



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

STANDARDS COMMITTEE

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

11th January 2022

Matter for Information

Wards Affected: All Wards

Independent Review of the Ethical Standards Framework in Wales

Purpose of the Report:

To update Members on the first phase of the Independent Review of the Ethical Standards Framework in Wales.

Executive Summary:

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.

The review is to be undertaken in two phases and the findings and recommendations of the first phase of the review is attached at Appendix 1 to this report.

Background:

The Ethical Standards Framework in Wales was established by the Local Government Act 2000 and had remained largely unchanged, though there had been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016.

The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.

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The review was to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose; • the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff; and
- consideration of the current sanctions and whether they were still appropriate

The first phase of the Independent Consultant's Review is attached at Appendix 1 to this report.

The first phase involved engagement with partners to establish views about the process and operation of the framework including details where the framework worked well and whether there were areas for improvement. Paragraph 2.14 of the report details the range of stakeholders the Consultant interviewed during the first phase of the review.

The second phase of the review is to focus on working with partners and stakeholders to deliver the necessary changes

The Standards Committee is requested to consider and note the contents of the review which has regard to the implementation of the provisions of the Local Government and Elections Wales Act 21 by May 2022. Specific attention should be drawn to the Executive Summary at Page 3 which highlights the main considerations.

Members will note that some of the findings are statements, and other are recommendations. The recommendations for action further break down into matters of good practice that can be implemented locally, and those that will require legislation (a Bill or statutory instrument). The lead in times for both types of legislation can be long but Bills can take years to be passed.

Finding
<p>An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances</p> <p>Only 1 County Council has adopted the Model Code of Conduct without significant variations or additions. Over a half have adopted a local resolution procedure, and over one half also have a mandatory training requirement</p>
<p>An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales.</p> <p>There are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils.</p> <p>Richard Penn believes that mandatory training on the Code for all members and the greater use of local resolution procedures should result in a reduction of the number of the low level complaints and thus the need for formal investigations.</p> <p>Discussions have been had though amongst Monitoring Officers throughout Wales that mandatory training is a good idea but the extent to which it will</p>

reduce complaints under the code is unknown. Most complaints are about failure to treat someone with respect or bullying and such behaviour is rarely caused by a lack of understanding, nor solved by greater understanding, of the code.

Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating.

This will include identification of areas where improvements could/should be made to the current arrangements. The consensus is that the current framework is fit for purpose and works well in practice.

The ten principles of conduct are seen as relevant and the Code of Conduct is seen as appropriate and not in need of major revision.

The report proposes a number of amendments to the Code

- (1) Specify the threshold for declarations of any gift, hospitality, material benefit or advantage to ensure consistency across Wales
- (2) There is agreement that the Code should not require Councillors to disclose their home address
- (3) Define a 'person' either in the 2000 Local Government Act or in the Code.
- (4) Paragraph 4a of the Code (to have due regard to equality of opportunity for all people) should be extended to include all nine protected characteristics under the Equality Act 2010.
- (5) The guidance on social media published by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code
- (6) 6(1)(b) of the Code of Conduct should be amended to make it an obligation of the member to report their own criminal behaviour as well as that of others (as at present)
- (7) Make training on the Code of Conduct mandatory for all members of by including a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004
- (8) Increase 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.

- (9) Extend the Public Services Ombudsman for Wales' power to refer complaints back for local resolution

Most proposed changes to the code seem sensible. The suggestion that all complaints should be considered for local resolution first has potentially major resource implications for monitoring officers. Neath Port Talbot Council receives few complaints about its own councillors each year but experience shows there are approximately 10 complaints about Town and Community Councillors per annum. The Council is not resourced to manage that number of complaints.

Changes to the powers and processes of the Adjudication Panel for Wales The report recommends introducing

- (1) Restricted reporting orders - to control the reporting by the press about any case.
- (2) Anonymity of witnesses - an express power to order anonymity for witnesses in sensitive cases would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning.
- (3) Disclosure – to put the recent practice direction on a legal basis xiii. Appeal Tribunal procedure – remove the requirement on Standards Committees to consider the decision of the APW on the Appeal if it is different to the original decision
- (4) Case Tribunal procedure – updates to make the Case Tribunal Procedure more efficient and fairer to witnesses
- (5) Permission to appeal procedure - minor amendments to make the process more “balanced and sensible”
- (6) Sentencing powers – to give the panel the power to impose more varied sanctions as was the case with the former Adjudication Panel for England
- (7) Interim Case Tribunals - the threshold for meeting the legislative requirements for an interim referral is considered to be too high.

The proposal is to introduce a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal.

Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of

sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.

The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings

There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees xxi.

The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints.

Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The report suggests that this is an issue that might be mitigated by mandatory training.

An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns

No view was expressed on whether the current sanctions open to Standards Committees are still appropriate

Accessibility of the ethical standards framework - the report believes that the lack of publicity about the ethical standards framework constrains use of the process, especially if the person wishing to complain if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems

Financial Impacts:

No implications.

Integrated Impact Assessment:

An Integrated Impact Assessment is not requirement for this report.

Valleys Communities Impacts:

No implications

Workforce Impacts:

No implications

Legal Impacts:

The Council has a duty to establish and maintain a Standards Committee as defined by legislation as set out in the Standards Committees Rules and 5 Regulations 2001 and the Standards Committee (Wales) Amendment Regulations 2006. The role of the Standards Committee is to promote and maintain high standards of conduct by Councillors, Co-opted Members and Church and Parent Governor Representatives.

Consultation:

There is no requirement for external consultation on this item

Recommendations:

That the Standards Committee consider and note the first phase of the Independent Review of the Ethical Standards Framework in Wales.

Appendices:

Appendix 1 – First phase of the Independent Review of the Ethical Standards Framework in Wales

List of Background Papers:

None

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