Case Number: 201904820 - Report issued in November 2020**

The Ombudsman received a self-referred Code of Conduct ("the Code") complaint from a Member ("the Member") of a Community Council in Wales ("the Council") because they had been named in a Welsh Audit Office ("Audit Wales") Report concerning unauthorised Council expenditure. The Ombudsman considered whether the Member may have breached paragraph 7 (b) (i), (ii), (iii) of the Code for use of Council resources which was imprudent, in breach of the authority's requirements and unlawful.

The Ombudsman's investigation found that a Planning Consultancy had billed the Council for work which had not been agreed, and the Planning Consultancy said it had been instructed by the Member. The Member said at the time of the events he was new to the Council and he thought the work undertaken for the Council by the Planning Consultancy had been part of a previously agreed arrangement with the Council. The Member said he had not worked with planning consultants before and he had not realised that his specific communications with them would incur additional costs. The Ombudsman's investigation found that the Member had a responsibility to fully understand the terms of the Council's arrangements with the Planning Consultancy, and the Member's actions and failure to do so, could reasonably be considered as a potential breach of paragraph 7(b) (i), (ii), (iii) of the Code.

However, the Ombudsman also found that whilst the Clerk had suggested the Member should contact the Planning Consultancy, the Member had not been provided with clear guidance on the implications of doing so, and that the Member's communications had a limited impact on the overall expenditure. In addition, Audit Wales had not engaged with the Member or the Planning Consultancy to establish what instruction it attributed to the Member.

Please Note: Summaries are prepared for all reports issued by the Ombudsman. This summary may be displayed on the Ombudsman's website and may be included in publications issued by the Ombudsman and/or in other media. If you wish to discuss the use of this summary please contact the Ombudsman's office.

Having taken into consideration the evidence available and the information provided by the Member, the Ombudsman did not consider it would be proportionate or in the public interest for any further action to be taken.

## Referred to Standards Committee

### **Denbighshire County Council – Objectivity and propriety Case Number: 201806601 - Report issued in September 2020**

The Ombudsman received a complaint that a Member ("the Member") of Denbighshire County Council ("the Council") failed to observe the Code of Conduct for members of the Council. It was alleged that the member abused his position by visiting a member of the public's place of work and complaining to her employer about a private altercation between her and a constituent in a local store car park.

The Ombudsman determined that there was evidence to suggest that the Member had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The Ombudsman determined that the member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Council's Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.

### **Laleston Community Council – Duty to uphold the law Case Number: 201807411 - Report issued in November 2020**

The Ombudsman received a complaint that a Former Member ("the Former Member") of Laleston Community Council ("the Council") had failed to observe the Code of Conduct for Members of the Council. It was alleged that the Former Member had misused Council funds via unauthorised cashpoint withdrawals and debit card transactions between November 2018 and January 2019.

A police investigation took place, and the Former Member subsequently resigned from the Council. The Ombudsman's investigation established that at the time of the events the Former Member had taken on extra duties and been paid agreed allowances by the Council. It was found that the Former Member then took charge of the Council's debit card and used it for purchases and cash withdrawals which were in excess of what he already received and could not be accounted for. The Former Member said he had accessed the Council's finances in this way because he felt he was entitled to the funds; however, he did not provide any further information to suggest his transactions were for the benefit of the Council.

The Ombudsman determined that the Former Member may have breached the Council's Code of conduct, in particular, paragraphs 7(a) and 7(b) i), ii), iii), iv) and vi) as he has sought to gain a personal and financial advantage via unauthorised access to Council finances, and misused Council funds. The Ombudsman also found that the Former Member's actions and conviction could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Bridgend County Borough Council for consideration by its Standards Committee.

## Referred to Adjudication Panel for Wales

### **Sully and Lavernock Community Council – Integrity Case Number: 201901994 - Report issued in September 2020**

The Ombudsman received a complaint that a member ("the Member") of Sully and Lavernock Community Council ("the Council") failed to observe the Code of Conduct for elected members. It was alleged that the Member made a series of public posts, on the social media platform Facebook, which could have the potential to damage the reputation of the Council.

The Ombudsman found that 3 public posts, dated between 10 January and 11 March 2019, which made reference to high profile female politicians, were gratuitously offensive and could reasonably be regarded as bringing the Councillor's Office or Authority into disrepute which was suggestive of a breach of paragraph of 6(1)(a) of the Code of Conduct. The Ombudsman considered that the language used went beyond political expression and was so egregious that, should a breach of the Code of Conduct be found and a sanction imposed, it would be a proportionate interference with the Councillor's right to freedom of expression.

The Ombudsman also found that the Councillor had failed to supply evidence he claimed to hold in respect of the privacy of the posts and that, in refusing to provide information, he had failed to comply with a request in connection with the investigation which was suggestive of a breach of paragraph 6(2) of the Code of Conduct.

The Ombudsman referred his investigation report to the Adjudication Panel for Wales for its consideration.

# Introduction

The Public Services Ombudsman for Wales considers complaints that members of relevant authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- a) that there is no evidence that there has been a breach of the authority's code of conduct;
- b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defense put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers January to March 2021.

# Contents

No evidence of breach ..... 3

No action necessary ..... 3

Referred to Standards Committee ..... 3

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# Case summaries

## No evidence of breach

There are no summaries in relation to this finding.

## No action necessary

There are no summaries in relation to this finding.

## Referred to Standards Committee

Knighton Town Council – Promotion of equality and respect

Case Number: 201907610 – Report issued in January 2021

The Ombudsman received a complaint from a member of the public that a Member (“the Member”) of Knighton Town Council (“the Council”) had failed to observe the Code of Conduct for members of the Council.

It was alleged that the Member shouted, and used offensive language, aimed at people present at a public meeting held to discuss the local community’s response to the coronavirus (COVID-19) outbreak. It was also alleged that the Member swore and used bullying behaviour towards the complainant. The Member had accepted a Conditional Caution from the Police for his conduct at the meeting.

The Ombudsman found that there was evidence to suggest that the Member shouted and used offensive language at the meeting and had used bullying behaviour.

The Ombudsman determined that the Member may have breached the Council’s Code of Conduct, in particular, paragraphs 4(b) and 4(c) as he failed to show respect and consideration, and used bullying behaviour, towards members of the public who attended the meeting. The Ombudsman also found that the Member’s actions could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Powys County Council for consideration by its Standards Committee.

The Standards Committee found that the Member had breached paragraphs 4(b), 4(c), and 6(1)(a) of the Code of Conduct and suspended the Member for a period of 6 months.

## Chirk Town Council – Promotion of equality and respect

### Case Number: 201904568 – Report issued in January 2021

The Ombudsman received a complaint that a Member (“the Member”) of Chirk Town Council (“the Council”) had breached the Code of Conduct.

It was alleged that the Member had sent an email to the complainant’s employer, in which he attempted to smear her name in her workplace and to make her feel threatened and vulnerable.

The investigation considered whether the Member had breached the following paragraphs of the Code of Conduct:

- 4(b) - show respect and consideration for others.
- 4(c) - not use bullying behaviour or harass any person.
- 7(a) - not, in his official capacity or otherwise, to use or attempt to use his position improperly to confer on or secure for himself, or any other person, an advantage or create or avoid for himself, or any other person, a disadvantage.

The Ombudsman found that the Member had sent an email to the complainant’s employer in which he threatened to take legal action against the complainant. The Member also copied his email to the Education Workforce Council, which was considered to be an aggravating factor.

The Ombudsman concluded that the Member’s conduct was such that it may amount to a breach of paragraphs 4(b), 4(c) and 7(a) of the Code of Conduct. The matter was referred to the Monitoring Officer of Wrexham County Borough Council, for consideration by the Council’s Standards Committee.

## Referred to Adjudication Panel for Wales

### Caerphilly County Borough Council – Disclosure and registration of interest

#### Case Number: 201903571 – Report issued in February 2021

The Ombudsman received a self-referred complaint that a Member (“the Member”) of Caerphilly County Borough Council (“the Council”) had breached the Code of Conduct.

The Member represented the Council as a member of the Cardiff Capital Region (“CCR”) City Deal’s Regional Cabinet. It was alleged that the Member had purchased shares in a company (“the Company”) that had been leased premises by CCR City Deal, to manufacture compound semiconductors and develop applications and that he had subsequently failed to declare an interest in the Company during CCR City Deal’s Joint Committee Meetings.

The complaint was investigated on the basis that there may have been a failure to comply with the following provisions of the Code of Conduct:

- 6(1)(a) – members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 7(a) – members must not, in their official capacity or otherwise, use or attempt to use their position to confer on or secure for themselves an advantage.
- 10(2)(viii) – members must regard themselves as having a personal interest in any business of their authority if it relates to, or is likely to affect...any body to which they have been elected, appointed or nominated by their authority.
- 11(1) – Where a member has a personal interest in any business of his authority and attends a meeting at which that business is considered, he 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.
- 14(1)(a) – Where a member has a prejudicial interest in any business of his authority, unless he has obtained dispensation from his authority's Standards Committee, he must withdraw from the room, chamber or place where a meeting considering the business is being held.

The investigation found that the Member had access to confidential information by virtue of his position on the CCR City Deal's Regional Cabinet, which enabled him to purchase shares in the Company at a low price with a reasonable expectation that he could later sell those shares at a higher value. The Ombudsman considered that his actions were not in the spirit of the Principles which underpin the Code of Conduct, in particular the principle of integrity, which expects members not to act or take decision to gain financial benefits for themselves. The Ombudsman also considered that the Member's behaviour was suggestive of a breach of paragraph 7(a) and 6(1)(a) of the Code of Conduct.

In respect of the allegation that the Member had failed to declare an interest in the Company during CCR Regional Cabinet meetings, the investigation found that the Member failed to declare an interest in the Company during a CCR Regional Cabinet meeting on 18 February 2019 and that, whilst no decisions were made about the Company during this meeting, the Member's failure to declare a personal and prejudicial interest and withdraw from the meeting was suggestive of breaches of paragraphs 11(1) and 14(1)(a) of the Code of Conduct.

The investigation concluded that the Ombudsman's report on the investigation should be referred to the President of the Adjudication Panel for Wales, for consideration of a possible breach of paragraphs 6(1)(a), 7(a), 11(1) and 14(1)(a) of the Code of Conduct.

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**THIS REPORT IS NOT EXEMPT AND IN THE PUBLIC DOMAIN**

**SOUTH WALES FIRE & RESCUE AUTHORITY**

AGENDA ITEM NO 9  
7 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF HEAD OF CORPORATE SUPPORT

**ADJUDICATION PANEL FOR WALES – ANNUAL REPORT 2020/21**

**THIS REPORT IS FOR INFORMATION**

REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

REPORTED PRESENTED BY HEAD OF CORPORATE SUPPORT

**SUMMARY**

This report advises Members of the Adjudication Panel for Wales' Annual Report 2020/21.

**RECOMMENDATIONS**

That Members note the Adjudication Panel for Wales' Annual Report 2020/2021.

**1. BACKGROUND**

- 1.1 The Adjudication Panel for Wales (APW) is an independent tribunal set up to determine alleged breaches of an Authority's Statutory Members' Code of Conduct by Elected and Co-opted Members of Welsh County, County Borough and Community Councils, Fire and National Park Authorities.
- 1.2 The APW has two statutory functions in relation to breaches of the Members' Code of Conduct:
  - To form case or interim case tribunals to consider references from the Public Services Ombudsman for Wales following the investigation of allegations that a Member has failed to comply with their Authority's Members' Code of Conduct; and
  - To consider appeals from Members against the decisions of local authority Standards Committees that they may have breached the Members' Code of Conduct.

## 2. ISSUE

- 2.1 The APW report is attached at Appendix 1 to this report. Section 2 (at page 8-11) provides details of the performance and progress from 2016-17 to 2020-21, and details the number of references and appeals that have been received each year. Summaries of case tribunal hearings can be found at Section 3 (page 12) of the APW Report.

## 3. IMPLICATIONS

### 3.1 Community and Environment

Equality, Diversity and Inclusion	No
Welsh Language	No
Well-Being Of Future Generations (Wales) Act	No
Socio Economic Duty	No
Sustainability / Environment / Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No
Impact Assessment	No

### 3.2 Regulatory, Strategy and Policy

Legal	No
Financial	No
Procurement	No
Corporate Risk	No
Information Management	No
Data Protection / Privacy	No
Health, Safety and Wellbeing	No
Governance & Audit	No
Service Policy	No
National Policy	No

- 3.2.1 The role of the Standards Committee is to oversee, maintain and strengthen high standards of conduct in public office and an awareness of the work of the Adjudication Panel for Wales is an important part of this work.

### 3.3 Resources, Assets and Delivery

Human Resources and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

## 4. RECOMMENDATIONS

- 4.1 That Members note the Adjudication Panel for Wales' Annual Report 2020/21.

<b>Contact Officer:</b>	Sarah Watkins Head of Corporate Support
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Background Papers	Date	Source / Contact
Adjudication Panel for Wales Annual Report Year 2020 – 2021	March 2021	<a href="https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2021-06/apw-annual-report-2020-21.pdf">https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2021-06/apw-annual-report-2020-21.pdf</a>

Appendices	
Appendix 1	Adjudication Panel for Wales Annual Report 2020/21

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# Adjudication Panel for Wales Annual Report

Year 2020 – 2021

PDC / APW

PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES

# Contents

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Mae’r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## Foreword

This is my sixth report as President of the Adjudication Panel for Wales. The report covers the period 1 April 2020 – 31 March 2021.

We aim to ensure that the Panel serves the public interest by dealing with any disputes both efficiently and effectively. We make every effort to ensure that all those involved in the dispute feel that the dispute has been fairly resolved within as short a timescale as is reasonable. We are conscious that the public must have confidence that any breaches of the Code of Conduct will be dealt with fairly in order to uphold trust and confidence in local democracy.

This year has undoubtedly been a year like no other, not only for the APW, but for everyone. Remote technology has enabled the Panel to continue its work unabated. While the use of such technology is likely to remain for the long-term, the return of the “face to face” aspect of our work is hoped for by the end of the next financial year (depending on social distancing guidance). That said, virtual hearings may make it easier for members of the public to attend our hearings which are principally held in public to ensure transparency and uphold the open justice principle. The APW will review for each case the best way to hold a hearing.

During the year covered by this report, the APW issued three Presidential Guidance documents on disclosure, anonymity and the role of the monitoring officer. These documents were prepared following consultation with stakeholders and to ensure both consistency and a deeper understanding of our processes. I also hope that the guidance might assist local government standards committees where appropriate when dealing with their own hearings.

The APW has updated its website to include information videos and briefings about the Panel and its processes, aimed to explain in an accessible way to the public our work and role. Due to the pandemic, we were unable to attend planned outreach events.

I would like to pay tribute to, and thank, all the members of the Panel and the administration, including the Registrar, for continuing to perform their public duty fairly, efficiently and professionally. Their commitment to doing so, even when they, their loved ones or community were affected by COVID-19, is something of which I am immensely proud.

Any questions or comments arising as to any aspect of the workings of the Panel, or as to the contents of the Report, are most welcome and should in the first instance be addressed to the Registrar.

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

## Section 1 – About Us

In this section:

- Basis for the APW
- The APW's Function
- The APW's Regulations
- The APW's Process
- Members of the APW
- Appointments
- Training
- Contacting the APW
- Accessing the APW

### Basis for the APW

The Adjudication Panel for Wales (APW) is an independent tribunal that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

The APW was established under Part III of the Local Government Act 2000.

### The APW's Function

The Code of Conduct for an authority provides its members with a set of standards expected of them in public life. The code of conduct covers various requirements as to how members should conduct themselves and includes requirements in relation to equality, personal and prejudicial interests, confidential information, their authority's resources and the need to avoid bringing their office or authority into disrepute.

The APW has two statutory functions in relation to breaches of the Code of Conduct:

- to form case or interim case tribunals ("Case Tribunals") to consider **references** from the Public Service Ombudsman for Wales (PSOW), following the investigation of allegations that a member has failed to comply with their authority's Code of Conduct; and
- to consider **appeals** from members against the decisions of local authority standards committees that they have breached the Code of Conduct ("Appeal Tribunals").

### The APW's Regulations

The APW operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the APW are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the APW clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the APW. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

APW's procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended), and
- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

## The APW's Process

Anyone wishing to respond to a reference from the PSOW or to make an application for permission to appeal to the APW must complete and send the relevant form to the APW.

At an APW hearing the panel is composed of a legally qualified chairperson and 2 lay members. Legally qualified members can also sit as a lay member. APW hearings are normally held in public and take place near to the authority area.

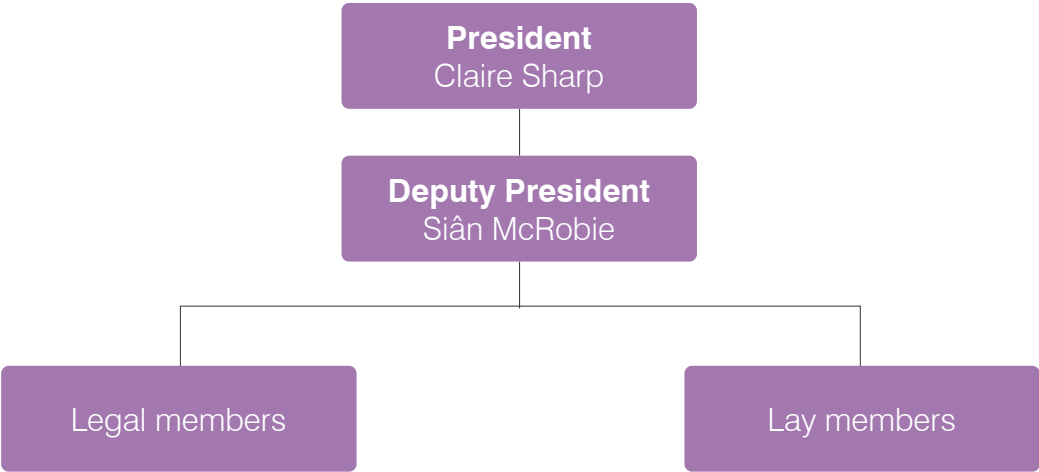
The APW publishes its decisions on the website for the APW. Decisions of Case Tribunals can be appealed on limited grounds to the High Court. Permission to appeal to the High Court must first be sought from the High Court.

Full information and guidance about the APW and its procedures, are provided on the website for the APW. Alternatively, please contact the APW administration for further information or if you would like to receive publications in a different format. The contact details can be found on page 7.

## Members of the APW

Appointments to the APW are made by the First Minister after consideration of recommendations made by the Judicial Appointments Commission.

<b>President</b>	The President has judicial responsibility for the APW and its members.
<b>Deputy President</b>	The Deputy President supports the President and fulfils the duties of President if the President is unable to carry out her duties, either temporarily or permanently.
<b>Legal Members</b>	Legal members are qualified lawyers and have responsibility for conducting proceedings at hearings and advising the administration on matters of law. Legal members write APW decisions and give directions where necessary.
<b>Lay Members</b>	Lay members have a wide range of knowledge and experience relevant to the work of the APW.
<b>Administration</b>	The day-to-day administration is largely delegated to the administration which deals with all the preliminary paperwork and the processing of applications to the APW. The administration consults the President and/or legal members on all legal points arising during the preliminary pre-hearing stages of the proceedings and sends rulings and directions in writing to the parties. The administration acts as a point of contact for chairpersons, members and APW users and attends hearings to help with the efficient running of proceedings.



Appointments

During this period, we have had no new appointed members.

Training

A training seminar was held on 1 May 2020, with a continued emphasis on judgecraft; particularly regarding vulnerability and developing a reflective practice. Sessions on applications to hear matters in private and the technology to support the Panel’s work were also delivered. A lay member received induction training in April 2020.

A programme of performance appraisal for APW members has been completed over previous years. It is anticipated that the next round of performance appraisal for APW members will start during the course of the 2021/22 year, depending on the pandemic.

Contacting the APW

To contact the APW Administration:

- APW Address:

Adjudication Panel for Wales  
Oak House  
Cleppa Park  
Celtic Springs  
Newport  
NP10 8BD
- APW Helpline:

03000 259805
- APW E-mail:

[adjudication.panel@gov.wales](mailto:adjudication.panel@gov.wales)

## Accessing the APW

The APW is happy to communicate with you in Welsh or English. If a Welsh speaker is not immediately available then we will arrange for a Welsh-speaking member of staff to phone you back.

You can choose to have your hearing conducted in Welsh or English. If your first language is not Welsh or English and you wish to speak in your first language during the hearing, we can arrange for an interpreter to be present. If you need a sign language interpreter to attend the hearing we will arrange this.

If you or anyone you are bringing to the hearing has any other access requirements that may affect our arrangements for the hearing, provisions will be made.

To enable arrangements for interpreters or to make provisions for any additional needs of attendees, sufficient notice must be given to the administration.

