



STANDARDS COMMITTEE

9.30 AM - FRIDAY, 22 NOVEMBER 2019

***COUNCIL CHAMBER - PORT TALBOT CIVIC CENTRE**

**Please Note Venue*

PART 1

1. Declarations of Interest
2. Minutes of Previous Meeting (*Pages 3 - 12*)
3. Summary of Cases Undertaken by the Public Service Ombudsman for Wales (*Pages 13 - 24*)
4. Public Service Ombudsman for Wales Annual Report 2017 2018 (*Pages 25 - 38*)
5. Neath Port Talbot Council Whistleblowing Policy (*Pages 39 - 58*)
6. Urgent Items
Any urgent items at the discretion of the Chairperson pursuant to Section 100B(4)(b) of the Local Government Act 1972

S.Phillips
Chief Executive

Civic Centre
Port Talbot

12 November 2019

Committee Membership:

Chairperson: C.L.Jones

**Vice
Chairperson:** B.Richards

**Independent
Members:** L.Fleet and T.Ward

**NPTCBC
Members:** Councillors S.E.Freeguard and D.Keogh

**Community
Committee
Member:** Vacant Post

Substitutes

**NPTCBC
Substitute:** Councillor R.W.Wood

**Community
Committee
Substitute:** Vacant Post

- Notes: (a) The Quorum for the Standards Committee is at least three Members including the Chairperson (or in absence Vice Chairperson). At least half the Members present (including the Chair) must be Independent Members. (e.g. if only two Independent Members attend, there must **only** be two other Members of the Committee present.)*
- (b) In view of the above, can all Members please inform the Monitoring Officer/Democratic Services Officer as soon as possible, if there is a problem with attendance.*

STANDARDS COMMITTEE

(Committee Room 1/2 - Port Talbot Civic Centre)

Members Present:

26 July 2019

Chairperson: C.L.Jones

Vice Chairperson: B.Richards

Independent Members: L.Fleet and T.Ward

NPTCBC Members: **Councillors** S.E.Freeguard and D.Keogh

Community Committee Member: A.Carter

Officers In Attendance: C.Griffiths and T.Davies

1. **DECLARATIONS OF INTEREST**

The following Member made declarations of interest at the commencement of the meeting:

Alan Carter - Report of the Head of Legal Services and Monitoring Officer – Item 6 – Urgent Private Item, Referral from the Public Service Ombudsman for Wales – as he was a witness in the enquiry and Item 7 – Referral from the Ombudsman – as he is a Member of Neath Town Council.

2. **MINUTES OF PREVIOUS MEETING**

RESOLVED: That the Minutes of the previous meeting held on the 9 July, 2019 be confirmed as a true and accurate record of the proceedings.

3. **REMIT OF STANDARDS COMMITTEE AND FORWARD WORK PROGRAMME**

Members discussed the circulated Forward Work Programme (FWP) for the Standards Committee, and any additional areas Members would like to cover going forward. The Head of Legal Services and Monitoring Officer advised that Members could add areas of interest to the FWP at any time.

RESOLVED: That the remit of the Standards Committee and the legislative background in which the Standards Committee operates be noted, and the items for discussion as set out in paragraph 4 of the circulated report be approved.

4. **URGENT ITEMS**

Because of the need to deal now with the matters contained in Minute Nos. 5 and 7 below, the Chairperson agreed that they could be raised at today's meeting as urgent items pursuant to Section 100B (4) (b) of the Local Government Act 1972.

Reason:

Due to the time element.

5. **GRANT OF DISPENSATION**

Members considered an application for a miscellaneous dispensation.

RESOLVED: That the application for dispensation set out in paragraph 1.3.2. of the circulated report be approved in the circumstances set out in Regulation 2 (d) and (e) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak and vote as set out in the Schedule within the circulated report, and that the dispensation run to the Standards Committee which follows the Annual Meeting 2022.

6. **ACCESS TO MEETINGS**

RESOLVED: That pursuant to Section 100A(4) and (5) of the Local Government Act 1972, the public be excluded for the following items of business which involved the likely disclosure of exempt information as defined in Paragraph 18c of Part 4 of Schedule 12A to the above Act.

7. **REFERRAL FORM THE PUBLIC SERVICE OMBUDSMAN FOR WALES**

(At this point in the meeting A.Carter reaffirmed his interests and withdrew from the meeting for the discussion and voting thereon)

Members discussed the case against former Councillor D.L. and whether or not to proceed with the investigation.

RESOLVED: That it would not be in the public interest to continue with the investigation into former Councillor D.L. and that the matter no longer be pursued.

8. **REFERRAL FROM THE OMBUDSMAN**

RESOLVED: That Councillor S.M. failed to comply with the Authority's Code of Conduct under Paragraph 6(1)(a) (in an official capacity or otherwise, bringing the office of Member or the Authority into disrepute) and should be subject to a four month suspension.

Decision Notice:

Introduction

1. This is the report of the Neath Port Talbot County Borough Council Standards Committee on the outcome of an investigation into the conduct of Town Councillor Sheila Marston, a Town Councillor of Neath Town Council ("Councillor Marston").
2. This report has been produced in accordance with Regulation 13 of the Local Government Investigations (Functions of

Monitoring Officers and Standards Committees) (Wales) Regulations 2001. The investigation follows from a referral by the Public Services Ombudsman for Wales (“the Ombudsman”) which alleged that Councillor Marston had acted in breach of the Neath Town Council Members Code of Conduct (“the Code of Conduct”).

Allegations

3. In his referral the Ombudsman indicated that his investigations had found that there was evidence to suggest that Councillor Marston had breached the following provisions of the Code of Conduct–

***Paragraph 6(1)(a)** Members must not conduct themselves in a manner which could reasonably be regarded as bring their office or authority into disrepute*

Process

4. Both the Ombudsman and Councillor Marston agreed that this matter was capable of being dealt with by way of written representations and consideration into the matter took place on 9th July 2019 by virtue of consideration of the papers at Civic Centre Port Talbot before the Standards Committee of Neath Port Talbot County Borough Council.

Findings of Fact

5. Councillor Marston is a long standing member of Neath Town Council who was last elected in May 2017, having first been elected in 2004.
6. Councillor Marston and her neighbour, the late Ms Jones lived in the same street. There was an acrimonious relationship

between both parties which is believed to have stemmed from an argument between Ms Jones and Councillor Marston over a garden hedge.

