

CITY & COUNTY OF CARDIFF DINAS A SIR CAERDYDD

STANDARDS AND ETHICS COMMITTEE: 21 OCTOBER 2014

REPORT OF THE MONITORING OFFICER AGENDA ITEM: 9

HEARINGS PANEL DECISION & PROCEDURES

Reason for this Report

1. To notify the Committee of the Hearings Panel's decision on a complaint dealt with under the Local Resolution Protocol; and to allow the Committee to consider whether its procedures require any amendment.

Background

2. Under its terms of reference (paragraph (i)), the Standards and Ethics Committee has responsibility:
 - i) To hear and determine any complaints of misconduct by Members or a report of the Monitoring Officer, whether on reference from the Ombudsman or otherwise;

And a Hearings Panel (sub-committee) has been appointed by the Committee to discharge these functions on its behalf.

3. Complaints may be referred to the Hearings Panel by (i) the Ombudsman (under Part 3 of the Local Government Act 2000); or (ii) the Monitoring Officer, under the Local Resolution Protocol adopted by the Council (on 23/05/13, upon the recommendations of this Committee) to deal with relatively minor 'member on member' complaints.
4. At its meeting on 23rd July 2014, the Committee was notified of the Hearings Panel's determination in respect of a complaint referred to the Panel by the Ombudsman (case reference 201202666).

Issues

5. On 30th July, 8th September and 1st October 2014, the Hearings Panel met to consider a complaint referred to the Panel under the Local Resolution Protocol. The Hearings Panel's decision, dated 3rd October 2014, is appended as **Appendix A** to this report, for the Committee's information.

6. The complaint was heard in accordance with the Local Resolution Protocol Panel Hearing Procedure (“the Local Resolution Procedure”, adopted by the Panel following the Committee’s approval at its meeting on 16/07/13), appended as **Appendix B** to this report.
7. The Committee will note that the Hearings Panel found no breach of the Members’ Code of Conduct in this case, but decided to make a number of recommendations as a consequence of matters arising from the Hearing. The Hearing Panel’s decision has been published on the Council’s website, as required under the Procedure.
8. The Committee will note that the Local Resolution Procedure gives the Chair of the Panel considerable discretion to vary the procedure where necessary (please see paragraph 6.1 of the Procedure); and in this case, the procedure was varied, with the consent of the parties, in the manner set out in the Hearings Panel’s decision, paragraph 2.
9. The Committee is recommended to note the decision of the Hearings Panel set out at **Appendix A**; and to consider whether the Local Resolution Procedure (**Appendix B**) requires any amendment.
10. The Committee may also wish to consider the Procedure for Hearings referred to the Committee by the Ombudsman (“the Ombudsman Referrals Hearings Procedure”, approved by the Committee on 20/03/12), attached as **Appendix C**. However, Members should note that the procedure for this type of Hearing is subject to the legal provisions of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001. Further advice will be provided at the Committee meeting on any specific issues of concern in this regard.

Legal Implications

The relevant legal implications are set out in the body of the report.

Financial Implications

There are no direct financial implications arising from this report.

RECOMMENDATION

The Committee is recommended to:

1. Note the decision of the Hearings Panel appended at **Appendix A**; and
2. Consider and comment on whether any changes should be made to the Hearings Panel's procedures (**Appendix B** and or **Appendix C**), and instruct the Monitoring Officer accordingly.

Marie Rosenthal
County Clerk and Monitoring Officer
14 October 2014

Appendices

Appendix A	Hearings Panel's Decision 03/10/14
Appendix B	Local Resolution Protocol Panel Hearing Procedure
Appendix C	Procedure for Hearings (Ombudsman's Referrals)

Background Papers

Standards & Ethics Committee report 'Hearings Panel's Determination of Public Services Ombudsman for Wales Case 201202666' dated 23rd July 2014

Standards & Ethics Committee report 'Local Resolution Protocol', dated 16/07/13; and minutes thereof;

Standards & Ethics Committee report 'Proposed Amendments to the Procedure for Dealing with Allegations Made Against Councillors and Referred to the Standards and Ethics Committee' 20/03/12; and minutes thereof

Local Resolution Protocol, Council report 23/05/13

COUNTY COUNCIL OF THE CITY & COUNTY OF CARDIFF

STANDARDS & ETHICS COMMITTEE

HEARINGS PANEL

REF: CDC 23

Held at County Hall on 30 July, 8th September and 1 October 2014

Independent Panel Members: - Richard Tebboth, Chair

Dr. James Downe

David Hugh-Thomas

1. Background

A Complaint was made by Councillor Paul Mitchell against his fellow ward Councillor Neil McEvoy.

