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## AGENDA

<b>Committee</b>	STANDARDS & ETHICS COMMITTEE
<b>Date and Time of Meeting</b>	TUESDAY, 15 DECEMBER 2015, 4.30 PM
<b>Venue</b>	COMMITTEE ROOM 4 - COUNTY HALL
<b>Membership</b>	Independent Members: Richard Tebboth (Chair), James Downe, Hollie Edwards-Davies, Lizz Roe and Hugh Thomas  Councillors Cowan and Margaret Jones  Community Councillor John Hughes

### 1 **Apologies for Absence**

To receive apologies for absence.

### 2 **Declarations of Interest**

To be made at the start of the agenda item in question, in accordance with the Members' Code of Conduct.

### 3 **Minutes** (*Pages 1 - 6*)

To approve as a correct record the minutes of the meeting on 22 September 2015.

### 4 **Standards Conference Wales 2015** (*Pages 7 - 16*)

Report of the Director Governance & Legal Services

### 5 **Members' Code of Conduct Complaints - Quarter 3** (*Pages 17 - 20*)

Report of the Director Governance & Legal Services

### 6 **Community Council Charter** (*Pages 21 - 36*)

Report of the Director Governance & Legal Services

**7 Member Protocol on Safeguarding Vulnerable Children & Adults**  
(Pages 37 - 48)

Report of the Director Governance & Legal Services

**8 Members' Planning Code of Good Practice** (Pages 49 - 70)

Report of the Director Governance & Legal Services

**9 Draft Local Government (Wales) Bill - Welsh Government Consultation** (Pages 71 - 90)

Report of the Director Governance & Legal Services

**10 Local Government Ethical Framework - Welsh Government Consultation on Amendments to Subordinate Legislation** (Pages 91 - 118)

Report of the Director Governance & Legal Services

**11 Date of next meeting.**

The next meeting of the Standards & Ethics Committee is on Tuesday 22 March 2015 @ 4.30 pm.

**Marie Rosenthal**  
**Director Governance & Legal Services**

Date: Wednesday, 9 December 2015

Contact: Kate Rees,

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***This document is available in Welsh/Mae'r hon ar gael yn Gymraeg***

STANDARDS & ETHICS COMMITTEE

22 SEPTEMBER 2015

Present: Independent Members: Richard Tebboth (Chair), James Downe, Hollie Edwards-Davies and Hugh Thomas

Councillors Cowan, Margaret Jones and Phillips

Community Councillor John Hughes

1 : DECLARATIONS OF INTEREST

The Chairperson reminded Members of their responsibilities under Part III of the Members' Code of Conduct, to declare any interests in general terms and complete 'personal interest' forms at the start of the meeting and then, prior to the commencement of the discussion of the item in question, specify whether it is a personal or prejudicial interest. If the interest is prejudicial Members would be asked to leave the meeting, and if the interest is personal, but not prejudicial, Members would be invited to stay, speak and vote. The following declarations were made:

<i>Committee Member</i>	<i>Item</i>	<i>Nature of Interest</i>
Community Councillor John Hughes	Item 9 iv	Community Councillor Hughes is a member of St Fagans Community Council
Councillor Phillips	Item 9 iv	Councillor Phillips husband is a member of a community council

2 : MINUTES

The minutes of the meeting of the Standards & Ethics Committee held on 21 April 2015 were agreed as a correct record of the meeting and signed by the Chairperson subject to the following correction:

Minute No S33 – DECLARATIONS OF INTEREST - Page 1, - amend to record that Councillor Georgina Phillips declared an interest in relation to agenda item 8 – Community Councils Charter; namely that her husband is a member of a community council.

RESOLVED: That the minutes of the meeting of 21 April 2015 be agreed as a correct record and signed by the Chairperson.

3 : CODE OF CONDUCT COMPLAINTS - QUARTERS 1 AND 2

The Committee received an update report on complaints made against Members alleging breaches of the Code of Conduct, including the number of complaints made and trends that have been identified.

During discussion the following points were made:

- There are a significant number of Member-on-Member complaints and complaints from members of the public continue to be received. Elections to the Welsh Government are due to take place next year and the number of complaints may increase at that time.
- A breakdown of the nature of complaints received would be useful. Noted that some information in this regard is included in the Committee's Annual Report. Issues have been raised when the cut and thrust of political debate has veered into personal attack, comments made by Members in social media, and also some made during committee meetings. A number of complaints from members of the public relate to delays in correspondence. None relate to fraud or corruption. The Monitoring Officer is attempting to get comparative data on complaints from other local authorities.
- Elected Members should be made familiar with the Hearings Panel procedure, in particular the requirements for notice before documents can be introduced as evidence. It may be useful for the Chair to discuss this with the political group leaders or write to them about this. The Monitoring Officer and Chair to have further discussion on this.
- It was observed that there had been an improvement in the general conduct of Members at full Council meetings.

RESOLVED: That the report be noted.

#### 4 : INQUIRY INTO POWERS OF PUBLIC SERVICES OMBUDSMAN FOR WALES

The purpose of this report was to inform the Committee of the recommendations made by the National Assembly for Wales Finance Committee's Inquiry into the Powers of the Ombudsman.

As part of the report the Committee received a copy of its response to the consultation carried out in relation to this inquiry.

During discussion the following points were made:

- As whenever possible councils are to deal with 'low level' Member-on-Member complaints, representations should be made to the PSOW or to the Welsh Government to secure funding to cover the costs of this.
- The recommendations of the report broadly reflected the comments made by the Committee during consultation, and as such, were generally supported by the Committee.

RESOLVED: That the recommendations of the NAW Inquiry into the Powers of the Ombudsman be noted.

#### 5 : GIFTS AND HOSPITALITY

The purpose of this report was to provide the Committee with information on registrations of gifts and hospitality received by Members, to enable the Committee to review the information and to consider any comments or observations it considers appropriate in this regard.

During discussion the following points were made:

- Many of the declarations listed in the register relate to gifts and hospitality received by the Lord Mayor whilst undertaking his civic duties. Is this necessary? The Committee was advised that this is a requirement of the Code.
- One Member commented that the threshold (£25) is quite high. Perhaps there should be a zero threshold.
- It is important that the Council is transparent and accountable and that it safeguards its reputation.

RESOLVED: That the information supplied on Members' registrations of gifts and hospitality be noted.

## 6 : MEMBER PROTOCOL ON CHILD PROTECTION CASEWORK

The Chair welcomed to the meeting Tony Young, Director of Children's Services.

The Monitoring Officer's report explained that an Independent Review has been commissioned by the Chief Executive to look into the role of members in dealing with parent's complaints and acting as an advocate in child protection proceedings. This followed concerns raised by an elected member about safeguarding practice within Children's Services in relation to a small number of cases. The Review has made a number of recommendations which come within the remit of the Standards and Ethics Committee.

Councillor Margaret Jones declared that she was aware of the background that has led to this review and was advised by the Monitoring Officer that this did not necessarily constitute a personal interest in the draft Protocol requiring a formal declaration of interest.

During discussion the following points were made:

- It is important that councillors are able to exercise proper scrutiny of Children's Services but difficulties can arise if they develop an interest in particular cases. It is a matter of finding the right balance, so that councillors can do their job without preventing officers from doing theirs.
- The Director has worked to ensure that everything is transparent but found that there was no protocol to cover the situation that led to the review. He and his officers were being challenged. The review has provided a wide range of stakeholders with reassurance. The Director feels that the review has been strong and has achieved the right balance. A Corporate Safeguarding Board has been established and the intention is to run a program of training on corporate parenting for all Members.

- It is important that councillors know what they should do if they believe that a child is in need or at risk. The draft protocol has been created to clarify this, and all of the political groups have been invited to sign up to it. The intention is to incorporate the protocol into the Cardiff Undertaking and to have the protocol approved by Full Council, so that it becomes part of the Constitution.
- Members should be consulted about the protocol before it becomes part of the Constitution.
- When involved in child protection processes parents may well need advocates but advocacy is a semi-professional occupation. If councillors act as advocates there could be a conflict of interest. Best practice is that councillors do not take on that role in child protection processes. If advocates are needed it is better if they are from accredited advocacy organisations.
- Point 4.5 of the protocol contains a lot of important information and should be clearer. The term 'undue influence' is a little ambiguous. Also, paragraph 4.5 refers to situations where there might be 'exceptional circumstances', but would not any case where a councillor felt compelled to get involved be a case where the Member would consider there to be exceptional circumstances?
- At point 7.3 the protocol states that 'any general queries or concerns will be carefully considered and a response will be given to the Councillor within 10 working days.' What happens if a response is not given within 10 working days? This should be clarified.

The Chairperson thanked the Director for attending.

#### RESOLVED:

- 1) To recommend to Council for approval the Member Protocol in relation to social services case work set out at Appendix A to the report, subject to the amendments noted above.
- 2) To delegate authority to the Monitoring Officer, in consultation with the Standards and Ethics Committee Chair, to make minor amendments to the Protocol set out at Appendix A to the report.
- 3) To agree to recommend to Council that the Cardiff Undertaking for Councillors include a new obligation to recognise the collective responsibility councillors have to safeguard and promote the life chances of looked after children.

#### 7 : STANDARDS CONFERENCE 2015

The purpose of this report was to provide the Committee with information on arrangements for the forthcoming All Wales Standards Conference 2015, which is being hosted by the City of Cardiff Council.

The title of the Conference is 'Standards and Ethics in a Changing World'. Conference workshops will be facilitated by Monitoring Officers from a number of other local authorities. The PSOW will be the keynote speaker and there will be a panel session to be chaired by the Chair of the S&E Committee. There are over seventy delegates so far and

there will be representatives from all local authorities in Wales. Delegates are paying £75 each to attend.

## 8 : MONITORING OFFICER'S VERBAL UPDATE

### (i) Independent Member Re-appointment

At the Full Council meeting on 23 July 2015 Richard Tebboth was re-appointed as an independent member of the Standards and Ethics Committee with effect from 23 September 2015 for a further four year term.