# Section 2 – Performance and Progress

In this section:

- Numbers and statistics
- Hearings Data
- Onward appeals
- Achievement against key performance indicators
- Complaints

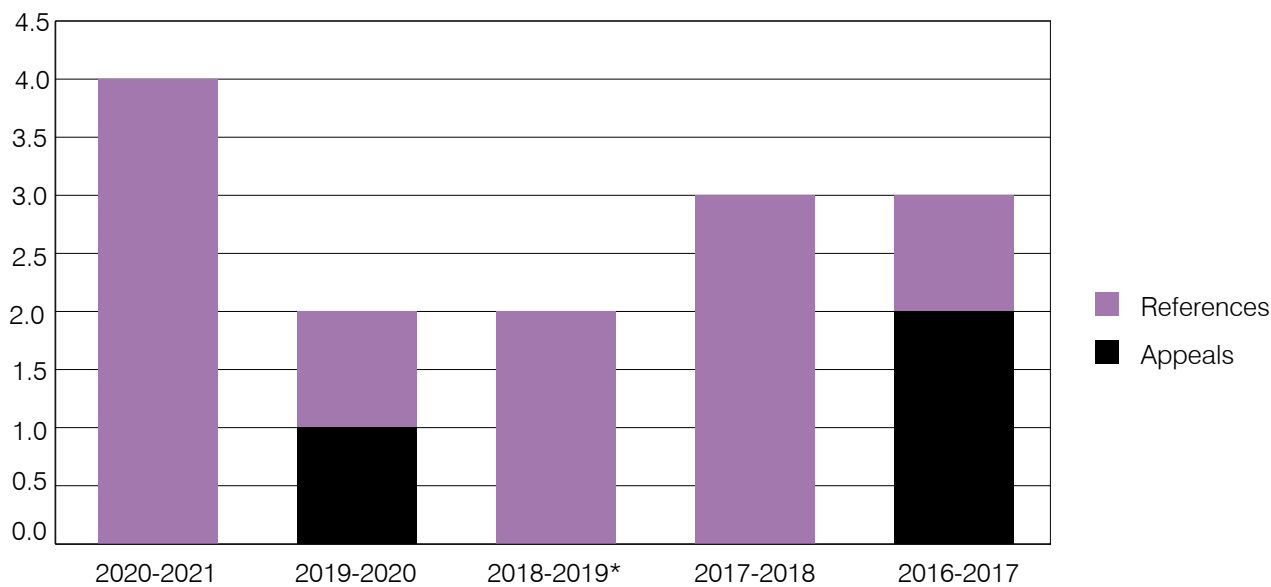
## Numbers and Statistics

A Tribunal year runs from April to March. As the numbers of cases received are relatively low, figures are given for a 5 year period to allow for comparison.

The following statistics are collated:

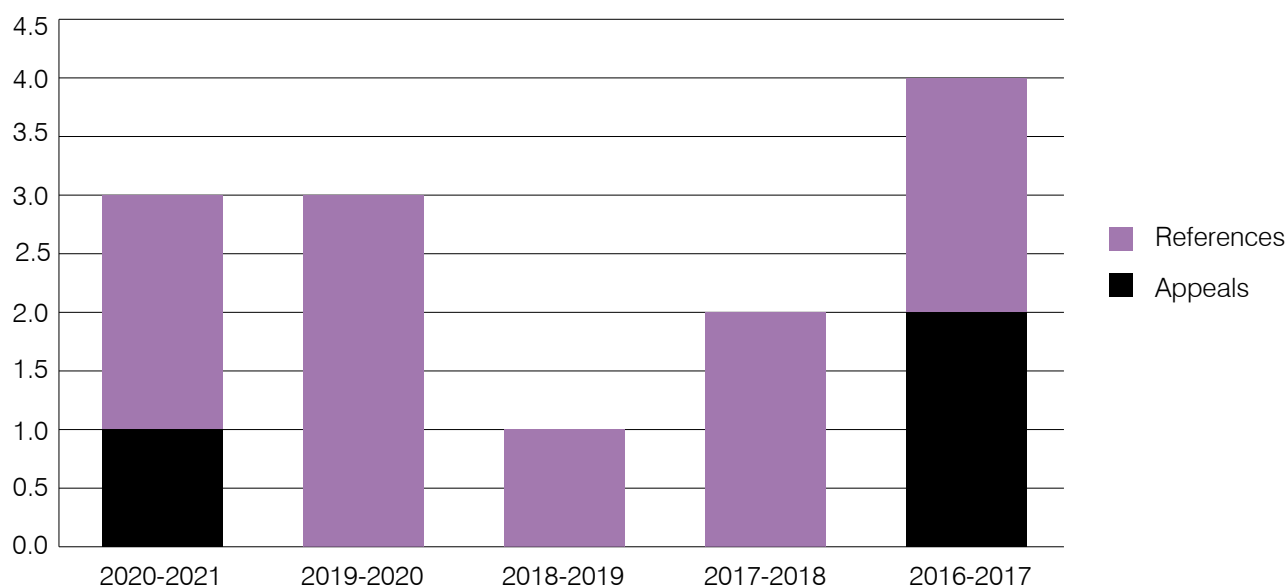
- Number of references and appeals received
- Type of applications received and registered
- Number of applications finalised
- Outcome of applications.

Graph 2.1: Number of references and appeals received by year



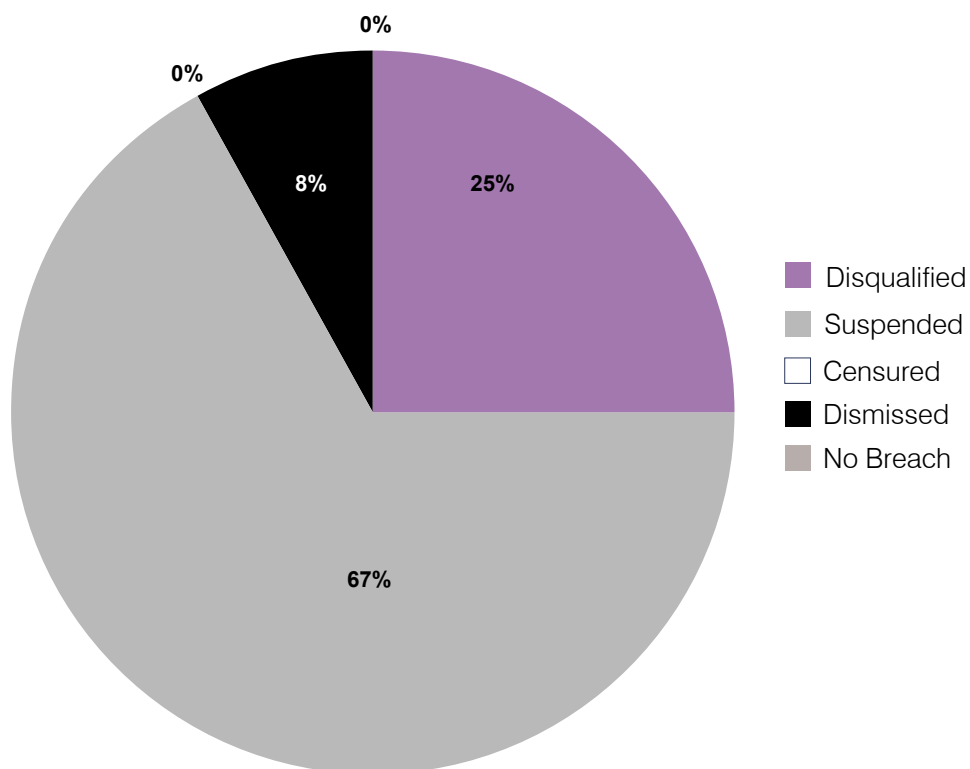
\* The 2018-2019 figure was incorrectly detailed in the 2018-2019 Annual Report which has been corrected above.

Graph 2.2: Number of references and appeals decided by year April 2016-March 2021

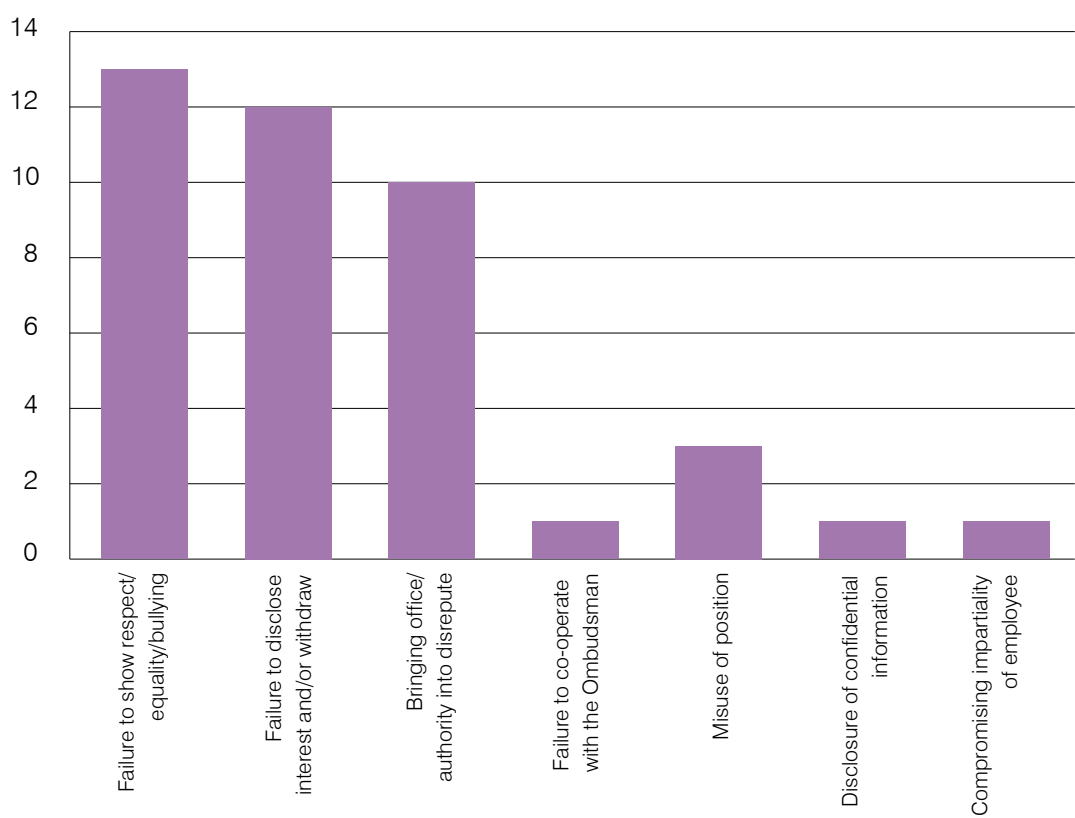


Charts 2.3: Outcomes of references and appeals April 2016-March 2021

The chart below shows the outcome of references and appeals decided by the Adjudication Panel over the last 5 years



Graph 2.4: Breaches by type April 2016-March 2021



Hearings data

During 2020-2021:

Type	Length (in days)
Reference	3 hearing days
Appeal	1 hearing day

1 listing conference took place in relation to these cases.

Onward appeals

Applications for permission to appeal a decision of a Case Tribunal or Interim Case Tribunal can be made on limited grounds to the High Court. Over the period of this report, no applications for permission were made, though one councillor obtained an extension of time to appeal.

## Achievement against key performance indicators

To monitor how effectively services are delivered, we have key performance indicators aimed at measuring two key aspects of our business; the speed of our service and the quality of service through customer satisfaction.

To measure the speed of our service, we have a series of primary performance indicators based on the time taken to process an application – from receipt to the hearing or disposal (see below).

### Speed of our service 2020-2021

<b>Target:</b> 95% of queries dealt with or cases accepted within 10 working days of receipt	➔	Target achieved in 100% of cases
<b>Target:</b> 100% of notices of hearing issued to respondent/appellant at least 15 working days prior to the hearing and at least 5 working days prior to any adjourned hearing	➔	Target achieved in 100% of cases
<b>Target:</b> 100% of notices of hearing issued to witnesses within 10 working days of the hearing	➔	Not Applicable as none issued
<b>Target:</b> 90% of decision reports issued within 30 working days of the hearing	➔	Target achieved in 100% of cases
<b>Target:</b> 75% of applications discharged within 12 months	➔	Target achieved in 100% of cases

## Complaints

The APW received no formal complaints during the reporting period.

## Section 3 – Case summaries

In this section:

- References
- Appeals

### References

During the reporting period, 2 case tribunals took place resulting from a reference from the Ombudsman. A summary of the cases determined by the APW appears below:

APW/001/2020-021/CT

Merthyr County Borough Council

The allegations were that the councillor had breached the Code of Conduct for Merthyr County Borough Council by failing to show respect and consideration for others, conducting himself in a manner reasonably regarded as bringing the office or authority into disrepute, failing to disclose a personal interest in council business when attending a meeting or making written representations, seeking to influence decisions by the council when he had a prejudicial interest (without obtaining a dispensation), and making oral representations in respect of a matter in which he had a prejudicial interest (without obtaining a dispensation).

The councillor was Leader of the Council. The proceedings arose from the purchase of a property next door to the councillor's home by a private organisation intending to house children from troubled backgrounds. In addition, the councillor's conduct towards the then chief executive of the council in front of other officers was alleged to have been in breach of the Code of Conduct.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Merthyr County Borough Council as follows:

- You must show respect and consideration for others (paragraph 4(b));
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- 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 (paragraph 11(1));
- 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 (paragraph 11(2)(a));
- 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, you must not seek to influence a decision about that business (paragraph 14(1)(c));

- 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, not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business (paragraph 14(1)(d));
- 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, you must not make any oral representations in respect of that business (paragraph 14(1)(e)).

The Case Tribunal concluded by unanimous decision that the councillor should be suspended for a period of 7 months and recommended that he attend further training on the Code of Conduct within a month of resuming his office as councillor. It found that the councillor's interest was both personal and prejudicial, and he had failed to follow the advice of the monitoring officer about how to deal with the matter. The Case Tribunal also concluded that the councillor's conduct towards the chief executive was "inappropriate, hectoring and unintermittible, and went beyond assertiveness". It judged that the councillor showed a lack of insight into his misconduct.

The councillor obtained an extension of the period to appeal the decision of the Case Tribunal from the High Court, but did not ultimately appeal the decision.

APW/002/2020-021/CT

Sully and Lavernock Community Council

The allegations were that the councillor had breached the Code of Conduct for Sully and Lavernock Community Council by bringing his office or authority into disrepute and failing to supply information and evidence requested by the Public Services Ombudsman for Wales in connection with an investigation conducted in accordance with his statutory powers.

The proceedings arose from posts made by the councillor on his Facebook account between 10 January 2019 and 11 March 2019. Within those posts, the councillor made a number of comments about three elected female politicians and Shamina Begum. He claimed to the Public Services Ombudsman for Wales that his posts were not visible to the public, but failed to disclose his activity log and confirmations he claimed he received from Facebook about the status of his account, despite requests from the Ombudsman.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Sully and Lavernock Community Council as follows:

- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute." (Paragraph 6(1)(a));
- 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." (Paragraph 6(2)).

The Case Tribunal concluded by unanimous decision that the councillor should be disqualified from office in a relevant authority for a period of 15 months. It found that the councillor's comments were inflammatory and extreme, threatening in nature and promoted violence towards individuals. The tribunal added that the councillor had deliberately avoided providing information or full and frank responses to the Ombudsman.

## Appeals

During the reporting period, 1 appeal tribunal took place arising from a decision made by a local government standards committee. A summary of the cases determined by the APW appears below:

### APW/002/2019-020/AT Cardiff Council

An appeal was received against the determination of the standards committee that the councillor had breached Cardiff Council's Code of Conduct and should be suspended from office for 4 months.

The proceedings arose from the councillor's conduct towards staff at a children's home and his involvement in the case of a child in its care. The standards committee had found on 14 January 2020 that the councillor on 29 April 2018 and 11 May 2018 had breached the following paragraphs of the Code of Conduct:

- You must show respect and consideration for others (paragraph 4(b));
- You must not use bullying behaviour or harass any person (paragraph 4c);
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a)).

The councillor applied for permission to appeal to the President. The appeal was permitted to proceed in respect of the sanction imposed only; the councillor argued that the sanction was too harsh and/or disproportionate.

The Appeal Tribunal by unanimous decision endorsed the four month suspension sanction imposed by the standards committee. It considered the breaches of the Code by the councillor to be "quite serious, bordering on very serious", and repeated. The Appeal Tribunal noted that the councillor had been subject to previous sanction by the Panel for similar misconduct and showed a lack of insight.

## Section 4 – Business Priorities

In this section:

- Business priorities for 2021-2022

It is important that the APW continues to develop in order to deliver the best possible service for our customers. This section is about how the APW will build on its achievements through focusing on business priorities and our commitment to our customers.

### Business Priorities 2021-2022

- Plan and deliver an all-members training event;
- Continue to deliver an effective and efficient service, meeting key performance indicators;
- Pandemic permitting, return as appropriate to “face to face” hearings and attend key outreach events;
- Depending on the outcome of the Law Commission report on Welsh tribunals and the review of the Ethical Framework, action any changes as required by the legislature.

# Section 5 – Expenditure

In this section:

- Expenditure for 20120-2021

## Expenditure for 2020-2021

Content	Amount
Members Fees and Expenses (proceedings and training)	£43,126
Tribunal events (hearing and other costs)	£15,682
<b>Total</b>	<b>£58,808</b>

Rounded to the nearest £1,000

**THIS REPORT IS NOT EXEMPT AND IN THE PUBLIC DOMAIN**

**SOUTH WALES FIRE & RESCUE AUTHORITY**

AGENDA ITEM NO 10  
07 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF THE DEPUTY MONITORING OFFICER

**INDEPENDENT REMUNERATION PANEL FOR WALES' DRAFT ANNUAL REPORT – FEBRUARY 2022**

**THIS REPORT IS FOR INFORMATION**

REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

REPORT PRESENTED BY THE DEPUTY MONITORING OFFICER

**SUMMARY**

This report brings to Members' attention the relevant sections of the Independent Remuneration Panel for Wales' Draft Annual Report that relate to payments to Members of Welsh Fire & Rescue Authorities.

**RECOMMENDATIONS**

That Members note the extract of the Independent Remuneration Panel's Draft Annual Report, attached at Appendix 1, which provides details of payments to Members of Welsh Fire & Rescue Authorities.

**1. BACKGROUND**

- 1.1 As Members will be aware, the Local Government (Wales) Measure 2011 gave powers to the Independent Remuneration Panel for Wales to determine and review the remuneration of Members of Local Authorities, National Park Authorities, Fire & Rescue Authorities and Town & Community Councils.
- 1.2 The Panel is also required to produce an Annual Report and consult on this prior to its issue. The Panel has now issued its draft report, and the relevant extracts for Members are attached at Appendix 1 to this report.

**2. RELEVANT ISSUES**

- 2.1 Members will note that the proposals for Councillors' remuneration for Fire & Rescue Authority duties recommend an increase for the 2022/23 municipal year of salaries as follows:

- Basic salary £2,369 per annum
- Senior Salary £6,109 per annum (inclusive of basic salary)
- Chair Of Fire Authority Salary £11,162 per annum (inclusive of basic salary)

### **3. IMPLICATIONS**

#### **3.1 Community and Environment**

Equality, Diversity and Inclusion	No
Welsh Language	No
Wellbeing of Future Generations (Wales) Act 2015	No
Socio Economic Duty	No
Sustainability/Environment/Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No
Impact Assessment	No

#### **3.2 Regulatory, Strategy and Policy**

Legal	No	Data Protection / Privacy	No
Financial	No	Health, Safety and Wellbeing	No
Procurement	No	Governance & Audit	No
Corporate Risk	No	Service Policy	No
Information Management	No	National Policy	No

#### **3.3 Resources, Assets and Delivery**

Human Resource and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

### **4. RECOMMENDATION**

- 4.1 That Members note the extract of the Independent Remuneration Panel's Draft Annual Report, attached at Appendix 1, which provides details of payments to Members of Welsh Fire & Rescue Authorities.

<b>Contact Officer:</b>	T/ACO Geraint Thomas T/Director of Corporate Services
<b>Background Papers</b>	Appendix 1 – Independent Remuneration Panel for Wales’ Draft Annual Report

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## APPENDIX 1

# Independent Remuneration Panel for Wales

## Annual Report

DRAFT

February 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## ANNUAL REPORT 2022/2023

### FOREWORD

The Covid pandemic continues to impact on the work of the Panel in that we have been unable to meet with authorities and their representative organisations face to face. However, we have continued to meet regularly and have meaningful discussions to meet our statutory obligations via Microsoft Teams or Zoom.

It has been a difficult time for the public sector but local authorities in Wales have demonstrated their resilience and capabilities over the past 18 months. 2022 is an election year for local government and the new five year term provides the opportunity to reset the basic salaries of elected members to align with the average earnings in Wales. This has been eroded in successive years, primarily as a result of austerity measures. We consider that it is important that the payments to elected members of principal councils be fair and at a level that is not a disincentive to potential candidates for election.

We have undertaken a major consultation exercise in respect of the Remuneration Framework for community and town councils and the outcome is contained in [Section 13](#) of this draft Report. I would like to express my appreciation to all the councils and individual members and officers for their involvement in the exercise.

