

STANDARDS COMMITTEE – 14TH FEBRUARY 2014

FINANCE AND CORPORATE SERVICES

**REPORT OF THE HEAD OF LEGAL SERVICES AND
MONITORING OFFICER
- D.MICHAEL**

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ITEM 1
PART 1 SECTION A

**LOCAL RESOLUTION PROCEDURE – COMPLAINTS IN
RESPECT OF MEMBERS**

1.1. Purpose of Report

To consider a Local Resolution Procedure for complaints in respect of Members.

1.2. Background

1.2.1. The Public Services Ombudsman’s Guidance on the Code of Conduct for Members of Local Authorities in Wales, first published in April 2010 contains the following section:

“Local Resolution Process

During the course of the life of this guidance I expect local authorities across Wales to have implemented local resolution procedures to deal with low level complaints which are made by a member against a fellow member. 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 me about a fellow member if the matter being complained about concerns paragraph 4b and 6(1)(d) I am likely to refer the matter back to the Council’s Monitoring Officer for consideration under this process.

In my view such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints. The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority’s reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority’s local protocol then I would expect the Monitoring Officer to refer the matter back to me.”

- 1.2.2. So far 8 Councils in Wales have adopted the Local Resolution Procedure (Blaenau Gwent, Denbighshire, Isle of Anglesey, Gwynedd, Monmouthshire, Rhondda Cynon Taff, Swansea and Torfaen). I have obtained copies of their Local Resolution Procedures and they largely appear to be based on one of 2 models.
- 1.2.3. Since the PSOW made his statement about local resolution procedures, the Welsh Government and the WLGA have also agreed that local resolution procedures should be adopted. They have suggested that such procedures should apply to complaints from officers as well as members. At the All Wales Standards Conference on 17 April 2013 the PSOW said he did not see why local resolution could not apply to complaints from officers provided the procedure was sufficiently independent of the political process.
- 1.2.4. It should be noted that the Welsh Government is considering removing the obligation on members to report suspected breaches of the code in order to facilitate the operation of local resolution procedures.
- 1.2.5. All Local Authorities are being encouraged by the PSOW, the WLGA and the Welsh Government to adopt Local Resolution Protocols. I have explained to Standards Committee on previous occasions that Member against Member and, incidentally, officer against Member complaints are not an issue for this Authority. Nevertheless it may be worthwhile to adopt a procedure to deal with any tensions which arise between Members without the necessity as going as far as a formal complaint.
- 1.2.6. Having looked at the various published protocols, I have decided to put two possible models before Standards Committee for consideration. The models, found in appendix 1 and appendix 2 are from Flintshire and Pembrokeshire respectively.

- 1.2.7. The main procedural concern which I have got is to avoid predetermination of an issue which might come back to the Standards Committee as a formal referral from the PSOW. By that I mean that it can be argued that in considering a formal referral the Standards Committee and the Monitoring Officer are performing a quasi-judicial function and any decision could be subject to judicial review if either the Monitoring Officer or Standards Committee had formed a fixed view about the merits of any complaint before it came back as a referral from the PSOW.
- 1.2.8. For that reason I do not favour models which suggest consideration by the Standards Committee. To my mind that would prevent the Standards Committee from considering a referral from the PSOW were that to arise. If one member of the Standards Committee were to participate in any informal resolution then that person would be debarred from participating in a Standards Committee which considered a formal referral.
- 1.2.9. On balance I would prefer the second model ie that contained in appendix 2 but Members will have their own views and it would be perfectly possible to come up with our own protocol. I think that this protocol must be seen as a real alternative to a formal complaint. It should not be too formal and should seek to conciliate between the Members or Member and Officer concerned, rather than impose some kind of external judgement.

1.3. Recommendation

That Standards Committee consider the two models attached to this report and indicate which model or alternative model they would wish the Monitoring Officer to pursue in discussion with Members.

1.4. Reason for proposed decision

To comply with central Government guidance on the adoption of Local Resolution Procedures.