### (ii) Committee's Annual Report 2014/15

Richard Tebboth presented the Standards & Ethics Committee's Annual Report to the meeting of the Full Council that was held on 23 July 2015.

### (iii) Whistleblowing Policy

The revised policy on Whistleblowing has been adopted and is now formal Council policy. Various measures are being undertaken with assistance from officers in the Communications team to make all staff aware of it, including providing information with payslips.

### (iv) Officers' Interests Policy

The new policy on Officers' Personal Interests and Secondary Employment has been adopted, setting out clear rules requiring all staff to disclose any personal interest which actually or potentially conflicts with their duties to the Council (and all secondary employment). Various measures are being undertaken with assistance from officers in the Communications team to make all staff aware of the new policy, including providing information with payslips.

### (v) Community Councils Charter

The Charter is being amended to reflect points discussed during the meeting with the Community Council Clerks in the summer, and will then be circulated to all Community Councils for approval. The Committee will be provided with a report on the revised Charter at its December 2015 meeting.

RESOLVED: That the Monitoring Officer's update be noted.

## 9 : FORWARD PLAN

The reason for this report was to allow the Committee to consider the updated Forward Plan of matters for consideration by the Committee in 2015/16.

During discussion the following points were made:

- Planning processes is now a Red item and a report on it may be brought to the next meeting. Reviewing social media and the safeguarding protocol are also priorities.

- It might be useful for the Committee to see the results of the Employee Consultation. A brief report on it may be brought to the next meeting. It might be useful for the Committee to know if any particular themes within the remit of this Committee emerged from the results of the Employee Consultation.

RESOLVED: That the report be noted.

10 : DATE OF NEXT MEETING

The next meeting is to be held on 15 December 2015

The meeting terminated at 6.30 pm



# CITY AND COUNTY OF CARDIFF DINAS A SIR CAERDYDD



**STANDARDS AND ETHICS COMMITTEE: 15 DECEMBER 2015**

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## **REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES**

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### **All Wales Standards Conference 2015**

#### **Reason for this Report**

1. To enable the Committee to consider the outcomes of the All Wales Standards Conference 2015 and any further action it wishes to take following on from the Conference.

#### **Background**

2. The All Wales Standards Conference 2015 was hosted by the City of Cardiff Council, under the direction of the Standards and Ethics Committee. The Committee formed a conference planning task group to agree arrangements for the conference; and received reports (verbal or written) on conference preparations at each of its meetings this year.

#### **Issues**

3. The Conference took place on Tuesday 20th October 2015, with an evening reception hosted by the Lord Mayor at the Mansion House on the evening of Monday 19th October. The theme for this year's conference was 'Standards and Ethics in a Changing World', and the aim was to mark the 20th anniversary of the Nolan principles by exploring the question: Are the Nolan Principles fit for purpose in the current climate and for the next 20 years? The Conference Programme was as previously approved by the Committee.
4. In the closing session of the Conference, the Chair and Vice-Chair of the Committee discussed the key issues and themes they had noted during the Conference; and agreed to circulate a report to all delegates. The Vice-Chair has prepared a draft Conference Report, which is attached as **Appendix A**.
5. Members are invited to provide comments on the draft Conference Report, in particular, to provide further information on discussions at the workshops they attended. Members may also wish to consider whether they wish to undertake any further work or actions, following on from any of the issues raised at the Conference.

6. Informal feedback on the Conference has been very positive. Delegates were given feedback forms to complete and the responses are shown in **Appendix B**.
7. The demand for conference places was high, which means that all the Council's costs, including conference preparation time, have been fully met.

### **Legal Implications**

8. There are no legal implications arising directly from the recommendations of this report.

### **Financial Implications**

9. There are no financial implications arising from this report.

## **RECOMMENDATION**

The Committee is recommended to:

1. Note the information set out in this report and comment as appropriate;
2. Delegate authority to the Monitoring Officer, in consultation with the Chair and Vice-Chair to finalise the Conference Report (**Appendix A**) and circulate copies to all Conference delegates and speakers; and
3. Consider any further action or work the Committee may wish to undertake following on from the Conference and instruct the Monitoring Officer accordingly.

**MARIE ROSENTHAL**  
**DIRECTOR GOVERNANCE & LEGAL SERVICES AND MONITORING OFFICER**  
**9 December 2015**

## **APPENDICES**

Appendix A	Draft Conference Report 'Standards Conference Wales 2015 – Standards and Ethics in a Changing World
Appendix B	Summary of Completed Conference Feedback Forms

### Background Papers:

Standards Conference Wales 2015, Standards & Ethics Committee report, 22<sup>nd</sup> September 2015

### Standards Conference Wales 2015 – Standards and Ethics in a Changing World

The theme for this year's conference was "Standards and Ethics in a Changing World" to reflect the challenges being faced by the Welsh local government sector. The conference aimed at reinforcing the importance of promoting and maintaining high standards and conduct and the connection between good conduct, good governance and excellent service delivery. The conference also provided an excellent opportunity to share ideas, best practice and learning.

There were a total of 117 attendees at the conference from 27 organisations from across the Welsh public sector, including representatives from every principal council in Wales, many community councils, the national parks authorities and fire and rescue services.

The slides from the conference are available here:

<https://www.cardiff.gov.uk/ENG/Visiting/SCW2015/Presentations/Pages/default.aspx>

#### Summary of the conference presentations

The opening session started with a keynote speech from **Nick Bennett**, the Public Service Ombudsman for Wales who reflected on whether the Nolan Principles are fit for purpose in the current climate and for the next 20 years. Key points from this presentation are summarised below:

- In the current context of an ageing population, cuts in public spending, NHS/Social Services integration, potential local government reorganisation and the likely move towards further reductions in the size and level of state provision - the Nolan principles are still fit for purpose but possibly no longer sufficient.
- There needs to be leadership - effective and distributed – in addition to the principles and formal complaints machinery. Many complaints to the Public Service Ombudsman are vexatious (such as councillors 'tutting and huffing'), due to a lack of leadership.
- There is a need to "set a watchman" first before coming to the Ombudsman as their resources are limited. Everyone from frontline staff to those responsible for governance should be the watchmen.
- Nick welcomed the new Public Service Ombudsman (Wales) Bill because it allows the Ombudsman to move from being reactive to working on their own

initiative. The Bill (if and when enacted) will enable them to consider complaints about private hospitals (if services are commissioned by private citizens) and to receive complaints made orally.

Three further speakers also shared their thoughts on the Nolan Principles and their current utility.

### **Lyn Cadwallader - Chief Executive, One Voice Wales**

- Lyn also outlined the importance of effective leadership at all levels of government.
- He welcomed the requirements of the Well-being and Future Generations Act to produce annual reports and a performance management approach for Community and Town Councils (C&TCs).
- The Welsh Government needs to define the purpose of C&TCs so that they can move forward more confidently. It is clear that C&TCs need a cultural shift including new capacities and skills so that they are able to become delivery bodies. C&TCs also need to have a clear electoral mandate and manage effective consultation as public perception of their work is low.
- While the number of complaints emanating from C&TCs has gone down in recent years, more councils need to take up training on ethics and standards.

### **Peter Davies, President of the Adjudication Panel Wales**

- Equality and respect remain the most significant issues for standards and ethics. This means that there is a continual need for training for councillors and refresher courses.
- Internal systems need be supported by external monitoring, but are members of standards committees too close to be objective and independent?

### **Jan Williams, Independent Police Complaints Commissioner for Wales**

- Jan also emphasised the importance of leadership. It's all about setting appropriate standards, culture, and doing the right thing every day which requires ethical behaviour. You don't simply need policies, procedures or codes but training is vital and avoiding tribalism when things go wrong.

## Workshops

Five workshops were run on two occasions in the conference.

### **1. Social Media – Staying out of Trouble - Patrick Arran, Head of Legal, Democratic Services & Procurement, City and County of Swansea Council and Daniel Hurford, WLGA.**

This workshop was structured into two parts. The first focused upon how different types of social media (e.g. Facebook, Twitter and blogging) can be used to stay in touch with the public and strategies for using it effectively. The second part concentrated on how to stay out of trouble by providing information on legal issues, and recent case law as the law of defamation can apply to social media issues.

Email and social media have been seen to change councillors' behaviour and has resulted in them posting items on social media that they would not usually have said and putting things in email that they would not have put in a 'formal' communication such as a letter.

Social media has the potential to have a significant positive effect on councillors and council life but care needs to be taken due to immediacy (once you have posted something, you can't withdraw it), issues of tone/voice, and the fluid boundaries between a person's role as a councillor and their private life.

Social media provides a two-way opportunity for the council and councillors to gain information and intelligence about the people they serve as well as putting information out there, but it must be used responsibly and the risks must be managed.

### **2. Whistleblowing - Sioned Wyn Davies, Legal Services Manager & Deputy Monitoring Officer, Wrexham County Borough Council with Kumi Ariyadasa, Solicitor at City of Cardiff Council.**

This workshop reviewed best practice and guidance, the role of standards and ethics committees in reviewing cases, and communication approaches. It considered the role of the committee in meeting its statutory requirements and its wider role/interest in ethics and the culture of the organisation to promote standards.

There was much discussion in the workshop about the role and remit of standards and ethics committees, and whether those that were named 'standards committees' had a more restricted remit than those whose role explicitly includes ethics as well; and to what extent committees should be proactive rather than simply reactive. It was noted that some councils have added matters such as oversight of whistleblowing arrangements to the statutory functions of their standards committees, as permitted by law. The rationale for this approach being that

whistleblowing is a report made in the public interest, which may raise ethical issues and impact on public perception. Other councils have adopted different arrangements, regarding whistleblowing as purely an employment matter, and others report to Scrutiny or Audit Committees.

It was acknowledged that effective whistleblowing arrangements provide protection for Council workers as well as for the organisation. However, some organisations may be struggling with getting to grips with their whistleblowing procedures; and the culture and attitudes within those organisations need to be brought into line with the Nolan principles.