There have been changes to the membership of the Panel. Ruth Glazzard joined the Panel in April and Helen Wilkinson replaced Claire Sharp in July. My personal thanks to Claire for her contribution to the work of the Panel.

The consultation period for this draft Report ends on **26 November 2021**. The Panel would appreciate comments which will be considered prior to the production of the final Report.

John Bader  
Chair

Panel Membership  
John Bader, Chair  
Saz Willey, Vice Chair  
Joe Stockley  
Ruth Glazzard  
Helen Wilkinson

Detailed information about the members can be found on the website: [Panel website](#)

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## Timescale for Implementation of the Panel's Determinations

The Local Government (Wales) Measure 2011 requires the Panel's Annual Report to take effect from 1 April. In most years, this is in line with financial and administrative arrangements of all authorities. However, when new councils are elected some of the Panel's determinations are to be effective for the new municipal term.

On 9 May 2022, new municipal arrangements will come into effect following local government elections. This Annual Report therefore has two different effective dates as set out below:

1. For the period 1 April 2022 to 8 May 2022, all of the Determinations contained in the Independent Remuneration Panel for Wales' [Annual Report 2021/2022](#) will continue to apply in respect of principal councils and community and town councils.
2. For national park authorities and Welsh fire and rescue authorities the determinations in Sections [7](#) and [8](#) of this Report will apply from the new financial year, 1 April 2022.
3. With effect from 9 May 2022, (the new municipal year) the determinations set out in this Report in Sections [3](#) and [13](#) will apply to principal councils and community and town councils.

## Executive Summary

**This is the fourteenth Annual Report of the Independent Remuneration Panel for Wales (the Panel), published under the requirements of the Local Government (Wales) Measure 2011 (as amended).**

1. As Wales emerges from the Covid pandemic, local democracy and public services will have a vital role to play in strengthening the resilience of our local communities and economies. 2022 is a milestone year because of this overarching context.
2. As a Panel our firm belief is that this is a reset moment for Welsh democracy and for valuing our public services; an important opportunity to future proof our democracy and public services. We have therefore taken time to engage with stakeholders, pause and reflect on the impact of the decisions we take and the messages we are communicating in making this year's determinations.
3. From inception, the Panel has consistently and vigorously expressed that local democracy and the governance of public services are not cost free and need to be valued if we are to enable everyone to participate. Levels of remuneration need to be set at a level sufficient to encourage a diversity of willing and able people to undertake local governance through elected, appointed or co-opted roles. It is important to promote a culture which encourages take up of remuneration to ensure that people from all walks of life can participate confidently in our democracy. However, the Local Government (Wales) Measure 2011 requires the Panel to have regard to the financial implication of its decisions. We have discussed the issue of affordability with representatives of the WLGA and the general consensus is that in the context of a council's income and expenditure the Panel's determinations do not have a significant impact. We consider that the proposals set out in this draft Report meet the legislative requirement.
4. Since 2009, remuneration of elected members of local government in Wales has not kept pace with measures of inflation or other possible comparators. These include Retail Prices Index, Consumer Prices Index, NJC (public sector employees), National Living Wage (NLW), [the Living Wage Foundation's Living Wage \(LWF\) rates](#), Members of Senedd Cymru, and MPs and also the Annual Survey of Hourly Earnings (ASHE). This is the result of austerity and pressure on public finances. This has the potential to perpetuate socio-economic disadvantage, adding to perceptions of a democratic deficit.

**Yearly percentage increases to basic salary, benchmarks and alternative measures 2013 to 2021**

<b>Annual Report Year</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>IRPW Basic</b>	<b>0.00</b>	<b>0.00</b>	<b>0.95</b>	<b>0.00</b>	<b>0.00</b>	<b>0.75</b>	<b>3.49</b>	<b>2.52</b>	<b>1.06</b>
<b>ASHE*</b>	4.00	0.60	1.00	2.70	1.00	2.10	5.10	0.60	<b>Oct-21</b>
<b>NLW</b>	1.90	3.00	3.10	7.50	4.20	4.40	4.90	6.20	<b>2.18</b>
<b>LWF</b>	3.47	2.68	2.61	5.10	2.42	3.55	2.86	3.33	<b>2.15</b>

5. During this period, decision-making and local governance has increased in complexity with increased responsibilities flowing from legal, social, economic, cultural and technological changes. People's lifestyles (and expectations) have also changed in the last decade with increased requirements and expectations for a flexible approach to support people with family and care pressures to participate and contribute at work and in public life, through job sharing, flexibility and family leave. The diversity in democracy agenda has gained traction, underpinned by the Equality Act with an increased expectation that people with protected characteristics should be encouraged and empowered to participate. Future proofing our democracy and governance also means that young people, those in work and those who are socially and economically disadvantaged are positively encouraged and empowered to participate as it is clear that our public services should be accountable to and delivered by people who reflect the communities they serve. There is evidence that greater diversity will ensure decision-making takes account of a wide variety of perspectives.
6. The Covid pandemic has put unprecedented pressure on our politicians and public servants. It has also highlighted the importance of our local and community infrastructure in developing rapid and innovative solutions. As Wales emerges from the pandemic, there is increased awareness that our nation needs to draw on a diverse talent pool to meet the scale of the ongoing challenges facing the nation. Local governance needs to engage lived experience and knowledge of local people.
7. As noted in this report, payments for councillors in the 22 principal councils in Wales have not kept pace with comparators such as ASHE. Financial constraints on the public sector and particularly on local authorities over many years meant that the link with average Welsh earnings could not be maintained. The Panel considers that this has undervalued the worth of elected members and that it is now time to restore this link as the most appropriate comparator. Members in these 22 principal councils will receive, proportionately, the same as the overall average amount that a Welsh constituent received in 2020. We believe this puts a fair value on the contribution made by local politicians. We hope that over time this will encourage greater diversity and enable potential candidates to consider putting themselves forward for election.
8. Local elections in Wales will take place on 5 May 2022 for a new municipal term and potentially many new local politicians. The 9 May 2022 is therefore the best date in our view to enact this 'significant reset' and invest in local democracy in

Wales. Our proposed increase in remuneration levels will therefore come into effect on this date. Further details can be found in [Section 3](#).

9. As a Panel, we are concerned that payment information provided by relevant authorities shows that very few members are utilising the provision in the framework for financial support in respect of care. We believe it is vital that Democratic Services Committees continue to encourage and facilitate greater use of this element of the Remuneration Framework so that members are not financially disadvantaged.
10. We also believe that encouraging take up of this financial support for members with caring responsibilities will send a positive signal that members with these responsibilities are welcome and valued. We hope that it will encourage others with caring responsibilities to consider standing for election.
11. Payments for members of national park authorities and Welsh fire and rescue authorities will increase as a result of the uplift proposed for elected members of principal councils. As indicated above these increases will be effective from 1 April 2022, the new financial year. The Panel considered the alternative for implementation following the annual meeting of each authority, but this could mean a significant delay in individuals receiving the new payments. This would not be equitable.
12. Early in 2021 the Panel commenced a major review of the Remuneration Framework in respect of community and town councils and undertook a comprehensive consultation exercise with the sector. We appreciated the level of engagement from individual councils and their representative organisations. The Covid pandemic limited the Panel's opportunities for face to face engagement in 2020/2021. However, the Panel's digital engagement was considerable. The Panel recognises a wide variation in geography, scope and scale across the 735 community and town councils in Wales, from small community councils with relatively minimal expenditure and few meetings to large town councils with significant assets and responsibilities. Our recommendations for reform and the proposed new framework are set out in [Section 13](#).
13. In reaching our conclusions we have also taken account of:
  - the overarching framework of the [Wellbeing of Future Generations Act](#);
  - the ethos and principle of the [socio-economic duty](#), implemented in Wales in 2020;
  - Welsh Government's ongoing commitment to [equality](#) and [diversity in democracy](#);

## **2022-2023 Determinations**

14. The table below summarises the new and updated determinations in this year's Annual Report informed by our belief and rationale for investing in local democracy and public services and by the principles outlined above.

[Annex 1](#) outlines all of the Panel's determinations for 2022/23.

<b>Summary of new and updated determinations contained in this report</b>
<b>Principal Councils</b>
<b>Determination 1:</b> The basic salary in 2022/23 for elected members of principal councils shall be £16,800.
<b>Determination 2:</b> Senior salary levels in 2022/23 for members of principal councils shall be as set out in Table 4.
<b>Determination 3:</b> Where paid, a civic head must be paid a Band 3 salary of £25,593 in accordance with Table 4.
<b>Determination 4:</b> Where paid, a deputy civic head must be paid a Band 5 salary of £20,540 in accordance with Table 4.
<b>Determination 5:</b> Where appointed and if remunerated, a presiding member must be paid £25,593 in accordance with Table 4.
<b>Assistants to the Executive</b>
<b>Determination 13:</b> The Panel will decide on a case-by-case basis the appropriate senior salary, if any, for assistants to the executive.
<b>National Park Authorities</b>
<b>Determination 23:</b> The basic salary for NPA ordinary members shall be £4,738 with effect from 1 April 2022.
<b>Determination 24:</b> The senior salary of the chair of a NPA shall be £13,531 with effect from 1 April 2022.
<b>Determination 25:</b> A NPA senior salary of £8,478 must be paid to a deputy chair where appointed.
<b>Determination 26:</b> Committee chairs or other senior posts can be paid. This shall be paid at £8,478.
<b>Fire and Rescue Authorities</b>
<b>Determination 30:</b> The basic salary for FRA ordinary members shall be £2,369 with effect from 1 April 2022.
<b>Determination 31:</b> The senior salary of the chair of a FRA shall be £11,162 with effect from 1 April 2022.
<b>Determination 32:</b> A FRA senior salary of £6,109 must be paid to the deputy chair where appointed.
<b>Determination 33:</b> Chairs of committees or other senior posts can be paid. This shall be paid at £6,109.
<b>Community and Town Councils</b>
<b>Determination 48:</b> Each council can decide to introduce an attendance allowance for members. The amount of each payment must not exceed £30. A member in receipt of financial loss will not be entitled to claim attendance allowance for the same event.  Councils that intend to introduce a system of attendance allowances must set out the details of the scheme and publish on their website.

# **1. The Panel's Framework: Principles of Members' Remuneration**

## **Upholding trust and confidence**

- 1.1 Citizens rightly expect that all those who choose to serve in local authorities uphold the public trust by embracing the values and ethics implicit in such public service. These principles underpin the contribution that the work of the Panel and its Framework make towards upholding public trust and confidence.

## **Simplicity**

- 1.2 The Framework is clear and understandable. This is essential for the Panel to be able to communicate its Determinations effectively to all those who are affected by, or who have an interest in its work.

## **Remuneration**

- 1.3 The Framework provides for payment to members of authorities who carry a responsibility for serving their communities. The level of payment should not act as a barrier to taking up or continuing in post. There should be no requirement that resources necessary to enable the discharge of duties are funded from the payment. The Framework provides additional payments for those who are given greater levels of responsibility.

## **Diversity**

- 1.4 Democracy is strengthened when the membership of authorities adequately reflects the demographic and cultural make-up of the communities such authorities serve. The Panel will always take in to account the contribution its Framework can make in encouraging the participation of those who are significantly under-represented at local authority level.

## **Accountability**

- 1.5 Taxpayers and citizens have the right to receive value for money from public funds committed to the remuneration of those who are elected, appointed or co-opted to serve in the public interest. The Panel expects all authorities to make information readily and appropriately available about the activities and remuneration of their members.

## **Fairness**

- 1.6 The Framework will be capable of being applied consistently to members of all authorities within the Panel's remit as a means of ensuring that levels of remuneration are fair, affordable and generally acceptable.

**Quality**

- 1.7 The Panel recognises that the complex mix of governance, scrutiny and regulatory duties incumbent upon members requires them to engage with a process of continuous quality improvement. The Panel expects members to undertake such training and personal development opportunities as required to properly discharge the duties for which they are remunerated.

**Transparency**

- 1.8 Transparency of members' remuneration is in the public interest. Some members receive additional levels of remuneration by virtue of being elected or appointed to more than one public body. The Framework serves to ensure that knowledge of all members' remuneration is made easily available to the public.

**Remuneration of Heads of Paid Service**

- 1.9 The Panel applies these principles of fairness, accountability and transparency in all its determinations in relation to remuneration of members of all the authorities that fall within its remit. The same principles also apply when the Panel is required to make recommendations in relation to the remuneration of the heads of paid service of these authorities.

## 2. Annual Report Summary Page

Type of Payment	Type of Authority			
	Principal Councils	National Park Authorities	Fire and Rescue Authorities	Community and Town Councils
Basic Salary	page 13	page 28	page 32	N/A <sup>2</sup>
Senior Roles	page 16	page 28	page 32	page 45
Committee Chairs	page 14	page 28	page 32	N/A
Opposition Groups	page 16	N/A	N/A	N/A
Civic Heads and Deputies	page 17	N/A	N/A	page 47
Presiding Members	page 18	N/A	N/A	N/A
Mileage	page 41	page 41	page 41	page 46
Other Travel Costs	page 41	page 41	page 41	page 46
Subsistence Costs	page 42	page 42	page 42	page 46
Contribution towards Costs of Care and Personal Assistance	page 35	page 35	page 35	page 35
Family Absence	page 26	N/A	N/A	N/A
Sickness Absence	page 39	page 39	page 39	N/A
Joint Overview and Scrutiny Committees	page 24	N/A	N/A	N/A
Pension	page 25	N/A	N/A	N/A
Co-optees	page 33	page 33	page 33	N/A
Specific or Additional Allowances	page 20	N/A	N/A	N/A
Payments to Community and Town Councillors	N/A	N/A	N/A	page 43
Compensation for Financial Loss	N/A	N/A	N/A	page 46
Statement of Payments	page 78	page 78	page 78	page 78
Schedule of Remuneration	Page 76	Page 76	Page 76	N/A
Salaries of Head of Paid Services	Page 53	N/A	Page 53	N/A

<sup>2</sup> Not Applicable

### 3. Payments to Elected Members of Principal Councils: Basic, Senior and Civic Salaries

#### Basic salary for elected members of principal councils

- 3.1 In 2009 the Panel decided the average work commitment of an elected councillor of a principal council was three working days. The maximum basic salary was set at £13,868. This reflected three fifths of the then median gross earnings of full-time male employees resident in Wales as reported in the Annual Survey of Hourly Earnings (ASHE) published by the Office of National Statistics. The Panel considered it was appropriate to use this figure, as it was comparable with constituents' pay, adjusted for the part-time nature of the work of a member with no senior responsibilities. At the introduction of austerity measures, the basic salary was reduced to £13,175 and the link to ASHE was broken. Since then, there has been no connection between councillor and constituent pay. In 2019, the Panel took steps to stop the gap widening and reviewed options to move towards reinstating the link with ASHE or another suitable benchmark. A detailed explanatory paper setting out the historical context and analysis is available on the Panel's [website](#). The key issues are:
- 3.1.1 Since 2009, the Panel has met its duty to take account of affordability and acceptability and set amounts for the basic salary that varied but have not kept pace with measures of inflation or other comparators. Table 1 shows the percentage increases to the basic salary and a selection of alternative benchmarks from 2013 to 2021.
- 3.1.2 From 2013 to 2020 the basic salary of other Welsh elected members increased by 9% (£13,175 to £14,368). A Senedd Cymru member's salary increased by 28.6% (£53,852 to £69,272) and an MP's salary increased by 23.4% (£66,396 to £81,932). MS salaries were realigned in 2017 and MPs in 2015.
- 3.1.3 Examining other parts of the United Kingdom, councillors in Scotland receive £18,604 a year and in 2018 councillors in Northern Ireland received £15,486. Comparison with England is more difficult as the structure of local government is different, although there are examples where members are paid significantly more than their Welsh counterparts.
- 3.1.4 Table 1 shows the basic salary of backbench councillors has fallen significantly behind the Welsh average (median) salary and public sector pay.

**Table 1 – Yearly percentage increases to basic salary, benchmarks and alternative measures 2013 to 2021**

Annual Report Year	2013	2014	2015	2016	2017	2018	2019	2020	2021
IRPW Basic	0.00	0.00	0.95	0.00	0.00	0.75	3.49	2.52	1.06
ASHE*	4.00	0.60	1.00	2.70	1.00	2.10	5.10	0.60	Oct-21
NJC **	1.00	0.43	2.05	1.00	1.00	2.00	2.60	2.75	1.75
MS	0.00	0.00	0.00	1.00	17.70	2.10	3.50	0.00	2.40
MP	1.00	1.00	10.30	1.30	1.40	1.80	2.70	3.10	0.00
RPI***	3.00	2.40	1.00	1.80	3.60	3.30	2.60	1.50	3.80
CPI ****	2.60	1.50	0.00	0.70	2.70	2.50	1.80	0.90	2.00
NLW	1.90	3.00	3.10	7.50	4.20	4.40	4.90	6.20	2.18
LWF	3.47	2.68	2.61	5.10	2.42	3.55	2.86	3.33	2.15

\*\* NJC final employers offer July 2021; \*\*\* RPI and CPI\*\*\*\* are for July 2021.

Wales Median Average (median) gross weekly earnings by Welsh local areas and year (£) (gov.wales)

MS [Remuneration Board](#)

MP [Independent Parliamentary Standards Authority](#)

RPI all items [Retail Price Index](#)

CPI [Consumer Price Inflation](#)

NLW [National Living Wage](#)

LWF [Living Wage Foundation](#)

**Table 2 - Basic yearly salary and actual full time and 3 day (60%) equivalents of Welsh national average pay 2013 to 2021**

Year	IRPW basic salary	Wales Median ASHE	
		full time	3 day
2013	13,175	24,499	14,699
2014	13,175	24,655	14,793
2015	13,300	24,915	14,949
2016	13,300	25,643	15,386
2017	13,300	25,904	15,542
2018	13,400	26,476	15,886
2019	13,868	27,828	16,697
2020	14,218	27,974	16,784
2021	14,368	October 2021	October 2021

- 3.2 When making determinations for this Annual Report, the Panel considered the progression of the variety of benchmark figures outlined above for the period from 2013 to 2021 and the increases.
- 3.3 As outlined in the Executive Summary, the Panel believes that local elections in May 2022 provide an opportune time to rectify the imbalance between the basic salary of councillors and the average salaries of their constituents. The basic salary of councillors of principal councils elected in the May 2022 local elections will be reset to align with the 2020 ASHE. This will be £16,800.

**Determination 1: The Basic Salary in 2022/23 for elected members of principal councils shall be £16,800.**

### **Senior Salaries**

Senior salaries are payments to members who are executive, chairs of committees and the leader of the opposition.

### **Number of Senior Salaries**

- 3.4 The limit on the number of senior salaries payable (“the cap”) will remain in place and remains unchanged. In 2022-2023 the maximum number of senior salaries payable within each council will be as set out in Table 3.

### **Senior Salary Payments**

- 3.5 All senior salaries include the basic salary payment.
- 3.6 The Panel recognises that years of no or low increases has meant the pay of senior salary holders is significantly and increasingly lower than many relevant comparators.

### **Leaders**

- 3.7 It is widely recognised that the role of leader of a principal council is highly complex and carries a large and increasing level of responsibility. Leaders’ pay is at the lower end of sector market comparators.
- 3.8 The Panel has heard arguments that a leader’s pay should be at or above a backbench MS or a Health Board Chair. The Panel has considered these arguments, but has concluded that although the roles have some similarities, there are significant and crucial differences which are not helpful in making comparisons.
- 3.9 The Panel is very concerned that the current payment levels are often financially

unattractive and are seen as a barrier to participation. For many willing and well-qualified people, a senior salary might necessitate a significant reduction in earnings. This is not in the spirit of diversity, inclusion, or democracy, or efficient for the effective running of principal councils. To start to address this, the Panel has re-set all senior salary payments for 2022-2023. The salary of a leader of the largest (Group A) council will be £63,000. All other payments have been decided in reference to this and are set out in Table 4.

### **Executive**

- 3.10 The Panel continues to take the view that executive members should be considered to be working the equivalent of full time (around 40 hours per week) but flexibly, and not necessarily nine to five. Continued discussions with members and officers in recent years have reinforced this conclusion.

### **Chairs of Committees**

- 3.11 The Panel recognises that there is a significant variance in the responsibilities and functions of chairing different committees. Councils do not have to pay chairs of committees. Each council can decide which, if any, chairs of committees they pay. This allows councils to take account of differing levels of responsibility.
- 3.12 The Panel has considered the role element of the chair's salary. The move to a single level of chair payment in 2019 reduced the differentials with other senior payments. To reset this, the Panel has decided not to change the role element at the 2021 figure of £8,793 for 2022-2023. The basic salary increase will apply.

