

CARDIFF COUNCIL CYNGOR CAERDYDD

**STANDARDS AND ETHICS COMMITTEE: 2 May 2013
AGENDA ITEM: 5**

REPORT OF THE CHIEF OFFICER, LEGAL & DEMOCRATIC SERVICES & MONITORING OFFICER

LOCAL RESOLUTION OF LOW-LEVEL CONDUCT COMPLAINTS

Reasons for the Report

1. The purpose of this report is to provide Committee Members with an updated draft Local Resolution Protocol for consideration in response to the Ombudsman's guidance and the discussions that took place at the last meeting of the Committee.

Background

2. This topic has been the subject of a number of recent reports to the Committee. As such Members of the Committee will be aware of the background that has prompted the proposed adoption of a Local Resolution Protocol.
3. The Committee discussed the issue of Local Resolution and the draft Protocol with the Leaders and Whips of the political groups at the last meeting of the Committee. The draft protocol had also been circulated to all Members of the Council in advance of the Committee meeting to ask for comments and feedback to inform the Committee's discussions.
4. The draft Protocol has been updated to reflect these discussions.

Draft Local Resolution Protocol

5. In response to the background set out above, officers have amended the draft Local Resolution Protocol. A copy of the revised draft Protocol is set out at Appendix A.

Hearing Panel

6. The revised draft Protocol anticipates a Hearing Panel comprising solely of independent members being formed to carry out any hearings that may be required.
7. It is proposed that the Hearing Panel be formed as a Sub-Committee of the Standards and Ethics Committee.

8. However, there is a concern that there will not be sufficient availability within the existing independent members of the Committee to enable such a Sub-Committee to operate efficiently. Officers are considering the options that may be available to help ensure a sufficiently wide pool of lay members being available, and will advise further at the meeting.

Cardiff Undertaking

9. As Members of the Committee will be aware from previous meetings and reports there is no legal framework in place that requires Members to abide by any Local Resolution Protocol that may be adopted.
10. At the last meeting of the Committee it was proposed that the Cardiff Undertaking should be amended to include a reference to Members agreeing to comply with the Local Resolution Protocol.
11. The power to amend the Cardiff Undertaking lies with Council. Therefore it is proposed that the Committee recommends such an amendment to Council for consideration.

Legal Implications

12. By virtue of the Local Government Act 2000, Members are required to comply with the Council's Code of Conduct for Members. The main body of the Code is supplemented by guidance issued from time to time by the Public Services Ombudsman for Wales.
13. In the past the formal route for complaints relating to the conduct of another Member under the Code would be for the complaint to be made directly to the Ombudsman. However, the Ombudsman has recently amended his guidance to encourage informal local resolution of low-level complaints as referred to in the body of this report.
14. Members' compliance with the proposed Protocol is therefore voluntary (as Members will still have the ability to take a complaint directly to the Ombudsman and the legislation does not formally create the ability for sanctions to be imposed under a local Protocol). However, it is expected that, in response to the revised Guidance recently issued by the Ombudsman, all local groups will voluntarily sign up to and agree to abide by the Protocol and any locally agreed sanctions.
15. Legal advice will be available at the meeting in the event that members of the Committee would like clarification of any of these issues.

Financial Implications

16. There are no financial implications arising directly from the content of this report.

RECOMMENDATION

The Committee is recommended to:

1. Note the contents of this report and contribute to the discussion on the revised draft Protocol.
2. Delegate authority to the Monitoring Officer (in consultation with the Chair and/or Vice-Chair of the Committee) to finalise the draft Protocol in consultation with the Leaders and Whips of the political groups.
3. Subject to 2. above, recommend to Council that the Local Resolution Protocol be adopted.
4. Subject to the Local Resolution Protocol being adopted by Council, approve the formation of a Sub-Committee to be known as the "Hearing Panel" (with a quorum requirement of three members) composed of all the independent members from time to time of the Committee with the following terms of reference:
 - a. to act as the Hearing Panel referred to in the draft Protocol;
 - b. to agree a procedure by which hearings will be carried out; and
 - c. to impose any sanctions that may be available to it under the Protocol.

Further to delegate authority to the Monitoring Officer (in consultation with the Chair and/or Vice Chair of the Committee) to take such steps as are required to establish the Hearing Panel.

5. Subject to 4. above delegate authority to the Hearing Panel to adopt such procedures as it deems suitable in order to carry out hearings under the Protocol.
6. Note the contents of this report as it relates to the availability of members to serve on the Hearing Panel and contribute to discussions on how this may be resolved.
7. Subject to 3 above, recommend to Council that the Cardiff Undertaking be amended to require Members to comply with the Local Resolution Protocol.

MELANIE CLAY

Chief Officer, Legal & Democratic Services and Monitoring Officer

1 May 2013

Appendix 1 - Draft Local Resolution Protocol

Draft 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 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*”.

Examples of matters that may constitute a “low-level” complaint are set out at Annex 1 of this Protocol. 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.

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).

- 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.

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Annex 1

Examples of conduct that may be considered to be a “minor complaint” would be matters that Members would currently report to the Ombudsman but that relate to:

- A Member making inappropriate comments in a public arena (such as a public meeting or in the media) relating to another Member (or party).
- A Member making inappropriate comments in a written format (such as on social media or campaigning leaflets) about another Member (or party).

In considering what would be seen as “inappropriate” the recent decisions relating to the case of “Calver” should be borne in mind – comments that might previously have been considered inappropriate, might now be protected as “political debate”.

- Inappropriate or disruptive behaviour at a Council or other public meeting.
- Failures to show respect or consideration for other Members, staff or members of the public.

The above list is intended to serve as examples of matters that may be defined as “minor complaints” only. The individual circumstances of each case should be considered. For example, if the making of inappropriate comments about another Member go so far as to be accusations of fraud or criminal activities or to be discriminatory then that may mean the matter should be treated as more than a “minor complaint”.

If a Member has any doubt as to whether a complaint may be considered “low-level” they may wish to first discuss this with the Monitoring Officer (who may consult with the Ombudsman’s office for guidance).

It is acknowledged that there is little guidance available at the time of writing as to what constitutes a “minor complaint”. It is hoped that this will be clarified as Local Authorities across Wales work with the Ombudsman to adopt and operate Local Resolution protocols.