

STANDARDS COMMITTEE
25TH JULY 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 B

Commentary on Heesom v Public Services Ombudsman for Wales

1.1. Purpose of Report

To advise Standards Committee of the outcome of a High Court case in which consideration was given to the relationship between the Code of Conduct and Human Rights legislation.

1.2. Background

1.2.1. Heesom v Public Services Ombudsman for Wales deals comprehensively with the law of suspension and disqualification of elected Councillors because of allegations of misconduct. It considers the Human Rights issues which the disqualification of an elected representative by a non-elected body can raise.

1.2.2. Cllr Patrick Heesom has been an Independent County Councillor on Flintshire County Council since 1996, and before that was a County Councillor. He has won elections in 1990, 1996, 2000, 2004, 2008 and 2012. For a period, as the leader of the Independent Group on Flintshire County Council, he was expected to become Council Leader when they became the largest group on the Council.

1.2.3. In 2009, a number of allegations of misconduct were made against him by the non-elected officers of the Council. The allegations resulted in Mr Heesom standing down from the Executive, but continuing to perform his duties as a Councillor.

1.2.4. The allegations were compiled into formal complaints that were submitted to the Public Services Ombudsman for Wales who in turn placed a report before the Adjudication Panel for Wales that Mr Heesom had committed breaches of the Council's code of conduct. They were made public. Following his re-election in 2012, the complaint process against him continued. A Panel heard the case for 58 days and considered 8000 pages of documents, as well as hearing extensive live witness evidence.

- 1.2.5. The Panel found against Mr Heesom on 14 separate allegations, including that he had failed to show respect and consideration for officers, used bullying behaviour, attempted to compromise the impartiality of officers and conducted himself in a manner likely to bring his office or the Council into disrepute.
- 1.2.6. The sanction imposed by the Panel was that Mr Heesom should be disqualified from being a Councillor (at Flintshire or any other local authority) for 2 years and 6 months. Mr Heesom appealed this decision to the High Court on the basis that the misconduct findings and the subsequent sanction were both unlawful.
- 1.2.7. Mr Justice Hickinbottom’s judgment on appeal considered at length the question of whether the Panel’s findings of misconduct were in error and concluded they were not. However, he did not agree with the sanction imposed by the Panel.

The democratic argument

- 1.2.8. Mr Heesom grounds for appeal were varied. He argued that his 2012 re-election – which took place after the events that the officers had complained of, and after their complaint had been made public – indicated that the electorate had not considered the issues raised in the complaint capable of disqualifying him from public office. This, Mr Heesom argued, was the democratic will of the people, which the Panel (an unelected body) ought to have considered in setting the sanction. The weight of the sanction, Mr Heesom argued, indicated that they had not done so.
- 1.2.9. Mr Justice Hickinbottom however found that:-

“if a councillor is guilty of a breach of the Code of Conduct, his re-election does not and cannot act as an absolution for his misconduct... his misconduct may, for example, have comprised of improperly favouring his own constituents”

and

“therefore, whilst re-election may be a relevant factor in showing the will of the electorate, whether it is material (and if so the weight to be given to it as a factor) is a matter – just one of many – for the case tribunal to consider.”

- 1.2.10. Mr Justice Hickinbottom noted that the Panel decision on sanction had stated that the weight of the sanction was “not wholly irrelevant” and had considered it. He therefore found that their approach was “not arguably wrong”. Accordingly, he found that the sanction of 2 years and 6 months – more than half of the term to which Mr Heesom had been elected – was not rendered unlawful on that particular ground despite the fact that Mr Heesom had received a democratic mandate after the complaints against him had been publicised to the electorate.

Consistency and Proportionality

- 1.2.11. Mr Heesom also argued that the weight of sanction was not consistent with other cases under the same provisions. He relied on Sanders –v- Kingston (No 2) in which it was established that consistency in penalties between different cases of this nature should be achieved. Mr Hickinbottom agreed with this, but declined to uphold Mr Heesom’s appeal on the basis that, at the original Panel, a more realistic sanction had not been proposed by Mr Heesom’s then-Counsel. Similarly, the Panel’s failure to consider the possibility of suspending him from executive roles (rather than merely as a backbench councillor) was not accepted by Justice Hickinbottom: again, it had not been advanced on Mr Heesom’s behalf at the Panel hearing. In any event Mr Hickinbottom’s Independent party no longer held power in the Council and therefore such a sanction would have been toothless as there are no executive roles he could fill, regardless of any sanction imposed.
- 1.2.12. Mr Heesom’s broader argument was that the sanction was plainly “wrong”. Mr Heesom cited a number of factors in support of this. He had been a Councillor for 20 years before the events complained of arose, and for a further 4 years afterwards, with no further complaints being made. There were no serious aggravating factors. The suspension would rob his ward’s electorate of the councillor of their choice, and Mr Heesom of his living as a councillor.
- 1.2.13. However, Mr Justice Hickinbottom broadly disagreed. Although there was no criminal complaint, there were aggravating factors in the Judge’s view: Mr Heesom had been found to have been deliberately misleading and there were repeat occasions of the

same conduct. He had also not shown any insight or remorse in his hearing and, although he was not seeking financial gain through his misconduct, he was seeking political gain by favouring his constituents over others. The absence of criminality, therefore, did not render the sanction unlawful.