1.5. Background Papers

Public Services Ombudsman's Guidance on the Code of Conduct for Members of Local Authorities in Wales

1.6. Wards Affected

All

1.7. Officer Contact

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FLINTSHIRE COUNTY COUNCIL

REPORT TO: **FLINTSHIRE COUNTY COUNCIL**

DATE: **TUESDAY, 25 JUNE 2013**

REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**

SUBJECT: **LOCAL RESOLUTION PROCEDURE**

1.00 **PURPOSE OF REPORT**

1.00 To consider a Local Resolution Procedure for complaints in respect of Members.

2.00 **BACKGROUND**

2.01 The Public Services Ombudsman’s Guidance on the Code of Conduct for Members of Local Authorities in Wales, first published in April 2010 contains the following section:

“Local Resolution Process

During the course of the life of this guidance I expect local authorities across Wales to have implemented local resolution procedures to deal with low level complaints which are made by a member against a fellow member. 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 me about a fellow member if the matter being complained about concerns paragraph 4b and 6(1)(d) I am likely to refer the matter back to the Council’s Monitoring Officer for consideration under this process.

In my view such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints. The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then I would expect the Monitoring Officer to refer the matter back to me."

2.02 So far 8 Councils in Wales have adopted the Local Resolution Procedure (Blaenau Gwent, Denbighshire, Isle of Anglesey, Gwynedd, Monmouthshire, Rhondda Cynon Taff, Swansea and Torfaen). I have obtained copies of their Local Resolution Procedures and they largely appear to be based on one of 2 models:-

- i) Those based on the Gwynedd Standard (attached at Appendix 1); and
- ii) Those based on the Denbighshire Standard (Appendix 2).

In addition, Swansea City Council has its own unique procedure attached at Appendix 3.

3.00 CONSIDERATIONS

3.01 In adopting a local resolution process I believe it is important that the process is clear, simple and relatively informal in its early stages. The process should not be seen as a replacement for investigation by the Public Services Ombudsman for Wales (PSOW), which will still remain appropriate for repeated or serious breaches of the Code of Conduct. The procedure should instead be used to address behaviour which either falls short of the breach of the Code or, even though amounting to a breach of the Code, which the Ombudsman would be unlikely to investigate.

N.B. The adoption of a local resolution procedure does not remove the PSOW's discretion to investigate any complaint that is referred to him though his staff will no doubt take into account the existence of such a procedure

when deciding how to handle a complaint.

- 3.02 Since the PSOW made his statement about local resolution procedures, the Welsh Government and the WLGA have also agreed that local resolution procedures should be adopted. They have suggested that such procedures should apply to complaints from officers as well as members. At the All Wales Standards Conference on 17 April 2013 the PSOW said he did not see why local resolution could not apply to complaints from officers provided the procedure was sufficiently independent of the political process.
- 3.03 Having weighed up the two different models I would make the following comments:
- The Gwynedd Standard is very simple, is independent of the political process and has the advantage of a clear positive statement of what is expected of Members.
 - The Denbighshire model places strong emphasis on training and conciliation and gives the group leaders the prominent role within the process thus encouraging self regulation.
 - The Swansea model gives Group Leaders a prominent role thus encouraging self regulation. It is also clear and simple to understand.
- 3.04 Of the two procedures I believe that the Gwynedd Standard is simpler to operate and could be adapted to our circumstances very positively. I have at Appendix 4 set out a suggested Flintshire Local Resolution Procedure.
- 3.05 Local resolution procedures were considered by Group Leaders at their meeting on 6 June 2013. They helpfully suggested that there should be a time limit on being able to bring complaints under the Local Resolution Procedure, as is the case with complaints about maladministration to the PSOW. The time limit for complaints about maladministration is 12 months and that seems to be a sensible limit on complaints under the Local Resolution Procedure.
- 3.06 The Standards Committee also considered the Local Resolution Procedure at its meeting of 10 June and suggested that a note of explanation be added to the proposed Flintshire Standard to clarify that any behaviour will be judged objectively. That is to

say it will be judged on the basis of what a reasonable person would think looking at the behaviour rather than specifically what the member had in their own minds when they were behaving in that way. They also suggested that all complaints under the Local Resolution Procedure should be in writing in order to increase clarity, transparency and openness. Lastly, the Committee suggested that the Procedure should specify that it would be the Monitoring Officer to decide whether a breach of the Code of Conduct was too serious to be handled by way of local resolution.

- 3.07 It should be noted that the Welsh Government is considering removing the obligation on members to report suspected breaches of the code in order to facilitate the operation of local resolution procedures.
- 3.08 Also at its meeting on 10 June the Standards Committee consider the Code of Conduct and whether it needed to be amended in order to facilitate local resolution. Paragraph 6.02 of the Code of Conduct at the moment requires Members to cooperate with the Monitoring Officer and the PSOW in the event of a complaint. The Standards Committee believes that a similar obligation should be introduced in respect of the Local Resolution Procedure and that members should be obliged to adhere to the Flintshire Standard.