The importance of leadership, culture, and staff ownership, as well as clear procedures and training were emphasised and it was generally agreed that an alternative to line management both inside and outside the organisation should be available. Some participants suggested that whistleblowing should be handled outside of local authorities to promote objectivity, and that this should be pursued nationally, involving the Public Service Ombudsman.

### **3. Community Councils – Governance and Standards - Iwan Evans, Monitoring Officer, Gwynedd Council and Lyn Cadwallader, Chief Executive, One Voice Wales.**

This workshop looked at the proposed new Welsh Government tests of competency; democracy, capability, capacity and governance. [\[Further details to be added here\]](#)

### **4. Local Complaints Resolution – Practicalities - Mel Jehu MBE, Chair of Rhondda Cynon Taf County Borough Council Standards and Ethics Committee and Paul Lucas, Director of Legal and Democratic Services, Rhondda Cynon Taf County Borough Council.**

This workshop looked at the hearing panel process in Rhondda Cynon Taf council. [\[Further details to be added here\]](#)

### **5. Are the Nolan Principles fit for purpose in the current climate and for the next 20 years? - Nick Bennett , Public Services Ombudsman and Delyth Jones, Monitoring Officer, Conwy County Borough Council.**

This workshop continued the discussion from the morning session. [\[Further details to be added here\]](#)

## Common themes at the conference

There are multiple leaders who act on ethics in an organisation. These include the Leader of the council and other party group leaders, party whips, the chief executive, monitoring officer and the standards committee. They *all* have a role to play in trying to improve the ethical culture of councils. The Code of Conduct is an important backstop, but it is important for the leaders to work informally by setting an example for others to follow and working closely with individuals (in party groups especially).

When unethical behaviour does occur, conference attendees raised concerns about the type of sanctions available (their severity), how these were applied and the 'power' of censure as a sanction. Linked to this point, councils were keen to hear the different ways in which councils have successfully dealt with 'rogue' individuals.

There was also discussion on the role of Standard and Ethics Committees after the Calver judgement which has raised the threshold of what is regarded as being unethical conduct of councillors. A number of questions were posed:

- Should committees be more assertive in drawing their own line of what is not acceptable behaviour?
- Should committees be more proactive in 'looking for work' in trying to improve the ethical culture of organisations?
- At what point do Standards and Ethics Committees risk losing our independence?

Ultimately, prevention is better than cure and training is therefore crucial in disseminating the various messages of ethical behaviour. There was discussion on whether training could be made available in different formats to suit the learning styles of councillors and whether training could be made mandatory. What other methods, beyond training, are available to promote good conduct between councillors?

The conference featured interesting debates on Community and Town Councils. Given the possibility that C&TCs will be given more responsibilities, there was a concern that the support they receive on ethical issues varies across principal councils. More thought needs to be given to ensuring that C&TCs are kept fully in the loop and properly supported. The conference heard that clerks seemed to have little recourse when treated inappropriately by members, especially since the Calver case which suggested that politicians are entitled to be robust in a political context.

Three-quarters of complaints to the Public Service Ombudsman are closed after initial consideration. It is important, therefore, that councillors understand this and that the exercise of examining complaints locally and by the Ombudsman is costly and using scarce resources.

The behaviour of the large majority of councillors is high and instances of corruption in Welsh local government are rare. More should be done to share this fact proactively, although there are concerns that the media may not be interested in a 'good news' story such as this.

### **Good practice examples**

It is important to have regular events, such as this conference, to share 'good practice' between local councils. Examples included:

- Cardiff Council requires all councillors to annually sign the 'Cardiff Undertaking' which reinforces the Members' Code of Conduct and forms part of the ethical code binding upon all Cardiff County Councillors.
- Chairs of Standards and Ethics Committees in North Wales meet on a regular basis to share knowledge, but this doesn't happen in South Wales.
- Members of Ceredigion's Standards Committee have visited all Community Councils in their area.
- Councils have different ways of conducting local resolutions. In RCT, the whole council is involved rather than just three Independent members in Cardiff. Which process is working better and why?
- There is variety in the extent of training conducted for members of Committees. RCT use structured role-play in their training of members and this has received positive feedback.
- There is a wide variety in the number of complaints resolved locally across Wales. There have been no cases in RCT since March 2013.

[Further examples to be added here]



### Summary of Completed Conference Feedback Forms

Was the correspondence prior to the Conference via email and website effective?	Did you find the venue and refreshments acceptable?	Did you find the online accommodation booking facility user friendly?	Did the Conference live up to your expectations?	Did you find the Workshop topics useful and relevant?	Did you find the Welsh translation during the Conference useful?	Was the time and setting for the networking satisfactory?	Rating of panel discussions (1 – 5)	Rating of workshops (1 – 5)
	Yes		Yes	Yes	No	Yes	3	3
Yes	Yes	Yes	Yes	Yes	Yes	Yes	4	4
Yes	Yes		Yes	Yes	Yes	Yes	4	3.5
Yes	Yes	Yes	Yes	Yes		Yes		
Yes	Yes		Yes	Yes	Yes	Yes	4	4
Yes	Yes		Yes	Yes		Yes	4	4
General Comments received: <ul style="list-style-type: none"> <li>• There was a lack of mobile reception in main hall; and</li> <li>• Shorter breaks would have enable an earlier finish at the end of the day.</li> <li>•</li> </ul>							Average: 3.8	Average: 3.7

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**CITY & COUNTY OF CARDIFF  
DINAS A SIR CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE**

**15 DECEMBER 2015**

**REPORT OF THE DIRECTOR GOVERNANCE AND LEGAL SERVICES**

**MEMBER CODE OF CONDUCT COMPLAINTS 2015/16**

**Reason for Report**

1. To provide a brief update on complaints made during 2015/16 against Members alleging breaches of the Code of Conduct with a focus on the last 3 months.

**Background**

2. During 2014/15, the Monitoring Officer dealt with a total of 96 Code of Conduct complaints.

The table below shows the position for 2015/16 with a total of 61 to date. There have been 8 complaints recorded for the last 3 month, the lowest quarter this year.

	<b>Q1 Jan Feb Mar</b>	<b>Q2 April, May, June</b>	<b>Q3 July, Aug, Sept</b>	<b>Q4 Oct, Nov, Dec</b>
Total	20	9	24	8
<b>Complaint Type</b>				
Member on Member	12	5	15	3
Public on Member	8	3	8	5
Officer on Member	0	1	1	0

**Complaints by the Public**

3. The figures for the last three months have seen a sharp decrease in relation to member on member complaints. However members of the public are still raising concerns alleging members may have breached the Code although the numbers are very small. Use of social media, dealing with correspondence and treating members of the public with respect remain common themes.

4. The Committee may be interested to note that Gerard Elias is retiring as Standards Commissioner for the Assembly, In his most recent annual report he comments as follows:.....

*On a recent visit to Washington D.C.1 I paid a visit to Deborah Sue Mayer, Chief Counsel and Staff Director of the Select Committee on Ethics of the United States Senate – in effect my counterpart in the US Senate. We discovered that the range of complaints we received covered very similar ground and that our respective Codes more or less mirrored each others. One of the areas which takes up time for the Chief Counsel are complaints relating to “performance” of Senators and as I have indicated in earlier reports – and in this one – this is an area where I, too, receive a significant number of complaints.*

*01.05 Whilst the Chief Counsel and I were clear that “performance” issues were not matters for standards, we did note the fact that the view of the public seems to be moving away from the acceptance that an elected Member can do whatever s/he wishes – and the electorate at the ballot box ultimately judges - to one where a degree of prescription is required as to what is to be expected of a Member. Complaints such as “he/she did not respond to my phone call or letter, or not within x days” are becoming more prevalent.*

*01.06 I am clear that it would be very difficult to set down prescriptive time scales for letter answering or phone call replies – even if it were desirable, which I do not accept – but the fact that such complaints are made does highlight the need for Members to be assiduous in ensuring that timely responses are made – even if the message is that you cannot support the matter for which your help is solicited.*

*01.07 Although such matters may not raise an admissible complaint because no part of the Code of Conduct is breached, they do not assist in terms of the general reputation of the Assembly. Administrative blips happen in the best run organisations and if there is such a reason for a delay in response it is perhaps better to say so – at least the air is cleared and the reason understood.*

### **Member on Member Complaints**

5. Training on the Code of Conduct and the Ombudsman’s most recent Guidance took place take place on the 15 and 21 September with good attendance on each occasion. A further session is being arranged for January.
6. The Chair and Vice Chair of the Committee met with political group leaders on the 18 November 2015 to discuss these figures. It was agreed that resolving member on member complaints can take up a disproportionate amount of officer time and that more can be done to resolve member on member complaints at a political level.
7. The Local Resolution procedure continues to provide a useful means to informally resolve most member on member complaints. If the matter cannot be resolved informally it is then dealt with more formally at the Hearings Panel of the Committee. The Hearings Panel met on on 22nd

September and 27th November 2015 to determine a longstanding member on member complaint. No breach of the Code was found in that case.

### **Legal Implications**

8. There are no legal implications arising from the content of this report.

### **Financial Implications**

9. There are no direct financial implications arising from the content of this report.

### **Recommendation**

The Committee is recommended to note the contents of the report.

**MARIE ROSENTHAL**  
**DIRECTOR GOVERNANCE AND LEGAL SERVICES**  
**8 December 2015**

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## **CITY & COUNTY OF CARDIFF DINAS A SIR CAERDYDD**

**STANDARDS AND ETHICS COMMITTEE: 15 December 2015**

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### **REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES**

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#### **COMMUNITY COUNCIL CHARTER**

##### **Reason for this Report**

1. To report back on the review of the Community Council Charter (“the Charter”).

##### **Background**

2. The Executive adopted a Community Councils Charter (“the Charter”) in March 2012, following consultation with relevant stakeholders, including the six Community Councils within the Council’s area and the Standards and Ethics Committee. The Charter reflects the model Charter issued by the Welsh Government under section 130-133 of the Local Government (Wales) Measure 2011.
3. The aim of the Charter is to support structured, regular engagement and communication between the County Council and the six Community Councils in Cardiff, based on the key principle of equality of partnership between the two tiers of local government.
4. The Standards and Ethics Committee has statutory responsibility for the promotion and maintenance of high standards of conduct within the Community Councils in its area (paragraph (g) of the Committee’s terms of reference); and also to consider ethical issues arising from complaints (Terms of Reference, paragraph (e)); and to recommend to Council and the Cabinet any additional guidance on issues of probity (Terms of Reference, paragraph h).
5. In response to concerns about the implementation of the Charter, the Standards and Ethics Committee reviewed the Charter, and recommended to Cabinet that the Charter should be updated.
6. In June 2015 the Cabinet reaffirmed its commitment to the aims of the Charter; and delegated authority to the Monitoring Officer (in consultation with the relevant Cabinet Member, the Standards and Ethics Committee and the

six Community Councils), to update the Charter; and authorised the relevant Cabinet Member to sign off the updated Charter on behalf of the City of Cardiff Council.