The Human Rights Arguments

- 1.2.14. Mr Heesom asserted his right to freedom expression under Article 10 of the European Convention on Human Rights, (the right to freedom of speech) had been breached by the sanction. Mr Justice Hickinbottom found that although such a breach was possible in principle, in this case any such breach was justified by the proper objective of fostering public confidence in local democracy.
- 1.2.15. Mr Heesom also argued that the sanction was a breach of his Article 10 rights because the regime under which he had been dealt with (Local Government Act 2000) had been abolished in England (via the Localism Act 2011) but not Wales. This, he argued, showed that Parliament had considered disqualification a disproportionate penalty to a Councillor and given the narrow margin of appreciation for member states to apply to Article 10 cases, the disqualification was unlawful in Wales even though the Localism Act 2011 did not apply there. This was rejected by Mr Justice Hickinbottom on the basis that Wales was a devolved power and entitled to pursue its own statutory regime for disciplining Councillors.
- 1.2.16. However, Mr Justice Hickinbottom did see a breach of Article 10 in the period of disqualification. This requires that the minimum sanction possible should be imposed which is consistent with the aims of maintaining standards in public life. Moreover, and given the need for consistency in these cases, the sanction of 2 years 6 months left little “head room” for sanctions for more serious cases of misconduct. A margin was required to allow future decisions to be taken against councillors found to have perpetrated criminality or corruption, for example.
- 1.2.17. Therefore, Mr Justice Hickinbottom substituted a sanction of 18 months disqualification, to run from the date of the original sanction decision in July 2013.

Comparison with the Calver Case

- 1.2.18. The Heesom case is very similar to a decision of the High Court in R (on the application of Calver) v Adjudication Panel for Wales decided in 2012. In that case Councillor Calver was a Member of Manorbier Community Council and Pembrokeshire County Council who operated a website which included comments about the functions and activities of that Council and individual Members. Complaints were received from the Public Services Ombudsman for Wales about the content of some of those comments. The Ombudsman referred the matter to the Standards Committee of the County Council. The Committee found breaches of the Code in that there was evidence to prove that the Member had failed to show respect and consideration to others and that he had brought the Council into disrepute. The Member then appealed to the Adjudication Panel for Wales who upheld the decision of the Standards Committee.
- 1.2.19. The Court ruled that the Panel had been entitled to conclude that on the fact of it the claimant had breached the Code. In principal the claimant's regular conduct over such a long period had brought the claimant's office of Councillor into disrepute.
- 1.2.20. The Court considered that the Panel had taken a narrow view of the right to political expression as contained in Article 10 of the European Convention on Human Rights. Councillors would be expected to possess a thicker skin and greater tolerance of criticism than ordinary members of the public. Comments on political matters are subject to what is described as enhanced protection.
- 1.2.21. It fell to the Courts to consider whether the restriction in this case had been a disproportionate interference with the Member's right to freedom of expression. The court concluded that it was and ruled that the Panel's decision would be set aside.

1.3. **Summary**

- 1.3.1. Sara Mansoori a barrister of Matrix Chambers comments as follows:-

The judge summarised the propositions that were derived from the Strasbourg cases:

i) The enhanced protection applies to all levels of politics, including local.

ii) Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated. Whilst, in a political context, Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.

iii) Politicians have enhanced protection as to what they say in the political arena; but Strasbourg also recognises that, because they are public servants engaged in politics, who voluntarily enter that arena and have the right and ability to respond to commentators (any response, too, having the advantage of enhanced protection), politicians are subject to “wider limits of acceptable criticism”. They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens.

iv) Enhanced protection therefore applies, not only to politicians, but also to those who comment upon politics and politicians, notably the press.

v) The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others

vi) The cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the

political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis.

vii) As Article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. In most instances, where the State seeks to impose a restriction on the right under Article 10(2), the determinative question is whether the restriction is “necessary in a democratic society”. This requires the restriction to respond to a “pressing social need”, for relevant and sufficient reasons; and to be proportionate to the legitimate aim pursued by the State.

viii) As with all Convention rights that are not absolute, the State has a margin of appreciation in how protects the right of freedom of expression and how it restricts that right. However, that margin must be construed narrowly in this context: “There is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate on questions of public interest”.

ix) Similarly, because of the importance of freedom of expression in the political arena, any interference with that right (either of politicians or in criticism of them) calls for the closest scrutiny by the court.