7. Sadly in January 2018, Ms Jones, a victim of domestic violence was murdered in her home.
8. During the period after the murder, Councillor Marston was reported to have expressed her opinion to members of the public, including a number of taxi drivers that Ms Jones had “deserved to be murdered”. This caused significant distress to Ms Jones’ familiar and friends.
9. During this period, a complaint was made to the Neath Town Council about Councillor Marston’s comments, upon which the Neath Town Council referred the matter to the Ombudsman.
10. In view of the reactions by the public, the Neath Town Council invited Councillor Marston to a meeting to discuss the comments on the 14th February 2018. Councillor Marston believed that this meeting was to offer her guidance and support and to ensure she was safe and she believed she attended in good faith. During the meeting, Councillor Marston immediately admitted to make comments to the effect that Ms Jones had “deserved to die”. The members and officer present were surprised and distressed to note that Councillor Marston’s only reaction was to express surprise at the manner of Ms Jones death but Councillor Marston refused to withdraw or apologise for her comments. Councillor Marston later added by way that the comments were made because there was uncertainty as to how Ms Jones had sadly passed away.
11. Councillor Marston was of the view that these comments were not made in any Council related meetings. However, in respect of both matters (the discussions with taxi drivers and at the

aforementioned meeting), the principles of the Code of Conduct (namely paragraph 6(1)(a)) will still have applied.¹

Article 10

12. Article 10 of the European Convention on Human Rights (“ECHR”) was fully considered by the Standards Committee during its deliberations both in relation to the breach and sanction. The Standards Committee adopted the three stage approach used by Wilkie J in the case of *Sanders v Kingston No (1) [2005] EWHC 1145* in its deliberations as follows:
 - (a) Could the Standards Committee as a matter of fact conclude that Councillor Marston’s conduct amounted to a relevant breach of the Code of Conduct?
 - (b) If so, was the finding of a breach and imposition of a sanction prima facie a breach of Article 10?
 - (c) If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?
13. The Standards Committee had determined each allegation against part (a) in the first instance. It was then concluded the nature and content of the questions raised by Councillor Marston did not consist of political expression which attracts enhanced protection under Article 10 ECHR. The content was so egregious and caused such significant upset and disruption that Police involvement was necessary and therefore an interference with Article 10 rights is justified.

Decision of the Standards Committee

14. The Standards Committee determined that Councillor Marston did conduct herself in a manner which could reasonably be regarded as bringing her office or authority into disrepute.

¹ Paragraph 2 (1)(d) of the Neath Town Council Member Code of Conduct provides that “save where paragraph 3(a) applies, you [a member] must observe the code of conduct - (d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7”

15. In finding against Councillor Marston, the Standards Committee concluded that in light of the particular circumstances of this case (which should evidence from this Report), that it is justified in interfering with Councillor Marston's Article 10(1) rights of freedom of expression, by making a finding of breach and by imposing a sanction.

Reasons for Decision

16. The reason for making these conclusions were as follows (adopting the structure set out above):
 - (a) Councillor Marston's comments were disrespectful and distasteful and there was no reason for such comments to be made public.
 - (b) Councillor Marston made these comments to members of the public outside of the Town Council setting but the principles of the Code of Conduct still applied on this occasion. Paragraph 6(1)(a) must be complied with at all times and the behaviour of Councillor Marston fell short of the appropriate standards required of elected members.
 - (c) Although acknowledging Councillor Marston's representations, respectfully it was felt that they did not amount to a defence of any actions but more mitigation and therefore were appropriate for consideration of sanction only.
 - (d) The Standards Committee concluded that Neath Town Council was brought into disrepute as a result of the comments made but also concluded that Councillor Marston's comments and her position as Town Councillor brought her office into disrepute. The evidence highlighted that several constituents feel that such comments were not expected from an elected member and therefore Councillor Marston's suitability as an elected member was called into question. The disapproving comments from the general public appear to be directed towards Councillor Marston and not the Neath Town Council but nevertheless given that Neath Town Council came under undue criticism because of

their inability to take action directly, Neath Town Council were brought into disrepute as a result of the actions of Councillor Marston.

Sanction

17. The Standards Committee were guided by decisions of the Ombudsman in their Code of Conduct Casebook and had due regard to the principles identified in the Adjudication Panel for Wales Sanctions Guidance as part of their determination. The Standards Committee acknowledged that in line with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 the maximum sanction they can impose is a six month suspension.
18. In considering the determination of any sanction which might be applied the Standards Committee determined that due to the seriousness of the incident and the level of public condemnation associated with the comments made by Town Councillor Sheila Marston, no action or informal action was not feasible.
19. The Standards Committee concluded that a public censure would not be appropriate as it would be important to send a message to Councillors that such behaviour is not appropriate for an elected official and it would be necessary to ensure that the public had confidence in local democracy and the only way to achieve this would be via a stronger sanction.
20. The Standards Committee concluded that a suspension of some duration was the appropriate course of action here.
21. The Standards Committee, considered that the following were aggravating factors:

- (a) Town Councillor Marston was a long standing member of Neath Town Council
- (b) Town Councillor Marston had a lack of acceptance of the misconduct and any consequences and failed to engage with the Ombudsman investigation.
- (c) The express of views were not worthy in a democratic society and were incompatible with dignity and in conflict with the rights of others
- (d) The behaviour not only brought herself into disrepute but also the Town Council (as elaborated above).

22. The Standards Committee though, considered by way of mitigation the representations put forward by Councillor Marston, those being:

- (a) Councillor Marston had now admitted the statements made, though it was acknowledged that there was no involvement with the Ombudsman during the course of their investigation.
- (b) Councillor Marston now acknowledged that her personal reputation had been sullied.
- (c) The commentary was made at the time when Councillor Marston was recovering from serious personal injuries sustained in a road traffic accident.
- (d) Councillor Marston acknowledged that she had been in a defensive mode during the aforementioned meetings as she felt she had been under personal attack but is now prepared to apologise to Ms Jones' family and the community. Though the Standards Committee noted though that no apology had appeared to have been made only an indication that an apology would be given. The Standards Committee recognised that this is something that Councillor Marston would have to pursue by herself as the Standards Committee could not legally insist on it.
- (e) Councillor Marston has undertaken public service for a number of years leading up to this matter and during this period there had been no previous referrals to the Standards Committee.

and accordingly were prepared to reduce the sanction that would be made accordingly in line with the guidance from the Adjudication Panel for Wales.

23. Pursuant to Regulation 9 of the 2001 Regulations, the Standards Committee made a determination that Town Councillor Sheila Marston should be suspended as a Town Councillor for a period of four (4) calendar months from the date that this notice takes effect. This Decision Notice is dated the 26th July 2019 and Town Councillor Sheila Marston has 21 calendar days in which to make an appeal. In the event that no appeal is made, the suspension will take effect following 21 day period.