## Issues

7. Discussions have been held with the Clerks of the six Community Councils, and it has been agreed that most of the Charter is still relevant and an important recognition of the role of Community Councils in representing their local areas. However, a few sections of the Charter are not being implemented and need to be updated in the light of the reduced resources now available to the Council.
8. The Charter has been amended to reflect the issues raised and a revised draft, attached at **Appendix A**, has been sent out to all Community Councils for consultation. Key changes made have been highlighted.
9. Feedback from the Community Councils on the revised draft has been generally positive. However, further consideration has been requested on the following points:
  - Local Governance - it is suggested that an annual liaison meeting is insufficient, and that liaison meetings should be held more frequently, such as bi-annually or quarterly; and that an officer reporting to the Monitoring Officer may be a more appropriate representative of Cardiff Council, in order to ensure that day to day issues are dealt with promptly and that there is an avenue of appeal. Members may recall that the Charter originally provided for a quarterly liaison meeting, but this was unsustainable for Cardiff Council due to reduced resources.
  - Consultation - several Community Councils asked for a firmer commitment to consult them before making a decision affecting the local community, rather than 'will aim to', as currently drafted. It should be noted, however, that there may be circumstances where the Council needs to act quickly, so prior consultation may not always be possible; and that consultation may not be appropriate on every decision which could be regarded as affecting a local community. There was also a request to include reference to consultation regarding local government reorganisation in Cardiff, but Members will note that reorganisation proposals (and consultation thereon) are issued by the Welsh Government rather than Cardiff Council.
  - Information and Communication - several Community Councils asked for a firmer commitment on the provision of information to Community Councils on issues affecting their areas, eg. proposed highways changes, arrangements for street closures etc. Relevant officers are being asked for their comments on this issue. Members may also wish to note that, once the revised Charter has been signed off, the Council's Communications team will be asked to assist with a communications plan to ensure that all Council staff are made aware of the Charter and its provisions, which should improve communications with Community Councils. A request was also made for Community Councils to have access to a Member Enquiry email address (in



addition to the Member Enquiry Telephone Line). This request has been referred to relevant Council staff for consideration.

- Land Use Planning - several Community Councils have requested specific reference to 'Section 106' planning obligations agreements (or Community Infrastructure Levy funds), seeking a commitment from the Council to consult and involve the Community Councils in negotiations for Section 106 agreements and decisions regarding the application of funds arising from developments within the Community Council's area. Other planning issues raised include reference to Cardiff Council 'paying particular attention to the long-term issues for communities affected directly or indirectly by LDP Strategic and flexibility sites'; and to 'consider adoption of appropriately prepared community council Village and Place Plans as Supplementary Planning Guidance'. Planning officers are being asked for their comments on these issues.
- Expertise - one Community Council has queried whether the Charter provisions (reference to Member induction training for Community Councillors to understand the role and function of the unitary authority) meet the proposals set out in the Local Government (Wales) Bill. The proposals in the Bill are currently under consideration, but Members will note that there is no certainty at this stage that such proposals will come into effect.
- Sustainability - amendment has been requested of the reference to the Well-being of Future Generations Act 2015, to reflect the less onerous obligation imposed on Community Councils with a budget below £200,000. This amendment can be agreed.

10. Members are invited to note the feedback from the Community Councils and comment as appropriate.

#### Legal Implications

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

#### Financial Implications

12. There are no direct financial implications arising from the recommendations of this report.

### **RECOMMENDATION**

The Committee is recommended to:

1. Note the revised draft Charter (**Appendix A**) and the feedback from the Community Councils, as set out in the report, and make any comments it considers appropriate;
2. Note the Monitoring Officer's delegated authority to finalise the revised Charter, as agreed by Cabinet in June 2015; and

3. Instruct the Monitoring Officer to implement an effective communications plan, once the revised Charter is signed off, to ensure that all Council staff and Members are aware of the Charter and its provisions.

**Marie Rosenthal**  
**Director Governance and Legal Services, and Monitoring Officer**  
**8 December 2015**

**Appendices**

Appendix A                      Revised draft 'A Shared Community – Charter between Cardiff Council and Community Councils in Cardiff'

**Background Papers**

Cabinet report 'Community Council Charter', 11<sup>th</sup> June 2015; and minutes thereof;

Standards & Ethics Committee report 'Community Council Charter', 27<sup>th</sup> January 2015; and minutes thereof;

Executive report 'A Shared Community – Charter Between Cardiff Council and Community Councils in Cardiff', 8<sup>th</sup> March 2012; and minutes thereof;

## **'A Shared Community'**

### **Charter between Cardiff Council and Community Councils in Cardiff**

#### **Introduction**

The six Community Councils of Lisvane; Old St Mellons; Pentyrch; Radyr & Morganstown; St Fagans and Tongwynlais and the County Council of the City & County of Cardiff (hereby referred to as 'Cardiff Council') have agreed to publish a Charter which sets out how we aim to work together for the benefit of local communities whilst recognising our respective responsibilities as autonomous, democratically elected statutory bodies.

The Charter is designed to build on existing good practice and embrace the shared principles of openness, respect for each other's opinions, honesty and our common priority of putting citizens at the centre. The Charter is based on equality of partnership and is not a top-down arrangement.

The Charter was originally adopted in March 2012 and has been updated and re-affirmed in xxx 2015.

#### **Partners to the Charter**

##### Unitary Authority

- Cardiff Council

##### Community Councils

- Lisvane Community Council
- Old St Mellons Community Council
- Pentyrch Community Council
- Radyr & Morganstown Community Council
- St Fagans Community Council
- Tongwynlais Community Council

## Recognition

We accept the legitimacy and benefits of partnership working whilst at the same time recognising and respecting each other's roles. We aim to work together as a partnership of equals rather than tiers.

<b>Cardiff Council</b>	<b>Community Councils</b>
Acknowledges and recognises that community councils are the grass roots level of local government. In their role as democratically accountable bodies, community councils offer a means of engaging with local people, of decentralising the provision of certain services, and of revitalising local communities.	Recognise the strategic importance of Cardiff Council and the economy of scale and appropriate distribution of certain services they are able to achieve.
Recognise and respect the diversity of community councils and that their needs vary according to size, and the extent to which they participate varies.	Recognise that community councils come within the common umbrella of Cardiff Council.

## Local Governance

We will be clear about the expectations that we have of each other in order to facilitate a smooth working relationship. In this regard, we will define the way in which we interact with each other. We will be clear about the role of councillors at all levels in the relationship and in community leadership.

Cardiff Council	Community Councils
Will hold an <b>annual</b> liaison meeting with nominated representatives of community councils that wish to take part. Such meetings will be held at a location to be mutually agreed and which is convenient for all councils. These meetings will be known as Community Liaison Meetings.	Will contribute towards the agenda of liaison meetings and contribute proactively to the attendance and discussion.
Will nominate the <b>Council's Monitoring Officer</b> as the appropriate officer to act as a liaison between Cardiff Council and the community councils.	Will contact the nominated liaison officer(s) on the agreed issues and make them aware of any difficulties being encountered.
Will administer the holding of community council elections.	Will notify the need for community council elections in a timely manner.
	Will facilitate public participation at all relevant meetings of the community council and its committees to encourage community involvement.

## Consultation

We appreciate the importance of meaningful consultation and set out a genuine commitment among all parties to consult on matters of mutual concern. We will agree clear, specific and time limited procedures and processes for consultation.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will aim to give community councils the opportunity to comment before making a decision that affects the local community (particularly on matters relating to planning and other environmental proposals).	Will respond to consultation opportunities in a timely manner, addressing the key issues in the consultation document, where applicable.
Will publish dates of public meetings and agendas & reports for Cabinet, Council and other Committee meetings on the Council's website as soon as possible.	Will make full use of the papers available to them to inform local decision-making.
Will, in accordance with existing protocols and subject to available resources, allow appropriate officers to attend meetings with community councils (or groups of community councils) at a mutually agreed time to discuss matters of common interest when requested to do so and given sufficient notice.	Will provide an opportunity for local county councillors/officers (as appropriate) from Cardiff Council to speak at community council meetings on matters of mutual interest.
Will encourage scrutiny committees to consult with community councils on relevant local issues.	Will respond to requests to input views to scrutiny committees.

## Information and Communication

We appreciate the need for timely, clear and relevant information and communication in fostering good relationships and better joint working for the benefit of local people.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will provide community council clerks with access to the Council's Member Enquiry telephone line, initially on a 6 month trial basis, to be extended by mutual agreement.	Will utilise the agreed contact systems and respond in the most appropriate and timely method.
Will communicate by providing appropriate consultation documents and other information electronically to community council clerks for distribution to community councillors.	Will ensure that all community councillors have access to the appropriate documents.

## Joint Working and Engagement

The Charter defines 'partnership' as working together towards a common set of goals, based on equality in terms of ownership, decision-making and recognition of each party's distinctive contribution. It is recognised that an equal and effective partnership brings benefits and responsibilities to all those involved. Local government at both tiers must work together to promote the economic, social and environmental well being of our area. If doing things differently achieves a better service, we will seriously examine these methods.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will provide the opportunity for community council clerks to meet with the Monitoring Officer or an officer representative from Cardiff Council to discuss common concerns and resolve issues, at the specific request of the clerks.	Will encourage participation by community council clerks in opportunities to network and share common concerns.