1.3.2. The legal balancing exercise that has to be carried out when dealing with situations involving political discussions between politicians, civil servants and private individuals is therefore quite complex:

- All individuals making statements about political matters are entitled to ‘enhanced’ protection expression;
- However, elected politicians are expected to have thicker skins and are subject to “wider limits of acceptable criticism”
- While civil servants are subject to “wider limits of acceptable criticism” than private individuals, the limits are not as wide as elected politicians
- Finally, there is also a public interest in protecting public servants from unwarranted criticism and this also needs to be taken into account

1.4. **Background Papers**

Case reports on *Heesom v Public Services Ombudsman for Wales*

1.5. **Wards Affected**

All

1.6. **Officer Contact**

For further information on this report please contact:-

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ITEM 2
PART 1 SECTION B

OMBUDSMAN ANNUAL REPORT 2013/2014

2.1. Purpose of Report

To advise Members of the Standards Committee of the Ombudsman Annual Report.

2.2. Background

2.2.1. Each year I report to the Standards Committee on the publication of the Ombudsman's Annual Report. I attach to this report as an Annex two extracts from the Annual Report both relating to complaints about alleged breaches of the Code of Conduct. The report covers complaints against principal Councils ie the County and County Boroughs of Wales together with Town and Community Councils.

2.2.2. The first extract from the report deals with the overall position. The Annual Report comments on changes in the number of complaints received, closed and those referred either to the Adjudication Panel for Wales or to the relevant Standards Committee. The Ombudsman comments that the use of local resolution protocols has reduced the number of complaints received. There is nothing in the report to substantiate that assertion because it does not compare local authorities with a local resolution protocol and those without. Also there is a decrease in the numbers of town and community council complaints and very few of these would have local resolution protocols.

2.2.3. I set out below a short table showing the all Wales figures for the last four years:-

Code of Conduct Complaints

	Received	Closed	Referred
2010/11	277	349	45
2011/12	412	345	19
2012/13	291	371	20
2013/14	228	229	6

- 2.2.4. I would have to agree that the figure for received complaints in 2013/2014 ie 228 is lower than the figure for 2010/11. However, the main spike in the figures for the year 2011/12 which, perhaps unsurprisingly, was an election year. Also there is a decrease in the number of town and community council complaints and very few of these would have local resolution protocols.
- 2.2.5. What is clear is that the number of complaints referred to the Adjudication Panel or to a Standards Committee has decreased markedly although this may be a temporary phenomenon.
- 2.2.6. I am pleased to advise Committee that there were no closed complaints against the County Borough in the financial year 2013/14 reflecting the overall low level of complaints which we have seen over the years. There was one complaint concluded in relation to Glynneath Town Council and one in relation to Blaengwrach in the relevant financial year but this neither gave rise to any further referral.

2.3. **Background Papers**

Ombudsman Annual Report 2013/2014

2.4. **Wards Affected**

All

2.5. **Officer Contact**

For further information on this report please contact:-

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4. Code of Conduct Complaints

Headline figures

- We received 228 new complaints, **down 22%** on 2012/13.
- We referred 6 investigation reports to either a standards committee or the Adjudication Panel for Wales, **down 70%** on 2012/13.
- We closed 229 cases, **down 38%** on 2012/13.
- We had no investigations older than 12 months open at 31 March 2014.

Complaints received

The table below gives a breakdown of the code of conduct complaints received by type of authority.

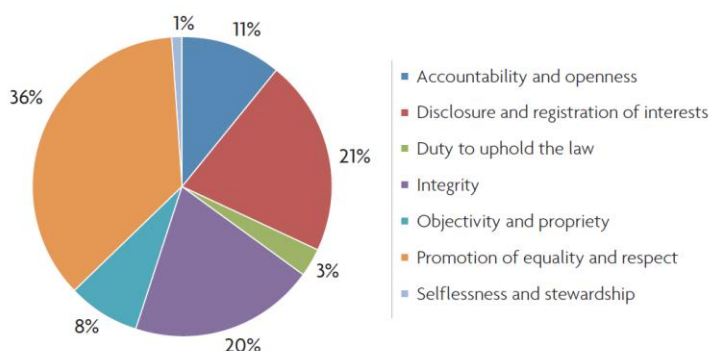
	2013/14	2012/13
Community Council	115	140
County/County Borough Council	111	150
Fire Authority	2	0
National Park	0	0
Police Authority	0	1
Total	228	291

It is particularly pleasing to see that the number of code of conduct complaints have continued to fall. The new local resolution arrangements introduced by local authorities over the past year or so is clearly having the desired effect with the decrease of 22% of complaints to this office compared with the previous year. It is now our practice under these new arrangements to refer 'low level' complaints made by one member against another, such as allegations of failures to show respect and consideration of others under paragraph 4(b) of the code, to authorities' monitoring officers to be dealt with locally.

