

STANDARDS COMMITTEE

REPORT OF HEAD OF LEGAL SERVICES MR. DAVID MICHAEL

17TH APRIL 2015

SECTION A – MATTER FOR DECISION

WARDS AFFECTED: ALL

WELSH GOVERNMENT WHITE PAPER - POWER TO LOCAL PEOPLE

Purpose of Report

To advise Members of Standards Committee of proposals of the Welsh Government contained in the White Paper mentioned above and to advise Standards Committee of a response which will be recommended to full Council.

Background

The Welsh Government has published a White Paper entitled Power to Local People which follows the Williams Report into provision of public services and other subsequent Welsh Government publications on reform of Local Government.

Although public attention and that of the press has concentrated on Local Government reorganisation aspects of the White Paper, in reality it ranges far and wide and touches on some areas relevant to Standards Committees. The structure of the report is as follows:

I firstly extract the relevant paragraphs from the White Paper, I then make some comments and reproduce for members of Standards Committee the responses that are recommended to Council in a report by the Chief Executive. Members of Standards Committee will understand that the Chief Executive has to deal with many diverse issues in the response to the White Paper.

“3.5. The Role and Responsibilities of Elected Members

The Welsh Government also intends to clarify the expectations which an Elected Member of a Local Authority is expected to fulfil, including strengthening their roles as community advocates through Area Boards. We

would set out their need to communicate with and represent their electorate, including the holding of surgeries and participation in community governance, to attend and participate in the committees to which they are appointed, and to hold the Executive to account through overview and scrutiny. All Elected Members must as a minimum be accessible to the public through electronic mail, and by preference also through the use of social media.

We should also require Elected Members to attend appropriate training. The responsibilities on Elected Members will increase in larger, merged Authorities and the Welsh Government believes it is prudent to invest in their skills. Under our proposals, Elected Members will need to commit to continuing personal development in order to develop high levels of expertise in finance, service and corporate matters to enable effective scrutiny of the Executive, and expertise in communication to enable effective community engagement. Some will wish to develop particular expertise in scrutiny, others in community engagement. At three recent (November 2014) Welsh Government workshops with Councillors and Local Authority officials on the impact of the Local Government (Wales) Measure 2011, the further training needs of Councillors were identified as: equalities, code of conduct, regulatory roles, legal responsibilities, performance and risk management, freedom of information, data protection, use of social media, ICT, remote working, and the Councillor's role as a school governor.

Local Authorities are required to support Elected Members to publish annual reports and Members are encouraged to produce them, although fewer than half currently do so. Some Elected Members have argued that annual reports are not necessary as they are judged by the public in the ballot box. It is difficult to see how most members of the public could judge the achievements of individual Elected Members without being able to access regular information about their Council and community activities. Therefore, the Welsh Government considers all Elected Members should be legally required to produce an annual report. Whilst this should include information about their attendance, membership of committees and Area Boards, remuneration, training, case work and correspondence, they should focus more explicitly on qualitative information about what they have achieved during the year and how people and communities are better off as a result.

Elected Members are paid from the public purse and are responsible for significant decisions about public spending, so their actions must be open to scrutiny by any member of the community whose interests they represent, as well as other persons affected by their actions. The Local Government ethical standards framework guides Elected Members on the appropriate standards of conduct expected of them in undertaking their roles, whilst providing reassurance to the public that action will be taken if things go wrong. In our 2012 *'Promoting Local Democracy'* White Paper, we said the standards

framework remained fundamentally sound, but we proposed a number of changes to improve its overall operation, including the adoption of local complaint resolution policies for low-level complaints between Members and the capping of indemnities. The Welsh Government welcomes the positive response from all Authorities in adopting such policies.

The Local Government (Democracy) (Wales) Act 2013 makes provision for the establishment of joint Standards Committees, the electronic publication of registers of interests and powers to enable the transfer of misconduct reports and Member dispensation requests between Standards Committees to overcome potential conflicts of interest. These provisions will be brought into effect later this year. Also, this year, we will bring forward legislation to modify the model code of conduct for Local Authority Members to facilitate the operation of local resolution policies and to clarify the position of Members with constituency interests. We will also exempt Local Authorities from publishing misconduct reports during ongoing proceedings.