CHAIRPERSON



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

STANDARDS COMMITTEE

REPORT OF THE HEAD OF LEGAL SERVICES –C.GRIFFITHS

22 November 2019

Matter for Information

Wards Affected: All Wards

Summary of cases undertaken by the Public Service Ombudsman for Wales

Purpose of the Report:

1. To provide Members with a summary of cases that have been undertaken by the Public Service Ombudsman for Wales (“the Ombudsman”).

Executive Summary:

2. The Ombudsman publishes a Code of Conduct Casebook quarterly which contains the summaries of all reports issued under section 69(4) of the Local Government Act 2000 relating to breaches of the Members Code of Conduct to which all elected members of County Borough Councils and Town and Community Councils must comply.

Background:

3. Members will note that where the Ombudsman decides that a complaint against a County Borough Councillor or Town and Community Councillor should be investigated, there are four findings to 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).
3. 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.
4. The Code of Conduct Casebook (attached as Appendix 1) 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. The Casebook covers October to December 2017.

Financial Impacts:

5. No implications.

Integrated Impact Assessment:

6. An Integrated Impact Assessment is not required for this report.

Valleys Communities Impacts:

7. No implications

Workforce Impacts:

8. No implications

Legal Impacts:

9. No implications

Consultation:

10. There is no requirement for external consultation on this item

Recommendations:

11. That Members note the findings in the Public Service Ombudsman for Wales Code of Conduct Casebook

Appendices:

12. Appendix 1 – Public Service Ombudsman for Wales Code of Conduct Casebook

List of Background Papers:

13. None

Officer Contact:

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The Code of Conduct Casebook

Issue 20 May 2019

Introduction

The Public Services Ombudsman for Wales considers complaints that members of local 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 2019.

The Code of Conduct Casebook

Issue 20 May 2019

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Case summaries

No evidence of breach

There are no summaries in relation to this finding.

No action necessary

Pembroke Dock Town Council - Promotion of equality and respect

Case Number: 201706079 - Report issued in January 2019

The Ombudsman received a complaint that a Member ("the Member") of Pembroke Dock Town Council ("the Council") had breached the Code of Conduct ("the Code") for members. It was alleged that the Member had acted in a disrespectful and bullying manner towards the previous Clerk to the Council, both in Council meetings and when communicating with her by email, between 2014 and her resignation from the Council in 2017.

The Ombudsman investigated whether the Members actions amounted to a breach of the parts of the Code that concern showing respect and consideration, bullying and harassment, bringing the Council into disrepute and a Member's duty to disclose an interest if they have one in any Council business. Information was sought from the Council, Pembrokeshire County Council and the Member. Interviews were also undertaken with relevant witnesses.

Having considered the evidence, the Ombudsman concluded that he was not persuaded that the Member acted in a disrespectful or bullying manner towards the Clerk at meetings or when communicating with her by email. He also decided that the evidence was not suggestive of a breach of the Code that the Member had not brought the Council into disrepute. The Ombudsman further concluded that it was likely that the Member may have breached the Code when failing to declare a personal interest at meetings.

Saltney Town Council - Promotion of equality and respect

Case Number: 201800177 & 201800178 & 201800179 & 201800180 - Report issued in January 2019

The Ombudsman received a complaint that Members ("the Members") of Saltney Town Council ("the Council") had breached the Code of Conduct by engaging in an argument with other councillors in front of members of the public, following a Town Council meeting.

The Ombudsman commenced an investigation on the basis that there may have been breaches of paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

The Ombudsman found that the behaviours complained about was below the standard that he would expect from elected members but that their behaviour was petty and immature and therefore to take further action and use further public resources would not be in the public interest.

Referred to Standards Committee

There are no summaries in relation to this finding.

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding.

The Code of Conduct Casebook

Issue 21 September 2019

Introduction

The Public Services Ombudsman for Wales considers complaints that members of local 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 April to June 2019.

The Code of Conduct Casebook

Issue 21 September 2019

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Case summaries

No evidence of breach

Sully and Lavernock Community Council - Disclosure and registration of interests

Case number: 201802547 - Report issued in April 2019

The Ombudsman received a complaint that a Member ("the Member") of Sully and Lavernock Community Council ("the Council") had breached the Code of Conduct. It was alleged that, despite being aware that a grievance had been submitted to the Council about his behaviour, the Member had failed to declare an interest when those matters were discussed in Council meetings.

In addition to the evidence provided by the complainant, information was also sought from the Council, the County Council and the Member. Having reviewed the information available, the Ombudsman found that there was no evidence of a breach of the Code of Conduct.

Amlwch Town Council – Promotion of equality and respect

Case Number: 201802863 – Report issued in April 2019

The Ombudsman received a complaint that a Member ("the Member") of Amlwch Town Council ("the Council") had breached parts of the Code of Conduct in his conduct towards the Council's Clerk at a meeting.

The Ombudsman investigated whether the Member had breached parts of the Code in relation to showing respect and consideration, not use bullying behavior or harass any person, and not conduct yourself in a manner which could reasonably be regarded as bringing their authority into disrepute.

The Ombudsman investigated a selection of those present at the meeting, including members of the Council and members of the public. The evidence did not support the complaint.

Under Section 69(4)(a) of the Local Government Act 2000, the Ombudsman Concluded that there was no evidence to suggest that the Member had failed to comply with the Code of Conduct

Powys County Council – Promotion of equality and respect

Case Number: 201803813 & 201803815 – Report issued in May 2019

The Ombudsman received a complaint that a Member ("the Member") of Powys County Council ("the Council") had breached the Code of Conduct. It was alleged that the Member had continuously made comments to the press about the complainant's business, which caused the complainant to feel bullied and harassed.

During the course of the investigation, information was provided by relevant parties including the complainant and the Monitoring Officer.

The Ombudsman found that there was no evidence of a breach of the Code of Conduct. The matters referred to by the complainant were accurate and in the public domain. There was no evidence which was suggestive that matters had been leaked to the press by the Member.

No action necessary

Magor with Undy Community Council – Integrity

Case Number: 201807788 – Report issued in May 2019

The Ombudsman received a complaint that a Member (“the Member”) of Magor with Undy Community Council (“the Council”) had breached the Code of Conduct when he organised the transfer of Council data to an external, electronic storage application. It was alleged that the Member acted improperly to persuade Council staff to grant access to the Council’s files, and inappropriately accessed the information which was available during the file transfer process.

Having been informed, during the course of the investigation, that the Member had resigned from the Council, the Ombudsman concluded that the complaint no longer satisfied the public interest requirements of the two-stage test and the investigation was discontinued.

Referred to Standards Committee

Cwmllynfell Community Council– Promotion of equality and respect

Case Number: 201704948 – Report issued in May 2019

The Ombudsman received a complaint that a Member (“the Member”) of the Cwmllynfell Community Council (“the Councillor”) displayed disrespectful and bullying behaviour towards the Clerk (at the time) at two meetings.