We have also continued with the approach adopted last year of writing to the local Monitoring Officer when the Ombudsman is minded not to investigate a complaint, or, having commenced an investigation, is minded to close the case. This will arise when it is judged that even if the Standards Committee did find that there had been a breach of the Code, it would be unlikely to apply a sanction. It will then be for the Monitoring Officer to consider the matter. If they take a different view on the likelihood of the Standards Committee applying a sanction should they decide that there has been a breach of the Code, then the investigation is transferred to them for local consideration. During the past year, 16 such complaints were referred to monitoring officers, of which 1 was called in for local investigation.

Nature of Code of Conduct complaints

As in previous years, the majority of complaints received during 2013/14 related to matters of 'equality and respect'. In 2013/14 this was 36% of the code of conduct complaints received compared to 35% in 2012/13. The next largest areas of complaint related to disclosure and registration of interests (21%), and integrity (20%).



Summary of Code of Conduct complaint outcomes

Of the Code of Conduct cases considered in 2013/14, the majority were closed under the category shown below as 'Closed after initial consideration'. This includes decisions such as:

- there was no 'prima facie' evidence of a breach of the Code
- the alleged breach was insufficiently serious to warrant an investigation (and unlikely to attract a sanction)
- the incident complained about happened before the member was elected (before they were bound by the Code).

Complaint about a public body	2013/14	2012/13
Closed after initial consideration	176	283
Complaint withdrawn	12	12
Investigation discontinued	8	18
Investigation completed: No evidence of breach	10	23
Investigation completed: No action necessary	17	15
Investigation completed: Refer to Standards Committee	5	15
Investigation completed: Refer to Adjudication Panel	1	5
Total Outcomes – Code of Conduct complaints	229	371

(A detailed breakdown of the outcome of Code of Conduct complaints investigated, by local authority, during 2013/14 is set out at Annex C.)

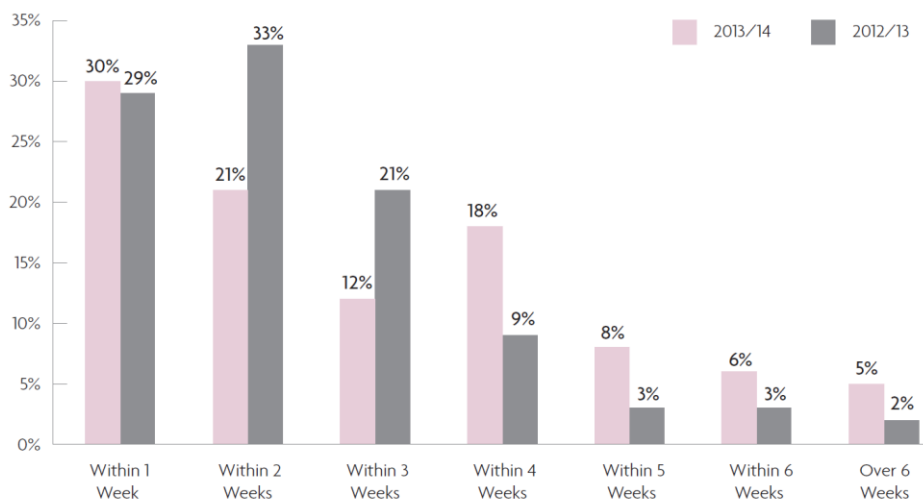
Not only have the number of code of conduct complaints to the office decreased over the past year, notable is the reduction in the number of cases referred to either an authority's standards committee or to the Adjudication Panel for Wales, which fell significantly from 20 in 2012/13 to 6 in 2013/14. This is partly attributable to the effects of the High Court judgement on the Calver case in 2012. The ruling on this case, concerning a member's freedom of expression attracting enhanced protection under the Human Rights legislation when comments made are political in nature, has had an impact on the application of paragraph 4b of the Code of Conduct relating to treating others with respect and consideration. Taking account of the ruling that politicians need to have 'thicker skins, the bar has now been raised on what the Ombudsman refers to a Committee or the Panel.

Decision times

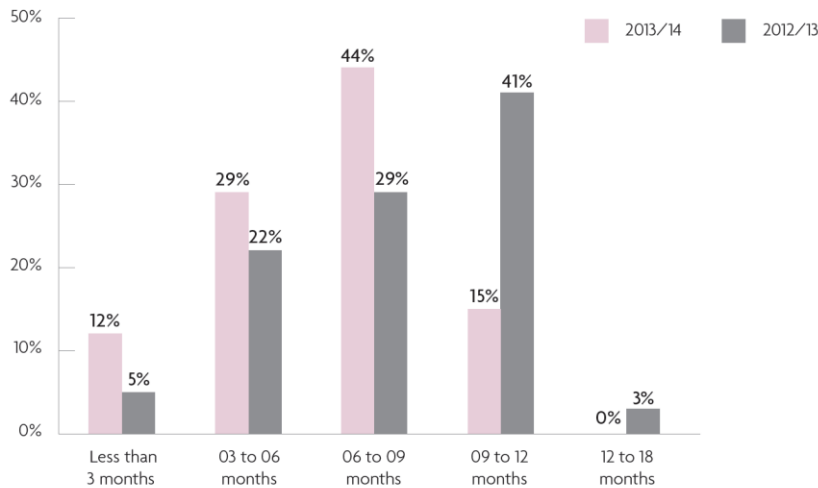
Below are the decision times for code of conduct complaints. The time targets set for code of conduct complaints are similar to those for complaints about public bodies, that is:

