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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL  
SERVICES & MONITORING OFFICER**

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**MEMBERS' CODE OF CONDUCT COMPLAINTS UPDATE – QUARTER 2 OF  
2023/24; AND OMBUDSMAN'S ANNUAL LETTER 2022/23 AND  
QUARTERLY NEWSLETTER**

**Reason for Report**

1. To provide the Committee with:
  - (i) An update on complaints made against Members of Cardiff Council or any of Cardiff's Community Councils alleging a breach of the Members' Code of Conduct, in particular, complaints notified to the Monitoring Officer during Quarter 2 of 2023/24 (the period running from 1<sup>st</sup> July 2023 to 30<sup>th</sup> September 2023); and
  - (ii) The Public Services Ombudsman for Wales ('PSOW') Annual Letter 2022/23 for Cardiff Council and Quarterly Newsletter, to allow the Committee to consider its contents in relation to Code of Conduct complaints.

**Background**

2. The Committee receives quarterly reports from the Monitoring Officer on complaints made against Members of Cardiff Council and Community Councils within its area, alleging a breach of the Members' Code of Conduct. (There are six Community Councils in Cardiff: Lisvane; Old St. Mellons; Pentyrch; Radyr and Morganstown; St. Fagans; and Tongwynlais.) These reports provide information to assist the Committee to discharge its functions, in particular:
  - i. To monitor and scrutinise the ethical standards of the Authority, its Members, employees and any associated providers of the Authority's services, and to report to the Council on any matters of concern;
  - ii. To advise the Council on the effective implementation of the Code including such matters as the training of Members and employees on the Code's application; and

- iii. To undertake those functions in relation to community councils situated in the area of the Council and members of those community councils which are required by law',
- (paragraphs (a), (c) and (g) respectively, of the Committee's terms of reference).
3. The Committee considers the number of complaints made and any themes or patterns emerging, but does not consider the specific details of each individual case, unless a complaint is formally referred to the Committee for a decision.
4. Complaints received during Quarter 1 of 2023/24 were reported to the Committee meeting on 25th July 2023.
5. Under the statutory ethical standards framework, the Public Services Ombudsman for Wales ('the Ombudsman') has responsibility for the investigation of complaints alleging a breach of the Members' Code of Conduct (as well as responsibility for complaints relating to maladministration and service failure by local authorities.) The Ombudsman issues an Annual Letter to each local authority providing an overview of complaints considered by the Ombudsman over the course of the year.

## Issues

6. During Quarter 2 of 2023/24, covering the period running from 1st July 2023 to 30th September 2023, a total of 6 complaints alleging a breach of the Members' Code of Conduct were notified to the Monitoring Officer by the Ombudsman.
7. The table below shows the number and type of complaints notified to the Monitoring Officer during Quarter 2 of 2023/24, alongside comparative figures for previous quarters:

	Q2 Jul – Sept 2022	Q3 Oct – Dec 2022	Q4 Jan – Mar 2023	Q1 Apr – Jun 2023	Q2 Jul – Sept 2023
Local Resolution	1	0	0	1	<b>0</b>
Ombudsman*	1	2	1	1	<b>6</b>
<b>Total</b>	2	2	1	2	<b>6</b>

\* Reported on the basis of the date upon which the complaint is notified to the Monitoring Officer.

## Type of Complaint

	Q2 Jul – Sept 2022	Q3 Oct – Dec 2022	Q4 Jan – Mar 2023	Q1 Apr – Jun 2023	Q2 Jul – Sept 2023
Member on Member	0	0	0	1	<b>0</b>
Public on Member	2	2	1	0	<b>4</b>
Officer on Member	0	0	0	0	<b>0</b>
Community Councillors	0	0	0	1	<b>2</b>
<b>Total</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>6</b>

8. Although there is an increase in the number of complaints reported to the Monitoring Officer during Quarter 2, compared to previous quarters, the Committee will recall that, following a recent change in the Ombudsman's notification procedure, the Monitoring Officer is only notified after the Ombudsman has considered a complaint, which means that the 6 complaints notified to the Monitoring Officer during Quarter 2 may have been submitted to the Ombudsman during one or more previous quarters. This makes it difficult to make meaningful comparisons in relation to the number of complaints made during each quarter.
9. Brief details of the 6 complaints notified to the Monitoring Officer during Quarter 2 are as follows:
  - (i) A community councillor submitted a complaint to the Ombudsman alleging that another community councillor (of the same community council) had made unfounded comments about them and disclosed information relating to an ongoing Ombudsman investigation (relating to the same two councillors) and in doing so had discriminated against the complainant, failed to show respect and consideration and used bullying behaviour towards them. The Ombudsman found that the Member's comments could reasonably be regarded as political expression and would therefore benefit from enhanced protection under Article 10 of the European Convention on Human Rights. The comments were not considered to be sufficiently offensive, intimidating or insulting to amount to bullying behaviour or a breach of the Code. The Ombudsman also found no evidence that the Member had disclosed confidential information or prejudiced the ongoing Ombudsman investigation. On this basis, the Ombudsman decided not to investigate the complaint.
  - (ii) A member of the public submitted a complaint to the Ombudsman alleging that a Member had breached the Code of Conduct by sharing an email from a constituent on social media. The Ombudsman found that there was nothing within the email which indicated that it was intended as private correspondence, nothing relating to Council business and nothing which identified the complainant. Therefore the

complainant could have no reasonable expectation that it would be treated as private. The email contained uninvited comments about the Member's private life, which the Member was entitled to view as intrusive and upsetting. The Member's actions were not suggestive of a breach of the Code and the Ombudsman therefore decided not to investigate the complaint.