The Ombudsman found that there was evidence to suggest that the Member had failed to show respect and consideration to the former Clerk when raising matters of a personal nature, which did not relate to the performance of the Clerk’s duties, during the second meeting which was open to the public. The Member’s actions were considered to be contrary to one of the Council’s Standing Orders. The Ombudsman found also that there was evidence to suggest that the Member had displayed bullying behaviour towards the Clerk at this meeting.

The Ombudsman determined that the matter should be referred to the Monitoring Officer of Neath Port Talbot County Borough Council for consideration by that Council’s Standards Committee.

The Standards Committee determined that the Members conduct in respect of the second meeting was in breach of paragraphs 4(b) and 4(c) of the Council’s Code of Conduct. In addition, the Standards Committee found that in behaving in this way during this meeting that the Member had also brought the office of member into disrepute in breach of paragraph 6(1)(a). The Standards Committee issued a censure to the Member for the breaches of the Code found.

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding.



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

STANDARDS COMMITTEE

REPORT OF THE HEAD OF LEGAL SERVICES –C.GRIFFITHS

22 November 2019

Matter for Information

Wards Affected: All Wards

Public Service Ombudsman for Wales Annual Report 2017/2018

Purpose of the Report:

1. To advise Members of the receipt of the Public Service Ombudsman of Wales Annual Letter.

Executive Summary:

2. The Public Service Ombudsman for Wales (“the Ombudsman”) has two specific roles:
 - (a) To consider complaints about public service providers in Wales; and
 - (b) To consider complaints that members of local authorities or town and community councils have breached their Code of Conduct.
3. The Ombudsman sends letters on an annual basis to county borough councils and local health boards concerning the

complaints he has received and considered during the previous financial year. The aim of the Annual Letter is to provide the relevant bodies with information to help them improve their complaint handling and the services that they provide. The purpose specifically of this report is to highlight the position in respect of Code of Conduct complaints.

Background:

4. In recent years the Ombudsman has adopted the practice of sending an annual letter to each local authority which comes within his jurisdiction. A full copy of the letter and Factsheet is reproduced for Members at Appendix 1.
5. The number of national Code of Conduct complaints increased slightly in 2018/2019 both in respect of Local Authority elected members and Town/Community Council members. Many of these complaints have arisen following changes in the membership of councils. In the Neath Port Talbot locality, the number of Code of Conduct complaints against County Borough Councils is low, there being just 4, which were closed after initial consideration (Table E), meaning there was no case to answer. However, there was a slight increase in the number of complaints against community councils (Table F) (going from 7 to 8), but as can be seen no further action was taken in respect of all but two of these matters and they were either closed after initial consideration, discontinued or withdrawn. Two were forwarded to the Standards Committee for consideration which saw a censure being issued to one Community Councillor for non-compliance with the Code of Conduct and one Town Councillor being suspended for a duration of four months for non-compliance with the Code of Conduct.
6. Overall, cuts in public expenditure create an environment in which there can be a mismatch between public expectations and the service which can be provided. This will make it even more

important to deal promptly with any complaints which arise and look for practical and achievable solutions. The Council continues to work collaboratively with the Ombudsman to resolve any matter that might be referred to him by a member of the public whether that be via an early settlement or to provide clarification and documentation to assist in any investigation being undertaken.

7. Officers will continue this assistance in 2019/2020 and onwards. However, steps will also be taken to try and reduce the number of cases which require intervention by the Ombudsman. This will include:
 - (a) Undertaking further training with Local Authority Elected Members on Code of Conduct matters and in particular the use of social media, which appears to be the source of numerous complaints to the Ombudsman.
 - (b) The further development of a Standards and Code of Conduct forum with Town and Community Council Clerks to ensure that standards and ethics of decision makers is considered actively within that setting and officers of those organisations are aware of key legal obligations.

8. It should also be noted that the Ombudsman is now in receipt of a number of additional power of investigation, recently granted by the Welsh Government. These include the ability to undertake “own initiative” complaints. These investigations are not instigated by a complaint from a resident but may occur where the Ombudsman suspects potential systemic failures of services or where residents feel unable to complain due to the fact that they are dependent on Council services or because they are vulnerable.

Financial Impacts:

9. No implications. Though it should be noted the Ombudsman has legal powers to require the Council to make payments to

complainants where they have suffered financial loss or in compensation for “time and trouble”.

Integrated Impact Assessment:

10. An Integrated Impact Assessment is not required for this report.

Valleys Communities Impacts:

11. No implications

Workforce Impacts:

12. No implications

Legal Impacts:

13. No implications

Consultation:

14. There is no requirement for external consultation on this item

Recommendations:

15. That Members note the content of the Public Service Ombudsman Annual Report for Neath Port Talbot County Borough Council for 2018/2019 enclosed at Appendix 1 and the steps that will be taken to reduce the number of referrals to the Ombudsman in respect of code of conduct matters.

Appendices:

16. Appendix 1 – Annual Letter of the Public Service Ombudsman for Wales for Neath Port Talbot County Borough Council (Welsh and English version)

List of Background Papers:

17. None

Officer Contact:

Mr Craig Griffiths
Head of Legal Services
Telephone 01639 763767
Email: c.griffiths2@npt.gov.uk

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Our ref: NB

Ask for: Communications



01656 641150

Date: 7 August 2019



communications
@ombudsman-wales.org.uk

Councillor Rob Jones
Council Leader
Neath Port Talbot County Borough Council

By Email Only
cllr.r.g.jones@npt.gov.uk

Dear Councillor Rob Jones

Annual Letter 2018/19

I am pleased to provide you with the Annual letter (2018/19) for Neath Port Talbot County Borough Council. This year I am publishing my Annual Letters as part of my Annual Report and Accounts. I hope the Council finds this helpful and I trust this will enable it to review its own complaint handling performance in the context of other public bodies performing similar functions across Wales.

Whilst overall the number of complaints received relating to local authorities across Wales increased from 794 to 912, I am pleased that local authorities continue to work with my office to resolve many of these complaints at an early stage. This provides complainants with appropriate and timely remedies avoiding the need for my office to fully investigate complaints.

A summary of the complaints of maladministration/service failure received relating to the Council is attached.

Also attached is a summary of the Code of Conduct complaints relating to members of the Council and the Town & Community Councils in your area.

Page 1 of 7

The Public Services Ombudsman (Wales) Act 2019 has now been introduced. I am delighted that the Assembly has approved this legislation giving the office new powers aimed at:

- Improving access to my office
- Providing a seamless mechanism for complaint handling when a patient's NHS care is inextricably linked with private healthcare
- Allowing me to undertake own initiative investigations when required in the public interest
- Ensuring that complaints data from across Wales may be used to drive improvement in public services for citizens in Wales.