- at least 90% of all complainants to be informed within 4 weeks whether Ombudsman will take up their complaint (from the date that sufficient information is received)
- to conclude all cases within 12 months from the point that a decision is made to take up a complaint (that is, to commence investigation of a complaint).

Decision times for informing complainants we will take up their complaint



Decision times for concluding code of conduct investigations



In respect of the first target, we actually achieved this 81% of the time, and it is a little disappointing that we have not been able to achieve the 90% target in respect of code of conduct complaints and that we were unable to sustain our performance in 2012/13. This will be a matter that we will be looking to address in the year to come therefore.

With regard to the second target, and on a much more positive note, we are particularly pleased that we achieved a 100% success rate for completion of code of conduct investigations within 12 months. When looking back on previous Annual Reports it can be seen that our performance on code of conduct cases has been improving year on year. It is especially pleasing when comparing the position to three years ago when only 63% of code investigations were concluded in under 12 months. Against that position, the fact that over the past year 85% of investigations were completed in less than 9 months is even more gratifying.

Standards Committee and Adjudication Panel for Wales’s Hearings – Indemnity Cap

The PSOW has previously made clear concerns about the levels of indemnity enjoyed by members who are accused of a breach and the need for this to be addressed. This is particularly of concern when considering the best use of public money, especially when all publicly funded organisations are working within a very difficult financial climate. By having unlimited indemnity, it is possible for cases before tribunals to last for months or even longer, with counsel being engaged at very considerable cost. Following discussions with the WLGA a proposed ceiling of £20,000 was agreed. Good progress

has been made by local authorities in introducing such a cap over the past year or so. However, it is disappointing that a couple of councils who have an insurance arrangement in place for indemnity have stated that they are unable to fall in line due to insurance companies resisting such a ceiling.

Welsh Government Ministers had previously indicated that they may consider addressing this matter through legislation if wholesale voluntary agreement could not be secured. This is a matter which may therefore need to be re-raised in the forthcoming year.

Annex C

Code of Conduct Complaints:

Statistical Breakdown of Outcomes by Local Authority

COUNTY/COUNTY BOROUGH COUNCILS

County/County Borough Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Blaenau Gwent	2		1					3
Bridgend	4							4
Caerphilly	4			2			1	7
Cardiff	5		1				1	7
Cardiffshire	1						3	4
Ceredigion	2							2
Conwy	1							1
Denbighshire	2						2	4
Flintshire	2	2						4
Gwynedd	4							4
Isle of Anglesey	1			1				2
Monmouthshire	1	2						3
Newport	8							8
Pembrokeshire	3			1	1			5
Powys	1		2					3
Rhondda Cynon Taf	14						1	15
Swansea	22	2	5	1				30
The Vale of Glamorgan							1	1
Torfaen	5				1			6
Wrexham	1							1
Total	83	6	9	6	6	1	9	114

COMMUNITY/ TOWN COUNCILS

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Aberffraw Community	1							1
Ammanford Town	1							1
Bangor City	1							1
Bargoed Town	1							1
Blaengwrach Community		1			1			2
Blaenrheidol Community	1							1
Bridgend Town	1							1
Brymbo Community	1							1
Caldicot Town	1							1
Cefn Community			1		2			3
Coity Higher	1							1
Colwinston Community						2		2
Comah's Quay Town	1							1
Cowbridge with Llanblethian Town	3							3
Cwmbran Community	1							1
Forden Community		1						1
Glynneath Town	1							1
Goldcliff Community	1							1
Gorseinon Town						1		1

COMMUNITY/ TOWN COUNCILS (CONTINUED)

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Gresford Community	2							2
Hay-on Wye Town	1							1
Hirwaun & Penderyn Community	2							2
Holyhead Town	1							1
Kidwelly Town	1							1
Killay Community	1							1
Knighton Town	2							2
Laleston Community	1							1
Langstone Community	2							2
Llanbadrig Community	1							1
Llandrindod Wells Town	2			1		1		4
Llandudno Town	3							3
Llanelli Rural							2	2
Llanfaelog Community					5			5
Llanfynydd Community [Carmarthenshire]	3							3
Llangennith, Llanmadoc & Cheriton Community	2							2
Llangwm Community [Pembrokeshire]	1							1

