

CITY AND COUNTY OF CARDIFF DINAS A SIR CAERDYDD

STANDARDS AND ETHICS SUB COMMITTEE: 26 MARCH 2012

REPORT OF THE MONITORING OFFICER AGENDA ITEM: 4

REPORT BY THE PUBLIC OMBUDSMAN FOR WALES ON AN INVESTIGATION INTO ALLEGED BREACHES OF THE CODE OF CONDUCT FOR MEMBERS BY A COMMUNITY COUNCILLOR

**APPENDIX A TO THIS REPORT CONTAINS EXEMPT INFORMATION AS
DEFINED IN SECTION 100(1) OF THE LOCAL GOVERNMENT ACT 1972
AND CATEGORIES 2 & 10 OF THE LOCAL AUTHORITIES (ACCESS TO
INFORMATION) (VARIATION) (WALES) ORDER 2007 AS DESCRIBED
BELOW:**

2 - "Information which is likely to reveal the identity of an individual"

**10 - "The deliberations of the Standards and Ethics Committee or of a
Sub-Committee of the Standards and Ethics Committee in reaching any
finding on a matter referred under the provisions of Part III of the Local
Government Act 2000 in reaching any finding on a matter referred to it."**

Reason for this Report

1. A complaint was made to the Public Ombudsman for Wales that a Community Councillor has failed to observe the Members Code of Conduct. The Ombudsman's report was completed on 23 January 2012. The conclusion of the report was that the matter was referred to the Monitoring Officer of Cardiff Council and the Standards and Ethics Committee.

Background

2. The Ombudsman's finding was that his report on the investigation should be referred to the Monitoring Officer of Cardiff Council, for consideration by the Council's Standards Committee.
3. At a meeting of the full Standards and Ethics Committee meeting held on 20 March 2012 this Sub Committee was formed to:
 - a. review the report;
 - a. make any determinations, conduct any hearings, impose any sanctions and take any other steps the Sub Committee deems necessary in relation to dealing with the report.

4. A copy of the Ombudsman's report is attached at Appendix A.

Issues

5. In accordance with the legislation governing this matter, the Sub Committee is requested to make an initial determination either:
 - a. that there is no evidence of a failure to comply with the Code of Conduct; or
 - b. that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
6. If members determine that (b) applies, then the Sub Committee should then consider the next steps to be taken in accordance with the Procedure for dealing with hearings that applies to this Sub Committee (attached at Appendix B).
7. In considering this matter it is important that Members consider, in full, the Ombudsman's report. The Ombudsman's report sets out details of the allegation made, the legal background, the investigation carried out by the Ombudsman, the facts (both disputed and undisputed), his findings as to the facts and the conclusions drawn.
8. Legal advice will be available to members at the meeting.
9. For the avoidance of any doubt, it is important to point out that an initial determination, 'that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing', does not equate to the Committee finding that a breach of the Code of Conduct has occurred. Such determination, in effect equates to the committee forming the view, that on the information before it, is unable to draw the conclusion that there is no evidence of a failure to comply with the Code of Conduct and thereby dismiss the matter.
10. Accordingly, at this meeting members are not being asked to form a view as to whether or not there has been breach of the Code of Conduct. Rather, members are being asked to consider, based on the Ombudsman's report, whether there is no evidence of a failure to comply with the Code of Conduct.

Legal Implications

11. The legal advice is reflected in the body of this report and legal advice will be available at the meeting. The relevant legislation is set out below.
12. The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 apply to a hearing by:
 - a. a case tribunal or an interim case tribunal under the Case Tribunal Regulations; and
 - b. a standards committee under the Standards Committees Regulations.

13. The 2009 Regulations amend the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, which are referred to as the “the Standards Committees Regulations”.
14. The 2001 regulations, as amended, provide, amongst other things, that after receiving a report from the Ombudsman together with any recommendations of the Monitoring Officer, the Standards 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 Service 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.

Financial Implications

15. There are no direct financial implications arising from this report.

Recommendations

That the Committee:

1. Is invited to make an initial determination either:
 - a. that there is no evidence of a failure to comply with the code of conduct; or
 - b. that the Community Councillor in question, must be given an opportunity to make representations, either orally or in writing in respect of the findings of the Ombudsman's investigation and any allegation that they have failed, or may have failed, to comply with the authority's code of conduct.
- 2A If the Committee determine that 1(a) applies, that the Monitoring Officer be instructed to notify all required parties (as prescribed in the legislation governing this matter) of the Committee's determination.

OR

- 2B If the Committee determine that 1(b) applies:
 - a. the Committee be invited to determine whether it is appropriate for the Community Councillor in question to make representations either orally or in writing; and

- b. that the Monitoring Officer be instructed to convene and take all necessary steps in anticipation of a special meeting of the Committee to consider representations (whether oral or in writing) and determine matters in accordance with the attached procedure.

MELANIE CLAY

Chief Officer (Legal and Democratic Services) and Monitoring Officer

21 March 2012

Appendix A: **Confidential and Exempted** Public Service Ombudsman
Investigation Report (with appendices)

Appendix B: Hearing Procedure