4.00 RECOMMENDATIONS

- 4.01 That the Standards Committee recommends that Council adopts the Flintshire Local Resolution Procedure at Appendix 4 with effect from the 25 June 2013.
- 4.02 That paragraph 6.02 of the Code of Conduct is amended to include an obligation to adhere to the Flintshire Standard and to cooperate with the Local Resolution Procedure.
- 4.03 That the Monitoring Officer be given delegated authority to include the Local Resolution Procedure and the amendment to the Code of Conduct within the Constitution.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None as a result of this report.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.00 CONSULTATION REQUIRED

10.01 None as a result of this report.

11.00 CONSULTATION UNDERTAKEN

11.01 Standards Committee

12.00 APPENDICES

Appendix 1 – Gwynedd Standard

Appendix 2 – Denbighshire Standard

Appendix 3 – Swansea Standard

Appendix 4 - Suggested Flintshire Local Resolution Procedure

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 BACKGROUND DOCUMENTS

As referred to in the report.

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LOCAL RESOLUTION PROCESS

**MEMBER ON MEMBER COMPLAINTS RELATING
TO EQUALITY AND RESPECT**

**Protocol on Expected Standards of Behaviour
for Members in dealing with other Members**

Preamble

Pembrokeshire County Council Members have adopted this Protocol which is supplemental to the Member/Employee Relations Protocol on the and should be read in conjunction with the Code of Conduct requirements and the Constitution. In particular it identifies the low level complaints that the Welsh Government and the Public Services Ombudsman for Wales (PSOW) require should be dealt with locally and informally by the Council.

This Protocol recognises that the freedom of expression enjoyed by Members (Art 10) is not absolute and the exercise of the freedom incurs responsibilities and may be subject to restrictions, notably the protection of the reputation and other rights of other Members and preventing unauthorised disclosure of information. In this regard the Members have considered the proposed Protocol and accept that their freedom to express their political opinions is not disproportionately impinged by agreeing to the Standards of Behaviour.

The Local Resolution Process will be utilised for low level disputes by a Member before a complaint is referred to the PSOW. The PSOW has confirmed that where a Local Resolution Process (LR) has been adopted by a council, he will not accept a complaint for consideration of an investigation until the LR from a member relating to a low level complaint.

The LR is an informal process and no indemnity will be granted to any Member for representation at the Local Resolution Panel.

Standards of Behaviour

1. Members should:

- a) Show personal respect to each other: when disagreeing with another Member's views, opinions or councillor actions, e.g. as a Cabinet Member, committee chairman, a Member should not engage in abusive, insulting or improper personal comments about other Members or their family but, having regard to the Code's requirement that decisions are made on the merits of the circumstances, should focus on the arguments put forward by other Members or the effectiveness of their actions. It is accepted that feelings can run high in debate but should the standards of behaviour have been breached, the culpable Member should apologise to the meeting when the breach is brought to their attention when the matter will be considered closed.
- b) Not publish malicious or false allegations or information or insulting personal comments against a Member: The growing propensity for personal comments to be made electronically to the world at large require a greater degree of control by the author, as once made it is difficult for the comments to be rescinded. The truth is only a defence if it is the whole truth and puts matters in context.
- c) Not release confidential information to the press or members of the public: there is no defence of public interest in the Code and there are avenues that should be explored to provide transparency in decision-making that would not disclose confidential/personal information which may cause harm to an individual or a company/organisation. The Council is a regulatory body but also has powers to enhance the prospects of the community which may be harmed by unauthorised disclosure.

2. Member's Representative behaviour:

- (i) Members should seek to work with Members of adjoining electoral divisions for the benefit of the locality.

- (ii) A Member who becomes involved in matters specifically related to another electoral division or representing a constituent in another electoral division should:
 - (a) Explain to the members of the public that they are not the Local Member for that electoral division and identify who is. However, it is the member of the public's choice as to who they wish to represent their interests.
 - (b) If the Member continues to act in the matter, inform the Local Member of their involvement (but not disclose any confidential information without authorisation) and if possible seek to work with the Local Member if the objective is shared.