COMMUNITY/ TOWN COUNCILS (CONTINUED)

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Llantrisant Community	1							1
Llanwrtyd Wells Town	1							1
Mathry Community	1							1
Montgomery Town	1							1
Mumbles Community	26							26
Nelson Community	2							2
Old Radnor Community	1							1
Old St. Mellons Community Council	1							1
Pembrey & Burry Port Town	1							1
Penmaenmawr Town	1			1				2
Pennard Community	2							2
Porthcawl Town	1							1
Prestatyn Town	8						1	9
Rogiet Community	1			1				2
St Florence Community	2							2
Sully Community						1		1
Talgarth Town	1							1
Trellech United Community	1							1
Total	93	2	1	11	4	1	3	115

ITEM 3
PART 1 SECTION B

PROCEDURE FOR HEARING REFERRALS FROM THE OMBUDSMAN

3.1. Purpose of Report

To remind Standards Committee of the procedure for considering referrals from the Ombudsman and to give new members of Standards Committee the opportunity to familiarise themselves with the procedure.

3.2. Background

3.2.1. The Chairman of Standards Committee has suggested to me that it would be appropriate to remind members of the procedure for handling referrals from the Ombudsman and to give an opportunity of new members of Standards Committee to familiarise themselves with the procedure.

3.2.2. When complaints are received by the Ombudsman they are investigated to see whether there is a case to answer. The Ombudsman has the option to refer cases either to the Adjudication Panel for Wales or to the relevant Standards Committee. More serious cases are referred to the Adjudication Panel since it has greater powers of sentencing.

3.2.3. The procedure is set out in Appendix 1 to this report.

3.3. Background papers

None

3.4. Wards Affected

All

3.5. Officer Contact

For further information on this report please contact:-
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Adopted Procedures: Code of Conduct Hearings

Background

The Standards Committee has adopted a two stage procedure for dealing with complaints referred to it under the provisions of The Local Government Act 2000 and WAG Regulations relating to alleged breaches of the Neath Port Talbot County Borough Council Members' Code of Conduct or that of any Town or Community Council in its area. The Member who is the subject of the complaint is referred to throughout this procedure as the "Member".

1. Preliminary Investigations ("First Stage")

- 1.1 On receipt of any Report referred under the above the Standards Committee to make a preliminary determination a) that there is no evidence of a failure to comply with the Code of Conduct or b) that any person who is subject to the investigation must be given an opportunity to respond either orally or in writing before the Standards Committee comes to a conclusion. This is referred to as the First Stage. At this stage the Standards Committee may request that the Ombudsman or his or her representative attend to present the report at the second stage.
- 1.2 Dependant upon the outcome of the First Stage determination above the Committee may proceed to a Second Stage which may involve a Hearing of Case at a further meeting or, by agreement, proceed by way of written representations to be considered at Standards Committee.
- 1.3 Any person who makes oral representations before Committee is entitled to be represented by Counsel or a Solicitor or any other person he or she wishes at the further hearing.

2. Standards Committee Meeting to Consider the Complaint (“Second Stage”)

Written representations

- 2.1. If the Member does not wish to attend or be represented at the hearing or to dispute the contents of the report, then the Member may submit written representations to be taken into consideration by the Standards Committee before it reaches a decision on the case.

Directions in preparation for a hearing

- 2.2.1. The Standards Committee may at any time, on the application of the Member or of its own motion, give directions to enable the Member to prepare for the hearing or to assist the Standards Committee to determine the issues. An application for directions should be made in writing to the Monitoring Officer.
- 2.2.2. The Standards Committee may give directions requiring any person to provide such particulars as may be reasonably required for the determination of the case. The Standards Committee may also give directions requiring any person to provide any document or other material which the Standards Committee requires and which it is in the power of that person to deliver.
- 2.2.3. Where a person to whom a direction (including any summons) is addressed had no opportunity of objecting to the direction, he/she may apply to the Standards Committee to vary it or set it aside. The Standards Committee will not take such action without first notifying the person who applied for the direction and considering any representations made by him/her.

Summoning of witnesses

- 2.3.1. The Standards Committee may require any person (with the exception of the Public Services Ombudsman for Wales and any member of the staff of the Public Services Ombudsman for Wales) to attend as a witness at the hearing and to answer any questions or produce any documents or other material in his/her custody or control which relate to any matter in question.

- 2.3.2. Unless a person accepts a lesser period, any person required to attend in response to a summons will be given at least 14 days notice of the hearing.
- 2.3.3. No person, other than the Member, shall be required to attend a hearing or to produce any document in response to a summons, unless the necessary expenses of his/her attendance are paid.