The Complaint was received in the first instance by the Monitoring Officer who held discussions with both councillors. When it became clear that the matter could not be resolved informally, it was referred to the Standards & Ethics Committee. The Committee in turn established a Hearings Panel to deal with the matter, under the Local Resolution Protocol agreed by the Council on 23rd May 2013.

2. Procedure

The Procedure for Hearings is set out in the Local Resolution Protocol Panel Hearing Procedure agreed by the Standards & Ethics Committee.

Considerable discretion is afforded to the panel to vary the procedure. In this instance the procedure was varied, with the consent of the parties, in the following respect:

- The requirement for the parties to submit written summaries, as set out in the procedure was waived. The complainant had submitted an e-mail setting out his areas of concern, accompanied by copies of Twitter and Facebook entries; these were seen in advance by the respondent.
- Initial Hearings, for the purposes of establishing the facts, were held in camera rather than in public, with each party in turn rather than together.
- The Hearing Panel was arranged for the 23 July but was postponed at the request of Councillor McEvoy to the 30 July 2014. The Panel resumed on the 8 September to determine the matter but Councillor McEvoy did not attend. At

the request of Cllr McEvoy the Hearing Panel reconvened on the 1 October 2014.

3. Findings of Fact

The factual evidence comprises of paper copies of entries on social media, namely Twitter and Face book, provided by the complainant. The respondent accepts that these are accurate copies and that he was responsible for entries attributed to him.

4. Did the Member follow the Code?

The Complainant alleges that comments in the Social Media by the respondent breached sections of the Code, as set out in the document headed 'Complaint Ref:CDC23 Councillor Paul Mitchell v Councillor Neil McEvoy' and divided into Sections Numbered 1 – 14.

The respondent maintains that the Social Media entries were all fair comment and that, as expressions of political opinion, were in any case protected by Article 10 of the European Convention on Human Rights. A Panel has considered these matters and has reached the following conclusion.

The majority of the Social Media entries are indeed expressions of political opinion and are permissible as such. Many are similar to comments previously referred to the Public Services Ombudsman for Wales, which were found not to constitute a breach of the Code. The complainant has suggested that, as a Member of the Council, the respondent should be under an obligation to represent fairly the policies of the Council. Definitions of fairness are debateable and it is an accepted part of political life that opposing parties will put different interpretations on the same policies; they are entitled also to question what may happen, rather than accept what is supposed to happen. For this majority of social media entries, therefore, we are satisfied that there is no breach of the Code.

We have considered also whether the sheer volume and persistence of comments may constitute bullying or harassment in its own right. We have come to the conclusion that this is not so. The evidence before us is of a style of doing politics, in particular oppositional politics that can be indiscriminate in its application. It may not always be dignified or indeed reasonable, but it is not unprecedented in political life in the UK and it must be accepted.

We do, however, have concerns over some aspects of what is before us.

Despite the protection afforded to political comment by Article 10 of the European Convention on Human Rights, there is a line to be drawn between political and personal comment (as noted by the Ombudsman in her decision letter of 6th February 2014 concerning comments which were 'disrespectful, offensive and unnecessary and do not appear to be made in any political context').

While that line may not have been crossed in the evidence before us, there are examples close to the line.

We view with concern the making of public accusations against individuals, without any independent determination, on matters which may constitute misconduct or crime. One such accusation is made against a named Councillor, another against an individual referred to as 'a Labour activist'. If such accusations have substance, they should be referred to the proper authorities for due process and, if appropriate, a fair hearing. Public comment of this kind may jeopardise due process and fairness, and may create the impression that accusations are made to gain party political advantage. This may in turn bring into disrepute the maker of the accusations, and the office which he occupies.