- (iii) A member of the public submitted a complaint to the Ombudsman alleging that a Member had breached the Code of Conduct by failing to respond to the complainant's concerns in an appropriate manner. The Ombudsman found there was no evidence of a breach of the Code and decided not to investigate the complaint. Members may find it helpful to note the explanation given by the Ombudsman, which included the following:

*'Whilst I can appreciate that the complainant is disappointed that the Member did not support his concerns, I consider that the Member is entitled to her opinion. It is not the Member's place to consider complaints of ASB or noise which are for the Police, the Council and the relevant Housing Organisation to consider, and these bodies are already engaged in the matter. It is for Members to determine what concern it is appropriate for them to respond to and to choose how to represent their constituency. The Member is entitled to support the causes within the community that she wishes to. If the complainant is dissatisfied with the way that the Member is representing the community, it is open to the complainant to vote for an alternative candidate at the next election. I am not persuaded that the evidence presented is suggestive of a breach of the Code or, even if it could amount to a breach of the Code, that it would be in the public interest to pursue the matter.'*

- (iv) A member of the public submitted a complaint to the Monitoring Officer alleging that they had been assaulted (subjected to a verbal and physical attack) by a Member. The Monitoring Officer advised the complainant to refer any alleged assault to the Police and to report any alleged breach of the Code of Conduct to the Ombudsman. At the complainant's request, informal resolution was also considered. However, on the basis of the evidence supplied, the Monitoring Officer found there was insufficient evidence of a breach of the Code. The Monitoring Officer has since received confirmation that the Ombudsman is investigating this complaint and the outcome is awaited.
- (v) A community councillor complained that another community councillor (from the same council) had failed to show respect, had bullied and harassed them and failed to implement a council decision. The Ombudsman considered the complaint and found that the Member's comments related to Community Council business and could reasonably be regarded as political expression, benefiting from enhanced protection under Article 10 of the European Convention on Human Rights. The Ombudsman accepted that the complainant may have felt intimidated and threatened by the Member's emails, but was not persuaded that the contents of the emails were sufficiently offensive, intimidating or insulting to amount to bullying or a lack of respect and consideration. In relation to the alleged failure to

implement a council decision, the Ombudsman found there was no evidence that the alleged failure could be attributed to the Member's individual conduct. On this basis, the evidence was not suggestive of a breach of the Code and the Ombudsman decided not to investigate the complaint.

- (vi) A member of the public complained that a Member had behaved unprofessionally in a public meeting, which was described as 'throwing a tantrum'. The complaint was submitted to the Monitoring Officer, but the Monitoring Officer subsequently received notification that the complainant had also complained to the Ombudsman about the Member's behaviour at this meeting. The Ombudsman found there was no specific evidence of disrespectful, offensive or intimidating comments or intentionally false, misleading statements or any other breach of the Code and therefore decided not to investigate the complaint. As the complaint in relation to the Member's behaviour at the meeting in question has been determined by the Ombudsman, the Monitoring Officer was satisfied that the complaint does not require any further consideration under the Local Resolution Protocol.

- 10. The Committee will note that in five out of the six complaints notified to the Monitoring Officer by the Ombudsman during Quarter 2 of 2023/24, the Ombudsman decided not to investigate, because in each case, the evidence was not suggestive of a breach of the Code. In the one remaining case, the Ombudsman has decided to investigate the complaint and the outcome is awaited.

#### Update on Complaints reported previously

##### Quarter 1 of 2023/24

- 11. The report to the last Committee meeting included reference to a complaint about a Community Councillor, which the Ombudsman had decided to investigate, in part, following a review of her earlier decision not to investigate. The Monitoring Officer has not yet been notified of the Ombudsman's decision, so the details of this complaint must be kept confidential at this stage.

##### Quarter 2 of 2021/22

- 12. The complaints submitted during Quarter 2 of 2021/22 included a number of complaints which the Monitoring Officer had been attempting to resolve under the Local Resolution Protocol. Brief details of those complaints are provided below:
  - i. Two Members complained about allegedly inaccurate information contained in a political group leaflet. These complaints were raised with the leader of the group concerned, who was asked whether the inaccuracies were accepted and if so, whether they would be

corrected and an apology offered on behalf of the group. Agreement on a resolution has not been reached.