Attendance of investigating officers

- 2.4.1. The Standards Committee may request an investigating officer to attend a hearing for the purpose of presenting the report and/or explaining any of the matters contained in it and otherwise playing such part or providing such assistance to the Standards Committee as it considers appropriate.
- 2.4.2. The investigating officer may be represented by Counsel or by a solicitor.

Experts

- 2.5.1. Where the Standards Committee considers that any question arises on which it would be desirable to have the assistance of an expert, it may make arrangements for a suitably qualified person to enquire into and report on the matter and, if necessary, to attend the hearing and to give evidence.
- 2.5.2. A copy of the expert's report will be supplied to the Member before the hearing or any resumed hearing.

Pre-hearing review

- 2.6.1. Where it appears to the Standards Committee that a hearing would be facilitated by the holding of a pre-hearing review, it may of its own motion or on the application of the Member, give directions for such a review to be held. The Monitoring Officer will give the Member at least 14 days notice of the time and place of the review.
- 2.6.2. The review will be held in private, unless the Standards Committee directs otherwise, and the Member may appear and be represented by any other person.

2.6.3. On a review:

- a. the Standards Committee, shall give all such directions as appear to be necessary or desirable to secure the just, expeditious and economical conduct of the hearing;
- b. the Standards Committee, shall endeavor to secure that the Member makes all such admissions and agreements as ought reasonably to be made in relation to the hearing; and
- c. the Standards Committee may, if the Member agrees, determine the matter on the documents and statements then before it without any further hearing.

Notice of place and time of a Standards Committee hearing

2.7.1. The Monitoring Officer will fix the date, time and venue for the hearing and, not less than 21 days before that date, will advise the Member of the hearing arrangements.

2.7.2. Included with the notice of the hearing will be:

- a. information and guidance as to attendance at the hearing of witnesses, the bringing of documents and the right of representation by another person; and
- b. a statement explaining the possible consequences of non-attendance and of the right of the Member who has delivered a reply, but who does not attend and is not represented, to make representations in writing.

2.7.3. The Standards Committee may postpone a hearing and the Monitoring Officer will give the Member not less than 7 days notice of such a postponement.

2.7.4. The Standards Committee may from time to time adjourn a hearing and, if the time and place of the reconvened hearing are announced before the adjournment takes place, no further notice shall be required.

Public notice of hearings

2.8. Notice of meetings will be given in accordance with statutory requirements.

Determination without a hearing

- 2.9.1. If the Member agrees in writing, the Standards Committee may determine a matter without a hearing.
- 2.9.2. The provisions of paragraphs 2.11.2 and 2.12.7 apply in respect of the determination of a complaint, or any particular issue, without a hearing.

Admission to Hearings

- 2.10.1. The Standards Committee will consider whether a case should be considered in public or private in accordance with the relevant statutory rules.
- 2.10.2. The following persons will be entitled to attend a hearing whether or not it is in private:
 - a. the Public Services Ombudsman for Wales or the representative of the Public Services Ombudsman for Wales; and
 - b. the monitoring officer of an authority of which the Member is a member or co-opted member.
- 2.10.3. The Standards Committee may permit any other person to attend a hearing which is held in private.
- 2.10.4. The Standards Committee can exclude from a hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the Standards Committee, to disrupt the hearing in accordance with the Procedure Rules of Neath Port Talbot County Borough Council.

Failure of parties to attend a hearing

- 2.11.1. If the Member fails to attend or be represented at a hearing of which he/she has been notified, the Standards Committee may:
 - a. determine the matter in that person's absence, unless it is satisfied that there is good reason for the absence; or
 - b. adjourn the hearing.

- 2.11.2. Before deciding to determine a matter in the absence of the Member, the Standards Committee will consider any written representations submitted by that person in response to the notice of the hearing. For this purpose, any reply shall be treated as a representation in writing.

Procedure at the hearing

- 2.12.1. At the beginning of the hearing the Chairperson will explain the order of proceedings that the Standards Committee proposes to adopt. The procedure to be followed is at the discretion of the Standards Committee, which will aim to conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the complaint. The Standards Committee will, as far as possible, try to avoid formality in its proceedings.
- 2.12.2. The hearing may be conducted in either English or Welsh as directed by the Standards Committee. Account will be taken of and, so far as is reasonably practicable, give effect to any preference stated by the Member. In either case a translation service will be provided for any person attending the hearing that requests it.
- 2.12.3. The Member will be entitled to give evidence, call witnesses, question any witnesses and address the Standards Committee both on the evidence and generally on the subject matter of the complaint.
- 2.12.4. The Standards Committee may limit the number of witnesses called by the Member, where this is conducive to the efficient and judicial hearing of the case. The circumstances in which a Standards Committee may impose such a limitation include, for example, where it appears to the Standards Committee that such witnesses will not be presenting significant new evidence or facts, or where an excessive number of witnesses are being called by the Member to give character testimony.
- 2.12.5. Witnesses will not be allowed to sit in the public gallery prior to being called to give evidence by the Standards Committee. A designated waiting area will be available for witnesses until they are called.
- 2.12.6. Evidence before the Standards Committee may be given orally or, if the Standards Committee orders it, by affidavit or written statement.