## Land Use Planning

Community councils know and understand their local area and must be able to comment effectively on planning matters. Cardiff Council is able to take an overview of the needs of the whole local area and make decisions, taking local views into account.

Cardiff Council	Community Councils
Will reaffirm its statutory duty to consult community councils during the preparation of the Local Development Plan and also on related policy documents, including Supplementary Planning Guidance.	Will make appropriate responses to the Council, recognising the parameters imposed by planning law and national planning policy guidance.
Will reaffirm its statutory duty to consult community councils on all planning applications in, or directly affecting, their communities.	Will make appropriate responses to Cardiff Council recognising the parameters imposed by planning law and agreed planning policy.
Will inform a community council of any site visit by Planning Committee members relating to a planning application in its area.	Will offer community councillors training on planning issues to ensure that they have a sound understanding of how planning law works.
Will provide a community council with a copy of the final report relating to a planning decision in its area within seven days of the decision being made, if the community council has submitted written representations in relation to the planning application.	Will maintain an objective and professional approach to planning matters at all times.
Will provide community councils with details of relevant Planning Committee meetings so that community councillors may attend as observers.	Will encourage community councillors to take up the opportunity to attend meetings of Cardiff Council's Planning Committee as observers.
Will provide timely information to a community council about any planning appeals in its area.	



## Practical Support

In order to be effective, elected members and officers must be well-trained and have the support they need to carry out their roles.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will, where practical, offer community councils access to support services, to enable them to take advantage of facilities such as printing, IT and purchasing at the Council's agreed rate to recover costs.	Will follow established procedures to access support services from Cardiff Council, but will also have the opportunity to make their own arrangements.

## Expertise

We will encourage continuous development of officers and members in both Cardiff Council and the community councils, either in their individual groupings or together. Improved expertise leads to professionalism and more effective joint working.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will offer member induction training to community councillors to enable them to understand the role and function of the unitary authority.	Will provide an induction to newly elected community councillors to enable them to undertake their role effectively.

## Ethics

We will provide an ethical service to local people, following the appropriate standards and Codes of Conduct. We will encourage links between community council clerks and Cardiff Council's Standards & Ethics Committee.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will, through the appointed Monitoring Officer, support community councils in the timely consideration and provision of advice & training in relation to the application of the Member Code of Conduct.	Community councillors shall not make vexatious complaints under the Member Code of Conduct and will provide all such information as required by the Monitoring Officer to enable him/her to carry out his/her function effectively.

## Financial Arrangements

Both Cardiff Council and the community councils recognise the need for clarity and transparency in financial arrangements. In developing and implementing financial arrangements, relevant national and local priorities will be taken into account.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will, in setting the level of council tax for the area, have regard to services being delivered by the Council as a whole.	Will, in setting the annual precept, have regard to local priorities and the services provided within the community by Cardiff Council.

## Delegating Responsibility for Service Provision

Services should be delivered in the most appropriate manner, with regard to value for money and added value for local people.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will, on a case-by-case basis and in line with any related policy or guidelines that may be developed by the Council, give due consideration to all reasonably argued formal requests for the delegation of responsibility for local service delivery to community councils, basing its consideration primarily on the improvement of service delivery for citizens whilst ensuring value for money is retained or enhanced.	Will recognise that there are certain instances where it is not appropriate or desirable for Cardiff Council to delegate service delivery.
Will, in the absence of formal delegation, seek ways in which local information from communities might be used to enhance service delivery to better meet the needs of citizens.	Will engage with citizens in the communities they serve to better understand their needs and convey these needs in a coherent and constructive manner to Cardiff Council, such that they can be taken account of in service design and delivery.

## Sustainability

We will work in ways that are sustainable, reconciling the long-term needs with those of the present; and protecting and improving the quality of life of current generations without compromising the quality of life of future generations.

Cardiff Council	Community Councils
Will assist community councils by providing information on sustainability and related good practice.	Will proactively assess the sustainability of current practices and processes.
Will outline how Cardiff Council is actively pursuing sustainable development.	Will investigate projects which contribute to sustainability where beneficial to the community.
Will put in place a framework for compliance with the requirements of the Well-being of Future Generations Act 2015 and share good practice, information and opportunities for engagement with Community Councils with a view to working towards the well-being goals outlined in the Act.	Will contribute towards meeting the local objectives included in the local well-being plan prepared pursuant to the Well-being of Future Generations Act 2015.

## Single Integrated Plan - “What Matters”

We recognise the strategic importance of the “What Matters” Single Integrated Plan which establishes the overarching strategic vision and sets out the priorities for the local area. In Cardiff, these are set out within the 10 year Integrated Partnership Strategy – ‘What Matters’ – which incorporates the previous Community Strategy; the Children & Young People’s Plan; the Health, Social Care & Wellbeing Strategy and the Community Safety Strategic Assessment. Furthermore, we recognise that this will only be fully effective if it is informed by the grass roots experiences from within our communities.

Cardiff Council	Community Councils
Will, in recognition of their local knowledge and experience, invite a representative of community councils to sit on the Strategic Neighbourhood Partnership Group in their respective areas. This will provide invaluable input into the delivery of the Integrated Partnership Strategy and respective Neighbourhood Action Plans across the city.	Will together nominate a community councillor to be their representative on the Strategic Neighbourhood Partnership Group in their respective areas. This individual shall proactively represent the community council, raising matters of general concern appropriate to the agenda.

Will involve community councils in the agreement of the local priorities for the <b>Neighbourhood Partnership</b> teams and to develop / review the annual Neighbourhood Action Plans.	Will contribute to the agreement of the local priorities for the <b>Neighbourhood Partnership</b> teams and assist in developing / reviewing the annual Neighbourhood Action Plans.
Will involve community councils in the implementation of the <b>Neighbourhood Action Plans</b> .	Will respond actively to assist in the implementation of the <b>Neighbourhood Action Plans</b> .

### Community Council Elections

Fair and open elections are the bedrock of local democracy. We will ensure that community council elections are freely and fairly contested, and encourage local people to become involved in local democracy.

<b>Cardiff Council</b>	<b>Community Councils</b>
Will involve community councils in the planning process for community council elections.	Will encourage participation by members of the local community in the community council election process
Will involve community councils in any awareness raising/publicity to encourage nominations for candidacy at community council elections.	Will ensure wide publicity of vacancies on community councils to maximise community representation.
Will help to publicise forthcoming community council elections on behalf of community councils.	Will publicly display statutory notices for forthcoming community council elections.
Will brief community council clerks on the nomination process so that they are equipped to assist any potential candidates who come forward for community council elections.	
Will provide help and assistance with the legal and administrative processes and procedures for community council elections.	

## **Monitoring and Review**

The Charter will be reviewed at the annual Community Liaison Meeting or before if there is a need to do so. The Council's Monitoring Officer will be authorised to make any agreed minor amendments to the Charter. Cardiff Council's Standards & Ethics Committee will receive a report on any proposed substantive amendments to the Charter or ethical issues arising from the Community Liaison Meeting.

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## **Conclusion**

Cardiff Council and the undersigned community councils are committed to the principles and statements within the Charter, for the benefit of local people.

**Cardiff Council, Cabinet Member, Skills Safety and Engagement**

**Chair, Lisvane Community Council**

**Chair, Old St Mellons Community Council**

**Chair, Pentyrch Community Council**

**Chair, Radyr & Morganstown Community Council**

**Chair, St Fagans Community Council**

**Chair, Tongwynlais Community Council**

**STANDARDS & ETHICS COMMITTEE**

**15 DECEMBER 2015**

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**REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES**

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**MEMBER PROTOCOL ON SAFEGUARDING VULNERABLE CHILDREN AND ADULTS**

**Reason for this Report**

1. To consider a draft Protocol to provide guidance and advice to elected Members on their roles and responsibilities in relation to safeguarding vulnerable children and adults.

**Background**

2. An Independent Review was commissioned by the Chief Executive to look into the role of Members in dealing with parent's complaints and acting as advocate in child protection proceedings. This followed concerns raised by an elected Member about safeguarding practice within Children's Services in relation to a small number of cases. The Review made a number of recommendations which come within the remit of the Standards and Ethics Committee.
3. The Standards and Ethics Committee considered a report on this matter at its last meeting, in September 2015.

**Issues**

4. At its meeting on 22nd September 2015 the Committee considered a draft Protocol addressing the matters recommended by the Independent Review; and heard evidence from the Director of Social Services.
5. The Committee made various observations and agreed that the following changes should be made to the draft Protocol:
  - To make clear that Members should immediately report any concerns they may have about potential harm to vulnerable children or adults – paragraph 4.1 (and section 5)

- To clarify the advice regarding Members acting as formal Advocates for service users - paragraph 4.5
  - To explain that a timescale for a full response will be given within 10 days, if a full response is not possible within that time – paragraph 7.3
  - To confirm that information is protected as ‘personal data’ if the individual is identifiable, even if the individual is not explicitly named – paragraph 8.4
6. A revised draft Protocol, incorporating the amendments above, is attached at **Appendix A** to this Report.
  7. The Committee noted that the draft Protocol had been discussed with political group leaders, but it was suggested that all Members should be consulted on the revised draft Protocol before submitting it to Council for approval. It was also suggested that, in order to reinforce the importance and effectiveness of the Protocol, the approved Protocol should be added to the Constitution and Cardiff Undertaking.
  8. Subject to the agreed amendments and consultation, as above, the Committee delegated authority to the Monitoring Officer, in consultation with the Chair, to recommend the Protocol to Council; along with amendment of the Cardiff Undertaking to include a new obligation to recognise the collective responsibility of Councillors to safeguard and promote the life chances of looked after children.
  9. The Committee is invited to note the revised draft Protocol attached at **Appendix A**, and make any further comments before this draft is sent to all Members for consultation and submitted to Council for approval.

