

CITY AND COUNTY OF CARDIFF DINAS A SIR CAERDYDD

STANDARDS AND ETHICS COMMITTEE: 22 NOVEMBER 2011

REPORT OF THE MONITORING OFFICER AGENDA ITEM:

LOCAL PROTOCOL FOR DETERMINATION OF COMPLAINTS MADE UNDER THE MEMBER CODE OF CONDUCT

Reason for this Report

1. To discuss the potential future development of a local protocol and/or procedure for the determination of complaints made by a Member against another Member(s).

Background

1. Legislation sets out a statutory regime whereby complaints relating to breaches of the Member Code of Conduct are referred to the Public Services Ombudsman for Wales ('the Ombudsman'). The Standards and Ethics Committee has agreed previously to look at developing a local protocol and/or procedure for the informal determination of complaints made by Members against other Members in line with the Member Code of Conduct and this proposal has been included as an item for discussion on the Committee's agreed Work Programme. This issue was also raised in a question at Council on 22 September 2011, which made specific reference to the system for dealing with such complaints which has been put in place by Rhondda Cynon Taf Council.
2. The Standards and Ethics Committee Annual Report 2010-11 confirmed for that period there were 3 formal complaints made by a County Councillor against another County Councillor. The Ombudsman considered the complaints at the initial stage, but determined not to investigate any of them. A complaint made by a Community Councillor against another Community Councillor, which has been referred to the Ombudsman, is an ongoing matter. It should be noted that these published figures do not reflect other minor complaints as between Members, which are sometimes raised by Members with the Chief Executive or Monitoring Officer to be resolved informally.

Case Studies

3. To date, the Council is aware that four other local authorities (Gwynedd, Rhondda Cynon Taf, Swansea and Torfaen Councils) have developed their own local protocols for the determination of such complaints 'in house', without the need for referral to the Ombudsman. A summary of the

informal local protocols, processes and procedures which have been adopted in each council is provided below:

Gwynedd County Council

Gwynedd Council took a decision to adopt 'The Gwynedd Standard' in October 2010. The purpose of the Standard is to establish what behaviour is acceptable between Members and what is not acceptable. The standard sets out the standards of conduct expected from Members in dealing with each other, specifically, in relation to their public behaviour, behaviour in committee meetings, confidentiality and relationships with local Members from adjoining Wards. This sits alongside the Member Code of Conduct and is supported by a local procedure for dealing with complaints from one Member about another Member(s).

The procedure for dealing with such complaints is based on the following three stage process, which is summarised as follows:

1. Receipt of advice from the Monitoring Officer or his/her representative;
2. Informal meeting held with the Members involved to try and resolve the matter;
3. If there is no solution, then a non-statutory hearing before the Standards Committee is held. Those Members involved in the complaint also have the opportunity to make both written and oral representations to Standards Committee.

The Standards Committee can arrive at three possible outcomes:

- there is no basis to the allegation;
- there is basis to the allegation, but there is no need to act further;
- there is basis to the allegation and the Member should be reprimanded/censured.

Rhondda Cynon Taf (RCT) County Borough Council

RCT Council took a decision on 12 January 2011 to adopt a 'Local Protocol – Standard of Conduct Expected by Members', which is used to promote good standards of behaviour and to resolve conduct issues which would not fall within the remit of the Ombudsman. This local protocol is based on the protocol or 'standard' developed by Gwynedd County Council and is similar in terms of its content. The related procedure for dealing with such complaints is similar to that outlined above for Gwynedd Council and includes a time limit of 28 days from the date of receipt of a complaint made under the local protocol to allow the Monitoring Officer to try and resolve the matter informally between the parties concerned and that, in the event of this not being possible, then the matter is dealt with by way of a hearing before the Council's Standards Committee at the earliest opportunity.

