



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

STANDARDS COMMITTEE

REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – MR CRAIG GRIFFITHS

14th October 2024

Matter for Decision

Wards Affected: All Wards

Local Resolution Process

Purpose of the Report:

1. To consider the Neath Port Talbot County Borough Council Local Resolution Procedure and whether any amendments may be required.

Background:

2. Neath Port Talbot County Borough Council Members have adopted a Local Resolution Procedure (a copy of which is enclosed at Appendix 1 of this Report) which is supplemental to the Procedure on Member/Employee Relations and the Code of Conduct requirements of the Constitution.

3. The Welsh Government and the Public Services Ombudsman for Wales (“PSOW”) have indicated that Member against Member complaints should be dealt with locally and informally by the Council.
4. This Procedure recognises that the freedom of expression enjoyed by Members is not absolute and the exercise of the freedom incurs responsibilities and may be subject to restrictions, notably the protection of the reputation and other rights of other Members and preventing unauthorised disclosure of information. The freedom to express their political opinions is not restricted by agreeing to this Procedure.
5. The Local Resolution Process is intended to deal with low level & trivial complaints, for example allegations of a failure to show respect and consideration at the very lowest level and which the right to free speech may indicate are not breaches of the code (For example, One Voice Wales’s LRP for Town & Community Council’s states “Serious complaints – breaches of the Code of Conduct, failure to disclose interests/bullying/abuse of position or trust/repeated breaches” should not be considered under the process.
6. The PSOW indicates that where a Local Resolution Process has been adopted by a council, she may not accept a complaint for consideration of an investigation relating to a low level complaint until or unless the Member has used the Local Resolution Procedure. If the complaint is not of a low level nature the Member may be referred to the PSOW. This is an informal process and no indemnity will be granted to any Member for representation at the Local Resolution Panel.
7. It is important to note that this procedure does not preclude anyone from referring any complaint to the PSOW if they so wish. However Members should note that the Ombudsman has made clear that, in normal circumstances, it is expected that in

the first instance Members should exhaust the procedures set out in this procedure before referring low-level complaints to the PSOW.

8. The procedure comprises two processes:
 - a. Informal mediation to find ways to resolve a complaint; and
 - b. The establishment of a Local Resolution Panel which will comprise three members to consider the complaint and make a determination on the factors and if they consider it appropriate make recommendations to address the complaint.

9. By way of examples, the following are matters which are likely to be considered under this process:
 - a. Minor complaints from members about members
 - b. Minor complaints from officers about members
 - c. Members alleged to have not shown respect and consideration for others either verbally or in writing.

10. Issues which are unlikely to be considered under this process include:
 - a. Complaints which must be directed to the PSOW such as complaints from the public or serious complaints i.e. bullying, failure to disclose interests etc.
 - b. Vexatious, malicious or frivolous complaints
 - c. Members' complaints about officers which should be dealt with using the Council's internal complaints process
 - d. Repetitive low level complaints

11. Local Resolution Processes are drafted on the basis that the complainant and the subject of the complaint agree to participate (i.e. upon consent) with both agreeing to participate

and agreeing to be bound by its outcome. Although, it is reasonable that a complaint to PSOW will bring the Local Resolution Process to a stop, the parties should not be precluded by that agreement from making a referral if they consider it is appropriate to do so after the process has started.

- 12.** In the last 10 years, there has only been one referral to the Local Resolution Procedure, which saw a mediation exercise carried out by an officer appointed by the Monitoring Officer.
- 13.** In the report to members of the Standards Committee of January 2022, it was highlighted that in March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the Ethical Standards Framework for Local Government (ESF) in Wales that was established by the Local Government Act 2000. The review sought to ensure that it remained fit for purpose, was open and transparent, and that it commanded the confidence of all involved with the framework. Richard Penn, an Independent Consultant was commissioned to undertake the review with the aim to report to Welsh Government Ministers by the end of June 2021 with the intention that any agreed changes to be made ahead of the Local Government elections in May 2022. Mr. Penn is a former Chief Executive of two major local authorities in England and was the first NAW Commissioner for Standards from 2000 - 2012.
- 14.** One of the recommendations that came from this report is that there should be an increase in the use of local resolution of complaints, by requiring that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman, in order to speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Therefore, it is feasible that future years may see greater use of this procedure, which could negate

complaints having to be considered by the PSOW and allow a more informal approach of resolution. It has also been suggested that the PSOW will incorporate Local Resolution Processes into their guidance at some point in future years.

Financial Impacts:

15. No implications.

Integrated Impact Assessment:

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

Valleys Communities Impacts:

17. No implications

Workforce Impacts:

18. No implications

Legal Impacts:

19. The powers of Standards Committees under a Local Resolution Process remain legally uncertain given that there is no statutory basis for it in the Local Government Act 2000 or other statute/secondary legislation and any consideration is voluntary, though encouraged. No decision under a Local Resolution Process can oust the PSOW's power to investigate a potential breach of the Code under s69(1)(a) of the Local Government Act 2000. This is a statutory power with the purpose of maintaining high standards of conduct in public life in Wales and cannot be and isn't limited by the private agreement of two individuals who submit to an Local Resolution Process.

20. This approach is also consistent with the High Court decision of *Bishop v The Public Services Ombudsman for Wales [2020] EWHC 1503 (Admin)*. The councillor sought an injunction from the High Court restraining the PSOWs investigation on the grounds that the complaint should have been dealt with pursuant to an Local Resolution Process. The court rejected that argument. Any complaint received by the PSOW triggers the Ombudsman's powers under s69 of the LGA 2000 – upon receipt of a 'written allegation', the PSOW 'may investigate'.

