



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **STANDARDS COMMITTEE**

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

**11<sup>th</sup> March 2024**

#### **Matter for Information**

**Wards Affected:** All Wards

**To consider the process the Public Service Ombudsman for Wales adopt in respect of Code of Conduct Complaints**

#### **Purpose of the Report:**

1. To provide an overview to members of the Standards Committee of the process embarked on by the Public Service Ombudsman for Wales (“the Ombudsman”) in respect of Code of Conduct Complaints

#### **Background:**

2. The Model Code of Conduct (“the Code”) for councillors sets out the high standards of behaviour which the public expects from its elected representatives. The role of the Ombudsman is to consider complaints that members of local authorities, community councils, fire and rescue authorities, national park authorities and police and crime panels in Wales have breached their authority’s Code. When a complaint is received by the Ombudsman, they will be considered by their Code of Conduct Complaints Team.
3. Their role is crucial in supporting the Standards Committees of local authorities to help councillors achieve the standards of conduct that meet

public expectations. They aim to support proper decision making and the proper use of public resources and to maintain public confidence in local government and in the democratic process itself. The view is adopted by them that undertaking investigations that do not support these wider benefits is not in the public interest. They adopt an approach that their limited resources should not be used to investigate matters which are trivial or which have little or no impact on the public. It is important that they focus their investigations on matters that are serious and are capable of undermining the relationship between councillors and the public they serve, such as corruption, bullying and misuse of power in public office.

4. Their process requires the application of a two-stage test.
5. Where they are satisfied that a complaint is supported by direct evidence that a breach has taken place, initially the public interest is considered in deciding whether a complaint against a councillor can and should be investigated. They consider the public interest again during the course of an investigation to ensure that it should continue and, finally, again, when determining whether a matter should be referred to a Standards Committee or to the Adjudication Panel for Wales for consideration.
6. There is no widely accepted definition of public interest, but it has been described as “something which is of serious concern and benefit to the public”. The public interest therefore relates to something which has an impact on the public and is not merely a matter the public finds to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the entire population of Wales. It may refer to a distinct section of the public such as a small community or interest group.
7. The published public interest factors they may take into account are set out below:
  - the seriousness of the breach
  - whether the member deliberately sought personal gain for themselves or another person at the public expense
  - whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to another
  - whether the breach was motivated by any form of discrimination against the victim’s ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity

- 8.** When taking any of the above factors into account, relevant considerations can include the circumstances of the complaint; the extent to which the councillor was responsible for, or was to blame for, the alleged breach; whether the alleged conduct was premeditated and/or planned and whether the alleged conduct has caused harm or impacted on another person, group or body. Views expressed by the complainant, or any other person affected by the alleged conduct, relating to the impact and effect should also be considered.
- 9.** Other considerations may be:

  - whether there is evidence of previous similar behaviour on the part of the member
  - whether the Councillor been the subject of any previous complaints or investigations, or been referred to the Standards Committee or Adjudication Panel for Wales for a similar matter? Is the alleged conduct ongoing, repeated or is there evidence of escalating behaviour?
  - whether the investigation or referral to a Standards Committee or Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
  - whether investigation or referral to a Standards Committee or Adjudication Panel for Wales is a proportionate response. They consider whether it is likely that the breach would lead to a sanction being applied to the member and whether the use of resources in carrying out an investigation or hearing by a Standards Committee or Adjudication Panel for Wales would be regarded as excessive, when weighed against any likely sanction.
- 10.** Public interest should not be decided on the basis of resource alone but this is a relevant consideration when making an overall assessment. A balanced view should be taken and consideration of the outcomes of previous cases considered by Standards Committees across Wales and the Adjudication Panel for Wales will be helpful in achieving this.
- 11.** The list is not exhaustive and not all factors will be relevant to every case.
- 12.** When they have received sufficient information to assess the complaint, they will aim to make a decision on whether they will investigate the complaint within six weeks.
- 13.** If a complaint does not meet the requirements of the two-stage test, they will notify the complainant of their decision in writing. They will share the

decision with the Monitoring Officer and Clerk (in the case of a Community Council).

- 14.** If they decide to investigate the complaint, they will notify the complainant and the said Councillor about the complaint. The Councillor does not need to respond if they do not wish to. However, it would be helpful if they could identify any concerns that they may have or identify any witnesses they feel should be contacted early in the course of the investigation so that these may be promptly resolved or considered. The investigation will be conducted by one of the Investigation Officers. The investigations are conducted in private. The Councillor impacted is therefore asked not to contact or discuss the complaint with any potential witnesses or persons who may be involved in the matter, whether directly or indirectly, this is to avoid any prejudice to the investigation. Conduct of this kind may amount to a breach of the Code.
- 15.** Where they receive a request from the media or a third party for information relating to a complaint received and/or an investigation, they will confirm that they have received a complaint or that they are investigating. They will not share any further details.
- 16.** The Investigation Officer will usually obtain further relevant documentary and witness evidence. Each investigation varies and while it may be necessary to interview those involved, some cases may be concluded through examination of documents alone. They aim to complete all investigations within 12 months, but most are concluded sooner. If, for any reason, they consider it necessary to discontinue our investigation, they will write to all parties explaining this decision.
- 17.** When all reasonable enquiries are completed, the Investigation Officer will review the evidence gathered and decide whether it is supportive of a breach of the Code and whether it is in the public interest to continue with the investigation. If so, they will send to the Councillor copies of the relevant evidence gathered, together with an invitation to attend an interview. The information provided to in advance of or during your interview will be disclosed for the purposes of their investigation in accordance with the Local Government Act 2000. It should be held in strictest confidence and should not be shared with anyone other than a legal or other adviser. Further disclosure may amount to a breach of the Code. In addition, the member should not discuss the evidence you intend to provide at interview or contained within any witness statement or document provided with persons who may be involved in the investigation,

whether directly or indirectly. Such contact may prejudice the investigation and be construed as a similar breach of the Code.

18. Interviews will be recorded and will be conducted face-to-face (in person) or using Microsoft Teams, unless there are exceptional circumstances.
19. When they have all the information required, they will write a report or letter setting out the evidence they have considered and the conclusions they have reached.
20. If they conclude there is no evidence to suggest that a breach the Code of Conduct has occurred, they will close the investigation and provide written reasons for this decision to all parties to the complaint. Once they have issued a decision not to investigate a complaint or to close an investigation or that no further action is appropriate, their task is effectively ended, and the file is closed. However, a complainant can ask (within twenty working days) for them to review a decision not to investigate the complaint. They will not re-open a complaint solely because the complainant disagrees with our decision. If, however following review a contrary decision is taken they will write to the Councillor to explain this.
21. They may determine in some circumstances that no further action is appropriate. Again, written reasons for this decision will be sent to all parties.
22. Where they find that a complaint is justified and it is also considered to be in the public interest to do so, they may refer it either to the Standards Committee of the relevant authority, or to a tribunal convened by the Adjudication Panel for Wales to make a determination on the issues.

**Financial Impacts:**

23. No implications.

**Integrated Impact Assessment:**

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

**Valleys Communities Impacts:**

25. No implications

**Workforce Impacts:**

26. No implications

**Legal Impacts:**

27. There are no legal impacts associated with this report.

**Consultation:**

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

**Recommendations:**

29. That Members note the role of the Public Service Ombudsman for Wales in addressing Code of Conduct complaints.

**Appendices:**

30. None

**List of Background Papers:**

31. None

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