We view also with concern comment on any individual cases, concerning family disputes and child protection concerns, which have come to the notice of the respondent in his role as the Ward Councillor. Although the respondent claims that he has taken reasonable steps to conceal individual identity, there will be a risk that some local people could identify those concerned. In one case, concerning matters of child protection, the respondent claims that he had no option but to go public because he had been frustrated in his attempt to raise justified concerns in more conventional ways.

As an elected Councillor, the respondent enjoys considerable access to, and right of audience with, senior Members and officers of the Council, the Police and other Public Bodies. If he is not satisfied with responses received there, he has access through political channels to national politicians and to government ministers to raise concerns. We also fear that discussion of these matters in public settings and the adoption of an adversarial approach may militate against the best interests of those individuals he seeks to represent.

We have considered whether any of the evidence constitutes a breach by the respondent of his obligations under the Code of Conduct not to disclose confidential information or information which should reasonably be regarded as being of a confidential nature. Whilst we consider there has been a risk of this, after careful analysis of the evidence before us we do not on balance find a breach of the Code

However the Local Resolution Procedure (Section 11.1.b) provides for the Panel to make recommendations as a consequence of any matters arising from the Hearing, and this we propose to do.

We recommend that:-

- The respondent should avoid gratuitously disrespectful, offensive and unnecessary personal comment;
- The respondent should exercise greater caution about, or refrain from, making or repeating public allegations against individuals without independent determination of misconduct or crime.
- The respondent should exercise great care when publishing matters relating to individual family circumstances so as not to breach his obligations in relation to confidential matters

5. The Written Decision

A copy of this written decision shall be published on the Council's web-site. A copy shall also be sent to the Public Services Ombudsman for Wales.

Dated: Friday 3 October 2014

Appendix A

Local Resolution Protocol

1. Introduction

- 1.1. By way of background, around a third of complaints referred to the Public Services Ombudsman for Wales (**Ombudsman**) are made by a Member against a fellow Member. Many of these complaints relate to low-level behavioural issues, typically during what may often be seen as the "cut and thrust" of normal Council debates and local politics. Many of these, if investigated by the Ombudsman, would not result in a sanction being imposed.
- 1.2. This Protocol has been adopted in response to the Ombudsman's latest guidance on the Code of Conduct for Members (**Code**) which states that "low-level, Member-on-Member" complaints relating to breaches of the Code should be dealt with at a local level. The Ombudsman's aim of doing so is to seek the resolution of matters at an early stage so as to avoid unnecessary escalation.
- 1.3. This Protocol seeks to define what is meant by "low-level, Member-on-Member" complaints and sets out the procedure to be adopted in response to them.
- 1.4. It is important to note that this protocol does not preclude Members from referring any complaint to the Ombudsman 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 Local Protocol before referring low-level complaints to the Ombudsman.

2. What is a "low-level, Member on Member" complaint?

- 2.1. In order to fall within the remit of this Protocol a complaint should satisfy all of the following criteria:
 - a. The complaint is made by a Member of the Council and relates to a breach of the Code by a fellow Member.¹
 - b. The complaint is "low-level" in nature. Whether or not a complaint is "low-level" in nature will be dependant on the individual circumstances of a complaint.

The Ombudsman has indicated that *"typically these complaints will be about alleged failures to show respect and consideration for others as required by*

¹ Members should not encourage non-Members to make complaints simply to avoid the application of this Protocol. Doing so, in itself, is likely to be viewed as a breach of the Code (for example, under Paragraph 6(1) of the Code).

paragraph 4(b) of the Code or the duty to not make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code".

If you are unsure whether a matter you wish to complain about is "low-level" then you may wish to discuss this with the Monitoring Officer (who may consult with the Ombudsman's office) to obtain guidance.

- c. The complaint does not relate to repeated occurrences of similar conduct that has already been dealt with under this Protocol or by the Ombudsman. In the event that the complaint relates to such a "repeated offence" it is likely that it will be appropriate to refer the matter to the Ombudsman directly.