### **Legal Implications**

10. These are set out in the Report

### **Financial Implications**

11. None identified

### **Recommendations**

The Committee is recommended to:

1. Note the revised draft Protocol attached at **Appendix A**, and recommend it to Council for approval, subject to consultation with all Members and any further amendments;
2. Authorise the Monitoring Officer, in consultation with the Standards and Ethics Committee Chair, to make any further amendments to the Protocol; and
3. Recommend to Council amendment of the Cardiff Undertaking to include a new obligation to recognise the collective responsibility of Councillors to safeguard and promote the life chances of looked after children and to observe the Member Protocol.



**Marie Rosenthal**  
**Director of Governance & Legal Services**  
**8 December 2015**

**Appendices:**

Appendix A: draft Protocol – The Role of Elected Members in Safeguarding Vulnerable Children and Adults

**Background papers:**

Standards and Ethics Committee report, 'Member Protocol on Child Protection and Vulnerable Adult Casework and Corporate Parenting', 22<sup>nd</sup> September 2015

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**PROTOCOL**  
**THE ROLE OF ELECTED MEMBERS IN SAFEGUARDING VULNERABLE**  
**CHILDREN AND ADULTS**

1. **Purpose of the Protocol** – To provide guidance and advice to elected Members on their roles and responsibilities in relation to safeguarding vulnerable children and adults; and on how Members should raise any concerns and receive assurance about children and adults who may be at risk.
2. **Definitions** - This Protocol uses the terms used by professionals to describe certain groups of individuals, which are defined as follows:

“Advocate” means a person accredited or recognised as competent to act as an advocate by an independent advocacy organisation

“Care leavers” – means young people who have been looked after by the local authority and who the local authority has a duty to continue to support until they reach the age of 21 or remain in education or training (if longer).

“Children at risk of harm” – means children about whom there are concerns that they are or may be at risk of suffering harm through abuse or neglect, including any child named on the Child Protection Register.

“Children In Need” – means any child who has been assessed as being unlikely to achieve or maintain a reasonable standard of health or development without access to services (including all disabled children and any child named on the Child Protection Register).

“Looked After Children” – means children who are looked after by the local authority through a Care Order made by court or by agreement with the parent/s.

“Vulnerable Adult” - means a person over 18 years of age who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or serious exploitation.

3. **The Role of the Council and its elected Members**

- 3.1 All Members of the Council have a strategic role in relation to social services issues and need to satisfy themselves that the Council as a whole is discharging its statutory responsibilities and demonstrates good practice wherever possible.
- 3.2 A number of high profile public inquiries have highlighted the importance of ensuring that child protection services are prioritised and adequately resourced, and all elected Members have responsibility in this regard.
- 3.3 The Council as a whole is the ‘corporate parent’ of all Looked After Children, which means that elected Members, relevant Council managers and staff all

need to work together to discharge their different roles and responsibilities, to ensure the best possible care and opportunities are made available.

- 3.4 Members have an important role to play in safeguarding children and vulnerable adults, as the eyes and ears in the community, where ward surgeries and local ward networks enable Members to be alerted to early signs of safeguarding concerns, whether general patterns of behaviour or concerns about a particular child or vulnerable adult.
- 3.5 The Members of the Cabinet, the Corporate Parenting Committee, the Children and Young People's Scrutiny Committee and the Community and Adults Scrutiny Committee have additional specific responsibilities, as outlined in section 9 below.

#### 4. Responsibilities of Members

- 4.1 It is the responsibility of all elected Members to bring any concerns they have about vulnerable children or adults to the attention of the responsible officer, depending on the nature of the concern, as set out in sections 5 and 6 below. **If a Member is concerned that a child or vulnerable adult may be at risk of harm, this should be reported immediately - please see section 5 and the Contact List at the end of this Protocol.**
- 4.2 Elected Members may also wish to make representations on behalf of their constituents in order to satisfy themselves that concerns or problems are being dealt with appropriately. Good practice dictates that Members should only be involved in casework issues within their own ward, and the Standards and Ethics Committee has approved a Protocol to this effect (Informal Protocol on Member Involvement in Other Wards).
- 4.3 Whilst local ward Members have an important role to play in responding to the concerns of their constituents, they must be mindful of their obligations under the Members' Code of Conduct, in particular:
- 4.4 Personal interests - Members must be mindful of their duty under the Members' Code of Conduct to disclose any personal interest in a particular case in which they may be making representations. For example, a personal interest may arise from the Member's personal relationship with a service user or from the Member's involvement in a particular organisation. Members must ensure that their personal or private interests do not conflict with their public duties, to the Council as a whole or to all ward constituents.
- 4.5 Advocacy for Service Users - It is not generally appropriate for an elected Member to act as an advocate for a service user, due to the potential conflict of interest and confusion over the role in which the member is acting. Elected Members are part of the Council and have a duty to represent all ward constituents fairly and equally; whereas the role of an advocate is to provide emotional support to an individual and help them to understand the process and to raise questions and issues as necessary. An elected Member seeking to act as an advocate is likely to have an actual or perceived conflict between his/her duties to: (i) the Council and its officers, (ii) the individual service user, and (iii) other ward constituents. A Member's involvement may also create an

impression of undue influence being exerted in any relevant decision making process, in view of the Member's position within the Council. It is only in exceptional circumstances (such as where a Member is a family member of a service user or is a professional advocate), that it may be appropriate for a Member to act as an advocate for a service user. However, any such exceptional circumstances must be explained and agreed in advance with the Director of Social Services or the Monitoring Officer. The Council has a responsibility to ensure that service users have access to advocacy services wherever necessary, and can provide contact details for independent advocacy service providers and professional advocates upon request.

**4.6 Criticism of Officers** - Members should ensure that any concerns about Council officers are raised with the relevant Director (or the Chief Executive) in accordance with the Protocol on Member / Officer Relations, as staffing issues are the statutory responsibility of the Chief Executive, as Head of Paid Service. Members should note that recent caselaw regarding a Councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights (*Heesom v. Public Services Ombudsman for Wales 2014*) has held that:

- Council officers are not expected to tolerate the same level of criticism as politicians during political debate
- Unwarranted criticism of officers by Councillors damages the mutual duty of trust and confidence between Councillors and officers, and that
- There is a public interest in ensuring that officers are not subjected to unwarranted criticism which could undermine the performance of their public duties and public confidence in the administration.

**4.7 Political / Public Debate** - When raising issues politically in public debate, during Council meetings, using social media etc, Members must ensure their comments do not disclose confidential information or personal information about identifiable individuals; must not make unwarranted criticism of officers (see above); and must not conduct themselves in a manner likely to bring the Council (or the office of Councillor) into disrepute.

## **5. What to do if you are concerned that a child or vulnerable adult may be at risk of harm?**

**5.1** If a Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Children's Access Point or, if outside of office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an experienced Social Worker will ensure Child in Need or Child Protection Procedures are instigated if needed, and will provide you with any required advice and guidance.

**5.2** If any information raises concerns about harm or potential harm to a vulnerable adult, these concerns should be reported immediately to the Protection of Vulnerable Adults (POVA) Support Team or, if outside of office hours, to the Emergency Duty Team (please see Contact List at the end of

this Protocol) where an experienced Social Worker will ensure that any appropriate procedures are instigated, and will provide you with any required advice and guidance.

5.3 If a Member has concerns about immediate danger needing an emergency response or thinks a crime is being committed, the police should be contacted on 101 or 999. You should never delay taking emergency action to safeguard a child or vulnerable adult.

## **6. Who else to Contact?**

If a Member has a general safeguarding concern, which is not related to a specific child or vulnerable adult, the Member should bring this to the attention of the Operational Manager, Safeguarding Children and Vulnerable Adults, the Assistant Director of Children's Services or the Assistant Director of Adult Services (as appropriate), or the Director of Social Services.

## **7. What To Expect?**

7.1 All concerns will be investigated and assurances given to the Councillor that the welfare of the child or vulnerable adult is being safeguarded.

7.2 All referrals of children or vulnerable adults at risk of harm will be promptly investigated and a response will be given to the Councillor within 24 hours to confirm that appropriate action has been taken. The Council will not, however, be able to confirm the outcome of any particular investigation due to confidentiality and data protection laws (explained in section 8 below).

7.3 Any general queries or concerns will be carefully considered and a response will be given to the Councillor within 10 working days. If a full response cannot be provided within 10 working days, the response will indicate a reasonable timescale within which a full reply will be given.

7.4 Any complaints made by or on behalf of service users will be considered in accordance with the Council's complaints procedures, which fully comply with all relevant statutory provisions and best practice.

(i) Complaints about the handling or outcomes of child protection conferences will be dealt with under the 'Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference' (based on the All Wales Protocol). This procedure is appended as Annex 1 to this Protocol.

(ii) All other complaints about Cardiff Social Services will be dealt with under the 'Social Services Complaints Policy and Procedure' (established in accordance with The Social Services Complaints Procedure (Wales) Regulations 2014 and The Representations Procedure (Wales) Regulations 2014). This procedure is appended as Annex 2 to this Protocol.

## **8. Members' Rights to Information and Information Sharing**

8.1 The Protocol on Members' Rights of Access to Information and Documents (set out in Part 5 of the Constitution), sets out Members' rights to information held by the Council and how to access such information.

8.2 Under the "need to know" principle, all Members have a right to inspect any Council documents *if* access to the documents is reasonably necessary to enable the Member to properly perform their duties as a Member of the Council. However, access to personal information is restricted by data protection legislation (see below); and any information provided under the "need to know" principle must only be used in connection with the Member's duties as a Councillor, and must not be disclosed to any other persons (unless and until the information properly enters the public domain).

8.3 The Council will ensure that all elected Members have access to general information about trends and issues affecting children and vulnerable adults as well as the quality and range of services provided.

### **Personal information / Information about individual cases**

8.4 Information relating to individuals is protected (as 'personal data') under data protection legislation (and such information may also be confidential). Personal data includes any information relating to an identifiable individual, even if the individual is not explicitly named. General advice on Members' data protection responsibilities is set out in the 'Data Protection' section of the Members' Handbook.