- ii. A Member (Cllr A) complained about comments made about them by another Member (Cllr B) during a meeting with other Members and Council officers. The complainant (Cllr A) considered the comments to be an unacceptable racist slur. In response, the Member (Cllr B) said that the offending comment was made following allegations made by the complainant (Cllr A) against them, which attacked their personal integrity, and Cllr B made a counter-complaint against the complainant (Cllr A). The counter-complaint was resolved informally, with Cllr B withdrawing the complaint and offering an apology to the complainant (Cllr A) for any upset caused by their comments. Cllr A has also been asked to apologise and consider withdrawing the complaint, but to date has not done so.
  - iii. A Member (the same Cllr A referred to in sub-paragraph (ii) above), complained about misleading information, which misrepresented what the complainant had said at a meeting with Members and Officers, being published on social media by another Member (the same Cllr B referred to in sub-paragraph (ii) above). To date it has not been possible to resolve this complaint by informal resolution.
  - iv. A Member (the same Cllr A referred to in sub-paragraphs (ii) and (iii) above) complained that another Member had posted untrue and misleading information about the complainant on social media. It has not been possible to resolve this complaint by informal resolution.
13. The Committee will recall that, in line with its recommendations, the Local Resolution Protocol has been revised to provide that an unresolved complaint shall not be referred to the Hearings Panel unless the Monitoring Officer is satisfied that there is direct evidence of a breach of the Code and that it is in the public interest to do so, with the proviso that any decision to not refer an unresolved complaint to the Hearings Panel must be made with the agreement of the Chair of the Standards and Ethics Committee (or Vice-Chair, in the absence of the Chair) - paragraph 3.5 of the Protocol.
  14. The Monitoring Officer has considered the four unresolved complaints referred to in paragraph 12 above, to determine whether or not a referral to the Hearings Panel is appropriate. In all four cases, the Monitoring Officer's view was that the conduct complained of was unlikely to constitute a breach of the Code of Conduct, because the Ombudsman's guidance and caselaw makes clear that Members are expected to have 'thick skins' in relation to political debates; and therefore, it would not be in the public interest for limited public resources to be used in referring these complaints to the Hearings Panel. Having reviewed the facts and the Monitoring Officer's advice in each case, the Chair has confirmed his agreement to the decisions not to refer any of these four complaints to the Hearings Panel. The parties have been notified accordingly.

### Ombudsman's Annual Letter 2022/23

15. The Ombudsman's Annual Letter 2022/23 for Cardiff Council (attached as **Appendix A** to this report) provides an overview of complaints relating to maladministration and service failure, as well as complaints relating to alleged breaches of the Members' Code of Conduct, and the actions being taken to improve public services.
16. The contents of the letter in relation to complaints about maladministration and or service failure are outside the terms of reference of the Standards and Ethics Committee. Members may wish to note that the provisions in these regards are being considered by Cabinet and the Governance and Audit Committee at their October meetings.
17. The Committee is invited to consider the contents of the Annual Letter in so far as they relate to Member conduct complaints only, in particular, Appendices E and F to the Annual Letter.
18. Members should note that the Ombudsman's office has corrected the categorisation of the outcomes shown in Appendix E to the Annual Letter, to confirm that the decision made in each of the 11 cases, after the Ombudsman's initial assessment of the complaint (the Ombudsman's two stage test which considers (i) whether there is evidence to suggest a breach of the Code; and (ii) whether it is in the public interest to investigate the matter), was 'not to investigate' the complaint in each case.

### Ombudsman's Quarterly Newsletter, August 2023

19. The PSOW has also commenced the production of quarterly Newsletters providing updates about casework trends and other work. The second edition of the Newsletter, issued in August 2023, is attached as **Appendix B**. The Newsletter provides a summary of the PSOW's work over recent months. Members' attention is drawn in particular to the decisions referred to within the Newsletter on referrals to Standards Committees and to the Adjudication Panel for Wales.

### **Legal Implications**

20. There are no direct legal implications arising from the recommendations of this report.

## Financial Implications

21. There are no financial implications arising directly from this report.

## Recommendation

The Committee is recommended to note the contents of the report and **Appendices A and B**, and make any appropriate observations and comments.

**Davina Fiore**

**Director of Governance and Legal Services and Monitoring Officer**

26 October 2023

## APPENDICES

Appendix A      Public Services Ombudsman for Wales, Annual Letter for Cardiff Council 2022/23

Appendix B      Public Services Ombudsman for Wales, Quarterly Newsletter, August 2023: [Our Quarterly Newsletter – August 2023 \(ombudsman.wales\)](https://www.ombudsman.wales/our-quarterly-newsletter-august-2023)

### Background papers

Standards & Ethics Committee report, 'Members' Code of Conduct Complaints Update – Quarter 1 of 2023/24', 25 July 2023: [Item 9 Report.pdf \(moderngov.co.uk\)](https://www.moderngov.co.uk/standards-ethics-committee-reports/members-code-of-conduct-complaints-update-quarter-1-2023-24)

Monitoring Officer's correspondence in relation to complaints (various)