3. Procedure

- 3.1. In the event of a Member seeking to make a complaint that may fall within the definition of a "low-level, Member on Member" complaint, that Member should first arrange to meet with the Monitoring Officer (or their deputy or other appointed officer who may assume the role of the Monitoring officer under this Protocol). The purpose of doing so is to determine whether the matter should be dealt with under this Protocol or whether the matter should be referred directly to the Ombudsman.
- 3.2. If it is decided that the matter should be dealt with under this Protocol the following procedure shall be followed.
- 3.3. Firstly, the Monitoring Officer will consider whether the matter can be resolved by mutual resolution. If so, then the Monitoring Officer shall arrange a meeting of the Members concerned with the aim of seeking an informal resolution of the matter. In doing so the Monitoring Officer may:
 - i require the attendance of any Group Leader, Member or Officer as they determine may be beneficial to resolving the complaint; and
 - ii adopt such arrangements (such as "breaking out" to meet with the individuals concerned privately or adjourning the meeting to ask individuals to reflect on their position) as they deem beneficial in an attempt to resolve the complaint.
- 3.4. If the matter cannot be resolved by mutual resolution, the Member bringing the complaint may ask the Monitoring Officer to refer the matter to the Standards & Ethics Member Hearing Sub-Committee (**Hearing Panel**).

4. Standards & Ethics Hearing Panel Proceedings

4.1. The Hearing Panel shall adopt and make available to all Members a procedure under which it shall carry out hearings. If a matter is brought before the Hearing Panel then the Hearing Panel shall hold a hearing to determine the matter in accordance with its hearing procedure.

4.2. The sanctions available to the Hearing Panel should it find that there has been a breach of the Code shall be:

- a. A statement that the complaint has substance, but no further action is required.
- b. Referral of the Member for training on a particular topic.
- c. A private or public written warning. If public, that warning shall be announced and circulated at the next meeting of Council.
- d. Censure of the Member at the next meeting of Council.
- e. Referral to the Ombudsman for investigation if the complaint is considered to be deserving of more serious sanctions than the Hearing Panel has the power to impose.

4.3. In making a decision on the sanctions to be imposed, the Hearing Panel may take into account (but is not limited to considering):

- a. The severity of the offence.
- b. The level of remorse the Member in question has shown and any apologies they have made.
- c. Whether there is an indication of the behaviour being repetitious or whether the Member has previously been found to have committed similar offences.

CARDIFF COUNTY COUNCIL
STANDARD AND ETHICS COMMITTEE

LOCAL RESOLUTION PROTOCOL

PANEL HEARING PROCEDURE

SEE CITEE
21 OCTOBER
2014
APPENDIX B2
ITEM 9

1. Introduction

- 1.1. Cardiff Council has adopted a Local Resolution Protocol. The purpose of the Protocol is to enable "minor member on member" allegations of breaches of the Member's Code of Conduct to be dealt with at a local level, rather than being referred to the Public Services Ombudsman for Wales.
- 1.2. In accordance with the Protocol a sub-committee of the Standards and Ethics Committee has been formed to carry out hearings in relation to alleged breaches. This sub-committee is referred to in this document as the "**Hearings Panel**".
- 1.3. This document sets out how matters may be referred to the Hearings Panel and the Procedure that the Panel shall adopt in relation to matters that are referred to it.

2. Referral to the Hearing Panel

- 2.1. The Protocol provides for the parties involved in the complaint to first attempt to informally resolve the matter with the assistance of the Monitoring Officer. The complaint may be referred to a meeting of the Hearing Panel if:
 - a. the Monitoring Officer is of the view that making informal attempts to mutually resolve the matter is inappropriate; or
 - b. having made attempts to mutually resolve the matter, the Member who is making the complaint (known as the "**Complainant**") asks the Monitoring Officer to refer the matter to the Hearing Panel.
- 2.2. In such cases the Monitoring Officer will make arrangements convene a meeting of the Hearing Panel and to refer that matter to it.
- 2.3. Prior to the Hearing, the Monitoring Officer will arrange for the following documents to be made available to the Panel Members, the Complainant and the Member against whom the complaint is made (known as the "**Respondent**").¹

¹ We have not provided timescales in an attempt to leave flexibility as to how these documents are produced and how quickly a Panel can be convened.