I am very much looking forward to implementing these new powers over the coming year.

Action for the Council to take:

- Present my Annual Letter to the Cabinet to assist Members in their scrutiny of the Council's performance
- Work to reduce the number of cases which require intervention by my office
- Inform me of the outcome of the Council's considerations and proposed actions on the above matters by **31 October 2019**.

This correspondence is copied to the Chief Executive of your Council and to your Contact Officer. Finally, a copy of all Annual Letters will be published on my website.

Yours sincerely



Nick Bennett
Public Services Ombudsman for Wales

CC: Steven Phillips, Chief Executive
Craig Griffiths, Contact Officer

Factsheet

A. Complaints Received and Investigated with Local Authority average adjusted for population distribution

Local Authority	Complaints Received	Average	Complaints Investigated	Average
Neath Port Talbot County Borough Council 2018/19	38	40	1	1
Neath Port Talbot County Borough Council 2017/18	35	35	2	1
Blaenau Gwent County Borough Council	8	20	0	0
Bridgend County Borough Council	33	41	0	1
Caerphilly County Borough Council	65	51	1	1
Cardiff Council	115	103	0	2
Carmarthenshire County Council	49	53	1	1
Ceredigion County Council	23	21	0	0
City and County of Swansea	83	70	0	2
Conwy County Borough Council	41	33	2	1
Denbighshire County Council	26	27	1	1
Flintshire County Council	50	44	2	1
Gwynedd Council	32	35	2	1
Isle of Anglesey County Council	31	20	2	0
Merthyr Tydfil County Borough Council	15	17	0	0
Monmouthshire County Council	20	27	0	1
Newport City Council	38	43	0	1
Pembrokeshire County Council	35	35	0	1
Powys County Council	67	38	4	1
Rhondda Cynon Taf County Borough Council	36	68	0	2
Torfaen County Borough Council	12	26	1	1
Vale of Glamorgan Council	24	37	0	1
Wrexham County Borough Council	45	38	3	1
Grand Total	886		20	

B. Complaints Received by Subject

Neath Port Talbot County Borough Council	Complaints Received
Adult Social Services	3
Benefits Administration	3
Children s Social Services	3
Complaints Handling	7
Education	3
Environment and Environmental Health	4
Finance and Taxation	2
Housing	2
Planning and Building Control	5
Roads and Transport	4
Various Other	2

C. Comparison of complaint outcomes with average outcomes for Local Authorities, adjusted for population distribution

Local Authority	Out of Jurisdiction	Premature	Other cases closed after initial consideration	Early Resolution / Voluntary settlement	Discontinued	Other Report - Not upheld	Other Report - Upheld in whole or in part	Public Interest Reports
2018/19								
Neath Port Talbot	8	16	12	4	-	-	-	-
Neath Port Talbot (adjusted)	7	13	14	5	-	1	1	-
2017/18								
Neath Port Talbot	4	15	8	4	-	-	-	-
Neath Port Talbot (adjusted)	6	10	12	5	-	1	1	-

D. Number of cases with PSOW intervention

Local Authority	No. of complaints with PSOW intervention	Total number of closed complaints	% of complaints with PSOW intervention
Neath Port Talbot County Borough Council 2018/19	4	40	10%
Neath Port Talbot County Borough Council 2017/18	4	31	13%
Blaenau Gwent County Borough Council	2	7	29%
Bridgend County Borough Council	6	36	17%
Caerphilly County Borough Council	8	68	12%
Cardiff Council	19	110	17%
Carmarthenshire County Council	4	48	8%
Ceredigion County Council	5	24	21%
City and County Swansea	10	80	13%
Conwy County Borough Council	5	39	13%
Denbighshire County Council	4	30	13%
Flintshire County Council	16	56	29%
Gwynedd Council	6	35	17%
Isle of Anglesey County Council	5	31	16%
Merthyr Tydfil County Borough Council	0	14	0%
Monmouthshire County Council	0	23	0%
Newport City Council	7	43	16%
Pembrokeshire County Council	6	33	18%
Powys County Council	11	64	17%
Rhondda Cynon Taf County Borough Council	4	34	12%
Torfaen County Borough Council	1	12	8%
Vale of Glamorgan Council	7	30	23%
Wrexham County Borough Council	8	43	19%

E. Code of Conduct Complaints Closed

Local Authority	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
2018/19								
Neath Port Talbot	4	-	-	-	-	-	-	4
2017/18								
Neath Port Talbot	1	-	-	-	-	-	-	1

F. Town/Community council Code of Conduct Complaints

Town/Community Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Briton Ferry TC	3	-	-	-	-	-	-	3
Cwmllynfell CC	-	-	-	-	1	-	-	1
Glynneath TC	5	-	-	-	-	-	-	5
Neath TC	-	-	-	-	1	-	-	1

Appendix

Explanatory Notes

Section A compares the number of complaints against the Local Authority which were received and investigated by my office during 2018/19, with the Local Authority average (adjusted for population distribution) during the same period.

Section B provides a breakdown of the number of complaints about the Local Authority which were received by my office during 2018/19. The figures are broken down into subject categories.

Section C compares the complaint outcomes for the Local Authority during 2018/19, with the average outcome (adjusted for population distribution) during the same period.

Section D provides the numbers and percentages of cases received by our case in which an intervention has occurred. This includes all upheld complaints, early resolutions and voluntary settlements.

Section E provides a breakdown of all Code of Conduct complaint outcomes against Councillors during 2018/19.

Section F provides a breakdown of all Code of Conduct complaint outcomes against town or community councils.

Feedback

We welcome your feedback on the enclosed information, including suggestions for any information to be enclosed in future annual summaries. Any feedback or queries should be sent via email to communications@ombudsman-wales.org.uk

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Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

STANDARDS COMMITTEE

REPORT OF THE HEAD OF LEGAL SERVICES –C.GRIFFITHS

22 November 2019

Matter for Decision

Wards Affected: All Wards

Neath Port Talbot Council Whistleblowing Policy

Purpose of the Report:

1. To provide Members with a copy of the Neath Port Talbot County Borough Council's ("the Council") Whistleblowing Policy and to seek comments or recommendations as Members deem appropriate.

Executive Summary:

2. The Council embarks on a review of the Whistleblowing Policy on a regular basis. A copy of the current policy attached at Appendix 1 for consideration by Members of the Standards Committee and for any recommendations to be made as may be considered appropriate.