Torfaen County Borough Council

Torfaen Council took a decision on 12 April 2011 to adopt a local protocol which sets out what is expected of both officers and members in relation to local standards of behaviour. It sets out a procedure by which complaints may be dealt with in-house either informally or, where appropriate, referred to the Council's Standards Committee by agreement. This is an expanded, but similar, three stage process to that used by both Gwynedd and RCT Councils and is supported by a detailed procedure. Stage 2 of the procedure adopted by Torfaen differs slightly in that it involves informal resolution through the involvement of the nominated Member Champion for Training & Development or the Mayor, who act as an intermediary and will involve the relevant Group Leader(s), as appropriate, in order to resolve the complaint. Torfaen's procedure also makes clear that it does not meet the costs of any Member's legal representation and that the information considered by any hearing would be exempt information.

City & County of Swansea Council

Swansea Council took a decision on 9 June 2011 to adopt an informal mediation process flowchart for dealing with a complaint by one Councillor about another Councillor. However, this decision was subject to the future approval of the Ombudsman at that time. The process aims to resolve matters informally so, in the first instance, a Member who has a complaint should approach the relevant Group Leader of the Member who the complaint is about. If this approach is not effective, then the complaint is forwarded to the Monitoring Officer or Democratic Services Manager and a meeting of a Councillor Mediation Panel, rather than the Standards Committee, is arranged if the matter does not relate to a failure to declare an interest. The Panel consists of Group Leaders and decisions of the Panel must be unanimous. Consideration by the Panel can then lead to two possible outcomes:

- The Panel is unable to resolve the issue, or;
- The matter is resolved and the parties involved carry out agreed actions as directed by their Group Leader.

Issues

4. The Ombudsman is known to be supportive of this kind of informal approach and has indicated previously in correspondence with Swansea Council, when agreeing their own process, that he considered it to be desirable to resolve minor matters locally to avoid the need for a formal investigation. However, he has also acknowledged that he cannot require Members to utilise the process before referring matters to him but would encourage them to do so. He has confirmed that any complaints which cannot be resolved under such informal processes would still need to be considered by his office. He further confirmed that some complaints which would involve those charged with resolving the complaints under the local protocol would still need to be referred to his office to enable objective consideration of the complaint. He also indicated to Swansea Council that he would not regard a decision to use the local informal process in the first

instance as a failure to comply with paragraph 6(1)(c) of the Member Code of Conduct which requires Members to report alleged breaches to him.

5. The Council is aware that discussions are currently ongoing between the Ombudsman, the Welsh Local Government Association (WLGA) and the Wales Branch of the Association of Council Secretaries and Solicitors (ACSeS) in relation to the development of such informal, local resolution policies and procedures within Wales, where relatively low level code of conduct complaints could be handled proportionately and speedily on a local basis.
6. The Ombudsman and WLGA have proposed that WLGA lead on a working group to develop a consistent approach with a pilot scheme for local resolution of complaints on an all-Wales basis, to be adopted by all 22 authorities.
7. Clearly, in order for a local protocol or informal arrangement to work successfully, all political groups would need to sign up to, and abide by, any local determination by a Council's Standards Committee (without recourse to the Ombudsman).
8. The future implementation of any proposed local protocol in Cardiff would require consultation with political group Leaders and Whips; agreement by the Council and inclusion as part of the Council's Constitution. The Council will also need to consider the related costs and resource implications of implementing any local arrangements for dealing with complaints in the future.
9. It is proposed that the Standards and Ethics Committee should discuss how such informal local arrangements for dealing with complaints made by one Member about another Member(s) could potentially be implemented in Cardiff, and advise the Monitoring Officer of any representations to be made on behalf of the Committee to the WLGA led working group on the development of any all-Wales Scheme. The Committee may also have an opportunity to discuss this matter directly with Group Leaders and Whips at a future meeting.

Legal Implications

There are no specific legal implications arising from this report.

Financial Implications

There are no specific financial implications arising from this report. Resource implications will need to be considered once a future model has been recommended.

RECOMMENDATION

The Committee is recommended to:

- (1) note the report;
- (2) indicate whether in principle it agrees to taking forward a local protocol for determination of member to member complaints under the Code of Conduct;
- (3) advise the Monitoring Officer of any representations to be made on behalf of the Committee to the WLGA led working group on the development of any all-Wales scheme.

MELANIE CLAY

Monitoring Officer and Chief Officer (Legal and Democratic Services)

16 November 2011