- a. A brief written summary from the Complainant, comprising of:
 - i a brief summary of the conduct that has given rise to the complaint;
 - ii a list of any witnesses the Complainant wishes to call to appear before the Hearing Panel;
 - iii a list and copies of any documents the Complainant wishes to draw to the attention of the Hearing Panel; and
 - iv details of the paragraphs of the Code that are alleged to have been breached.
 - b. Following the Monitoring Officer giving the Respondent a copy of the documents referred to in paragraph a above, a brief written summary of the response from the Respondent to the allegations, including:
 - i a brief summary of the Respondent's response to the facts as alleged by the Complainant;
 - ii a list of any witnesses the Respondent may wish to call to appear before the Hearing Panel; and
 - iii a list and copies of any documents the Respondent may wish to draw to the attention of the Hearing Panel.
 - c. If the Monitoring Officer believes it appropriate in the circumstances, a brief written report from the Monitoring Officer in relation to any investigations into or attempts to settle the complaint or any other matter the Monitoring Officer believes to be relevant to the deliberations of the Hearing Panel.
- 2.4. If a matter involves "cross allegations" with two or more Members making allegations of breaches of the Code against each other, the Monitoring Officer (in consultation with the Chair) may convene one Hearing to deal with all such allegations simultaneously. In such circumstances the Monitoring Officer may amend the requirements of paragraph 2.3 to ensure that fair opportunity to present and respond to complaints are afforded to each Member prior to the Hearing.

3. Legal Advice and the Monitoring Officer's Role at Hearings

- 3.1. The Monitoring Officer (or the Deputy Monitoring Officer) shall be in attendance at Hearings to advise the Hearing Panel.
- 3.2. If the Monitoring Officer has investigated a complaint, he/she will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another of the Authority's lawyers will be present to advise the Committee.
- 3.3. The Committee may take legal advice from its advisor at any time before or during the Hearing or while the outcome is being considered.

The substance of any legal advice given to the Committee should be shared with the Complainant and Respondent, but not the detail of the request for legal advice.

4. Representation

4.1. Members may be represented or accompanied during the Hearing by another Member, or any other person if they so desire. However, when making a decision on representation Members should bear in mind that Local Resolution is intended to provide a relatively informal forum to resolve relatively minor complaints.

4.2. Members are responsible for meeting their own costs of any representation.

5. Composition and Decisions of the Hearing Panel

5.1. The Hearing Panel shall be composed of three independent members of the Standards and Ethics Committee. The Standards and Ethics Committee may also resolve to co-opt suitably experienced independent persons to serve as members on the Hearing Panel.

5.2. The Hearing Panel shall appoint one of them to serve as Chair for each Hearing.

5.3. Except for decisions that are expressed in this Procedure to be taken by the Chair, any decision of the Hearing Panel shall be made on the basis of a simple majority vote.

6. General Powers of the Hearing Panel in relation to this Procedure

6.1. The Chair may agree to vary this procedure in any particular instance where they are of the opinion that such a variation is necessary in the interests of fairness. The Chair may also vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure).

6.2. Panel members may ask any questions they wish to anyone taking part in the Hearing.

6.3. The Panel may also require the attendance of a particular person or the production of specific documentation where they are of the view it would assist their deliberations.

7. Introductions

7.1. At the start of the Hearing, the Chair shall introduce each of the Members of the Hearing Panel and everyone involved in the Hearing. The Chair shall then explain the procedure that the Panel is to follow in

conducting the Hearing and should obtain confirmation from everybody taking part in the Hearing that they have understood the procedure.

8. Preliminary Procedural Issues

- 8.1. The Panel should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.
- 8.2. If a party wishes to adduce additional information to the Panel that was not included in the summaries they produced for circulation prior to the Hearing they should apply to the Panel for permission to do so before the commencement of the formal part of the Hearing.
- 8.3. It will assist if the Legal Advisor and the other party have been provided with details of the late information as early as possible but at least two days before the commencement of the Hearing. The Panel retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present evidence which is relevant to the matters before the Panel.
- 8.4. If any party fails to attend the Hearing, the Panel may, depending on any reasons given for such non-attendance, continue with the proceedings or adjourn the Panel to another date.