**Determination 2: Senior salary levels in 2022/23 for members of principal councils shall be as set out in Table 4.**

**Table 3:** Maximum numbers of council membership eligible for payment of a senior salary

Council	Number of councillors	Number of senior salaries
<b>Group A</b> (populations over 200,000)		
Cardiff	75	19
Rhondda Cynon Taf	75	19
Swansea	72	19
<b>Group B</b> (populations of 100,000 to 200,000)		
Bridgend	54	18
Caerphilly	73	18
Carmarthenshire	74	18
Conwy	59	18
Flintshire	70	18
Gwynedd	75	18
Neath Port Talbot	64	18
Newport	50	18
Pembrokeshire	60	18
Powys	73	18
Vale of Glamorgan	47	18
Wrexham	52	18
<b>Group C</b> (populations of up to 100,000)		
Blaenau Gwent	42	17
Ceredigion	42	17
Denbighshire	47	17
Isle of Anglesey	30	16
Merthyr Tydfil	33	16
Monmouthshire	43	17
Torfaen	44	17

**Table 4:** Salaries payable to Basic, Senior, Civic and Presiding Members of Principal Councils:

<b>Basic salary (payable to all elected members) £16,800</b>			
	<b>Group A</b> Cardiff, Rhondda Cynon Taf, Swansea	<b>Group B</b> Bridgend, Caerphilly, Carmarthenshire, Conwy, Flintshire, Gwynedd, Newport, Neath Port Talbot, Pembrokeshire, Powys, Vale of Glamorgan, Wrexham	<b>Group C</b> Blaenau Gwent, Ceredigion, Denbighshire, Merthyr Tydfil, Monmouthshire, Torfaen, Isle of Anglesey
<b>Senior salaries (inclusive of basic salary)</b>			
<b>Band 1</b> Leader	£63,000	£56,700	£53,550
Deputy Leader	£44,100	£39,690	£37,485
<b>Band 2</b> Executive Members	£37,800	£34,020	£32,130
<b>Band 3</b> Committee Chairs (if remunerated):	£25,593		
<b>Band 4</b> Leader of Largest Opposition Group <sup>3</sup>	£25,593		
<b>Band 5</b> Leader of Other Political Groups	£20,540		

<sup>3</sup> Leader of largest opposition group. See IRPW Regulations, Annex 2, Part 1(2) for a definition of "largest opposition group" and "other political group".

**Table 4 notes:**

- The Panel considers that leadership and executive roles (Band 1 and 2 salaries respectively) carry the greatest individual accountability. A deputy leader salary is set at 70% of their leader and an executive member at 60% of their leader.
- The Panel considered arguments for and against changing council groupings. Options included removing or increasing the number of groups

and changing the banding levels. The Panel concluded that 'size of population' remains a major factor in influencing levels of responsibility and has retained the three population groups (A, B and C). For information: Group A Population 200,000 and above; Group B Population 100,001 to 199,999; Group C Population up to 100,000.

- c. Salaries for B group councils will be at 90% of Group A salaries. Salaries for C group councils have been set at around 80% of Group A. Although Group C councils have significantly smaller populations and budgets they face similar duties and challenges as Group A and B councils and they do so with fewer resources. The Panel has therefore decided to reduce the Group differentials. In 2022/2023 salaries for Group C will be at 85% of Group A salaries. The salaries are set out in Table 4.
- d. Committee chairs will be paid at Band 3. A council can decide which, if any, chairs of committees are remunerated. This allows councils to take account of differing levels of responsibility.
- e. The stipulation that an opposition group leader or any other group leader must represent at least 10% of the council membership before qualifying for a senior salary remains unchanged.
- f. The Panel has determined that a council must make a senior salary available to the leader of the largest opposition group.
- g. The Panel has determined that, if remunerated, a Band 5 senior salary must be paid to leaders of other political groups.

### **Payments to Civic Heads and Deputies (Civic Salaries)**

- 3.13 A council may decide not to pay any civic salary to the posts of civic head and or deputy civic head. If paid, civic heads must be remunerated at Band 3 level and deputy civic heads at Band 5. (Determinations 5, 6, 7 and 8).
- 3.14 The posts of civic head and deputy civic head are not included in the cap (with the exception of Isle of Anglesey and Merthyr Tydfil Councils).
- 3.15 Civic heads are senior posts within councils which are distinct from political or executive leadership. In addition to chairing major meetings the civic head is the authorities' 'first citizen' and 'ambassador' representing the council to a wide variety of institutions and organisations. The Panel's requirement that members should not have to pay for the cost of the support (see **Determination 10**) needed to carry out their duties applies also in respect of deputy civic heads.

**Determination 3: Where paid, a Civic Head must be paid a Band 3 salary of £25,593 in accordance with Table 4.**

**Determination 4: Where paid, a Deputy Civic Head must be paid a Band 5 salary of £20,540 in accordance with Table 4.**

- 3.16 In many instances civic heads receive secretarial support and are provided with transport for official duties and can access a separate hospitality budget which is managed and controlled by council officers.
- 3.17 The Panel recognises the wide range of provision made for civic heads in respect of transport, secretarial support, charitable giving and official clothing. Funding decisions in relation to levels of such additional support are not matters of personal remuneration, but of the funding required to carry out the tasks and duties. These matters remain entirely a decision for individual councils. Councils remain free to invest in support at whatever levels they deem appropriate for the levels of civic leadership they have in place.
- 3.18 The Local Government (Democracy) (Wales) Act 2013 allows councils to appoint a presiding member whose role is to chair meetings of the whole council. Where appointed, there would be a consequential reduction in the responsibilities of the respective civic head.

### **Presiding Members**

- 3.19 Councils are reminded that, if a presiding member is appointed, they do not have to be remunerated. If they are remunerated the post will count towards the cap and be paid at a Band 3 senior salary.

**Determination 5: Where appointed and if remunerated, a presiding member must be paid £25,593 in accordance with Table 4.**

**Determination 6: The post of deputy presiding member will not be remunerated.**

### **Key factors underpinning the Panel's determinations:**

- 3.20 The basic salary, paid to all elected members, is remuneration for the responsibility of community representation and participation in the scrutiny, regulatory and related functions of local governance. It is based on a full time equivalent of three days a week.
- 3.21 The prescribed salary and expenses must be paid in full to each member unless an individual has independently and voluntarily opted in writing to the authority's proper officer to decline all or any element of the payment. It is fundamental there is transparency in this process so any possible suggestion that members are put under pressure to decline salaries is avoided.

The following must be applied:

**Determination 7:**

- a) **An elected member must not be remunerated for more than one senior post within their authority.**
- b) **An elected member must not be paid a senior salary and a civic salary.**
- c) **All senior and civic salaries are paid inclusive of basic salary.**
- d) **If a council chooses to have more than one remunerated deputy leader, the difference between the senior salary for the deputy leader and other executive members should be divided by the number of deputy leaders and added to the senior salary for other executive members in order to calculate the senior salary payable to each deputy leader.**

**Determination 8: Members in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA or FRA to which they have been appointed. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the NPA or FRA.**

**Determination 9: Members in receipt of a Band 1 or Band 2 salary cannot receive any payment from a community or town council of which they are a member. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the community or town council. Where this situation applies, it is the responsibility of the individual member to comply.**

**Supporting the work of local authority elected members**

- 3.22 The Panel expects support provided should take account of the specific needs of individual members. Democratic Services Committees are required to periodically review the level of support provided to members to carry out their duties. The Panel would expect these committees to carry this out and bring forward proposals to the full council as to what is required. Any proposals should be made with due regard to Determinations 10 and 11 below. For example, the Panel does not consider it appropriate that elected members should be required to pay for any telephone usage to enable them to discharge their council duties.
- 3.23 The Panel considers it is necessary for each elected member to have ready use of email services, and electronic access to appropriate information via an internet connection. The Panel does not consider it appropriate that elected members should be required to pay for internet related services to enable them to discharge their council duties. Access to electronic communications is

essential for a member to be in proper contact with council services and to maintain contact with those they represent. Councils are committed to paperless working and without electronic access members would be significantly limited in their ability to discharge their duties. It is inappropriate for facilities required by members only to be available within council offices within office hours.

- 3.24 The responsibility of each council, through its Democratic Services Committee, to provide support should be based on an assessment of the needs of its members. When members' additional needs or matters of disability apply, or there are specific training requirements indicated, each authority will need to assess any particular requirements of individual members.
- 3.25 As a result of their role as a councillor an elected member's personal security may become adversely affected. It is the duty of Democratic Services Committees to fund or provide support necessary to enable a councillor to discharge their role reasonably and safely. This may require funding appropriate security measures to protect councillors from personal risk or significant threat. Risk assessment and liaison with relevant bodies such as the police and security services would normally inform the selection of required provision.
- 3.26 For co-opted members the support requirements are set out in [Section 9](#) and Determination 42.

**Determination 10: Each authority, through its Democratic Services Committee, must ensure that all its elected members are given as much support as is necessary to enable them to fulfil their duties effectively. All elected members should be provided with adequate telephone, email and internet facilities giving electronic access to appropriate information.**

**Determination 11: Such support should be without cost to the individual member. Deductions must not be made from members' salaries by the respective authority as a contribution towards the cost of support which the authority has decided necessary for the effectiveness and or efficiency of members.**

### **Specific or additional senior salaries**

- 3.27 The Panel has allowed for greater flexibility which allows for authorities to apply for specific or additional senior salaries that do not fall within the current remuneration framework, or which could not be accommodated within the maximum number of senior salaries relating to the authority. If the proposed addition is approved and results in the council exceeding its cap, this will be included in the approval (with exception of Merthyr Tydfil and the Isle of Anglesey Councils – see footnote 4). Some councils have raised the possibility of operating some senior salary posts on a job share arrangement. The Panel is supportive of this principle, on the basis that it supports diversity and

inclusion, and the process is set out in Paragraph 3.29.

**Determination 12: Principal councils can apply for specific or additional senior salaries that do not fall within the current Framework.**

- 3.28 Guidance to local authorities on the application process was issued in April 2014 and incorporated the following principles:
- a. The total number of senior salaries cannot exceed fifty percent<sup>4</sup> of the membership.
  - b. Applications will have to be approved by the authority as a whole (unless this has been delegated within Standing Orders) prior to submission to the Panel.
  - c. There must be clear evidence that the post or posts have additional responsibility demonstrated by a description of the role, function and duration.
  - d. Each application will have to indicate the timing for a formal review of the role to be considered by the authority as a whole.

<sup>4</sup> Local Government (Wales) Measure 2011 Section 142 (5). The proportion fixed by the Panel in accordance with subsection (4) may not exceed fifty percent unless the consent of the Welsh Minister has been obtained.

### 3.29 Job Sharing Arrangements

Section 58 of the Local Government and Elections Act (Wales) 2021 established new arrangements for job sharing for executive leaders and executive members. The Act makes provision:

- a) requiring local authorities to include in their executive arrangements provision for enabling two or more councillors to share an office on an executive, including the office of executive leader
- b) changing the maximum number of members of an executive when members of the executive share an office and
- c) about voting and quorum where members of an executive share office.

For members of an executive: Each job sharer will be paid an appropriate proportion of the salary group as set out in Table 3.

The statutory maximum, as set out in the Act, for cabinets cannot be exceeded so each job sharer will count toward the maximum.

Under the Measure, it is the number of persons in receipt of a senior salary, not the number of senior salary posts that count towards the cap. Therefore, for all job share arrangements the senior salary cap will be increased subject to the statutory maximum of 50% of the council's membership. Where the arrangements would mean that the statutory maximum would be exceeded the Panel would need to seek the approval of Welsh Ministers.

### 3.30 Assistants to the Executive

The Local Government and Elections Act also provides for principal councils to be able to appoint elected members to assist the executive in discharging its functions.

Such appointments are made by the leader of the council and can include:

- the number of assistants that may be appointed
- the term of office of the assistants
- the responsibility of the assistants

There are exclusions to the appointments as set out in the legislation and assistants are not members of the cabinet.

The Panel has given initial consideration to matters of remuneration for members appointed as assistants to the executive but has concluded that until there is more information in respect of the responsibilities attached to the posts it is not possible to decide on additional payments, if any. It is therefore

proposed that this will be further considered when a council decides to make appointments and details of the specific responsibility is available.

To give effect to this without the requirement for a further formal report the following determination will apply.

**Determination 13: The Panel will decide on a case-by-case basis the appropriate senior salary, if any, for assistants to the executive.**

Note: If a senior salary payment is made, each will count towards the cap, however, the cap will be increased by the number of assistants receiving payments subject the statutory maximum of 50 per cent of the council's membership.

## 4. Joint Overview and Scrutiny Committees (JOSC)

- 4.1 Little use has been made of the arrangements for JOSCs. Therefore, the Panel has decided to delete the payment from the Framework. If, in future, a JOSC is formed by an individual council and it wishes to remunerate, it can apply using the arrangements contained in paragraphs 3.27 and 3.28. The current JOSCs in operation will continue without need for further confirmation. The applicable salaries are set out in the following determinations.

**Determination 14: The salary level for a chair of a Joint Overview and Scrutiny Committee shall be £8,793.**

**Determination 15: The salary level for a vice chair of a Joint Overview and Scrutiny Committee shall be £4,396.**

## **5. Pension Provision for Elected Members of Principal Councils**

- 5.1 The Local Government (Wales) Measure 2011 provides a power to the Panel to make determinations on pension entitlement for elected members of principal councils.

**Determination 16: The entitlement to join the Local Government Pension Scheme (LGPS) shall apply to all eligible elected members of principal councils.**

## 6. Entitlement to Family Absence

This section applies to elected members of principal authorities.

- 6.1 The Regulations relating to Family Absence for elected members of principal councils were approved by the National Assembly for Wales in November 2013<sup>5</sup> and cover maternity, new-born, adoption and parental absences from official business.
- 6.2 The Panel considered the implications for the remuneration of such members who are given absence under the terms of the Welsh Government Regulations and the Panel's determinations are set out below.

**Determination 17: An elected member is entitled to retain a basic salary when taking family absence under the original regulations or any amendment to the regulations irrespective of the attendance record immediately preceding the commencement of the family absence.**

**Determination 18: When a senior salary holder is eligible for family absence, they will continue to receive the salary for the duration of the absence.**

**Determination 19: It is a matter for the authority to decide whether or not to make a substitute appointment. The elected member substituting for a senior salary holder taking family absence will be eligible to be paid a senior salary, if the authority so decides.**

**Determination 20: If the paid substitution results in the authority exceeding the maximum number of senior salaries which relates to it, as set out in the Panel's Annual Report, an addition to the maximum will be allowed for the duration of the substitution. However, this will not apply to the Isle of Anglesey or Merthyr Tydfil Councils if it would result in the number of senior salaries exceeding fifty percent of the Council membership. Specific approval of Welsh Ministers is required in such circumstances.**

**Determination 21: When a Council agrees a paid substitution for family absence the Panel must be informed within 14 days of the date of the decision, of the details including the particular post and the duration of the substitution.**

**Determination 22: The Council's schedule of remuneration must be amended to reflect the implication of the family absence.**

<sup>5</sup> [The Family Absence for Members of Local Authorities \(Wales\) Regulations 2013](#)

## 7. Payments to Members of National Park Authorities (NPAs)

### Structure of National Park Authorities

- 7.1 The three national parks in Wales - Brecon Beacons, Pembrokeshire Coast and Snowdonia were formed to protect spectacular landscapes and provide recreation opportunities for the public. The Environment Act 1995 led to the creation of a National Park Authority (NPA) for each park.
- 7.2 National park authorities comprise members who are either elected members nominated by the principal councils within the national park area or are members appointed by the Welsh Government through the Public Appointments process. Welsh Government appointed and council nominated members are treated equally in relation to remuneration.
- 7.3 The structure of the members' committee at each of the three national parks is set out in Table 5.

**Table 5: Membership of Welsh National Park Authorities**

National Park Authority	Total Membership	Principal Council Members	Welsh Government appointed Members
<b>Brecon Beacons</b>	18	12: Blaenau Gwent County Borough Council – 1 Carmarthenshire County Council – 1 Merthyr Tydfil County Borough Council – 1 Monmouthshire County Council – 1 Powys County Council – 6 Rhondda Cynon Taf County Borough Council - 1 Torfaen County Borough Council – 1	6
<b>Pembrokeshire Coast</b>	18	12: Pembrokeshire County Council – 12	6
<b>Snowdonia</b>	18	12: Conwy County Borough Council – 3 Gwynedd Council – 9	6

- 7.4 Standards Committees of NPAs also have independent co-opted members whose remuneration is included in the Framework as set out in [Section 9](#).
- 7.5 The Panel has based its determinations on the following key points:
- NPAs manage their work via formal authority meetings, committees and task and finish groups. Each has a Development, Management and or Planning Committee, and other committees include Performance and

Resources and Audit and Scrutiny. Ordinary NPA members are members of at least one committee as well as being involved in site visits and inspection panels.

- There is an expectation that members will participate in training and development.
- The chair of an NPA has a leadership and influencing role in the authority, a representational role similar in some respects to that of a civic head and a high level of accountability. The chair is not only the leader of the authority but is also the public face of the particular national park and is the link with the Minister and MS' with whom they have regular meetings. The role requires a high level of commitment and time.

### **Basic and senior salaries**

- 7.6 The time commitment on which the remuneration of members is based is 44 days. The salary for members of NPAs will increase to £4,738.
- 7.7 The Panel has determined that the remuneration of a NPA chair should be aligned to that part of a Band 3 senior salary received by a committee chair of a principal council. This salary will increase to £13,531.
- 7.8 NPAs can determine the number of senior posts it requires as appropriate to its governance arrangements.
- 7.9 The Panel has made the following determinations:

**Determination 23: The basic salary for NPA ordinary members shall be £4,738 with effect from 1 April 2022.**

**Determination 24: The senior salary of the chair of a NPA shall be £13,531 with effect from 1 April 2022.**

**Determination 25: A NPA senior salary of £8,478 must be paid to a deputy chair where appointed.**

**Determination 26: Committee chairs or other senior posts can be paid. This shall be paid at £8,478.**

**Determination 27: Members must not receive more than one NPA senior salary.**

**Determination 28: A NPA senior salary is paid inclusive of the NPA basic salary.**

**Determination 29: Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA to which they have been appointed. Where this situation applies, it is the responsibility of the individual member to comply.**

Note: Family absence does not apply to Welsh Government appointed members and local authority nominees are covered by their principal council so NPAs are not required to make any arrangements in this respect.

## 8. Payments to Members of Welsh Fire and Rescue Authorities (FRAs)

### Structure of Fire and Rescue Authorities

- 8.1 The three fire and rescue services (FRAs) in Wales: Mid and West Wales, North Wales and South Wales were formed as part of Local Government re-organisation in 1996.
- 8.2 FRAs comprise elected members who are nominated by the Principal Councils within each fire and rescue service area.
- 8.3 The structure of the each of the three FRAs is set out in Table 6.

**Table 6: Membership of Fire and Rescue Authorities**

Name of Fire and Rescue Authority	Number of Local Authority Members
Mid and West Wales	25: Carmarthenshire County Council – 5 Ceredigion County Council – 2 Neath Port Talbot County Borough Council – 4 Pembrokeshire County Council – 3 Powys County Council – 4 Swansea City and County Council – 7
North Wales	28: Conwy County Borough Council – 5 Denbighshire County Council – 4 Flintshire County Council – 6 Gwynedd Council – 5 Isle of Anglesey County Council – 3 Wrexham County Borough Council – 5
South Wales	24: Bridgend County Borough Council – 2 Blaenau Gwent County Borough Council – 1 Caerphilly County Borough Council – 3 Cardiff City Council – 5 Merthyr Tydfil County Borough Council – 1 Monmouthshire County Council – 2 Newport City Council - 2 Rhondda Cynon Taf County Borough Council - 4 Torfaen County Borough Council – 2 Vale of Glamorgan Council -2

- 8.4 In addition, Standards Committees of FRAs have independent co-opted members whose remuneration is included in the Framework as set out in [Section 9](#).

- 8.5 In considering remuneration of members of FRAs, the Panel has based its determinations on the following key points:
- The Chair has a leadership and influencing role in the authority, and a high level of accountability especially when controversial issues relating to the emergency service arise. In addition to fire authority meetings, all FRAs have committees that include in different combinations: audit, performance management, scrutiny, human resources, resource management as well as task and finish groups and disciplinary Panels. As well as attending formal meetings of the authority and committees, members are encouraged to take on a community engagement role, including visiting fire stations.
  - There is a strong training ethos in FRAs. Members are expected to participate in training and development. Induction programmes are available as well as specialist training for appeals and disciplinary hearings.
  - Training sessions often follow on from authority meetings to make the training accessible.

### **Basic and Senior Salaries**

- 8.6 The time commitment on which remuneration is based is 22 days. The salary for members of FRAs will increase to £2,369.
- 8.7 The Panel determined that the remuneration of a FRA chair should be aligned to that part of a Band 3 senior salary received by a committee chair of a principal council. This salary will increase to £11,162.
- 8.8 The Panel determined that the remuneration of a FRA deputy chair will be aligned with the Band 5 senior salary for principal councils. This will increase to £6,109 and must be paid if the authority appoints a deputy chair.
- 8.9 FRAs determine the number of senior posts it requires as appropriate to its governance arrangements. Committee chairs and any other senior post if remunerated will be aligned with Band 5. This will increase to £6,109.