8.5 The Council is legally responsible (as the 'Data Controller') for personal information held by the Council (or held by Members for the purpose of Council business). Each elected Member is legally responsible (as 'Data Controller') for personal information held for constituency work purposes. The Council and all elected Members must carefully consider, on a case by case basis, their legal obligations in respect of any particular personal information they may hold.

8.6 The law requires that all personal information must be handled fairly, lawfully and securely. In particular, personal information about individual cases *must not be disclosed without the consent of the individual/s concerned*, unless a legal exemption applies. This means that the Council can only disclose information about individual cases to Members if it is satisfied that the individual/s concerned have consented to such disclosure.

8.7 In their ward Member role, if a Member is asked by a ward constituent to assist them in resolving a social services matter, the Member will be dealing with personal information, some of which will be sensitive personal information (defined by law as information about a person's racial or ethnic origin; political opinions; religious beliefs; trade union membership; physical or mental health or condition; sexual life; alleged criminal activity; or court proceedings, and subject to additional legal restrictions).

8.8 Members must ensure that:

- The individual/s concerned understand how the Member intends to use their personal information and have consented to this.
- If the Member intends to make enquiries with the Council about a particular case, then the Member must obtain written consent from all individuals involved, expressly authorising the Council to disclose their personal information to the Member; and provide a copy of this consent to the Council.
- All personal information relating to individual cases must be used only as necessary and appropriate in order to take the agreed action on behalf of the individual; and must not be used or disclosed for any other purpose, for example, for political purposes.
- Members must have robust systems for holding personal information securely and only for as long as necessary.

8.9 Further advice is available from the Council's Information Manager. The Information Commissioner's Office website also publishes helpful guidance for Councillors on their data protection responsibilities (see Background Documents listed at the end of this Protocol).

## 9. **Decision makers and Accountability**

In addition to the strategic role of full Council, referred to in section 3 above, the key decision makers and their accountabilities are as follows:

Cabinet; Cabinet Member, Early Years, Children and Families; and Cabinet Member, Health, Housing and Wellbeing

9.1 The Cabinet has a collective corporate leadership role and decision making powers in respect of children's and adults' services, subject to compliance with the Council's approved Policy Framework. The Cabinet Member, Early Years, Children and Families (and Lead Member for Children's Services) has particular responsibility to lead and inform the Cabinet's work on child protection, corporate parenting and safeguarding children matters. The Cabinet Member, Health, Housing and Wellbeing has particular responsibility to lead and inform the Cabinet's work on adult social care and safeguarding vulnerable adults matters. Both Cabinet Members are regularly briefed by the Statutory Director of Social Services on the performance of social services functions, any identified weaknesses and recommended improvement actions.

Statutory Director of Social Services

9.2 The Statutory Director of Social Services is responsible for providing professional leadership and discharging core responsibilities in respect of all social services functions of the Council. The Director makes a Statutory Annual Report to Cabinet on the discharge of the Council's social services functions, including a report on all social services complaints.

Corporate Parenting Advisory Committee



9.3 The Corporate Parenting Advisory Committee is responsible for advising the Council and the Cabinet on the discharge of the authority's corporate parenting functions. The Committee receives a 6 monthly Independent Reviewing Officer report, and a quarterly report of all complaints concerning Children's Services (in anonymised form) to check that appropriate action has been taken in response to all complaints.

#### Children and Young People's Scrutiny Committee

9.4 The Children and Young People's Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to children and young people, including children's social services.

#### Community and Adult Services Scrutiny Committee

9.5 The Community and Adult Services Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to community and adults' services, including adults' social care services.

#### CONTACTS LIST:

The Children's Access Point (CAP)	029 2063 6490
POVA Support Team (Protection of Vulnerable Adults)	029 2053 6436
Emergency Duty Team (out of hours)	029 2078 8570
Operational Manager, Safeguarding Children and Vulnerable Adults	029 2087 3830
Assistant Director of Children's Services	029 2087 3803
Assistant Director of Adult Services	029 2087 3803
Director of Social Services	029 2087 3803
Operational Manager, Information Management	029 2087 3340

#### APPENDICES

Annex 1 'Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference', Cardiff and Vale of Glamorgan, Local Safeguarding Children Board

Annex 2 'Social Services Complaints Policy and Procedure', City of Cardiff Council

BACKGROUND DOCUMENTS:

Welsh Government Guidance 'If this were my child.. A councillor's guide to being a good corporate parent to children in care and care leavers'  
Cardiff Council Social Media Guidance  
Informal Protocol on Member Involvement in Other Wards  
Protocol on Member / Officer Relations  
Protocol on Members' Rights of Access to Documents and Information  
Members' Handbook, 'Data Protection' section  
Information Commissioner's Office, 'Advice for elected and prospective councillors – Data Protection Act'

DRAFT

**CITY & COUNTY OF CARDIFF  
DINAS A SIR CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE**

**15 DECEMBER 2015**

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**REPORT OF THE DIRECTOR GOVERNANCE AND LEGAL SERVICES**

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**MEMBERS' PLANNING CODE OF GOOD PRACTICE**

**Reason for this Report**

1. To improve public perceptions relating to openness and transparency

**Background**

2. The Committee identified the Council's planning processes and procedures as a key item of business in its Forward Work Plan for 2015/16. It is also important to note that the Planning committee has recently begun to webcast its meetings over the internet.
3. The Committee had previously received a report at its meeting on 10<sup>th</sup> January 2007 following a Wales Audit specific recommendation that the Council prepare a code of practice for Councillors and Officers involved in the planning process, having regard to better practice across Wales.
4. As a result of this, the Council subsequently adopted the Planning Code of Good Practice set out at Appendix 1 to this Report. The Code now forms part of the Constitution. The Planning Code has been prepared in accordance with the Member Code of Conduct and the Royal Town Planning Institute Code of Conduct for Chartered Planners.

**Issues**

5. The Code has the following objectives:
  - To guide and protect officers and members in dealing with planning related matters from criticism and challenge
  - To inform potential developers and members of the general public of the standards adopted by Cardiff council and the performance of its planning function

- To ensure that, in the planning process, there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
6. The Committee is invited to review the Code to see how well it meets these objectives. The Committee may wish to review best practice across the UK in relation to these matters. The Committee may also wish to arrange to send an observer to a Planning Committee Meeting to see how the Code operates in practice.

### **Legal Implications**

7. None identified

### **Financial Implications**

8. None Identified

## **RECOMMENDATION**

That the Report is noted and any further actions agreed

**MARIE ROSENTHAL**  
**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES**  
**8 December 2015**

*The following Appendix is attached:*

MEMBERS PLANNING CODE OF GOOD PRACTICE

*The following Background Documents have been taken into account:*  
*None Identified*

## **PART 5 – CODES AND PROTOCOLS**

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### **MEMBERS PLANNING CODE OF GOOD PRACTICE**

#### **1 Purpose of the Code**

This Code has been being prepared for the guidance of Officers and Members in their dealings with planning matters. This includes decision-making meetings of Council, which exercise the planning function of the planning authority or less formal occasions such as meetings with officers or the public or consultative meetings. Whilst much of this Code of Good Practice relates to the submission and determination of planning applications it also applies to discussions / submission relating to the preparation of the Local Development Plan and to Planning Appeals and enforcement. The Code has been prepared in accordance with: -

- Code of Conduct for Members and Co opted Members of the County Council of the City and Council of Cardiff
- The Royal Town Planning Institute Code of Conduct for Chartered Planners

The Code has the following objectives:-

- To guide and protect Officers and Members in dealing with planning related matters from criticism and challenge
- To inform potential developers and members of the general public of the standards adopted by Cardiff County Council and the performance of its planning function
- To ensure that, in the planning process, there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

#### **2 Key Principles**

Planning decisions made by Councils can have a considerable effect on the value of land, the nature of its development and on the lives and amenities of people living in the vicinity. The process of arriving at decisions on a planning matter must be open and transparent. The involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are:-

- The key purpose of planning is to control development in the public interest
- Your overriding duty as a Councillor is to the whole local community
- You have a special duty to your constituents including those who do not vote for you
- Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement, and for justifiable reasons

- Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to decide what view to take on any question which Councillors have to decide
- You should never do anything as a Councillor, which you could not justify, to the public. Your conduct and what the public believes about your conduct will effect the reputation of the Council
- It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct
- You should treat with extreme caution any offer of gift or favour or hospitality that is made to you personally. You are personally responsible for all decisions connected to the acceptance of such gifts or hospitality and for avoiding the risk of damage to public confidence in local government
- Section 54a of the Town and Country Planning Act requires you to take planning decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. You should ensure that all decisions that you make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust
- The Code applies to all decisions of the Council on planning related matters. This includes Members involvement in any planning application, whether or not it is reported to a committee, all applications determined by any committee or by Full Council acting as a local planning authority

### **3 Relationship to the Code of Conduct for Members and Co Opted Members of the County Council of the City and County of Cardiff**

The Code of Conduct adopted by Cardiff County Council on 13<sup>th</sup> December 2001 sets out requirements and guidance for Members on the disclosure and registration of interests. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter you should have primary regard for the Code of Conduct, and particularly the requirement to properly declare all interests:-

- Do apply the rules in the Code of Conduct for Members first which must always be complied with
- Do then apply the rules in this planning Code of Best Practice

### **4 Development Proposals and the Declaration of Members' Interests**

When considering planning matters Members may find that they need to:

- Declare a personal and / or prejudicial interest or
- Indicate that they have come to a view prior to the meeting (i.e. fettered their discretion)

The existence and nature of any interest should be disclosed at all relevant meetings including informal meetings or discussions with officers and other Members. A member may at any time declare a personal interest under the Members Code of Conduct however it is preferably disclose your interest at the beginning of the meeting and not just at the commencement of the discussion on that particular matter.