9. Stage 1 – Formal Findings of Fact

- 9.1. After dealing with any preliminary issues, the Panel should then consider whether or not there are any significant disagreements about the facts.
- 9.2. If there is no disagreement about the facts, the Panel can move on to the next stage of the Hearing.
- 9.3. If there is disagreement about the facts, the Complainant should be invited to make representations to support the allegations they are making. With the Panel's permission, the Complainant may call witnesses to give evidence. The Panel may allow the Respondent an opportunity to challenge or comment upon any evidence put forward by the Complainant or any witness called by the Complainant.
- 9.4. The Respondent should then have the opportunity to make representations to support their version of the facts. With the Panel's permission, the Respondent may call witnesses to give evidence. The Panel may allow the Complainant an opportunity to challenge or comment upon any evidence put forward by the Respondent or any witness called by the Respondent.

9.5. The Panel shall then retire to consider their decision in relation to the facts.

9.6. Once the Panel has reached a decision and the Hearing has been re-convened, the Chair will announce the Panel's findings of fact.

10. Stage 2 – Did the Member fail to follow the Code?

10.1. The Panel then needs to consider whether or not, based on the facts it has found, the Respondent has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Complainant or the Respondent an opportunity to re-examine the facts of the case.

10.2. The Complainant should first be invited to give reasons as to why they believe (on the facts as determined by the Panel) the conduct of the Respondent amounts to a breach of the Code.

10.3. The Respondent should then be invited to give reasons as to why they believe (on the facts as determined by the Panel) their conduct does not amount to a breach of the Code.

10.4. The Panel shall then retire to consider their decision in relation to whether the facts found by the Panel amount to a breach of the Code.

10.5. Once the decision is reached and the Hearing re-convened, the Chair will announce the Panel's decision as to whether there has been a breach of the Code.

11. Stage 3 – Breach of the Code and Sanctions

11.1. If it is found that the Councillor has not breached the Code of Conduct.

- a. If the Panel determines that the Respondent has not breached the Code, the Panel shall dismiss the case.
- b. However, the Panel may consider whether it should make any general recommendations to the Members involved or all Members as a consequence of any matters arising from the Hearing.

11.2. If it is found that the Councillor has failed to follow the Code of Conduct

- a. If the Panel determines that the Respondent has failed to follow the Code, it will consider any representations from:
 - i the Complainant; and

ii the Respondent,

as to any extenuating circumstances and whether or not the Panel should impose any sanction and what form that sanction should take.

- b. The Panel shall then retire to consider their decision in relation to whether a sanction should be imposed. In making that determination the Panel may consider any factor they consider to be relevant, including:

- i the severity of the offence;
- ii the level of remorse the Respondent has shown and any apologies they have made; and
- iii whether there is any indication of the behaviour being repetitious or whether the Respondent has previously been found to have committed similar offences.

- c. Once the decision is reached and the Hearing re-convened, the Chair will announce the Panel's decision as to whether a sanction will be imposed.

11.3. Sanctions Available to the Panel

- a. The Panel may impose such sanctions as are stated as being available to it in the Protocol (as amended from time to time).

12. The Written Decision

- a. The Panel will announce its decision orally on the day.
- b. The Panel will also issue a written decision shortly after the end of the Hearing. A copy of the written decision shall be published on the Authority's website not later than 14 days after the date of the Hearing.

CARDIFF COUNTY COUNCIL
STANDARD AND ETHICS COMMITTEE

PROCEDURE FOR HEARINGS

Adopted by Standard and Ethics Committee on 20 March 2012.

Introduction

The Standard and Ethics Committee needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor, Community Councillor or co-opted member of any committee or sub committee in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority. All such allegations must in the first instance be made to the Public Services Ombudsman for Wales, who will decide whether or not to investigate the allegation.

Standard and Ethics Committee Hearings will occur as the result of either:

- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer. The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standard and Ethics Committee.
- (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer, for reporting to the Standard and Ethics Committee.

The following procedure should be used in respect of both instances referred to above and provides the Standard and Ethics Committee with a consistent approach in determining matters locally.