### **Local Pension Boards**

- 8.10 The Panel has considered requests from FRAs to allow them to pay salaries to chairs of local pension boards established under the Firefighters' Pension Scheme (Wales) Regulations 2015. Those Regulations already give FRAs the power to decide how local pension boards are to work and to pay the chair and members if they wish. Therefore, it is not appropriate for the Panel to make a determination empowering FRAs to pay salaries to local pension board chairs. The senior salaries in Determination 31 or 32 cannot be used exclusively for this role.
- 8.11 The Panel has made the following determinations:

**Determination 30: The basic salary for FRA ordinary members shall be £2,369 with effect from 1 April 2022.**

**Determination 31: The senior salary of the chair of an FRA shall be £11,162 with effect from 1 April 2022.**

**Determination 32: A FRA senior salary of £6,109 must be paid to the deputy chair where appointed.**

**Determination 33: Chairs of committees or other senior posts can be paid. This shall be paid at £6,109.**

**Determination 34: Members must not receive more than one FRA senior salary.**

**Determination 35: A FRA senior salary is paid inclusive of the FRA basic salary and must reflect significant and sustained responsibility.**

**Determination 36: Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any FRA to which they have been nominated. Where this situation applies, it is the responsibility of the individual member to comply**

## 9. Payments to Co-opted Members of Principal Councils, National Park Authorities and Fire & Rescue Authorities<sup>6</sup>

- 9.1 The Panel has determined that a daily or half daily fee is appropriate remuneration for the important role undertaken by co-opted members of authorities with voting rights.
- 9.2 The number of days in any one year for which co-opted members may be paid varies and reflects the specific work discharged by the relevant committee. This context for payment therefore differs from that for elected members of principal councils which provides a monthly payment. Many elected members of principal councils report that they rely on this as part of a core income without which they would be unable to continue in the role.
- 9.3 In dialogue with the Panel, co-opted members acknowledge the importance of fees they receive but do not identify these payments as an income for living upon which they depend. Panel determinations in relation to co-opted member fees occur in this context and any uplifts are therefore not comparable with the changes to salaries of elected members.
- 9.4 Recognising the important role that co-opted members discharge, payment must be made for travel and preparation time; committee and other types of meetings as well as other activities, including training, as set out in Determinations 38 to 41.
- 9.5 The determinations are set out below. Principal councils, NPAs and FRAs must tell co-opted members the name of the appropriate officer who will provide them with the information required for their claims; and make the appropriate officer aware of the range of payments that should be made.

**Determination 37: Principal Councils, NPAs and FRAs must pay the following fees to co-opted members who have voting rights (Table 7).**

**Table 7:** Fees for co-opted members (with voting rights)

Chairs of standards, and audit committees	£268 (4 hours and over) £134 (up to 4 hours)
Ordinary Members of Standards Committees who also chair Standards Committees for Community and Town Councils	£238 daily fee (4 hours and over) £119 (up to 4 hours)
Ordinary Members of Standards Committees; Education Scrutiny Committee; Crime and Disorder Scrutiny Committee and Audit Committee	£210 (4 hours and over) £105 (up to 4 hours)
Community and Town Councillors sitting on Principal Council Standards Committees	£210 (4 hours and over) £105 (up to 4 hours)

**Determination 38:** Reasonable time for pre-meeting preparation is to be included in claims made by co-opted members the extent of which can be determined by the appropriate officer in advance of the meeting.

**Determination 39:** Travelling time to and from the place of the meeting is to be included in the claims for payments made by co-opted members (up to the maximum of the daily rate).

**Determination 40:** The appropriate officer within the authority must determine in advance whether a meeting is programmed for a full day and the fee will be paid on the basis of this determination even if the meeting finishes before four hours has elapsed.

**Determination 41:** Fees must be paid for meetings and other activities including other committees and working groups (including task and finish groups), pre-meetings with officers, training and attendance at conferences or any other formal meeting to which co-opted members are requested to attend.

#### **Support for co-opted members**

**Determination 42:** Each authority, through its Democratic Services Committee or other appropriate committee, must ensure that all voting co-opted members are given as much support as is necessary to enable them to fulfil their duties effectively. Such support should be without cost to the individual member.

<sup>6</sup> This section does not apply to co-opted members to community and town councils.

## 10. Contribution towards Costs of Care and Personal Assistance (CPA)

- 10.1 This section applies to all members of principal councils, NPAs, FRAs and to co-opted members of these authorities. The same provision applies to community and town councils.
- 10.2 The purpose of this section is to enable people who have personal support needs and or caring responsibilities to carry out their duties effectively as a member of an authority. The Panel believes that additional costs of care required to carry out approved duties should not deter any individual from becoming and remaining a member of an authority or limit their ability to carry out the role. The Panel has adopted specific principles related to support for the costs of care which were the subject of a [Supplementary Report](#) published in February 2020. These principles are set out in Table 8.
- 10.3 The Panel reviewed the arrangements for this financial support and has made the following changes:
- a) As payments are taxable under the current HMRC rules, full reimbursement is not possible so for clarity this is retitled to “contribution towards the costs of care and personal assistance”. It will still require receipts to accompany claims.
  - b) Claims can be made in respect of a dependant under 16 years of age, or a minor or adult who normally lives with the member as part of their family and who cannot be left unsupervised.
  - c) Reimbursement may be claimed for member’s own care or support needs where the support and/or cost of any additional needs are not available or are not met directly by the authority such as Access to Work, Personal Independence Payments, insurance. These could arise when the needs are recent and or temporary.
- 10.4 Members, including co-opted members are entitled to claim towards the costs of care and personal assistance, for activities that the individual council has designated official business or an approved duty which might include appropriate and reasonable preparation and travelling time. It is a matter for individual authorities to determine specific arrangements to implement this. Each authority must ensure that any payments made are appropriately linked to official business or approved duty.
- 10.5 The Panel reviewed the maximum monthly payment in recognition that this has not changed for several years. Information indicates that monthly costs and claims vary considerably. These can depend on the number of dependants, their ages and other factors. Therefore the monthly cap will be replaced with the following arrangements:
- Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.

- Informal (unregistered) care costs to be paid up to a maximum rate equivalent to [hourly rates as defined by the Living Wage Foundation](#) at the time the costs are incurred.

For clarification, care costs cannot be paid to someone who is a part of a member's household.

- 10.6 The Panel continues to recognise the issues relating to the publication of this legitimate expense and has retained the requirements for publication set out in [Annex 4](#). To support current members and to encourage diversity the Panel urges authorities to promote and encourage greater take-up of the contribution towards costs of care and personal assistance.

**Table 8**

**The Panel's principles relating to Care and Personal Assistance (CPA)**

<b>The Minimum Authorities should do</b>		<b>How this could be done</b>
Be clear who it is for	<p>Members with primary caring responsibilities for a child or adult and/or personal support needs where these are not covered by statutory or other provision.</p> <p>Claims for personal support might also include a short term or recent condition not covered by the Equality Act 2010, access to work, Personal Payments, insurance or other provision.</p>	A confidential review of the needs of individual members annually and when circumstances change
Raise Awareness	Ensure potential candidates, candidates and current members are aware that financial support is available to them should their current or future circumstances require.	Ensure clear and easily accessible information is available on website and in election and appointment materials, at Shadowing and at induction and in the members' "handbook". Remind serving members via email and or training. Signpost to Panel's <a href="#">Payments to Councillors</a> leaflets.
Promote a Positive Culture	Ensure all members understand the reason for CPA and support and encourage others to claim where needed.	Encouragement within and across all parties of relevant authorities to support members to claim.

The Minimum Authorities should do		How this could be done
		Agree not to advertise or make public individual decisions not to claim.
Set out the approved duties for which CPA can be claimed	<p><b>Meetings</b> – formal (those called by the authority) and those necessary to members’ work (to deal with constituency but not party issues) and personal development (training, and appraisals.)</p> <p><b>Travel</b> – in connection with meetings.</p> <p><b>Preparation</b> – reading and administration are part of a member’s role. Some meetings and committees require large amounts of reading, analysis or drafting before or after a meeting.</p> <p>Senior salary holders with additional duties may have higher costs.</p>	<p>Approved duties are usually a matter of fact. Interpretation of the Panel’s Regulations are set out in the Annual Report.</p> <p>“Any other duty approved by the authority, or any duty of class so approved, undertaken for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees.”</p>
Be as enabling as possible about the types of care that can be claimed	<p>Members should not be out of pocket subject to the limit set in the Annual Report.</p> <p>Models of care and needs vary. Members may use a combination of several care options.</p> <p>Patterns of care may alter over the civic and academic year.</p> <p>Not all care is based on hourly (or part hourly) rates.</p> <p>Where a whole session must be paid for, this must be reimbursed even where the care need is only for part of a session.</p> <p>Members may need to:</p> <ul style="list-style-type: none"> <li>• book and pay for sessions in advance</li> <li>• commit to a block contract: week, month or term</li> <li>• pay for sessions cancelled at short notice</li> </ul> <p>Where care need straddles two sessions both should be reimbursed.</p>	

The Minimum Authorities should do		How this could be done
Have a simple and effective claim process	<p>Members should know how to claim.</p> <p>The claim process should be clear, proportionate and auditable.</p>	<p>Check members understand how to claim and that it is easy to do so.</p> <p>Flexibility to accept paperless invoices</p> <p>Online form</p> <p>Same or similar form to travel costs claim</p>
Comply with Panel's Publication rules	<p>The Panel's Framework states:</p> <p>"In respect of the publication of the reimbursement of the costs of care, the Panel has decided that relevant authorities should only publish the total amount reimbursed during the year. It is a matter for each authority to determine its response to any Freedom of Information requests it receives. However, it is not intended that details of individual claims should be disclosed."</p>	

**Determination 43: All relevant authorities must provide a payment towards necessary costs for the care of dependent children and adults (provided by informal or formal carers) and for personal assistance needs as follows:**

- **Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.**
- **Informal (unregistered) care costs to be paid up to a maximum rate equivalent to the [hourly rates as defined by the Living Wage Foundation](#) at the time the costs are incurred.**

**This must be for the additional costs incurred by members to enable them to carry out official business or approved duties. Each authority must ensure that any payments made are appropriately linked to official business or approved duty. Payment shall only be made on production of receipts from the care provider.**

## 11. Sickness Absence for Senior Salary Holders

11.1 The Family Absence Regulations (approved by the National Assembly in 2014) are very specific relating to entitlement and only available for elected members of principal councils. Absence for reasons of ill-health is not included.

11.2 Instances have been raised with the Panel of senior salary holders on long term sickness and the perceived unfairness in comparison with the arrangements for family absence. In consequence, councils are faced with the dilemma of:

- operating without the individual member but still paying them the senior salary.
- replacing the member who therefore loses the senior salary (but retains the basic salary).

11.3 The Panel's Framework provides specific arrangements for long term sickness as set out below:

- a) Long term sickness is defined as certified absences in excess of 4 weeks.
- b) The maximum length of sickness absence within these proposals is 26 weeks or until the individual's term of office ends, whichever is sooner (but if reappointed any remaining balance of the 26 weeks will be included).
- c) Within these parameters a senior salary holder on long term sickness can, if the authority decides, continue to receive remuneration for the post held.
- d) It is a decision of the authority whether to make a substitute appointment, but the substitute will be eligible to be paid the senior salary appropriate to the post.
- e) If the paid substitution results in the authority exceeding the maximum number of senior salaries payable for that authority, as set out in the Annual Report, an addition will be allowed for the duration of the substitution. (However, this would not apply to Merthyr Tydfil or the Isle of Anglesey councils if it would result in more than 50% of the membership receiving a senior salary. It would also not apply in respect of a council executive member if it would result in the cabinet exceeding 10 posts - the statutory maximum).
- f) When an authority agrees a paid substitution, the Panel must be informed within 14 days of the decision of the details including the specific post and the estimated length of the substitution. The authorities' Schedule of Remuneration must be amended accordingly.
- g) It does not apply to elected members of principal councils who are not senior post holders as they continue to receive basic salary for at least

six months irrespective of attendance and any extension beyond this timescale is a matter for the authority.

- 11.4 This arrangement applies to members of principal councils, NPAs and FRAs who are senior salary holders, including Welsh Government appointed members, but does not apply to co-opted members.

Note:

The Family Absence Regulations apply to elected members in cases of maternity, new-born, adoption and parental absences from official business. They do not apply to Welsh Government appointed members of NPAs.

## 12. Reimbursement of Travel and Subsistence Costs when on Official Business

- 12.1 This section applies to members of principal councils, NPAs, FRAs and to co-opted members of these authorities. (Similar provision for community and town councils is contained in Section 13 as there is a different approach to such members, principally that the provision is permissive.)
- 12.2 Members may claim reimbursement for travel and subsistence (meals and accommodation) costs where these have arisen as a result of undertaking official business or approved duties.
- 12.3 Expenses reimbursed to members of principal councils, by their principal council are exempt from Income Tax and employee NICs. Members of NPAs and FR As may be subject to other arrangements as determined by HMRC.
- 12.4 The Panel is aware that in some instances members with disabilities have been reluctant to claim legitimate travel expenses because of an adverse response following the publication of their travel costs. As an alternative, travel arrangements could be made directly by the authority in such circumstances.
- 12.5 The Panel has determined there will be no change to mileage rates which members are entitled to claim. All authorities may only reimburse travel costs for their members undertaking official business within and or outside the authority's boundaries at the current HM Revenue and Customs (HMRC) rates which are:

### Reimbursement of mileage costs

45p per mile	Up to 10,000 miles in a year by car
25p per mile	Over 10,000 miles in a year by car
5p per mile	Per passenger carried on authority business
24p per mile	Motorcycles
20p per mile	Bicycles

- 12.6 Where a member who is on official business or an approved duty is driven by a third party (not a member or officer of that authority), the member can claim mileage at the prescribed rates plus any parking or toll fees provided the authority is satisfied that the member has incurred these costs.

### Reimbursement of other travel costs

- 12.7 All other claims for travel, including travel by taxi if this is the only, or most appropriate, method of transport, must only be reimbursed on production

of receipts showing the actual cost and will be subject to any requirement or further limitation that an authority may determine. Members should always be mindful of choosing the most cost-effective method of travel.

### **Reimbursement of subsistence costs**

£28 per day	Day allowance for meals, including breakfast, where not provided in the overnight charge
£200 per night	London
£95 per night	Elsewhere
£30 per night	Staying with friends and or family

- 12.8 These rates are in line with Welsh Government rates. Recommended practice is that overnight accommodation should usually be reserved and paid for on behalf of members by the relevant authority, in which case an authority may set its own reasonable limits and the limits which apply when an individual member claims in arrears for overnight accommodation costs do not then apply.
- 12.9 All authorities must continue to reimburse subsistence expenses for their members up to the maximum rates set out above on the basis of receipted claims except for occasions when members stay with friends and or family.
- 12.10 There may be instances where an authority has determined that travel costs within its boundaries are payable and require a journey to be repeated on consecutive days. Where it is reasonable and cost effective to reimburse overnight accommodation costs, instead of repeated daily mileage costs, then it is permissible to do so.
- 12.11 It is not necessary to allocate the maximum daily rate (£28 per day) between different meals as the maximum daily rate reimbursable covers a 24-hour period and can be claimed for any meal if relevant, provided such a claim is accompanied by receipts.

### **Car Parking for Members**

Several councils have specific arrangements for their members in respect of car parking. The Panel considers that it is a matter for individual councils to determine arrangements including payments to and from members providing that it is a decision made formally by the council.

## 13. Payments to Members of Community and Town Councils

- 13.1 The Panel recognises a wide variation in geography, scope and scale across the 735 community and town councils in Wales, from small community councils with relatively minimal expenditure and few meetings to large town councils with significant assets and responsibilities. This and the fact that not all electoral areas have councils, has made establishing remuneration arrangements more difficult to achieve than for other relevant authorities. For this reason, the Panel decided to undertake a fundamental review ready for implementation effective from the elections on 5 May 2022.
- 13.2 The Panel decided that in carrying out the review it was vital to engage comprehensively with community and town councils and representative organisations together with a commitment to consult on the proposals emanating from the review. The result of this consultation was a significant degree of support for the new proposals and therefore the Panel has decided to introduce the new Framework as set out in this section.
- 13.3 In order to act and carry out duties as a member of a community or town council all persons are required to make a formal declaration of acceptance of office. Following this declaration, members of community or town councils are then holders of elected office and occupy a role that is part of the Welsh local government structure. It is important to note that a person who follows this path is in a different position to those in other forms of activity, for example such as volunteering or charitable work, typically governed by the Charity Commission for England and Wales.
- 13.4 Under the Local Government (Wales) Measure 2011, community and town councils are relevant authorities for the purpose of remuneration.
- 13.5 Consequently, individuals who have accepted office as a member of a community or town council are entitled to receive payments as determined by the Independent Remuneration Panel for Wales. It is the duty of the proper officer of a council (usually the Council Clerk) to arrange for correct payments to be made to all individuals entitled to receive them.
- 13.6 Members should receive monies to which they are properly entitled as a matter of course.
- 13.7 An individual may decline to receive part, or all, of the payments if they so wish. This must be done in writing and is an individual matter. A community or town council member wishing to decline payments must themselves write to their proper officer to do so.
- 13.8 The Panel considers that any member who has personal support needs or caring responsibilities should be enabled to fulfil their role. Therefore, the Panel continues to make the contribution towards costs of care and personal allowance mandatory for all members of community and town councils as set

out in Determination 43.

- 13.9 Each community and town council must ensure that it does not create a climate which prevents persons accessing any monies to which they are entitled that may support them to participate in local democracy. Payments should be made efficiently and promptly.
- 13.10 Members in receipt of a Band 1 or Band 2 senior salary from a principal council cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance. However, this does not preclude them from holding a senior role (Leader, Deputy Leader) without payment.
- 13.11 Table 12 sets out the actions that community and town councils must take annually in respect of each determination that follows.

**Table 9: Community and Town Council Groupings**

The current groups are:

<b>Community and Town Council Group</b>	<b>Income or Expenditure in 2020-2021 of:</b>
A	£200,000 and above
B	£30,000 - £199,999
C	Below £30,000

- 13.12 These are based solely on finance. We acknowledge the view of many respondents that this was restrictive and limiting. Therefore 5 Groups will be established based on the size of the council's electorate.

**Table 10**

<b>Group number</b>	<b>Size of Electorate</b>
Group 1	Electorate in excess of 14,000
Group 2	10,000 to 13,999
Group 3	5,000 to 9,999
Group 4	1,000 to 4,999
Group 5	Under 1,000

- 13.13 In addition, there will be a second factor for determining which group the council will be placed. Where income or expenditure exceeds £200,000 a year, it will be moved upwards to the next group.

### **Payments towards costs and expenses**

- 13.14 The Panel continues to mandate a payment of £150, except for councils in

Group 5 where it will be optional, as a contribution to costs and expenses for members of community and town councils.

13.15 Receipts are not required for these payments.

**Determination 44: Community and town councils must make available a payment to each of their members of £150 per year as a contribution to costs and expenses, with the exception of those councils in Group 5 where the payment is optional.**

### **Taxation**

13.16 The issue of the taxation of the £150 payment has been raised on many occasions and included in the responses to the recent consultation. As has been made clear the Panel has no remit in respect of matters of taxation but has been kept informed of the discussions between the Welsh Government and HMRC to establish a possible exemption applying to all community and town councils. If there is a positive outcome, it will not be within the timescale of this draft Report. However, if it is achieved before the publication of the final Report the Panel will take the opportunity to restructure the arrangements for this payment and if appropriate adjust by determination the amount to be paid.

### **Senior roles**

13.17 The Panel recognises that specific member roles especially within the larger community and town councils, for example a committee chair, will involve greater responsibility. It is also likely that larger councils will have a greater number of committees, reflecting its level of activity. The Panel has therefore set out the determinations for senior role in table 11 below.

13.18 In all cases, a councillor can only have one payment of £500 regardless of how many senior roles they hold within their Council.

13.19 Where a person is a member of more than one community or town council, they are eligible to receive the £150 and, if appropriate, £500 from each council of which they are a member.

### **Contribution towards costs of Care and Personal Assistance**

13.20 The purpose of this is to enable people who have personal support needs and or caring responsibilities to carry out their duties effectively as a member of an authority. The Panel's determinations in [Section 10](#) apply to Community and Town Councils.

### **Reimbursement of travel costs and subsistence costs**

13.21 The Panel recognises there can be significant travel and subsistence costs associated with the work of community and town council members, especially

where the council area is geographically large and/or when engaging in duties outside this area. Each council has an option to pay travel and subsistence costs including travel by taxi if this is the only, or most appropriate, method of transport. Where a council does opt to pay travel and subsistence costs, the following determinations apply.

**Determination 45: Community and town councils can make payments to each of their members in respect of travel costs for attending approved duties.<sup>7</sup> Such payments must be the actual costs of travel by public transport or the HMRC mileage allowances as below:**

- 45p per mile up to 10,000 miles in the year.
- 25p per mile over 10,000 miles.
- 5p per mile per passenger carried on authority business.
- 24p per mile for private motor cycles.
- 20p per mile for bicycles.