Background:

3. One of the remits of the Council's Standards Committee is to oversee the whistleblowing regime in particular in this respect to consider and recommend procedures in respect of the following:
 - (a) Whistleblowing arrangements
 - (b) Anti-Fraud/Corruption or malpractice strategy
4. The Council has adopted a Whistleblowing Policy in line with the requirements of the Public Interest Disclosure Act 1998.
5. In the policy 'Whistleblowing' means the reporting by employees of suspected misconduct, illegal acts or failure to act within the Council. The aim of the Policy is to encourage employees and others who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.
6. Employees are often the first to realise that there may be something seriously wrong within the Council. 'Whistleblowing' is viewed by the Council as a positive act that can make a valuable contribution to the Council's efficiency and long-term success. It is not disloyal to colleagues or the Council to speak up. The Council is committed to achieving the highest possible standards of service and the highest possible ethical standards in public life and in all of its practices. To help achieve these standards it encourages freedom of speech.
7. Importantly the policy also provides protection for workers who report allegations of such malpractice or misconduct.
8. The whistleblowing policy is designed to ensure that all allegations of malpractice or misconduct are thoroughly investigated and suitable action taken where necessary.

9. The policy is intended to encourage and enable workers to raise serious concerns within the Council, rather than overlooking a problem or 'blowing the whistle' outside.
10. The Whistleblowing Policy will be reviewed by the Council in early 2020 and a report is brought before Standards Committee for consideration by Members of the Standards Committee and for any recommendations to be made as may be considered appropriate

Financial Impacts:

11. No implications.

Integrated Impact Assessment:

12. An Integrated Impact Assessment is not required for this report.

Valleys Communities Impacts:

13. No implications

Workforce Impacts:

14. No implications

Legal Impacts:

15. The Council has adopted a Whistleblowing Policy in line with the requirements of the Public Interest Disclosure Act 1998.

Consultation:

16. There is no requirement for external consultation on this item

Recommendations:

17. That Members note the content of the Neath Port Talbot County Borough Council Whistleblowing Policy and provide any comments or recommendations for consideration as they consider appropriate.

Appendices:

18. Appendix 1 - Neath Port Talbot County Borough Council Whistleblowing Policy

List of Background Papers:

19. None

Officer Contact:

Mr Craig Griffiths
Head of Legal Services
Telephone 01639 763767
Email: c.griffiths2@npt.gov.uk

Whistleblowing Policy



Neath Port Talbot
Castell-nedd Port Talbot
County Borough Council Cyngor Bwrdeistref Sirol

Human Resources

APPROVED BY

Personnel
Committee

DATE

31/08/2015

EDITION/VERSION

Issue No. 03

REVIEW DATE

31/03/2020

Os hoffech dderbyn gohebiaeth mewn perthynas â'ch
cyflogaeth yn Gymraeg, cysylltwch â'ch Swyddog AD
dynodedig.

Os hoffech gynnal y broses hon yn Gymraeg, cysylltwch
â'ch Swyddog AD dynodedig.

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1. INTRODUCTION

The purpose of this policy is to encourage workers to disclose any malpractice or misconduct (whistleblowing) of which they become aware and importantly to provide protection for workers who report allegations of such malpractice or misconduct.

The whistleblowing policy is designed to ensure that all allegations of malpractice or misconduct are thoroughly investigated and suitable action taken where necessary.

The policy is intended to encourage and enable workers to raise serious concerns within the Council, rather than overlooking a problem or 'blowing the whistle' outside

2. DEFINITIONS

Whistleblowing is used to describe situations when an employee or a worker provides certain types of information, usually to the employer or a regulator, which has come to their attention through work. Whistleblowing is therefore 'making a disclosure in the public interest' and occurs when a worker raises a concern about danger or illegality that affects others, for example, members of the public.

Examples of the concerns which could be reported include:-

- Conduct which is an offence or a breach of law
- Disclosures related to miscarriages of justice
- Health and safety risks, including risks to the public as well as other employees
- Damage to the environment
- The unauthorised use of public funds
- Possible fraud, bribery, corruption or malpractice
- Sexual or physical abuse of clients, or
- Criminal offences as defined by the Bribery Act 2010
- Other unethical conduct

The Public Interest Disclosure Act 1998 (PIDA) protects a worker who reports concerns about where they work, if that worker genuinely believes their concerns are true. See Appendix A.

- When someone blows the whistle, they are raising a concern about danger or illegality that affects others (e.g. customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern - they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it.

- This is very different from a **complaint**. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case.
- For these reasons, it is not in anyone's interests if the Council's whistleblowing policy is used to pursue a personal grievance. The Council has a **Grievance Procedure** and this will be more appropriate for making a complaint.
- People who use services, their relatives or representatives or others can make complaints about a service, using the **Corporate Comments, Compliment and Complaints Policy**. This is not whistleblowing.

3. GENERAL PRINCIPLES

3.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it is expected that workers that we deal with, who have serious concerns about any aspect of the Council's work will come forward and voice those concerns.

3.2 Any whistleblowing worker is protected against adverse employment actions (discharge, demotion, suspension, harassment, or other forms of discrimination) for raising allegations of business misconduct. **A worker is protected even if the allegations prove to be incorrect or unsubstantiated.** Workers who participate or assist in an investigation will also be protected.

3.3 The Council is committed to equality of opportunity in employment and is determined that unlawful discrimination or harassment, will not be accepted at the workplace. All employees should be aware that offences which constitute discriminatory behaviour will be regarded as potentially serious disciplinary matters.

3.4 All persons residing, visiting or working within the County Borough, whether service user, employee or worker, have the right to be treated with fairness and dignity.

3.5 If requested by the whistleblower, all reasonable steps will be taken to protect the anonymity of the whistleblower. However, under certain circumstances, to assist with the investigation, or subsequent actions to the investigation, the individual's identity may need to be revealed.

3.6 Any act of retaliation or victimisation against the whistleblower will result in disciplinary action, up to and including termination of employment.

3.7 The malicious use of the whistleblowing policy will result in disciplinary action against the whistleblowing complainant, up to and including termination of employment.

4. THOSE COVERED BY THIS POLICY

This Policy applies to all employees of the County Borough Council, including those employees employed by schools operating under fully delegated personnel powers.

This policy also applies to all contractors working for the Council on Council premises, for example, agency staff, builders and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example care homes.

5. ACCESSIBILITY

A copy of this Policy will be made available on the Intranet

6. LINKS WITH OTHER POLICIES

6.1 The Code of Conduct outlines the standards of behaviour expected of Council employees. Where employees are covered by their own professional codes of conduct, it is a requirement for them to adhere to these too.

6.2 This policy is separate from the Complaints Policy and other statutory reporting procedures adhered to in some directorates.