LOCAL RESOLUTION PROCEDURE

1. In the event of a dispute arising, a Member who complains that another has breached the Protocol's Standard of Behaviour will be provided with the contact details of a Mediator by the Monitoring Officer.
2. The complainant Member will notify the Member who is the subject of the complaint of his intention to seek mediation of the dispute. Both Members will supply the Mediator with dates of availability, but with the intent that the mediation meeting will within 6 weeks from the complaint being made.
3. The mediation meeting(s) will follow Chatham House Rules, i.e. be confidential. It is hoped that this process will encourage the Members to attain consensus on resolving the complaint. Whatever is agreed will be confirmed by them to the Mediator but will not be further published unless agreed by both the Members.
4. If the mediation stage does not resolve the complaint, then the complaining Member may request that the matter to be referred to the Local Resolution Panel (LRP) within 6 weeks of the last mediation meeting. The Mediator will be asked to confirm whether resolution was attained but nothing further.
5. The LRP will comprise three members, namely: an elected Member who is also a member of the Standards Committee, the Group Leader of a group to which neither of the Members is

affiliated (would include a representative chosen by the unaffiliated Members) and a Member of a neighbouring authority's Standards Committee who will chair the meeting. The press and public will be excluded from the LRP's proceedings.

6. Both the complaining Member and the Member subject of the complaint will be entitled to appear and/or produce written or oral information relevant to the facts of the matter complained of. Either Member may be accompanied by a friend but shall not be represented by a professional lawyer (unless they also are an elected member of the Council acting as a friend).
7. The LRP will consider the information and have discretion to determine the facts and if they consider it appropriate to make such recommendation as would redress the low level complaint, either there is:
 - (a) no basis for the complaint
 - (b) a basis for the complaint but no further action is necessary or
 - (c) a basis for the complaint and an apology should be provided to the complainant Member in an appropriate manner or such other action that is within the power of the Council.
8. The determination of the LRP will be respected and honoured by both Members, however, in the event that the LRP determine that there is no basis for the complaint, the complainant Member may refer the matter to the PSOW if they can identify a flaw in the procedure followed or that the determination is patently perverse.
9. The LRP may also make recommendations to the Standards Committee/Corporate Governance Committee regarding training or changes to any procedures which may have contributed to the complaint arising.
10. If the complaint is referred to the PSOW and an investigation report is produced the elected Member on the Standards Committee who was appointed to the LRP will not take part in any proceedings relating to that investigation report.

ITEM 2
PART 1 SECTION B

**PROPOSED DETERMINATIONS BY THE INDEPENDENT
REMUNERATION PANEL FOR WALES "IRPW"**

2.1. Purpose of Report

To advise Members of proposed determinations by the Independent Remuneration Panel for Wales "IRPW".

2.2. Background

2.2.1. Members of the Standards Committee will be aware that the IRPW determined the remuneration paid to all councillors and co-opted members of committees such as the Standards Committee.

2.2.2. The IRPW has determined the following payments or fees which must be paid to Co-opted Members (provided that they are Co-opted Members with voting rights) in 2013/14.

Co-opted Members	Co-opted Member Payments/Fees
Committee Chairs: Standards Committee;	£256 daily fee (£128 for ½ day)
Co-opted Ordinary Members of the Council's Standards & Ethics Committee who also chair standards committees for community councils	£226 daily fee (£113 for ½ day)
Ordinary members of standards committees	£198 daily fee (£99 for ½ day)

2.2.3. Co-opted Members are also eligible to claim for Care, Travel and Subsistence Allowances, where applicable.

2.2.4. In 2012/13, payments to Co-opted Members were capped at a maximum of the equivalent of 10 full days a year for each Committee to which an independent/lay member has been co-opted (i.e. maximum payments totalling £2560 to Co-opted Committee Chairs and £1980 to Co-opted Committee Members).

- 2.2.5. The IRPW has determined that, in 2013/14, principal councils may decide on the maximum number of days for which Co-opted Members may be paid in any one year. It is proposed that this maximum or 'cap' of the equivalent of 10 full days a year for each Committee including Co-opted Members should be retained by the Council in 2013/14.
- 2.2.6. A full day meeting is defined by the IRPW as over 4 hours and a half day meeting is defined as up to 4 hours. The IRPW has further determined that, in 2013/14, payments cannot cover time spent on preparation, but can include authorised training events, conferences and pre-meetings with officers
- 2.2.7. It is unlikely that meetings of the Standards Committee will exceed one half day except where there are planned hearings of cases referred by the Public Services Ombudsman for Wales. I would expect that the normal Standards Committee meeting, together with reading time, could be accommodated in a half day as defined by the IRPW. If members have any queries about the time which may be claimed for any meeting, it would be appropriate to speak with me well beforehand.
- 2.2.8. The revised remuneration is only for noting by Standards Committee.

2.3. Background papers:

Report of the Independent Remuneration Panel for Wales for the year 2014/2015.

2.4. Wards Affected

All

2.5. Officer Contact

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