We believe these reforms will improve and strengthen the ethical standards framework. However, we are seeking views on whether there should be any further reforms, in particular in respect of the most serious cases. Standards Committees and Monitoring Officers already play a key role in supporting and advising Members on conduct matters. There should be a new power for Standards Committees to consider cases where there are serious concerns that an Elected Member is failing to fulfil their duties satisfactorily. We would provide Standards Committees with appropriate sanctions which could be imposed. There would need to be safeguards against vexatious complaints.

It is important Local Authorities take full responsibility for the poor performance of Elected Members and manage this internally in a transparent manner. It is also important that as part of this process we consider an appropriate appeals process for Elected Members, whether that be internally within the Authority, to the Adjudication Panel for Wales or another body. We are seeking views on the most appropriate procedure”

Commentary

I am sure that Standards Committee would support the move by the Welsh Government to require elected Members to attend appropriate training. This is an issue that has concerned various Standards Committees over the years. If the Welsh Government intends to extend the jurisdiction of Standards Committees to consider allegations that an elected Member is failing to fulfil their duties, then this would require amendment to the Code. It would also require a job description for Members with statutory support. The proposed response of the Council appears below:-

Proposed response

The Council also supports the principle of strengthening of arrangements around standards; conflicts of interest, conduct and the performance of elected Members (page 30); but if the Welsh Government considers that Standards Committees should address complaints of neglect of duty, there needs to be specified duties in law whereas there are none at present.

Proposed Response

“3.6. Diversity among Elected Members

Changing behaviours in a Local Authority requires leadership. Therefore, we propose placing a duty on Leaders, Group Leaders and Chief Executives to ensure diversity is respected. For Leaders, this duty will extend to ensuring that there are coherent anti-bullying and harassment policies in place for Councillors, not only in respect to Local Authority staff but also in respect of other Councillors. Group Leaders should also be required to ensure they are taking this responsibility seriously within their groups, and Chief Executives should be required to ensure there are anti-bullying and harassment policies in place for staff. In each case, the Monitoring Officer and Standards Committee will have enforcement roles. In addition, we need to support our Elected Members appropriately and they should be due similar entitlements to a balanced life as others working in the public and private sectors. For example, the Local Authority, the public and the media should support them when they take maternity or paternity leave, or when they need time out for caring responsibilities”

Commentary

The existing Members’ Code of Conduct contain provisions which deal with bullying and of harassment by Members. In fact many of the more high profile complaints dealt with by Standards Committees and by the Adjudication Panel for Wales have been in relation to those comparatively rare cases of bullying and harassment of staff. The response recommended to Council is as follows:-

This Council already has in place extensive conduct policies, as does the Public Services Ombudsman for Wales, so coherence in terms of developing the existing system is important, particularly to avoid confusion of roles and responsibilities. Councillors are not employees and therefore the only way in which bullying and harassment can be dealt with is through the Members’ Code of Conduct.

“3.11. Recall of Elected Members

The Recall of MPs Bill currently making its way through the Houses of Parliament, causes a Member of Parliament to lose their seat and a by election to be held if ten percent of the electorate in the constituency sign a petition to call for this. Recall can only be triggered if certain conditions are met. Broadly speaking, these are that the MP has been convicted of an offence and imprisoned or they have been suspended from the House of Commons for at least ten days.

The Welsh Government would welcome views as to whether similar provisions should be put in place for Elected Members of Local Authorities. The conditions to trigger recall of an Elected Member in Local Government could include, for example, where sanctions have been imposed on a Councillor by a Standards Committee or the Independent Adjudication Panel following a breach of the code of conduct or failure to perform effectively as an Elected Member. ”

Commentary

I would take the view that if the imposition of a sanction against a Member for a breach of the Code should trigger a right to recall, then that sanction should be of a serious nature and should be imposed by the Independent Adjudication Panel for Wales (which deals with more serious cases) as opposed to the Standards Committee which has more limited powers. The response recommended to Council is as follows:-

Proposed Response

Similar considerations apply to the recall of elected Members at section 3.11 – page 35. If the proposal is that a proven breach of the Code of Conduct should trigger a right to recall, it should be for more serious breaches of the Code. Those more serious breaches are dealt with by the Adjudication Panel for Wales rather than local Standards Committees. For that reason it might be appropriate to have the right to recall triggered by a sanction applied by the Panel.

Recommendation

That Standards Committee supports the response of the Council.

List of Background Papers

White Paper issued by the Welsh Government – Power to Local People

Reason for proposed decision

To express the views of Standards Committee on the Welsh Government White Paper.

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