**Determination 46: If a community or town Council resolves that a particular duty requires an overnight stay, it can authorise reimbursement of subsistence expenses to its members at the maximum rates set out below on the basis of receipted claims:**

- £28 per 24-hour period allowance for meals, including breakfast where not provided.
- £200 – London overnight.
- £95 – elsewhere overnight.
- £30 – staying with friends and/or family overnight.

### **Compensation for financial loss**

13.22 The Panel has retained the facility which councils may pay as compensation to their members where they incur financial loss when attending approved duties. Members must be able to demonstrate that the financial loss has been incurred. Each council has an option to pay compensation for financial loss and where it does the following determination applies.

**Determination 47: Community and town councils can pay financial loss compensation to each of their members, where such loss has occurred, for attending approved duties as follows:**

- Up to £55.50 for each period not exceeding 4 hours
- Up to £110.00 for each period exceeding 4 hours but not exceeding 24 hours

<sup>7</sup> Where a member who is on official business or an approved duty is driven by a third party (not a member or officer of that

authority), the member can claim mileage at the prescribed rates plus any parking or toll fees provided the authority is satisfied that the member has incurred these costs.

### **Attendance Allowance**

- 13.23 One of the points raised in the responses to the consultation should be the inclusion of an attendance allowance. The Panel acknowledges that in some cases this might be a valuable addition to support the work of a council. It is therefore included as an option for all councils.

**Determination 48: Each council can decide to introduce an attendance allowance for members. The amount of each payment must not exceed £30. A member in receipt of financial loss compensation will not be entitled to claim attendance allowance for the same event.**

**Councils that intend to introduce an attendance allowance must set out the details of the scheme and publish them on their website.**

### **Civic Head and Deputy Civic Head**

- 13.24 Civic heads are senior posts within community and town councils. In addition to chairing major meetings the civic head is the ambassador representing the council to a variety of institutions and organisations. The Panel requires that members should not have to pay themselves for any cost associated with carrying out these duties. This requirement also applies in respect of deputy civic heads.
- 13.25 The Panel recognises the wide range of provision made for civic heads in respect of transport, secretarial support, charitable giving and official clothing – we consider these to be the council's civic budgets.
- 13.26 Funding decisions in relation to these civic budgets are not matters of personal remuneration for the post holder but relate to the funding required for the tasks and duties to be carried out. Councils remain free to set civic budgets at whatever levels they deem appropriate for the levels of civic leadership they have in place.
- 13.27 For the avoidance of doubt, costs in respect of, for example, transport (physical transport or mileage costs), secretarial support, charitable giving (purchasing tickets, making donations or buying raffle tickets) and official clothing are not matters of personal remuneration for the individual holding the senior post. These should be covered by the civic budget.
- 13.28 Recognising that some mayors and chairs of community and town councils and their deputies are very active during their year of office, the Panel has determined that community and town councils can make a payment to the individuals holding these roles.
- 13.29 This is a personal payment to the individual and is entirely separate from covering the costs set out above.
- 13.30 The Panel has determined that the maximum payment to a chair or mayor of

a community or town council is £1,500. The maximum payment to a deputy mayor or chair is £500.

**Determination 49: Community and town councils can provide a payment to the mayor or chair of the council up to a maximum of £1,500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.**

**Determination 50: Community and town councils can provide a payment to the deputy mayor or deputy chair of the council up to a maximum of £500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.**

**Determination 51: The application of the Remuneration Framework by relevant Group.**

**Table 11**

<b>Type of payment</b>	<b>Requirement</b>
<b>Group 1</b>	<b>(Electorate over 14,000)</b>
Basic Payment	Mandatory for all Members
Senior Role Payment	Mandatory for 1 member; optional for up to 7
Attendance Allowance	Optional
Financial Loss	Mandatory
Travel and Subsistence	Optional
Costs of Care	Mandatory
<b>Group 2</b>	<b>(Electorate 10,000 to 13,999)</b>
Basic Payment	Mandatory for all members
Senior Role Payment	Mandatory for 1 member; optional up to 5
Attendance Allowance	Optional
Financial Loss	Mandatory
Travel and Subsistence	Optional
Cost of Care	Mandatory
<b>Group 3</b>	<b>(Electorate 5,000 to 9,999)</b>
Basic Payment	Mandatory for all members
Senior Role Payment	Optional up to 3 members
Attendance Allowance	Optional
Financial Loss	Mandatory
Travel and Subsistence	Optional
Cost of Care	Mandatory
<b>Group 4</b>	<b>(Electorate 1,000 to 4,999)</b>
Basic Payment	Mandatory for all members
Senior Role Payment	Optional up to 3 members
Attendance Allowance	Optional
Financial Loss	Mandatory

Type of payment	Requirement
Travel and Subsistence	Optional
Cost of Care	Mandatory
<b>Group 5</b>	<b>(Electorate less than 1,000)</b>
Basic Payment	Optional
Senior Role Payment	Optional
Attendance Allowance	Optional
Financial Loss	Mandatory
Travel and Subs	Optional
Cost of Care	Mandatory

### Making Payments to Members

- 13.31 Table 12 sets out each of the above determinations and if a decision is required by the council in respect of each one.
- 13.32 In respect of the mandated payments where no decision is required by a council, members should receive monies to which they are properly entitled as a matter of course.
- 13.33 Where a decision is required by the council, this should be done at the first meeting following receipt of the Annual Report.
- 13.34 A council can adopt any, or all, of the non-mandated determinations but if it does make such a decision, it must apply to all its members.
- 13.35 When payments take effect from is set out in paragraphs 13.37 to 13.39 below.
- 13.36 On receipt of the draft Annual Report the previous autumn, councils should consider the determinations for the next financial year and use this to inform budget plans.

**Table 12**

Determination Number	Is a decision required by council?
<b>44</b> Community and town councils must make available a payment to each of their members of £150 per year as a contribution to costs and expenses, with the exception of those councils in Group 5 where the payment is optional.	No - the payment of £150 is mandated for every member unless they advise the appropriate officer that they do not want to take it in writing.  This does not apply to councils in Group 5. The council must decide whether to adopt the payment and if so, it must be available for all members.
<b>45</b> Community and town councils can make payments to each of their members in respect of travel costs for attending approved duties.	Yes – the payment of travel costs is optional.

Determination Number	Is a decision required by council?
<b>46</b> If a community or town council resolves that a particular duty requires an overnight stay, it can authorise reimbursement of subsistence expenses to its members.	Yes – the payment of overnight subsistence expenses is optional.
<b>47</b> Community and town councils can pay financial loss compensation to each of their members, where such loss has actually occurred, for attending approved duties.	Yes – the payment of financial loss compensation is mandatory if claimed
<b>48</b> Determination 47: Each council can decide to introduce an attendance allowance for members. The amount of each payment must not exceed £30.  A member in receipt of financial loss will not be entitled to claim attendance allowance for the same event.  Councils that intend to introduce a system of attendance allowances must set out the details of the scheme and publish on their website.	Yes – the payment of attendance allowance is optional.
<b>49</b> Community and town councils can provide a payment to the mayor or chair of the council up to a maximum of £1,500.	Yes – the payment to a civic head is optional.
<b>50</b> Community and town councils can provide a payment to the deputy mayor or deputy chair of the council up to a maximum amount of £500.	Yes – the payment to a deputy civic head is optional.
<b>51</b> The application of the Remuneration Framework by relevant Group	
<b>52</b> Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is leader, deputy leader or executive member) cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance.	No - Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is leader, deputy leader or executive member) can only receive travel and subsistence expenses and contribution towards costs of care and personal assistance; if they are eligible to claim, and wish to do so.

13.37 All members are eligible to be paid the £150 as set out in Determination 44 and Table 11 from the start of the financial year; unless they are elected later in the financial year, in which case they are eligible for a proportionate payment from that date.

13.38 Other amounts payable to members in recognition of specific responsibilities or as a civic head or deputy civic head as set out in Determinations 49 and 50 are payable from the date when the member takes up the role during the financial year.

13.39 It is a matter for each council to make, and record, a policy decision in respect of:

- when the payment is actually made to the member;
- how many payments the total amount payable is broken down into;
- and whether and how to recover any payments made to a member who leaves or changes their role during the financial year.

13.40 Payments in respect of Determinations 45, 46, 47 and 48 are payable when the activity they relate to has taken place.

13.41 As stated in paragraph 13.7 any individual member may make a personal decision to elect to forgo part or all of the entitlement to any of these payments by giving notice in writing to the proper officer of the council.

**Determination 52: Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is Leader, Deputy Leader or Executive Member) cannot receive any payment from any community or town Council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance.**

### **Publicity requirements**

13.42 There is a requirement on community and town councils to publish details of all payments made to individual members in an annual Statement of Payments for each financial year. This information must be published on council noticeboards and or websites (with easy access) and provided to the Panel by email or by post no later than 30 September following the end of the previous financial year. The Panel draws attention to the requirements stipulated at [Annex 4](#). The Panel is concerned that a significant number of councils are still in breach of this requirement.

## 14. Compliance with Panel Requirements

### The Panel's remit under the Measure

- 14.1 Section 153 of the Measure empowers the Panel to require a relevant authority<sup>8</sup> to comply with the requirements imposed on it by an Annual Report of the Panel and further enables the Panel to monitor the compliance of relevant authorities with the Panel's determinations.
- 14.2 A relevant authority must implement the Panel's determinations in this report from the date of its annual meeting or a date specified within the Annual Report.

### Monitoring compliance

- 14.3 The Panel will monitor compliance with the determinations in this Annual Report by relevant authorities against the following requirements:
  - (i) A relevant authority must maintain an annual **Schedule of Member Remuneration** (IRPW Regulations 4 and 5). Guidance at Annex 3 sets out the content which must be included in the Schedule.
  - (ii) A relevant authority must make arrangements for the Schedule's publication within the authority area (IRPW Regulation 46) and send the Schedule to the Panel as soon as practicable and not later than 31 July in the year to which it applies. Annex 4 provides further details of the publicity requirements.
  - (iii) Any amendments to the Schedule made during the year must be notified to the Panel as soon as possible after the amendment is made.

**Note: The above requirements do not apply to Community and Town Councils at this time.**

**The following applies to all authorities including Community and Town Councils.**

- (iv) A relevant authority must make arrangements for publication within the authority area of the total sum paid by it in the previous financial year to each member and co-opted member in respect of salary (basic, senior and civic), allowances, fees and reimbursements in a Statement of Payments (in accordance with Annex 4 that sets out the content that must be included in the Publicity Requirements). This must be published as soon as practicable and no later than 30 September following the end of the previous financial year- **and must also be submitted to the Panel no later than that date.**

<sup>8</sup> Interpretation of "Relevant Authority" provided in the Independent Remuneration Panel for Wales (IRPW) Regulations, Part 1, 'Interpretation'.

## 15. Salaries of Heads of Paid Service of Principal Councils and Fire and Rescue Authorities and Chief Officers of Principal Councils

- 15.1 Section 63 of the Local Government (Democracy) (Wales) Act 2013 amended the Local Government (Wales) Measure 2011 by inserting section 143A. This enables the Panel to take a view on anything in the Pay Policy Statements of these authorities that relates to the salary of the head of paid service (normally the Head of Paid Service or chief fire officer). Section 39 of the Local Government (Wales) Act 2015 further amended the Measure extending this function to include Chief Officers of Principal Councils. However, this function ceased on 31 March 2020.
- 15.2 The Welsh Government issued amended guidance to the Panel which can be found at [Amended Guidance to the Independent Remuneration Panel for Wales under Section 143A of the Local Government \(Wales\) Measure 2011 and Section 39 of the Local Government \(Wales\) Act 2015](#). This sets the basis on which the Panel will carry out the function contained in the legislation.
- 15.3 The functions of the Panel and the requirements on authorities established by the legislation and the subsequent guidance are:
- a) If a principal council intends to change the salary of the head of paid service, or if a fire and rescue authority intends to change the salary of its head of paid service it must consult the Panel unless the change is in keeping with changes applied to other officers of that authority (whether the change is an increase or decrease). 'Salary' includes payments under a contract for services as well as payments of salary under an employment contract.
  - b) The authority must have regard to the recommendation(s) of the Panel when reaching its decision.
  - c) The Panel may seek any information that it considers necessary to reach a conclusion and produce a recommendation. The authority is obliged to provide the information sought by the Panel.
  - d) The Panel may publish any recommendation that it makes as long as these comply with any guidance issued by the Welsh Government. It is the intention that, in the interests of transparency, it will normally do so.
  - e) The Panel's recommendation(s) could indicate:
    - approval of the authority's proposal
    - express concerns about the proposal
    - recommend variations to the proposal

15.4 The Panel also has a general power to review the Pay Policy Statements of

authorities so far as they relate to the heads of paid service.

15.5 It is important to note the Panel will not decide the amount an individual head of paid service will receive.

15.6 The Panel is very aware that this function is significantly different from its statutory responsibilities in relation to members' remuneration. However, it undertakes this role with clarity and openness, taking into account all the relevant factors in respect of specific individual cases. Authorities are encouraged to consult the Panel at an early stage in their decision-making on such matters. This will enable the Panel to respond in a timely manner.

### **Pay Policy Statements**

Paragraph 3.7 of the guidance to the Panel from the Welsh Government states that "The legislation does not restrict the Panel to a reactive role". It allows the Panel to use its power to make recommendations relating to provisions within local authorities' Pay Policy Statements.

### **Changes to the salaries of chief executives of principal councils – Panel decisions 2021**

Letters issued to the Local Authorities notifying them of the Panel decision can be found on the [Panel website](#).

<b>Name of Local Authority</b>	<b>Proposal</b>	<b>Panel decision</b>
Wrexham County Borough Council	Chief Executive pay proposal	Approved
Ceredigion County Council	Review of Chief Executive salary	Approved

## Annex 1: The Panel's Determinations for 2022/23

Principal Councils	
1.	The Basic Salary in 2022/23 for elected members of principal councils shall be £16,800.
2.	Senior salary levels in 2022/23 for members of principal councils shall be as set out in Table 4.
3.	Where paid, a civic head must be paid a Band 3 salary of £25,593 in accordance with Table 4.
4.	Where paid, a deputy civic head must be paid a Band 5 salary of £20,540 in accordance with Table 4.
5.	Where appointed and if remunerated, a presiding member must be paid £25,593 in accordance with Table 4.
6.	The post of deputy presiding member will not be remunerated.
7.	<p>a) An elected member must not be remunerated for more than one senior post within their authority.</p> <p>b) An elected member must not be paid a senior salary and a civic salary.</p> <p>c) All senior and civic salaries are paid inclusive of basic salary.</p> <p>d) If a council chooses to have more than one remunerated deputy leader, the difference between the senior salary for the deputy leader and other executive members should be divided by the number of deputy leaders and added to the senior salary for other executive members in order to calculate the senior salary payable to each deputy leader.</p>
8.	Members in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA or FRA to which they have been appointed. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the NPA or FRA.
9.	Members in receipt of a Band 1 or Band 2 salary cannot receive any payment from a community or town council of which they are a member. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the community or town council. Where this situation applies, it is the responsibility of the individual member to comply.
10.	Each authority, through its Democratic Services Committee, must ensure that all its elected members are given as much support as is necessary to enable them to fulfil their duties effectively. All elected members should be provided with adequate telephone, email and internet facilities giving electronic access to appropriate information.

11.	Such support should be without cost to the individual member. Deductions must not be made from members' salaries by the respective authority as a contribution towards the cost of support which the authority has decided necessary for the effectiveness and or efficiency of members.
<b>Specific or Additional Senior Salaries</b>	
12.	Principal councils can apply for specific or additional senior salaries that do not fall within the current Remuneration Framework.
<b>Assistants to the Executive</b>	
13.	The Panel will decide on a case-by-case basis the appropriate senior salary, if any, for assistants to the executive.
<b>Joint Overview and Scrutiny Committees (JOSC)</b>	
14.	The salary level for a chair of a JOSC shall be £8,793.
15.	The salary level for a vice chair of a JOSC shall be £4,396.
<b>Local Government Pension Scheme</b>	
16.	The entitlement to join the Local Government Pension Scheme (LGPS) shall apply to all eligible elected members of principal councils.
<b>Family Absence</b>	
17.	An elected member is entitled to retain a basic salary when taking family absence under the original regulations or any amendment to the regulations irrespective of the attendance record immediately preceding the commencement of the family absence.
18.	When a senior salary holder is eligible for family absence, they will continue to receive the salary for the duration of the absence.
19.	It is a matter for the authority to decide whether or not to make a substitute appointment. The elected member substituting for a senior salary holder taking family absence will be eligible to be paid a senior salary, if the authority so decides.
20.	If the paid substitution results in the authority exceeding the maximum number of senior salaries which relates to it, as set out in the Panel's Annual Report, an addition to the maximum will be allowed for the duration of the substitution. However, this will not apply to the Isle of Anglesey or Merthyr Tydfil Councils if it would result in the number of senior salaries exceeding fifty percent of the Council membership. Specific approval of Welsh Ministers is required in such circumstances.
21.	When a Council agrees a paid substitution for family absence the Panel must be informed within 14 days of the date of the decision, of the details including the particular post and the duration of the substitution.

22.	The Council's schedule of remuneration must be amended to reflect the implication of the family absence.
<b>National Park Authorities</b>	
23.	The basic salary for NPA ordinary members shall be £4,738 with effect from 1 April 2022.
24.	The senior salary of the chair of a NPA shall be £13,531 with effect from 1 April 2022.
25.	A NPA senior salary of £8,478 must be paid to a deputy chair where appointed.
26.	Committee chairs or other senior posts can be paid. This shall be paid at £8,478.
27.	Members must not receive more than one NPA senior salary.
28.	A NPA senior salary is paid inclusive of the NPA basic salary.
29.	Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA to which they have been appointed. Where this situation applies, it is the responsibility of the individual member to comply.
<b>Fire and Rescue Authorities</b>	
30.	The basic salary for FRA ordinary members shall be £2,369 with effect from 1 April 2022.
31.	The senior salary of the chair of a FRA shall be £11,162 with effect from 1 April 2022.
32.	A FRA senior salary of £6,109 must be paid to the deputy chair where appointed.
33.	Chairs of committees or other senior posts can be paid. This shall be paid at £6,109.
34.	Members must not receive more than one FRA senior salary.
35.	A FRA senior salary is paid inclusive of the FRA basic salary and must reflect significant and sustained responsibility.
36.	Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any FRA to which they have been nominated. Where this situation applies, it is the responsibility of the individual member to comply.
<b>Co-opted Members</b>	
37.	Principal councils, NPAs and FRAs must pay the fees to co-opted members (who have voting rights) as set out in Table 7.

38.	Reasonable time for pre meeting preparation is to be included in claims made by co-opted members the extent of which can be determined by the appropriate officer in advance of the meeting.
39.	Travelling time to and from the place of the meeting is to be included in the claims for payments made by co-opted members (up to the maximum of the daily rate).
40.	The appropriate officer within the authority must determine in advance whether a meeting is programmed for a full day and the fee will be paid on the basis of this determination even if the meeting finishes before four hours has elapsed.
41.	Fees must be paid for meetings and other activities including other committees and working groups (including task and finish groups), pre-meetings with officers, training and attendance at conferences or any other formal meeting to which co-opted members are requested to attend.
42.	Each authority, through its Democratic Services Committee or other appropriate committee, must ensure that all voting co-opted members are given as much support as is necessary to enable them to fulfil their duties effectively. Such support should be without cost to the individual member.
<b>Contribution towards costs of Care and Personal Assistance</b>	
43.	<p>All relevant authorities must provide a payment towards necessary costs for the care of dependent children and adults (provided by informal or formal carers) and for personal assistance needs as follows:</p> <ul style="list-style-type: none"> <li>• Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.</li> <li>• Informal (unregistered) care costs to be paid up to a maximum rate equivalent to <a href="#">hourly rates as defined by the Living Wage Foundation</a> at the time the costs are incurred.</li> </ul> <p>This must be for the additional costs incurred by members to enable them to carry out official business or approved duties. Each authority must ensure that any payments made are appropriately linked to official business or approved duty. Payment shall only be made on production of receipts from the care provider.</p>
<b>Community and Town Councils</b>	
44.	Community and town councils must make available a payment to each of their members of £150 per year as a contribution to costs and expenses, with the exception of those councils in Group 5 where the payment is optional.