6.3 Where employees abuse the Whistleblowing Policy, they will be subject to appropriate action under the Disciplinary Policy. Equally, those employees who victimise whistleblowers, or commit an offence linked with the act(s) reported via whistleblowing, will be subject to disciplinary action.

6.4 Bullying and harassment – The Council will not tolerate any harassment or victimisation, and will take appropriate action to protect employees when they raise a concern under this policy. Should an employee feel that s/he is being bullied or harassed by an employee of the Council, then they should refer to the Bullying and Harassment Policy.

6.5 The Equality Duty requires the Council to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out duties. Employees are required to comply with policies relating to equality issues, and familiarise themselves and adhere to the Equality of Opportunity in Employment Policy and Equality of Opportunity in Service Delivery Policy.

6.6 Grievance – where a concern is not sufficiently serious nor of major concern, then the Grievance Policy should be used to address the matter, if informal channels have been explored.

7. TIMESCALES

Actions set out in this policy should be completed in as short a time scale as is reasonably possible. Timescales should be adhered to unless there are compelling reasons not to do so. If it is not possible to operate within these timescales, the parties involved must be informed and Responsible Officer, in conjunction with Human Resources, will decide whether an extension is appropriate.

8. RECORD KEEPING

A central record shall be maintained by Internal Audit of all whistle-blowing concerns raised.

Data processed through a scheme that promotes anonymous whistle-blowing should be deleted or archived within two months of conclusion of the investigation unless it has led to disciplinary or legal proceedings.

9. ROLES AND RESPONSIBILITIES

All managers and professional advisors involved in the whistle blowing process must be fully capable of discharging their duties, and should take responsibility for ensuring that they are appropriately trained in order to perform their role satisfactorily.

9.1 Employee

- Employees have a contractual obligation to conduct their work in an honest and loyal manner, and adhere to the disciplinary rules of the Council.
- Employees must familiarise themselves with and abide by the Code of Conduct. Failure to comply could result in disciplinary action.
- It is essential that employees bring any improper conduct to the attention of their line manager, if appropriate, who will then inform Internal Audit. Failure to do so could in itself be a disciplinary matter. For example failure to report a child or adult protection issue.

9.2 Line Manager

- Line managers are responsible for making employees aware of the Council's standards of behaviour, enforcing rules, and ensuring breaches are tackled promptly, reasonably and fairly.
- Managers must also ensure that they encourage employees to report any concerns directly to them and then forward the concerns to Internal Audit for investigation.

9.3 Human Resources

- HR should ensure the provision of robust employment advice and support where appropriate.

9.4 Head of Service

- Heads of Service should ensure that the Policy is adhered to and any resulting outcomes are consistent.
- They must ensure that investigations are completed in a timely and professional manner, that suspensions are sanctioned after appropriate risk assessments, and are for reasonable periods, and that any disciplinary hearings occur promptly following the conclusion of any investigation.
- They must nominate an appropriate Investigating Officer if the investigation is not to be undertaken by Internal Audit.
- They must ensure that when any witnesses are requested, that they are notified when they should attend any investigatory meeting or hearing, and that they are afforded the time to attend.
- They must review the outcome of the investigation, or nominate an appropriate deputy to do so, and confirm whether the recommendations of the report should be actioned, and if so, ensure that they are.

9.5 Trade Union/Workplace Representative

- Representatives must behave in a professional manner, and follow due process, raising any concerns regarding the management of the process with the relevant Head of Service.

9.6 Role of Investigating Officer (when not Internal Audit)

- To investigate the whistleblowing complaint, establish if there is a case to answer and make appropriate conclusions and recommendations.
- The Investigating Officer is appointed by the Head of Service. The Investigating Officer should receive and review the findings of the investigation and recommend whether the matter needs to be reported to a regulator, whether corrective action is required and recommend, where there is a case to answer, and whether there should be a disciplinary hearing.

- Where someone outside of Internal Audit is charged with investigating, they must ensure that Internal Audit is updated regarding progress and that Internal Audit have a log of the initial whistleblowing incident.
- Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.

9.7 Internal Audit Service

- Internal Audit is charged with the responsibility for being the usual means of investigating suspected fraud, corruption malpractice and bribery. For further information please refer to the appropriate Code of Conduct. Employees of the Internal Audit Section have experience in investigating such matters, and the Audit Manager and staff will always be receptive to discussing concerns raised by employees or by the general public.
- If the concerns are of a very specialist malpractice nature, the investigation may have to be carried out by persons other than Internal Audit. Internal Audit will request an appropriate nomination from the relevant Head of Service.
- Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.
- Internal Audit will maintain a log of all reported Whistleblowing cases.
- The Audit Manager will lead any investigation raised via the Whistleblowing Policy, and recommend whether corrective action is required and, where there is a case to answer, whether there should be a disciplinary hearing.

10. PROCESS FOR REPORTING WHISTLEBLOWING CONCERNS

- 10.1 It is usually recommended that a worker raise concerns openly within the Council, but it is also recognised that sometimes this is not possible.
- 10.2 In the first instance an employee or worker should consider discussing the matter with their line manager, or another member of their management team. Managers should deal quickly and effectively with concerns about their service. However, where this proves unsuccessful the matter maybe dealt with more formally (see 10.3-10.5).
- 10.3 If the complainant is not directly employed by the service in question they might also want to discuss their concerns with their own line manager so that they can consider what action to take. For example, a Social Worker may have concerns about a school they visit and report these to their line manager in the Social Services. These disclosures are also protected.
- 10.4 Where a worker lacks confidence that management may deal with the matter appropriately or feels that management maybe involved or associated with the issue of concern, **Internal Audit can be contacted on 01639 763628**. It is always preferred that the whistleblower identifies themselves when they contact Internal Audit as this enables the investigation to proceed more effectively if however the whistlblower does not wish to disclose their identity an investigation will still be undertaken based on the information disclosed.

This telephone number is staffed by the Council's Internal Audit Service. Internal Audit will either investigate the concern directly or forward the concern to a more appropriate Service within the Council. This could include:-

- Health & Safety
 - Adult Protection Co-ordinator for vulnerable adults' cases.
 - PO Placement Review & Child Protection Co-Ordinator for child cases
- 10.4 An employee or worker can also contact a **Prescribed Body**, as outlined below. Should a worker wish to make a whistle-blowing disclosure outside the Council, care should be taken not to disclose confidential information. Advice on rights and responsibilities may possibly be gained from the party the complaint is taken to.
- 10.4.1A 'prescribed body' is one which is identified under PIDA as able to receive concerns about organisations. Most regulators are prescribed bodies.