Initial Determination

Prior to the Hearing, following receipt of a Report and any recommendations from the Monitoring Officer, or a Report from the Ombudsman, together with any recommendations of the Monitoring Officer, the Standard and Ethics Committee must determine either:

- (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned and must notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly; or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.

If the Standards and Ethics Committee makes a determination under paragraph (b) above, the Hearing rules set out below will be followed at a subsequent meeting of the Committee.

The Monitoring Officer

If the Monitoring Officer has investigated a complaint, he/she will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another of the Authority's Lawyers will be present to advise the Committee.

1. Interpretation

- (a) "Councillor" means the Member or former Member of the County or Community Council or the co-opted member of any committee or sub committee who is the subject of the allegation being considered by the Standards and Ethics Committee, unless stated otherwise. Unless the context requires otherwise it also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the Public Services Ombudsman for Wales and includes his/her nominated representative. In the case of matters that have been referred to the Monitoring Officer for investigation, references to the "Investigating Officer", means the Monitoring Officer, or a person appointed by the Monitoring Officer to undertake the investigation, and his/her nominated representative.
- (c) "Legal Advisor" means the officer responsible for providing legal advice to the Standards and Ethics Committee. This may be the Monitoring Officer, or another legally qualified officer of the Authority.

2. Powers of the Standards and Ethics Committee

- (a) The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
- (b) The Chair may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
 - (i) the ability to combine Stages 1 and 2 of this procedure set out below so that the Councillor and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and

- (j) the ability to request that the proceedings be conducted by exchange of written submissions only if the Councillor so agrees.
- (c) The members of the Committee may question anyone taking part in the proceedings on a point they raise in their representations or to seek clarification of views on points raised by others appearing at the Hearing.
- (d) The Committee may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve conflict on facts.

3. Representation

The Councillor may be represented or accompanied during the Hearing by Counsel or a Solicitor, or any other person he or she desires. The Councillor is responsible for meeting the cost of any representation.

4. Legal Advice

The Committee may take legal advice from its Legal Advisor at any time before or during the Hearing or while the outcome is being considered. The substance of any legal advice given to the Committee should be shared with the Councillor and the Investigating Officer, if they are present, but not the detail of the request for legal advice.

5. Prior to the Hearing

Prior to the hearing the Investigating Officer shall set out in writing the results of their investigation and send copies of that report together with copies of all written evidence the report relies upon to the Committee and to the Councillor. If relevant the Investigating Officer's report may simply refer the Committee to any report of the Public Services Ombudsman for Wales or other pre-existing report. The report should also indicate any witnesses the Investigating Officer wishes to call together with brief reasons for doing so (if any).

The Councillor shall be required to respond in writing to the Committee and copied to the Investigating Officer within three weeks of receipt of the Investigating Officers' report. The Councillor's written response need not set out the Councillor's position in full, but it should:

- (a) indicate all areas of the Investigating Officers' Report that the Councillor intends to dispute with brief reasoning;
- (b) attach all written evidence the Councillor intends to rely upon;
and

- (c) indicate any witnesses the Councillor wishes to call and brief reasons for doing so (if any).

Following receipt of the Councillor's written response the Committee shall write to the Investigating Officer and the Councillor confirming the following:

- (a) the date, time and location set for the hearing (having taken reasonable steps to accommodate the availability of the Councillor and the Investigating Officer);
- (b) whether the witnesses the Investigating Officer and the Councillor wishes to call will be allowed (giving reasons and allowing opportunity to respond if any witnesses are not to be allowed); and
- (c) any other steps the Committee may in its discretion require prior to the hearing.

6. Introductions

At the start of the Hearing, the Chair shall introduce each of the Members of the Standards and Ethics Committee and everyone involved in the Hearing. The Chair shall then explain the procedure which the Committee is to follow in its conduct of the Hearing and should obtain confirmation from everybody taking part in the Hearing that they have understood the procedure.

7. Preliminary Procedural Issues

- (a) The Committee should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.
- (b) If either party want to adduce further information to the Committee they should make an application to the Committee for permission to do so prior to the commencement of the formal part of the Hearing. It will assist if the Legal Advisor and the other party have been provided with details of the late information as early as possible but at least two days before the commencement of the Hearing. The Committee retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Committee.
- (c) If the Councillor fails to attend the Hearing, the Committee may, depending on the reason for such non-attendance, continue with

the proceedings or adjourn the Hearing to another date to give the Councillor a last opportunity to make representations.