At any stage during the proceedings the Standards Committee can require the attendance of any person making a written statement.

- 2.12.7. The Standards Committee can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law. The Standards Committee shall not refuse to admit any evidence that is admissible at law and is relevant.

Procedure

- 2.13 The usual procedure to be followed is set out in the following paragraphs, but the Standards Committee is free to depart from that procedure where it considers it appropriate to do so.

Step 1

- 2.13.1. After the Chairperson has explained the order of proceedings, the Standards Committee will first seek to resolve any procedural issues or disputes arising from any Direction that may have been given.

Step 2

- 2.13.2. The Standards Committee will next seek to resolve any remaining disputes of fact that have been identified in the pre-hearing procedures.
- 2.13.3. Where several matters of fact are in dispute, the Standards Committee may consider that it is more convenient to consider all such matters together rather than for the hearing to proceed on a fact-by-fact basis.
- 2.13.4. The Committee will conduct its consideration of the complaint in an inquisitorial manner. The Councillor whose conduct has been complained of and the complainant will be entitled to attend the meeting of the Standards Committee at which the report of The Monitoring Officer is considered.

- 2.13.5. The following procedure will be followed:

- 2.13.5.1. the Monitoring Officer or the Ombudsman's investigating officer will present the report;
 - 2.13.5.2. the complainant or his or her representative will have an opportunity to set out his or her complaint;
 - 2.13.5.3. the Committee can ask questions of the complainant;
 - 2.13.5.4. the Member, or his or her representative can then present his or her case. The Members of the Committee can then ask questions of the Councillor; and
 - 2.13.5.5. witnesses can be called at the discretion of the Committee. If called, witnesses can normally be asked questions by the complainant, the Member and the Committee.
- 2.13.6. The Member against whom the complaint has been made can then sum up his or her case.
 - 2.13.7. Any witness will be entitled to be accompanied by a representative of his or her choice including a legal representative.
 - 2.13.8. The complainant and the Councillor against whom the complaint has been made will normally be entitled to be present at the meeting during the Committee's hearing of evidence. The Committee will consider deliberating in private with the Monitoring Officer.
 - 2.13.9. Any procedural questions or issues which may arise during the course of the hearing will be determined by the Committee ensuring at all times that the councillor against whom the complaint has been made is treated fairly.
 - 2.13.10. The Committee may conduct its hearing in public but may decide that it is necessary or in the public interest for all or part of the hearing to be in public.
 - 2.13.11. At any time before or during the hearing the Committee may send for persons, papers or records not currently, before it and may adjourn so that this can take place.

Step 3

2.13.12. The Standards Committee will consider whether the facts do lead to the conclusion that there has been a failure to comply with the relevant authority's code of conduct, if that has not been admitted by the person who is the subject of the Ombudsman's report.

2.13.13. The Standards Committee may, at its discretion, adjourn at this step to consider whether there has been a failure to comply with the relevant authority's code of conduct.

Step 4

2.13.14. If the Standards Committee finds that a failure to comply with the code of conduct has occurred, the person who is the subject of the report (or his/her representative) will be invited to make submissions on what action the Standards Committee should take, including any mitigating factors. This may take place at step 3 if the Standards Committee has not already adjourned to consider whether or not there has been a failure to comply with the code of conduct.

2.13.15. The Standards Committee will then adjourn to consider whether a failure to comply with the relevant authority's code of conduct warrants the suspension of the member, before announcing its decision. Where the Standards Committee decides that a sanction is appropriate, it may where appropriate suspend or partially suspend the member for a period not exceeding six months

Decision of the Standards Committee

2.14.1. The decision of a Standards Committee may be taken by a majority, with the Chairperson having a casting vote should that be needed.

2.14.2. The decision may be given orally at the end of the hearing or reserved. In any event, whether there has been a hearing or not, the decision will be recorded in accordance with the normal rules relating to Committee minutes.

2.14.3. Where a document refers to evidence that has been heard in private, only a summary of the document will be entered in the minute, with such material omitted as the Standards Committee may direct.

2.14.4. The decision of the Standards Committee will be notified to the person who is the subject of the notice, the Public Services Ombudsman for Wales and the person who made the original allegation (if known).

2.14.5. The Standards Committee will produce a report on the outcome of its investigation in accordance with Paragraph 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 and shall duly publish it/make it available for inspection in accordance with the provisions contained in the Regulations.

Orders for costs

2.15.1. The Standards Committee shall have no power to make an award of costs or expenses arising from its proceedings.

Appeals

2.16. Where a Standards Committee decides that a person has failed to comply with the code of conduct of the relevant authority concerned, that person may appeal to the Adjudication Panel for Wales.