Consultation:

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

Recommendations:

22. That Members consider the appropriateness of the Local Resolution Procedure and agree the amendments which are shown underlined in the Local Resolution Procedure at Appendix 1 and consider whether any additional amendments should be made.

Appendices:

23. Appendix 1 – Local Resolution Procedure

List of Background Papers:

24. None

Officer Contact:

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

Appendix 1

Local Resolution Procedure Member Complaints of Breaches of the Code of Conduct for Members

Scope of Procedure

Neath Port Talbot County Borough Council Members have adopted this Protocol which is supplemental to the Protocol on Member/Employee Relations and the Code of Conduct requirements of the Constitution. The Welsh Government and the Public Services Ombudsman for Wales (“PSOW”) have indicated that Member against Member complaints should be dealt with locally and informally by the Council.

This Procedure recognises that the freedom of expression enjoyed by Members is not absolute and the exercise of the freedom incurs responsibilities and may be subject to restrictions, notably the protection of the reputation and other rights of other Members and preventing unauthorised disclosure of information. The freedom to express their political opinions is not restricted by agreeing to this Protocol.

This Local Resolution Procedure may be utilised for low level disputes by a Member before a complaint is referred to the PSOW. The PSOW indicates that where a Local Resolution Process has been adopted by a council, he may not accept a complaint for consideration of an investigation relating to a low level complaint until or unless the Member has used the Local Resolution Procedure. If the complaint is not of a low level nature the Member may be referred to the PSOW.

Matters that suggest a breach of the Code of in respect of declarations of interests, bullying, disreputable conduct should be referred to the PSOW for consideration and are expressly excluded from this Local Resolution Procedure.

This Local Resolution Procedure is drafted on the basis that the complainant and the subject of the complaint agree to participate (i.e. upon consent) with both agreeing to participate and agreeing to be bound by its outcome. Although, it is reasonable that a complaint to PSOW will bring the Local Resolution Procedure to a stop, =the parties should not be precluded by that agreement from making a referral if they consider it is appropriate to do so after the process has started. No decision under this Local Resolution Procedure can oust the PSOW's power to investigate a potential breach of the Code of Conduct under s69(1)(a) of the Local Government Act 2000. This is a statutory power with the purpose of maintaining high standards of conduct in public life in Wales and cannot be and isn't limited by the private agreement of two individuals who submit to this Local Resolution Procedure.

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

Standards of Behaviour

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

2. Member's Representative behaviour:
 - 2.1 Members should seek to work with Members of adjoining electoral divisions for the benefit of the locality.
 - 2.2 A Member who becomes involved in matters specifically related to another electoral division or representing a constituent in another electoral division should:
 - 2.2.1 Explain to the members of the public that they are not the Local Member for that electoral division and identify who is. However, it is the member of the public's choice as to which Member they wish to represent their interests.
 - 2.2.2 If the Member continues to act in the matter, inform the Local Member of their involvement (but not disclose any confidential information without authorisation) and if possible seek to work with the Local Member if the objective is shared.
3. The behaviour described in the paragraphs above are examples or illustrations of behaviour which may constitute a breach of the Code; they are not additional to the Code.

Local Resolution Procedure

- 4.1 In the event of a dispute arising, a Member who complains that another has breached the Code will be provided with the contact details of a Mediator appointed by the Monitoring Officer.
- 4.2 The complainant Member will notify the Member who is the subject of the complaint of his intention to seek mediation of the dispute. Both Members will supply the Mediator with dates of availability, but with the intent that the mediation meeting will

take place within six weeks from the date of the complaint being made.

- 4.3 The mediation meeting(s) will be confidential. It is hoped that this process will encourage the Members to attain consensus on resolving the complaint. Whatever is agreed will be confirmed by them to the Mediator but will not be further published unless agreed by both the Members.
- 4.4 If the mediation stage does not resolve the complaint, then the complaining Member may request that the matter be referred to the Local Resolution Panel within six weeks of the last mediation meeting. The Mediator will be asked to confirm whether resolution was attained but nothing further.
- 4.5 The Local Resolution Panel will comprise three members, namely: an independent Member of the Standards Committee and elected Members appointed by the Leader of Council and the Leader of the largest non-executive political group. No Member shall serve who has had a previous involvement with the matter. The Panel will meet in private.
- 4.6 Both the complaining Member and the Member who is subject of the complaint will be entitled to appear and/or produce written or oral information relevant to the facts of the matter complained of. Either Member may be accompanied by a friend but shall not be represented by a Solicitor or Barrister.
- 4.7 The Local Resolution Panel will consider the information and have discretion to determine the facts and if they consider it appropriate to make such recommendation as would address the complaint, either there is:
 - 4.7.1 No basis for the complaint
 - 4.7.2 A basis for the complaint but no further action is necessary or

- 4.7.3 A basis for the complaint and an apology should be provided to the complainant Member in an appropriate manner or such other action that is within the power of the Council.
- 4.8 The complainant Member may refer the matter to the PSOW and the PSOW will consider whether to investigate.
- 4.9 The Local Resolution Panel may also make recommendations to the Standards Committee regarding training or changes to any procedures which may have contributed to the complaint arising.
- 4.10 If the complaint is referred to the PSOW and an investigation report is produced the independent Member on the Standards Committee who was appointed to the Local Resolution Panel will not take part in any proceedings relating to that investigation report.