8. Stage 1 – Formal Findings of Fact

- (a) After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's Report.
- (b) If there is no disagreement about the facts, the Committee can move on to the next stage of the Hearing.
- (c) If there is a disagreement about the facts, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Report (for the avoidance of doubt, the Investigating Officer may choose to invite the Committee to consider the evidence given in the Report and not make any further submission). With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may allow the Councillor an opportunity to challenge or comment upon any evidence put forward by any witness called by the Investigating Officer.
- (d) The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the Committee's permission, to call any necessary witnesses to give evidence.
- (e) At any time, a Member of the Committee may question any of the people involved or any of the witnesses. The Committee may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- (g) If the Councillor disagrees with any relevant fact in the Investigating Officer's Report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the Committee will consider whether or not it would be in the public interest to continue in his/her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Committee may then:
 - (i) continue with the Hearing, relying on the information in the Investigating Officer's Report;

- (ii) allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
- (iii) adjourn the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present, if he or she is not already present.
- (h) The Committee shall then retire to consider their decision. Depending on the number of persons attending the Hearing, the Committee will either move to another room to deliberate on the representations and evidence in private or request the parties to leave the room during the deliberations.
- (i) Once the decision is reached and the meeting re-convened, the Chair will announce the Committee's findings of fact.

9. Stage 2 – Did the Member fail to follow the Code?

- (a) The Committee then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case in question.
- (b) The Councillor should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
- (c) The Committee should then consider any verbal or written representations from the Investigating Officer.
- (d) The Committee may, at any time, question anyone involved on any point they raise in their representations.
- (e) The Councillor should be invited to make any final relevant points.
- (f) The parties shall then retire or the Committee will then move to another room to consider the representations and make its decision as to whether or not the Member has failed to follow the Code of Conduct.
- (g) On the Hearing being re-convened, the Chair will announce the Committee's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

10. Stage 3 – Breach of the Code and Sanctions

10.1 If it is found that the Councillor has not failed to follow the Code of Conduct.

If the Committee decides that the Councillor has not failed to follow the Code of Conduct, the Committee can however consider whether it should make any general recommendations to the Authority in question.

10.2 If it is found that the Councillor has failed to follow the Code of Conduct

- (a) If the Committee decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:
 - (i) whether or not the Committee should set a penalty; and
 - (ii) what form any penalty should take.
- (b) The Committee may question the Investigating Officer and the Councillor and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
- (c) The parties shall then retire or the Committee will then move to another room to consider whether or not to impose a penalty on the Councillor and, if so, what the penalty should be.
- (d) On reconvening the Hearing, the Chair will announce the Committee's decision.

10.3 If it is found by the Standards and Ethics Committee that a Councillor has failed to comply with an Authority's Code of Conduct

If the Committee finds that a Councillor has breached the Code, it can decide:

- (a) that no action needs to be taken in respect of that failure; or
- (b) that the Councillor should be censured; or
- (c) that the Councillor should be suspended or partially suspended from being a Member or Co-opted Member of the Authority in question, for a period not exceeding six months.

11. Recommendations to the Authority

After considering any verbal or written representations from the Investigating Officer and the Councillor (should it choose to do so), the Committee will consider whether or not it should make any recommendations to the Authority concerned, with a view to promoting high standards of conduct among Councillors.

12. The Written Decision

The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the Hearing. It is good practice to prepare the full written decision in draft on the day of the Hearing, before memories fade.

13. Appeals

Where the Standards and Ethics Committee determines that a person has failed to comply with the Code of Conduct, that person may appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The grounds and procedure for making such an appeal are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

Any such appeal must be instigated by giving notice in writing to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the Standards and Ethics Committee's determination.

14. Publication

The Committee will cause a report of the proceedings to be published on the Authority's website not later than 14 days after the period for an appeal or the appeal process has been completed, whichever is the later, and also publish a notice in a newspaper circulating in the area.