45.	<p>Community and town councils can make payments to each of their members in respect of travel costs for attending approved duties.<sup>9</sup> Such payments must be the actual costs of travel by public transport or the HMRC mileage allowances as below:</p> <ul style="list-style-type: none"> <li>• 45p per mile up to 10,000 miles in the year.</li> <li>• 25p per mile over 10,000 miles.</li> <li>• 5p per mile per passenger carried on authority business.</li> <li>• 24p per mile for private motor cycles.</li> <li>• 20p per mile for bicycles.</li> </ul>
46.	<p>If a community or town council resolves that a particular duty requires an overnight stay, it can authorise reimbursement of subsistence expenses to its members at the maximum rates set out below on the basis of receipted claims:</p> <ul style="list-style-type: none"> <li>• £28 per 24-hour period allowance for meals, including breakfast where not provided.</li> <li>• £200 – London overnight.</li> <li>• £95 – elsewhere overnight.</li> <li>• £30 – staying with friends and or family overnight.</li> </ul>
47.	<p>Community and town councils can pay financial loss compensation to each of their members, where such loss has occurred, for attending approved duties as follows:</p> <ul style="list-style-type: none"> <li>• Up to £55.50 for each period not exceeding 4 hours.</li> <li>• Up to £110.00 for each period exceeding 4 hours but not exceeding 24 hours.</li> </ul>
48.	<p>Each council can decide to introduce an attendance allowance for members. The amount of each payment must not exceed £30.</p> <p>A member in receipt of financial loss will not be entitled to claim attendance allowance for the same event.</p> <p>Councils that intend to introduce a system of attendance allowances must set out the details of the scheme and publish on their website.</p>
49.	<p>Community and town councils can provide a payment to the mayor or chair of the council up to a maximum of £1,500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.</p>
50.	<p>Community and town councils can provide a payment to the deputy mayor or deputy chair of the council up to a maximum of £500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.</p>
51.	<p>The application of the Remuneration Framework by relevant Group.</p>

52.	Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is leader, deputy leader or executive member) cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance.
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<sup>9</sup> Where a member who is on official business or an approved duty is driven by a third party (not a member or officer of that authority), the member can claim mileage at the prescribed rates plus any parking or toll fees provided the authority is satisfied that the member has incurred these costs.

## **Annex 2: Independent Remuneration Panel for Wales (IRPW) Regulations:**

- a) For the remuneration of members and co-opted members of relevant authorities**
- b) For functions relating to the salaries of Heads of Paid Service of Principal Councils and Fire and Rescue Authorities**

### **Introduction**

Part 8 (sections 141 to 160) and schedules 2 and 3 of the Local Government (Wales) Measure 2011 (*the Measure*) set out the arrangements for the payments and pensions for members of relevant authorities and the functions and responsibilities of the Independent Remuneration Panel for Wales (the Panel).

Sections 62 to 67 of the Local Government (Democracy) (Wales) Act 2013 amends sections 142, 143, 144, 147, 148 and 151 of the Measure and confers additional powers on the Panel.

The powers contained in part 8 and schedules 2 and 3 of the Measure (as amended) have replaced the following Statutory Instruments:

- The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002 (No. 1895 (W.196)).
- The Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004 (No. 2555 (W.227)).
- The Local Authorities (Allowances for Members) (Wales) Regulations 2007 (No.1086 (W.115)).

The Measure also has replaced the sections of the Local Government Act 1972, the Local Government and Housing Act 1989 and the Local Government Act 2000 relating to payments to councillors in Wales.

Payments for members of community and town councils are set out in Part 5 of these Regulations. The Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003 (No. 895(W.115)) were revoked from 1 April 2013.

### **Part 1**

#### **General**

1.
  - a. The short title of these Regulations is: “IRPW Regulations”.
  - b. These IRPW Regulations came into force on 1 April 2021 and replace

those in force from 1 April 2012. The implementation date for each of the relevant authorities is set out in the Annual Report or Supplementary Report of the Panel.

- c. Authorities are required to produce a schedule of payments to members and co-opted members no later than the 31 July each year, for submission to the Panel and publication (see paragraph 46).

## **Interpretation**

### **2. In the IRPW Regulations:**

- “The 1972 Act” means the Local Government Act 1972.
- “The 2000 Act” means the Local Government Act 2000.
- “The 2013 Act” means the Local Government (Democracy) (Wales) Act 2013.
- “Payment” means the actual or maximum amount which may be paid to members and co-opted members of a relevant authority for expenses necessarily incurred when carrying out the official business of the relevant authority.
- “Annual Report” means a report produced by the Panel in accordance with section 145 of the Measure.
- “Approved duty” in relation to community and town councils has the meaning as set out in Part 5 of these Regulations.
- “Authority” means a relevant authority in Wales as defined in Section 144(2) of the Measure and includes a principal council (county or county borough council), a national park authority and a Welsh fire and rescue authority, a community or town council.
- “Basic Salary” has the same meaning as set out in paragraph 6 of these Regulations, and may be qualified as “LA Basic Salary” to refer to the basic salary of a member of a principal council; “NPA Basic Salary” to refer to the basic salary of a member of a national park authority; and “FRA Basic Salary” to refer to the basic salary of a member of a Welsh fire and rescue authority.
- “Chief Officer” of a principal council has the meaning as defined in the Localism Act 2011.
- “Civic Head” is the person elected by the council to carry out the functions of the chair of that council and is designated as mayor or chair.
- “Committee” includes a sub-committee.
- “Community or town council” means in relation to Part 8 of the Measure, a community council as defined in section 33 of the Local Government Act 1972 or a town council in accord with section 245B of the same Act.

- “Consultation draft” means the draft of an Annual or Supplementary report under Section 146 (7) or 147(8) of the Measure. The Panel must take account of these representations.
- “Constituent authority” – for national park authorities this is a principal council falling within the area of a national park authority; for Welsh fire and rescue authorities it is a principal council falling within the area of a fire and rescue authority.
- “Contribution to Costs of Care and Personal Assistance” has the same meaning as set out in paragraph 21 of these Regulations.
- “Controlling group” means a political group in a principal council where any of its members form part of the executive.
- “Co-opted Member” has the meaning contained in section 144 (5) of the Measure, that is those with the right to vote on matters within the remit of the committee on which they serve.
- “Co-opted Member payment” has the same meaning as set out in paragraph 19 of these Regulations.
- “Democratic Services Committee” means the principal council committee established under section 11 of the Measure.
- “Deputy Civic Head” is a person elected by the council to deputise for the mayor or chair of that council.
- “Executive” means the executive of an authority in a form as specified in sections 11(2) to (5) of the 2000 Act, as amended by section 34 of the Measure.
- “Executive arrangements” has the meaning given by section 10(1) of the 2000 Act.
- “Family absence” as defined in Section 142 (2) (b) of the Measure has the meaning given to it by Part 2 of the Measure, and the related Regulations
- “Financial Loss Allowance in relation to community or town councils has the meaning as set out in Part 5 of the Regulations.
- “Fire and rescue authority” means an authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
- “Head of paid service” means as designated under section 4(1) of the Local Government and Housing Act 1989.
- Joint Overview and Scrutiny Committee means a committee or subcommittee set up by two or more principal councils under the Local Authority (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013.
- “Largest opposition group” means a political group other than a controlling group which has a greater number of members than any other political group in the authority.

- “Member” means a person who serves on an authority.
  - For a principal council or a community or town council a “Member” may be:
  - An “Elected Member” which means a person who has been elected to serve as a councillor for that authority. It is possible for a person to hold an elected office if, further to the completion of an election, no candidate has presented and a person holds that office subject to proper process.
  - A “Co-opted Member” which means a person who has been placed into membership of a council committee or to discharge a function subject to proper process.
  - For a national park authority, a “Member” means a person appointed by a constituent authority and a person appointed by Welsh Ministers.
  - For Welsh fire and rescue authorities a “Member” means a person appointed by a constituent authority.
  
- “National Park Authority” means a national park authority established under section 63 of the Environment Act 1995.
  
- “Official business” has the meaning contained in Section 142 (10) of the Measure in relation to the reimbursement of care, travel and subsistence costs necessarily incurred by members and co-opted members of a relevant authority (excluding community and town councils) when:
  - a. Attending a meeting of the authority or any committee of the authority or any other body to which the authority makes appointments or nominations or of any committee of such a body.
  - b. Attending a meeting of any association of authorities of which the authority is a member.
  - c. Attending a meeting the holding of which is authorised by the authority or by a committee of the authority or by a joint committee of the authority and one or more other authorities.
  - d. Attending any training or development event approved by the authority or its executive.
  - e. A duty undertaken for the purpose of or in connection with the discharge of the functions of an executive within the meaning of Part 2 of the 2000 Act, as amended.
  - f. A duty undertaken in pursuance of a standing order which requires a member or members to be present when tender documents are opened.
  - g. A duty undertaken in connection with the discharge of any function of the authority to inspect or authorise the inspection of premises.
  - h. A duty undertaken by members of principal councils in connection with constituency or ward responsibilities which arise from the discharge of principal council functions.

- i. Any other duty approved by the authority, or any duty of class so approved, undertaken for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees.
- “Other political group” means a political group other than a controlling group or the largest opposition group (if any) which comprises not less than ten per cent of the members of that authority.
- “Overview and Scrutiny Committee” means a committee of the authority which has the powers set out in sections 21(2) and (3) of the 2000 Act, as amended by Part 6 of the Measure.
- “Panel” means the Independent Remuneration Panel for Wales as set out in section 141(1) and schedule 2 of the Measure.
- “Pay policy statement” means a statement produced by a relevant authority under section 38 of the Localism Act 2011.
- ‘Political group’ may be formed from members of a recognised political party or be a group of independent members unaffiliated to any recognised political party. “Presiding Member” means a member of a principal council who has been designated by that council to carry out functions in relation to the chairing of its meetings and proceedings.
- “Principal Council” is as defined by the 1972 Act and means a county or county borough council.
- “Proper officer” has the same meaning as in section 270(3) of the 1972 Act. In community and town councils, the ‘Proper Officer’ may be the clerk or other official appointed for that purpose. “Public body” means a body as defined in section 67(b) of the 2013 Act.
- “Qualifying provision” means a provision that makes a variation to a previous decision of the Panel. (Section 65 (c) of the 2013 Act).
- “Qualifying relevant authority” is an authority within the meaning of section 63 of the 2013 Act, required to produce a pay policy statement.
- “Relevant authority” is set out in Section 144(2) of the Measure (as amended) and in section 64 of the 2013 Act and, for the purposes of these Regulations, includes a principal council, a community or town council, a national park authority and a Welsh fire and rescue authority.
- “Relevant matters” are as defined in Section 142(2) of the Measure.
- “Schedule” means a list setting out the authority’s decisions in respect of payments to be made during the year (as relating to that authority) to all members and co-opted members of that authority.
- “Senior Salary” has the same meaning as set out in paragraph 11 of these Regulations and may be qualified as “Principal council Senior Salary” to refer to the senior salary of a member of a principal council; “National Park Senior Salary” to refer to the senior salary of a member of a national park authority; or “Fire and Rescue authority Senior Salary” to refer to the senior salary of a member of a Fire and Rescue authority.
- “Sickness absence” means the arrangements as set out in the Annual Report.

- “Supplementary report” has the meaning contained in section 146(4 to 8) of the Measure.
- “Travelling and subsistence payment” has the same meaning as set out in paragraph 25 of these Regulations.
- “Year” has the following meanings:
  - “financial year” – the period of twelve months ending 31 March;
  - “calendar year” – the period of twelve months ending 31 December;
  - “municipal year” – the year commencing on the date of the annual meeting of the authority and ending the day before the annual meeting of the following year; for national park authorities and Welsh fire and rescue authorities it is the period of up to twelve months following the annual meeting of the authority.

## **Part 2: Schedule of member or co-opted member payments**

### **Commencement of term of office**

3. The term of office of:
  - An elected member of a principal council or community or town council begins 4 days following the election subject to making the declaration of acceptance of that office under section 83(1) of the 1972 Act.
  - A councillor member of a national park authority begins on the date on which that member is appointed as such by a constituent authority and the term of office of a Welsh Government appointed member begins on the date of that appointment. The term of office of the chair and deputy chair of the national park authority begins on their acceptance of that office further to being either elected or appointed as a chair or deputy chair of a national park authority.
  - A councillor member of a Welsh fire and rescue authority begins on the date on which that member is appointed as such by a constituent authority and the term of office of the chair and deputy chair of the fire and rescue authority begins on the date of election by that authority to that office.
  - A co-opted member of a relevant authority begins on the date of appointment by the relevant authority.

### **Schedule of payments to members (the Schedule) (does not apply to community or town councils – see Part 5)**

4. An authority must produce annually, a schedule of payments it intends to make to its members and co-opted members. The amount of those payments must accord with the Panel's determinations made for that year in its Annual or Supplementary Reports. The Schedule must be produced no later than four weeks following the annual meeting of the authority.

### **Amendment to the Schedule**

5. An authority may amend the Schedule at any time during the year (as relating to the authority) provided that such amendments accord with the Panel's determinations for that year.

### **Basic salary**

6. An authority must provide for the payment of a basic salary, as determined by the Panel in its Annual or Supplementary Reports, to each of its members. The amount of the salary must be the same for each member. For principal councils only, this salary remains payable during a period of family absence.
7. A member may not receive more than one basic salary from a relevant authority, but a member of one relevant authority may receive a further basic salary by being appointed as a member of another relevant authority (except in the case as indicated in paragraph 16).
8. The amount of the basic salary will be set in accordance with Section 142(3) of the Measure and will be one of the following:
  - The amount the authority must pay to a member of the authority.
  - The maximum amount that the authority may pay to a member of the authority.
9. Where the term of office of a member begins or ends other than at the beginning or end of the year (as relating to the authority), the entitlement of that member is to such proportion of the basic salary as the number of days during which the member's term of office subsists during that year bears to the number of days in that year.
10. Where a member is suspended or partially suspended from being a member of an authority (Part 3 of the 2000 Act refers) the part of the basic salary payable to that member in respect of the responsibilities or duties from which that member is suspended or partially suspended must be withheld by the authority. Payment must also be withheld if directed by the Welsh Ministers (Section 155(1) of the Measure).

### **Senior salary**

11. Subject to paragraphs 12 to 18 an authority can make payments of a senior salary to members that it has given specific responsibilities. Such payments must accord with the Panel's determination for the year (as relating to the authority) that the payments are made and must be set out in the Schedule of that authority. For principal councils only, a senior salary will remain payable during the family absence of the office holder.
12. The Panel will prescribe in its Annual or Supplementary Reports the following:
  - The categories of members eligible for the payment of a senior salary

which may not be the same for all authorities or categories of authorities.

- The discretion available to authorities in relation to the payment of senior salaries which may not be the same for all authorities or categories of authorities.
13. The amount of the senior salaries payable will be in accordance with section 142(3) of the Measure and specify:
    - The amount that a relevant authority must pay to a member of the authority.
    - The maximum amount that a relevant authority may pay to a member of the authority.
  14. The Senior Salary will comprise an amalgam of the basic salary and an additional amount for the relevant specific responsibility determined by the Panel in its Annual or Supplementary Reports. This may not be the same for all authorities or categories of authorities.
  15. The Panel in its Annual or Supplementary Reports will determine either the maximum proportion of its membership or the total number of members that an authority can pay as senior salaries. The percentage may not exceed fifty percent without the express approval of Welsh Ministers (Section 142(5) of the Measure). For principal councils only, the maximum proportion or number may be exceeded to include payment of a senior salary to an additional member who is appointed to provide temporary cover for the family absence of a senior salary office holder (subject to the 50% limit).
  - 15(a). For, Fire and Rescue Authorities and National Park Authorities the maximum proportion or number may be exceeded to include the payment of a senior salary to an additional member who is appointed to provide temporary cover for the sickness absence of a senior salary holder as determined in the Annual Report or a Supplementary Report.
  - 15(b). Payments to chairs of Joint Overview and Scrutiny Committees or Sub Committees are additional to the maximum proportion of its membership that an authority can pay as senior salaries subject to the overall maximum of fifty percent as contained in Section 142(5) of the Measure. The Panel will determine the amounts of such payments in an Annual or Supplementary Report.
  16. An authority must not pay more than one senior salary to any member. A principal council member in receipt of a senior salary as leader or executive member of an authority (determined as full-time by the Panel) may not receive a second salary as a member appointed to serve on a national park authority or a Welsh fire and rescue authority.
  - 16(a). Paragraph 16 does not apply to payments made to a chair of a Joint Overview and Scrutiny Committee or Sub Committee who is in receipt of a senior salary for a role that is not classified as full time equivalent. It continues to apply to leaders or members of the executive.

17. Where a member does not have, throughout the year specific responsibilities that allow entitlement to a senior salary, that member's payment is to be such proportion of the salary as the number of days during which that member has such special responsibility bears to the number of days in that year.
18. Where a member is suspended or partially suspended from being a member of the authority (Part 3 of the 2000 Act refers) the authority must not make payments of the member's senior salary for the duration of the suspension (Section 155(1) of the Measure). If the partial suspension relates only to the specific responsibility element of the payment, the member may retain the basic salary. Payment must also be withheld if directed by the Welsh Ministers.

### **Co-opted member payment**

19. A relevant authority must provide for payments to a co-opted member as determined by the Panel in its Annual or Supplementary Reports. In relation to this regulation 'co-opted member' means a member as determined in Section 144(5) of the Measure and set out in paragraph 2 of these Regulations.
20. Where a co-opted member is suspended or partially suspended from an authority (Part 3 of the 2000 Act refers) the authority must not make payment of a co-opted member fee for the duration of the suspension (Section 155(1) of the Measure).

### **Payments Contribution to Costs of Care and Personal Assistance**

21. Authorities must provide for the payment to members and co-opted members of an authority the reimbursement in respect of such expenses of arranging the care of children or dependants or for the individual member as are necessarily incurred in carrying out official business as a member or co-opted member of that authority. Payments under this paragraph must not be made:
  - In respect of any child over the age of fifteen years or dependant unless the member or co-opted member satisfies the authority that the child or dependant required supervision which has caused the member to incur expenses that were necessary in respect of the care of that child or dependant in the carrying out of the duties of a member or co-opted member.
  - To more than one member or co-opted member of the authority in relation to the care of the same child or dependant for the same episode of care.
  - Of more than one reimbursement for care to a member or co-opted member of the authority who is unable to demonstrate to the satisfaction of the authority that the member or co-opted member has to make separate arrangements for the care of different children or dependants.

22. The arrangements in respect of the contribution to cost of care and personal assistance payable by an authority is to be determined by the Panel in its Annual or Supplementary Reports.
23. Where a member or co-opted member is suspended or partially suspended from being a member or co-opted member of the authority (Part 3 of the 2000 Act refers) the part of the contribution to the cost of care and personal assistance payable to that member or co-opted member in receipt of the responsibilities or duties from which that member or co-opted member is suspended or partially suspended must be withheld by the authority. Payment must also be withheld if directed by the Welsh Ministers for reasons other than suspension (Section 155(1) of the Measure).
24. An authority's Schedule must stipulate the arrangements regarding the contribution towards costs of care and personal assistance payable and its arrangements for making claims, taking full account of the Panel's determinations in this respect.

#### **Travel and subsistence payments**

25. Subject to paragraphs 26 and 27 below a member or co-opted member is entitled to receive payments from the authority by way of travelling and subsistence payments at rates determined by the Panel in its Annual or Supplementary Reports. Such payments are in respect of expenditure incurred by a member or co-opted member in the performance of the official business within or outside the boundary of the authority.

#### **(Paragraphs 26 & 27 apply only to principal councils)**

26. Payment of a subsistence payment to a principal council member for the performance of official business within the boundaries of a county or county borough where they are a member should only be made when the authority is satisfied that it can be justified on economic grounds. This does not apply in respect of co-opted members of a council who live outside that authority.
27. A principal council may make provision, subject to any limitations it thinks fit, for members to claim mileage expenses for official business in connection with constituency or ward responsibilities where they arise out of the discharge of the functions of the county or county borough.
28. Where a member or co-opted member is suspended or partially suspended from being a member or co-opted member of the authority (Part 3 of the 2000 Act refers), travelling and subsistence payments payable to that member or co-opted member in respect of the responsibilities or duties from which that member is suspended or partially suspended must be withheld by the authority. Payment must also be withheld if directed by the Welsh Ministers for reasons other than suspension (Section 155(1) of the Measure).

## **Part 3: Further provisions**

### **Pensions**

29. Under Section 143 of the Measure, the Panel may make determinations in respect of pension arrangements for principal council members in its Annual or Supplementary Reports. Such determinations may:
- Define which members for whom the principal council will be required to pay a pension.
  - Describe the relevant matters in respect of which a local authority will be required to pay a pension.
  - Make different decisions for different principal councils.

### **Payments to support the function of an authority member**

30. An authority must provide for the requirements of a member to undertake their role and responsibilities more effectively. The way in which this support should be provided is determined by the Panel in its Annual or Supplementary Reports.

### **Arrangements in relation to family absence**

31. Part 2 of the Measure sets out the rights of principal council members in relation to family absence. The Panel will set out its determinations and the administrative arrangements in relation to these payments in its Annual or Supplementary Reports.

### **Sickness Absence**

32. Arrangements for long-term sickness absence of senior salary holders of principal councils, Fire and Rescue Authorities and National Park Authorities will be as set out in the Panel's Annual Report or Supplementary Report.

## **Part 4: Payments**

### **Repayment of payments**

33. An authority can require that such part of a payment be repaid where payment has already been made in respect of any period during which the member or co-opted member concerned:
- a. is suspended or partially suspended from that member's or co-opted member's duties or responsibilities in accordance with Part 3 of the 2000 Act or Regulations made under that Act.
  - b. ceases to be a member or co-opted member of the authority.