10.4.2 An employee or worker can raise concerns with a prescribed body, or any other such body, if it is relevant to that body. Such disclosures are protected under PIDA law, where the whistleblower meets the criteria for disclosure. They must also reasonably believe that the matter is substantially true and relevant to the regulator. Examples of prescribed bodies are:

- The Public Services Ombudsman for Wales
- HMRC
- Financial Services Authority
- Health and Safety Executive
- The Information Commissioner
- Regulator of Social Housing
- Care Quality Commission
- Pensions Regulator
- Food Safety Agency
- Wales Audit Office

10.5 **Independent advice** may be sought before raising a concern, by contacting a trade union or professional regulatory body, or referring to guidance issued by them. Free, confidential advice can be obtained from independent whistleblowing charity Public Concern at Work:

Public Concern at Work
3rd Floor
Bank Chambers
6-10 Borough High Street
London
SE1 9QQ

✉: whistle@pcaw.org.uk

☎: 020 7404 6609 (helpline)

☎: 020 3117 2520 (other enquiries)

☎: 020 7403 8823

🌐: www.pcaw.co.uk

11. PROCESS FOR DEALING WITH WHISTLEBLOWING CONCERNS

11.1 All whistleblowing concerns must be forwarded to Internal Audit, if not directly by the whistleblower, then by the recipient.

11.2 Internal Audit will then either investigate the complaint directly, or when not fraud related, will ask a Head of Service to nominate a suitable professional to investigate and, where appropriate, may:

- Refer the matter to the police
- Refer the matter to the external auditor
- Engage in the subject of an independent inquiry

11.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

11.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

11.5 Within 14 calendar days of a concern being raised with them, Internal Audit will write to the whistleblower if the identity of the whistleblower is known:

- acknowledging that the concern has been received
- indicating how the Council proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response
- advising whether any initial enquiries have been made
- supplying information on staff support mechanisms, and
- advising whether further investigations will take place and if not, why not.

11.6 The amount of contact between the officers considering the issues and the whistleblower, will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from the whistleblower.

11.7 Where any meeting is arranged, the whistleblower can be accompanied by a trade union or professional association representative or a work colleague.

11.8 The Council will take steps to minimise any difficulties which a whistleblower may experience as a result of raising a concern. For instance, if s/he is required to give evidence in criminal or disciplinary proceedings the Council will arrange for him/her to receive advice about the procedure.

11.9 The Internal Audit Service, or nominated officer, will produce a report on the findings of the investigation. The format of the report will not always be the same as each case is unique, but will frequently set out:

- How the investigation arose
- Who the suspects are
- Their position within the Authority and their responsibilities
- How the investigation was undertaken
- The facts and evidence which were identified
- Summary of findings and recommendations, both regarding the fraud, malpractice, corruption or bribery and any additional work required on the system weaknesses during the investigation.

11.10 The Council accepts that whistleblowers need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, the Council will inform whistleblowers of the outcome of any investigation.

11.11 All reports must be presented to the Head of Service. They will (or nominate someone to do so) review the findings of the investigation and recommend whether the matter needs to be reported to a regulator, whether corrective action is required and recommend, where there is a case to answer, whether there should be a disciplinary hearing. Where disciplinary action is required, please refer to the Disciplinary Policy. Please note that all employees involved in the whistleblowing process will be required to support the disciplinary process as necessary.

Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.

Please refer to flowchart in Appendix B for a summary of the process.

12. PROTECTION FOR WHISTLEBLOWING

Under PIDA, the law says that a worker is protected from the risk of losing their position or suffering any form of retribution as a result, provided that:

- The information is a protected disclosure
- It is made in the public interest
- The worker reasonably believes that information, and any allegations contained in it, are substantially true
- The worker is not acting for personal gain
- Making the disclosure does not involve the worker committing a criminal offence

For a worker's disclosure to be protected by PIDA, it must be a 'protected disclosure'. The worker must:

- Make sure the information is of a 'qualifying' nature (see Appendix A)
- Make a disclosure of information that, in the reasonable belief of the worker making the disclosure, is made in the public interest
- Reasonably believe that the information is substantially true
- Reasonably believe that they are making the disclosure to the right 'specified person'

Please see Appendix A for further information about making disclosures under PIDA.

Should a worker believe they have incurred any detriment (as per examples in 1.2), then if appropriate s/he should inform their line manager (or more senior manager if the detriment is caused by the line manager). Where the worker feels unable to report the detriment in their own management structure, then it should be reported to the Head of Human Resources or the Audit Manager.

13. UNTRUE ALLEGATIONS

Should an allegation be made frivolously, maliciously or for personal gain, disciplinary action may be taken against the individual concerned.

14. REVIEW AND EVALUATION

The effectiveness of this policy will be measured through an appropriate set of performance measures (to be agreed). Managers and HR, working with trade unions, will use these measures and other relevant data to identify any further changes needed to the policy and procedure to secure continuous improvement to individuals conduct and behaviour.

The Public Interest Disclosure Act 1998 (as amended 2013)

The Public Interest Disclosure Act 1998 (PIDA) offers protection to workers from any detriment from their employer that arises from the worker making a **‘protected disclosure’**.

To qualify as a ‘protected disclosure’ the disclosure must satisfy a number of requirements under PIDA:

1. The worker must have made a **‘qualifying disclosure’**. This is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more of the following:
 - (a) That a criminal offence has been committed, is being committed, or is likely to be committed
 - (b) That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject
 - (c) That a miscarriage of justice has occurred, is occurring, or is likely to occur
 - (d) That the health and safety of any individual has been, is being, or is likely to be endangered
 - (e) That the environment has been, is being, or is likely to be damaged
 - (f) That information tending to show any matter falling within any of the preceding paragraphs has been, or is likely to be deliberately concealed

A disclosure of information is not a qualifying disclosure if the person making it commits a criminal offence in doing so.

2. The qualifying disclosure must be made in **the public interest**.
3. The worker must make the qualifying disclosure to one of a number of **'specified persons'** set out in PIDA, which include:
 - (a) The worker's **employer** or, if they reasonably believe that the failure relates solely or mainly to (i) the conduct of a person other than their employer or (ii) any other matter for which a person other than their employer has legal responsibility, **to that other person**
 - (b) A **'prescribed person'**, which includes CQC. However, the worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true. The worker must also reasonably believe that the relevant failure being disclosed falls within any description of matters for which CQC is a prescribed person.

Where the above requirements are satisfied, a worker who has made a protected disclosure is protected under PIDA from dismissal or any other detriment arising from making that disclosure. Detriment can include detriment suffered from a previous employer where, for example, the employer refused to give a reference because the worker has made a protected disclosure. A worker who suffers dismissal or detriment may bring a claim for compensation (which is unlimited) in the Employment Tribunal. The term 'worker' includes employees, contractors or self-employed people.

The Whistleblowing Process