- c. or in any way is not entitled to receive a salary, allowance or fee in respect of that period.

### **Forgoing payments**

- 34. Under Section 154 of the Measure, any member or co-opted member may by notice in writing to the proper officer of the authority elect to forgo any part of their entitlement to a payment under the determination of the Panel for that particular year (as relating to the authority).

## **Part 5: Specific provisions relating to community and town councils (“the council”)**

### **Interpretation**

- 35. For the purposes of this Part the term member means both an elected member and a co-opted member.

### **Payments**

- 36. Payments
  - a) The Annual Report or a Supplementary Report determines the arrangements and amount of an annual payment to members in respect of costs incurred in carrying out the role of a member and if appropriate take account of the variation in size or financial circumstances of different councils.
  - b) The council may make payments to members in respect of costs of travel for attending approved duties within or outside the area of the council. The amounts claimable will be set out in the Annual or Supplementary Report of the Panel.
  - c) The council may reimburse subsistence costs to its members when attending approved duties within or outside the area of the council. The arrangements for reimbursement will be set out in the Annual or Supplementary Report of the Panel.
  - d) The council may pay compensation for Financial Loss to its members where such loss has occurred for attending approved duties within or outside the area of the council. The payments will be set out in the Annual or Supplementary Report of the Panel.
  - e) The council may make a payment to the chair or mayor and deputy chair or mayor of the council for the purposes of undertaking the role of that office. The payment will be set out in the Annual or Supplementary Report of the Panel.
  - f) The Annual Report or a Supplementary Report determines the arrangements for payments to members of a council who undertake senior roles and if appropriate take account of the variation in size or financial circumstances of different councils.

- g) The council must reimburse the contribution to costs of care and personal assistance to a member if claimed, as determined in the Annual Report of the Panel.
- 37. A member may elect to forgo any part of an entitlement to payment under these Regulations by giving notice in writing to the proper officer of the council.
- 38. A member making a claim for compensation for Financial Loss must sign a statement that the member has not made and will not make any other claim in respect of the matter to which the claim relates.
- 39. “Approved Duty” under this Part means
  - i. Attendance at a meeting of the council or of any committee or sub-committee of the council or of any other body to which the council makes appointments or nominations or of any committee or sub-committee of such a body.
  - ii. Attendance at any other meeting the holding of which is authorised by the council or a committee or sub-committee of the council, or a joint committee of the council and one or more councils, or a sub-committee of such a joint committee provided that at least two members of the council have been invited and where the council is divided into political groupings at least two such groups have been invited.
  - iii. Attendance at a meeting of any association of councils of which the council is a member.
  - iv. Attendance at any training or development event approved by the council.
  - v. Any other duty approved by the council or duty of a class approved by the council for the discharge of its functions or any of its committees or sub-committees.

## **Part 6: Miscellaneous**

### **Arrangements for payments**

- 40. The Schedule of an authority must set out the arrangements for payment to all members and co-opted members of that authority. Such payments may be made at such times and at such intervals as determined by the authority.

### **Claims**

- 41. An authority must specify a time limit from the date on which an entitlement to travelling or subsistence payments arise during which a claim for must be made by the person to whom they are payable. However, this does not prevent an authority from making a payment where the allowance is not claimed within the period specified.

42. Any claim for payment of travelling, subsistence or care costs in accordance with these Regulations (excluding claims for travel by private vehicle or bicycle) shall be accompanied by appropriate receipts proving actual cost.

### **Avoidance of duplication**

43. A claim for a payment of travelling, subsistence or care costs must include, or be accompanied by, a statement signed by the member or co-opted member that the member or co-opted member has not made and will not make any other claim in respect of the matter to which the claim relates.

### **Records of payments**

44. An authority must keep a record of the payments made in accordance with these Regulations as set out in an Annual or Supplementary Report.

### **Publicity requirements**

(The required content of publicity requirements is contained in an annex to the Annual Report)

45. An authority must, as soon as practicable after determining its Schedule of Remuneration for the year under these Regulations and any Report of the Panel and not later than 31 July of the year to which the Schedule refers, arrange for the Schedule's publication within the authority's area and to notify the Panel. **(This section does not apply to community and town councils).**
46. As soon as practicable and no later than 30 September following the end of the financial year **all relevant authorities** must publicise within the authority's area and notify the Panel:
- the total sum paid by it to each member or co-opted member in respect of basic salary, senior salary, co-opted member fee, travel and subsistence payments.
  - the total expenditure on contribution towards costs of care and personal assistance.
47. In the same timescale and in the same manner, an authority must publicise any further remuneration received by a member nominated or appointed to another relevant authority. **(This section applies only to principal councils).**

**Publicising the reports of the Panel**

48. Under Section 146(7) (a) and (b) of the Measure, the Panel will send a consultation draft of its Annual Report or Supplementary Report to all relevant authorities for circulation to authority members and co-opted members, so that representations can be made by members and co-opted members to the Panel, normally in a period of eight weeks.
49. The Panel will determine in its Annual or Supplementary Reports the arrangements publicising its Reports in accordance with Section 151 and 152 of the Measure.

**Monitoring compliance with the Panel's determinations**

50. Section 153 of the Measure determines that relevant authorities must comply with the requirements imposed by the Panel in its Annual Reports. It also empowers the Panel to monitor the payments made by relevant authorities and for it to require the provision of information that it specifies. The requirements under this section will be set out in the Annual Report of the Panel.

## Annex 3: Schedule of Member Remuneration

1. Principal councils, national park authorities (NPAs) and Welsh fire and rescue authorities (FRAs) (but not community and town councils) must maintain an annual Schedule of Member Remuneration (the 'Schedule') which is in accord with the Panel's determinations on member salary and co-opted member payments and which must contain the following information:

In respect of a principal council:

- a. Named members who are to receive only the basic salary and the amount to be paid.
- b. Named members who are to receive a Band 1 and Band 2 senior salary, the office and portfolio held and the amount to be paid.
- c. Named members who are to receive a Band 3, Band 4 and Band 5 senior salary, the office and portfolio held and the amount to be paid.
- d. Named members who are to receive a civic salary and the amount to be paid.
- e. Named members who are to receive the co-opted member fee and whether chair or ordinary member and the amount to be paid.
- f. Named members who are to receive a senior salary as a chair of a Joint Overview and Scrutiny Committee or Sub Committee and the amount to be paid.
- g. Named members in receipt of a specific or additional senior salary approved by the Panel and the amount to be paid.

In respect of National Park and Fire and Rescue Authorities:

- a. Named members who are to receive a basic salary and the amount to be paid.
  - b. Named member who is to receive a senior salary as a chair of the authority and the amount to be paid.
  - c. Named members who are to receive a senior salary as deputy chair of the authority or a committee chair and the amount to be paid.
  - d. Named members who are to receive the co-opted member fee and whether a chair or ordinary member and the amounts to be paid.
2. Amendments made to the Schedule during the municipal year must be communicated to the Panel as soon as it is practicable.
  3. Principal councils must confirm in their annual Schedule that the maximum limit of senior salaries set for the council has not been exceeded.

4. Principal councils, NPAs and FRAs must include a statement of allowable expenses and the duties for which they may be claimed for care, travel and subsistence in their annual Schedule which is in accord with the Panel's determinations.
5. The Schedule must set out the arrangements for the payment of salaries, allowances and fees to all members and co-opted members of the relevant authority (IRPW Regulation 35); arrangements for making claims for care and personal assistance, travel and subsistence expenses (IRPW Regulations 24 and 36-37); arrangements for the avoidance of duplication (IRPW Regulation 38) and arrangements for re-payment of salaries, allowances and fees (IRPW Regulation 33). This schedule must also include the duties for which members and co-opted members are able to claim reimbursement towards travel, subsistence and care and personal assistance costs.
6. Principal councils must declare in the Schedule whether:
  - A statement of the basic responsibility of a councillor is in place.
  - Role descriptors of senior salary office holders are in place.
  - Records are kept of councillor attendance.
7. Principal councils, NPAs and FRAs must make arrangements for the publication of the Schedule of Member Remuneration as soon as practicable after its determination and no later than 31 July of the year to which it applies. The Schedule should be published in a manner that provides ready access for members of the public.
8. The **Schedule** must also be sent to the Panel Secretariat to be received by 31 July.
9. Any changes to the schedule during the year must be promptly publicised in the above manner and all changes notified to Panel Secretariat promptly.
10. Retention. The time limit for the schedule to be retained should be consistent with the council's policy on document retention.

## **Annex 4: Publication of Remuneration – the Panel’s Requirements**

In accordance with Section 151 of the Wales (Local Government) Measure 2011 the Panel requires that:

1. Relevant authorities must publish a Statement of Payments made to its members for each financial year. This information must be published in a form and location that is easily accessible to members of the public no later than 30 September following the end of the previous financial year and in the same timescale also provided to the Panel. The following information must be provided:
  - a. The amount of basic salary, senior salary, civic salary and co-opted member fee paid to each named member or co-opted member of the relevant authority, including where the member had chosen to forego all or part of the salary, or fee for the municipal year in question. Where a senior salary has been paid, the title of the senior office held is to be provided.
  - b. The payments made by community and town councils to named members as:
    - Payments in respect of telephone usage, information technology, consumables etc.
    - Responsibility payments
    - Allowances made to a mayor or chair and deputy mayor or deputy chair
    - Compensation for Financial Loss
    - Costs incurred in respect of travel and subsistence
  - c. All travel and subsistence expenses and other payments received by each named member and co-opted member of the relevant authority, with each category identified separately.
  - d. The amount of any further payments received by any named member nominated to, or appointed by, another relevant authority or other public body as defined by Section 67 of the Local Government (Democracy) (Wales) Act 2013, namely:
    - a local health board
    - a police and crime panel
    - a relevant authority
    - a body designated as a public body in an order made by the Welsh Ministers.
  - e. Names of members who did not receive basic or senior salary because they were suspended for all or part of the annual period to which the Schedule applies.
  - f. In respect of the publication of the contribution towards costs of care and personal assistance, relevant authorities are only required to

publish the total amount reimbursed during the year. It is a matter for each authority to determine its response to any Freedom of Information requests it receives. However, it is not intended that details of individual claims should be disclosed.

2. **Nil returns** are required to be published and provided to the Panel by 30 September.
3. Retention. The time limit for the publications to be retained should be consistent with the council's policy on document retention.

## Annex 5: Summary of new and updated determinations contained in this report

The numbers of most of the determinations contained within this report have changed from previous reports.

To assist authorities, this table sets out the determinations in this report which are entirely new or have been updated.

<b>Summary of new and updated determinations contained in this report</b>
<b>Principal Councils</b>
Determination 1: The basic salary in 2022/23 for elected members of principal councils shall be £16,800.
Determination 2: Senior salary levels in 2022/23 for members of principal councils shall be as set out in Table 4.
Determination 3: Where paid, a civic head must be paid a Band 3 salary of £25,593 in accordance with Table 4.
Determination 4: Where paid, a Deputy Civic Head must be paid a Band 5 salary of £20,540 in accordance with Table 4.
Determination 5: Where appointed and if remunerated, a presiding member must be paid £25,593 in accordance with Table 4.
<b>Assistants to the Executive</b>
Determination 13: The Panel will decide on a case-by-case basis the appropriate senior salary, if any, for Assistants to the Executive.
<b>National Park Authorities</b>
Determination 22: The basic salary for NPA ordinary members shall be £4,738 with effect from 1 April 2022.
Determination 23: The senior salary of the Chair of a NPA shall be £13,531 with effect from 1 April 2022.
Determination 24: A NPA senior salary of £8,478 must be paid to a Deputy Chair where appointed.
Determination 25: Committee Chairs or other senior posts can be paid. This shall be paid at £8,478.
<b>Fire and Rescue Authorities</b>
Determination 29: The basic salary for FRA ordinary members shall be £2,369 with effect from 1 April 2022.
Determination 30: The senior salary of the Chair of a FRA shall be £11,162 with effect from 1 April 2022.
Determination 31: A FRA senior salary of £6,109 must be paid to the Deputy Chair where appointed.
Determination 32: Chairs of Committees or other senior posts can be paid. This shall be paid at £6,109.
<b>Community and Town Councils</b>
Determination 47:

<p><b>Summary of new and updated determinations contained in this report</b></p> <p>Each council can decide to introduce an attendance allowance for members. The amount of each payment must not exceed £30.</p> <p>A member in receipt of financial loss will not be entitled to claim attendance allowance for the same event.</p> <p>Councils that intend to introduce a system of Attendance Allowances must set out the details of the scheme and publish on their website.</p> <p>Determination 51: The application of the Remuneration Framework by relevant Group.</p>
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**[Independent Remuneration Panel for Wales](#)**

**THIS REPORT IS NOT EXEMPT AND IN THE PUBLIC DOMAIN**

**SOUTH WALES FIRE & RESCUE AUTHORITY**

AGENDA ITEM NO 11  
7 FEBRUARY 2022

STANDARDS COMMITTEE

REPORT OF HEAD OF CORPORATE SUPPORT

**DRAFT STANDARDS COMMITTEE ANNUAL REPORT 2021/22**

**THIS REPORT IS FOR DECISION**

REPORT APPROVED BY TEMPORARY DIRECTOR OF CORPORATE SERVICES

REPORTED PRESENTED BY HEAD OF CORPORATE SUPPORT

**SUMMARY**

As a matter of good corporate governance, it was stated in the 2020/21 Annual Governance Statement to introduce an annual report on the work of the Standards Committee to provide the Authority with an update on its activities during each financial year.

**RECOMMENDATIONS**

The proposed format for the inaugural Standards Committee Annual Report is attached for Members' consideration and comment to enable publication with effect from 5 May 2022.

**1. BACKGROUND**

- 1.1 The Local Government and Elections (Wales) Act 2021) was passed by the Senedd on 18 November 2020 and received Royal Assent on 20 January 2021. Having monitored the Bill's progress since publication in November 2019, and having actively engaged with the public consultation, the most recent of which was the response to the consultation on the Regulations to establish corporate joint committees, the Service is now reviewing the requirements placed on it by the Act.
- 1.2 As a result, the Service has committed to put in measures to enable the Standards Committee to produce an Annual Report to the Fire & Rescue Authority, with effect from 5 May 2022. The Fire & Rescue Authority will consider the report and any recommendations made by its Standards Committee within three months of its receipt.

## 2. PROPOSAL

- 2.1 Appendix 1 contains a draft of the proposed structure for the Standards Committee Annual Report for comment and further development, to produce an approved report format for presentation to the Fire & Rescue Authority as required by legislation.

## 3. IMPLICATIONS

### 3.1 Community and Environment

Equality, Diversity and Inclusion	No
Welsh Language	No
Well-Being Of Future Generations (Wales) Act	No
Socio Economic Duty	No
Sustainability / Environment / Carbon Reduction	No
Safeguarding	No
Consultation and Communications	No
Consultation with Representative Bodies	No
Impact Assessment	No

### 3.2 Regulatory, Strategy and Policy

Legal	No
Financial	No
Procurement	No
Corporate Risk	No
Information Management	No
Data Protection / Privacy	No
Health, Safety and Wellbeing	No
Governance & Audit	No
Service Policy	No
National Policy	No

### 3.3 Resources, Assets and Delivery

Human Resources and People Development	No
Assets and Resources (Property/Fleet/ICT/Equipment)	No
Service Delivery	No
Procurement	No
Budget Revenue/Capital	No

#### 4. RECOMMENDATIONS

- 4.1 The proposed format for the inaugural Standards Committee Annual Report is attached for Members' consideration and comment to enable publication with effect from 5 May 2022.

<b>Contact Officer:</b>	Sarah Watkins Head of Corporate Support
<b>Background Papers</b>	Appendix 1 – Draft Standards Committee Annual Report 2021/22

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South Wales Fire and Rescue Authority



**DRAFT**

**Standards Committee**

**Annual Report**

**2021/2022**



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### 1. Background

This is the Standards Committee's inaugural annual report to the Fire and Rescue Authority and spans the period from April 2021 to March 2022. Legislation requires that Standards Committees meet at least annually. The Terms of Reference of the Standards Committee provide a remit to promote and maintain high standards of conduct by Members of the Authority. Also, where statute permits, to receive reports and complaints about Members and to conduct or oversee investigations and make recommendations to the Authority.

### 2. Membership

<b>Independent Members</b> Mr Geoffrey Hughes – Started 2011 (appointed Chairperson March 2016)  Dr Mark Kerbey - Started 2016  Mr Ronald Alexander - Started 2018  Mr Simon Barnes - Started 2018  Mr David Fussell - Started 2018	<b>Fire and Rescue Authority Members</b> Cllr Joel Williams – Started June 2018  Cllr Aurfron Roberts – Started June 2017  Cllr Glynne Holmes – Started June 2021
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### 3. Work of the Committee

The Committee's main role is to promote and maintain high standards of conduct by elected and co-opted members of South Wales Fire Authority and to assist them to observe the Members' Code of Conduct

The committee meets at annually for the routine scheduled meeting. Additional meetings would be scheduled as required. The Committee endeavors to maintain regular training.

### Training - Equality, Diversity and Inclusion (EDI)

A half day training session for members was held virtually via Starleaf on 8th September 2021 focusing on EDI. Members in attendance were:

<b>Independent Members</b> Mr Geoffrey Hughes Mr Ronald Alexander	<b>Fire and Rescue Authority Members</b> Cllr Joel Williams Cllr Glynne Holmes
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### Annual Meeting

The scheduled annual meeting was held was held virtually via Starleaf on 7 February 2022.

Members Present:

<b>Independent Members</b> Mr Geoffrey Hughes (Chairperson) Dr Mark Kerbey Mr Ronald Alexander Mr Simon Barnes Mr David Fussell	<b>Fire and Rescue Authority Members</b> Cllr Joel Williams Cllr Aurfron Roberts Cllr Glynne Holmes
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## 4. Issues Discussed

During the meeting on 7 February 2022 the Committee reviewed.

- Independent Review of the Ethical Standards Framework Report
- Public Services Ombudsman for Wales – Annual Report and Accounts 2020/2021
- Public Service Ombudsman for Wales – Updated Guidance on the Code of Conduct
- Public Service Ombudsman's Code of Conduct Casebook – Issues 24 & 25
- Adjudication Panel for Wales – Annual Report 2021/2021
- Independent Remuneration Panel for Wales – Draft Annual Report, February 2022
- Draft Standards Committee Annual Report 2021/2022 (Decision)

Commentary on the above to be added here:

## 5. Complaints of Breach of the Code of Conduct for Authority Members

Complaints made but not investigated by the PSOW	None
Complaints made and investigated by the PSOW	None
Investigations completed by the PSOW where the decision was no evidence of breach of the Code of Conduct or no action taken	None
Investigations undertaken by the PSOW where the decision was to discontinue the investigation	None
Investigations referred to the Standards Committee for consideration by the Standards Committee by the Standards Committee.	None
Investigations completed by the PSOW which determined there was evidence of a breach of the Code of Conduct	None

## 6. Financial Implications

The budget for the Standards Committee is managed through a single budget heading for all Authority costs. Independent members of the Standards Committee are entitled to claim remuneration based on meetings and events attended. For attending meetings in this financial year, a total of £XX(to be added at end of FY) has been claimed.

## 7. Conclusion

The Standards Committee recommends that the South Wales Fire and Rescue Authority notes its annual report 2021/22.

## 8. Useful Contacts

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Adjudication Panel for Wales Oak House, Cleppa Park, Celtic Springs Newport, NP10 8BD Telephone: 03000 259805 E-mail: <a href="mailto:adjudication.panel@gov.wales">adjudication.panel@gov.wales</a> <a href="http://www.adjudicationpanel.gov.wales/contact">www.adjudicationpanel.gov.wales/contact</a>	Address Public Services Ombudsman for Wales 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ Telephone: 0300 790 0203 Fax: (01656) 641199 E-mail: <a href="mailto:ask@ombudsman.wales">ask@ombudsman.wales</a> <a href="http://www.ombudsman.wales">www.ombudsman.wales</a>

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1.	Roll Call	
2.	Apologies for Absence	
3.	Declarations of Interest	
	Members of the Standards Committee are reminded of their personal responsibility to declare both orally and in writing any personal and/or prejudicial interest in respect of matters contained in this agenda in accordance with the provisions of the Local Government Act 2000, the Fire & Rescue Authority's Standing Orders and the Members Code of Conduct	
4.	To receive the minutes of:	
	<ul style="list-style-type: none"> <li>Standards Committee held on Monday 1 February 2021</li> </ul>	3
5.	Independent Review of the Ethical Standards Framework	11
6.	Public Services Ombudsman for Wales – Annual Report and Accounts 2020/21	69
7.	Public Service Ombudsman for Wales – Updated Guidance on the Code of Conduct	103
8.	Public Service Ombudsman for Wales' - Code of Conduct Casebook – Issues 24 & 25	201
9.	Adjudication Panel for Wales – Annual Report 2020/21	221
10.	Independent Remuneration Panel for Wales' Draft Annual Report - February 2022	241
11.	Draft Standards Committee Annual Report 2021/22	327