**Where your interest is personal and /or prejudicial:**

- **Do Not** participate or give the appearance of trying to participate in the making of any decision on the matter by the planning authority
- **Do Not** try to represent Ward/local views. Get another Member who is not a member of DC to do so instead
- **Do Not** get involved in the processing of the application and direct any queries or technical matters to the relevant officer
- **Do Not** seek or accept any preferential treatment or place yourself in a position that could lead the public to see that you are receiving preferential treatment because of your position as a Councillor. This would include using your position to discuss any proposal with Officers or Members when other members of the public would not have the same opportunity to do so. You may need to identify another local member who is prepared to represent local interests
- **Do** be aware that whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal interest to an appropriate Officer in person or in writing, the Member's Code of Conduct places greater limitations on you in representing that proposal than would apply to a normal member of the public (for example where you have a personal and prejudicial interest in a proposal to be put before a meeting you will have to withdraw from the room or Chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to observe the meeting's consideration of it from the public gallery)
- **Do** notify the Monitoring Officer in writing of your own interest and ensure that a proper record of the interest is noted at any meeting (use the form at Appendix 1)

**Where you have fettered your discretion**

The allowance made for Councillors to be predisposed to a particular view is a practical recognition of:

- the role played by party politics in Local Government
- the need for Councillors to inform constituents of at least an initial view on a matter as part of their public role

- the structure of local government which ultimately requires the same Councillors to make decisions

It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing an opinion or view on planning matters. If you make up your mind or clearly appear to have made up your mind (particularly in relation to an external interest or lobby group) on how you will vote on any planning matter prior to formal consideration of that matter (i.e. at the meeting of the planning authority, prior to the hearing of the Officers presentation and evidence and arguments on both sides) you may be seen to have fettered your discretion. For example:-

- Where the Council is the landowner, developer or applicant and you have acted as or could be perceived as being a chief advocate for the proposal. Through your significant personal involvement in preparing or advocating the proposal you may be perceived by the public as being no longer able to act impartially or to determine the proposal purely on its planning merits
- Where you are a member of an organisation or lobbying group, which has publicly expressed a view on the planning matter. (A lobbying group is a body whose principle purposes include the influence of public opinion or policy). You may also have a personal interest in a matter before committee. The test of establishing a prejudicial interest under the Code is analogous to the common law test for bias -"that a member of the public with knowledge of all of the relevant facts would regard your interest as so significant that it is likely to prejudice your judgment of the public interest"

However where you act as part of the consultee body (e.g. where you are also a member of a community council) you may take part in its debate provided that:-

- the proposal does not substantially effect the well-being or financial standing of the consultee body, and
- you make it clear that your views are expressed on limited information before you only, and
- that you reserve judgment and the independence to make up your own mind on each separate proposal based on your overriding duty to the whole community and not just to the people in that area, ward or parish, and
- you clearly state you will not in anyway commit yourself as to how you or others may vote when the proposal comes before the Planning Committee and
- you disclose your personal interest regarding your membership or role when the Planning Committee comes to consider the proposal

**In all other circumstances**



- **Do not** speak and vote on a proposal as a Member of the Development Control Committee where you have fettered your discretion. You do not also have to withdraw but you may prefer to do so for the sake of appearances
- **Do** explain that you do not intend to speak and vote because you have or could reasonably be perceived as having judged the matter elsewhere so that this may properly be recorded in the minutes
- **Do** take the opportunity to exercise your separate speaking rights as a ward member where you have represented your views or those of local electors and have fettered your discretion but do not have a personal/prejudicial interest. In these circumstances advise the Chair that you wish to speak in this capacity before the commencement of the item, remove yourself from the Members seating area for the duration of that item and ensure that your actions are recorded.

The flow chart at Appendix 2 provides guidance for you in deciding whether you have a declarable interest

Given the issues set out above Members of Planning Committee may wish to consider whether they should take an active role on consultee bodies such as Community Councils.

## **5 Contact with Applicants, Developers and Objectors**

Local Authorities are encouraged by Government policy to enter into pre-application discussions with potential applicants. There will also be discussions and meetings on strategic plans for the Council (e.g. matters arising from the local development plan or major development sites). Such strategic discussions lie within the remit of the Cabinet Member with responsibility for Environment and Transportation and may be distinguished from discussions on specific planning applications, and therefore not subject to the caveat set out below. In addition negotiations and discussions are likely to be ongoing after an individual application has been submitted. Such discussions can often be interpreted by the public (and especially objectors) as prejudicing the planning decision-making process. In order to allay such perceptions all discussions should take place within clear guidelines.

One particular aspect of application discussions relates to lobbying. Lobbying is a normal part of the political process. However, it can lead to impartiality being brought into question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents as well as un-represented applicants/landowners and community action groups.

- **Do not** agree to any formal meeting with applicants, developers or groups of Objectors if you are a member of Development Control Committee and therefore likely to be part of the decision-making process. There may be exceptional circumstances where meetings do take place. Such meetings must always have been formally convened by the Development Control Manager. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the

meeting is properly recorded on the application file, and that a record of the meeting will be made available for public inspection and will form a background paper to any Committee report

- **Do** refer those who approach you for planning procedural or technical advice to officers
- **Do** report to the Development Control Manager any significant contact with the applicant and other party, explaining the nature and purpose of the contacts and your involvement in them and ensure that this is recorded on the planning file
- **Do not** attend any private planning presentation unless an Officer is present and/or that it has been organised by Officers. These may be differentiated from major public presentations when members may seek information but should not enter into discussions or express a view
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application and that this will be carried out by the appropriate Committee of the planning authority
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals
- **Do** explain to those lobbying or attempting to lobby you that whilst you can listen to what is said it prejudices your impartiality and therefore your ability to participate in the Committee's decision-making to express an intention to vote one way or another, or such a firm point of view which amounts to the same thing
- **Do** remember that your overriding duty is to the whole community not just the people in your local area, and taking account of the need to make decisions impartially, you should not improperly favour or appear to improperly favour any person, company, group or locality
- **Do not** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable ensure that it is of the minimum and its acceptance is declared as soon as possible (remembering to register any gift with a value of over £25).
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity as this will enable proper officer advice to be given in the report and avoid the situation where officers are asked to respond to new information at the meeting itself, leading to deferral or decisions made on partial advice

- **Do** promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development
- **Do** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches
- **Do** note that unless you have a personal and prejudicial interest you will not have fettered your discretion or breached this Planning Code of Good Practice through listening or receiving view points from residents or other interested parties making comments to residents, interested parties, other members or appropriate officers providing they do not consist of or amount to prejudging the issue. Provided that you make clear that you are keeping an open mind, seeking information through appropriate channels or being a vehicle for the expression of opinion or speaking at the meeting as a ward member provided you explain your actions at the start of the meeting or item and make it clear that having expressed the opinion or ward view you have not committed yourself to vote in accordance with those views and you will make up your own mind having heard all of the facts and listened to the debate

## 6 Ward Interests

A Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duty to be an active ward representative and the overriding duty as a Councillor to the whole local community. In these circumstances

- **Do not** lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Do not** decide or discuss how to vote on any application at any sort of political group meeting or lobby any other member to do so. Political group meetings should never dictate how Members should vote on a planning issue
- **Do not** become a Member or lead or represent an organisation whose primary purpose is to lobby, to promote or oppose specific planning proposals. If you do you will have fettered your discretion and are likely to have a personal and prejudicial interest and will have to withdraw from any meeting
- **Do** of course join general interest groups which reflect your areas of interest or which concentrate on issues beyond particular planning proposals (such as your local civic society) but make sure that you disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the committee that you have reserved judgement and the independence to make up your own mind on each separate proposal

## 7 Development Proposals Submitted by Officers or Councillors of the Council (the advice in this section applies to both planning applications and Development Plan Policy matters)

Officers should never act as agents for people pursuing a planning matter with their Authority. Members may in law advocate on behalf of a proposal or act as an agent on behalf of a specific proposal. However, it is likely that you will then have a personal and a prejudicial interest which must be declared in accordance with the Members Code of Conduct and which will debar you from taking part in the decision. Where Members are likely to do this on a regular basis they should not accept membership of the Development Control Committee.

Should any Member or Officer connected with the planning service submit their own proposals to the Authority they should declare the interest to the Monitoring Officer and to the Chief Strategic Planning and Environment Officer at the earliest opportunity and take no part in the processing. Any such proposal/application will be reported to the Development Control Committee **and not** dealt with under delegated powers.

## **8 The Decision Making Process**

A decision on a planning application cannot be made before the committee meeting when all of the relevant information is to hand, any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote. Accordingly Agenda Briefing meetings and any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups. All applications considered by Development Control Committee or by a report on the circulated schedule shall be the subject of written reports and clear recommendations. If the recommendations are contrary to the provisions of the Development Plan the material considerations, which justify this, shall be clearly stated. If in the view of the officer the matter is finely balanced the report will say so. The recommendations put forward by officers and the decisions by members are separate parts of the same process, which should be justified by the report and debate respectively.

The Conduct of the meeting will be in accordance with the Committee Procedure Rules found within the Council's Constitution

- **Do not** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions or submitting views to the Development Control Manager which may be incorporated in to any Committee report)
- **Do** recognise that officers are part of a management structure. Only discuss the proposal outside of any arranged meeting with a Chief Officer, or those officers who are authorised by the Chief Officer to deal with the proposal at Member level
- **Do** recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Councils Code of Conduct for Officers and their Professional Code of Conduct. As a result planning officers views, opinions and recommendations will be presented on the

basis of their overriding obligation of professional independence which may on occasions be at odds with the views, opinions or decisions of the Committee or its Members

- **Do** have regard to the Councils Member/Officer Protocol, which governs the working relationships that you have with officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.
- **Do** come to meetings with an open mind and demonstrate that you are open minded
- **Do** ensure that if you have requested a proposal to go before the Committee rather than be determined through officer delegation that your planning reasons are recorded and repeated in the report to the Committee
- **Do** comply with the Section 54a of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise
- **Do** come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary defer or refuse
- **Do not** vote or take part in the meeting's discussions on a proposal unless you have been present to hear the debate including the officers introduction to the matter
- **Do** have recorded the reasons for the Committees decision to defer any proposals
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge
- **Do not** allow members of the public to communicate with you during the committee's proceedings (or in writing) other than through the scheme for public speaking as this may give the appearance of bias
- **Do** ensure that you comply with the Councils procedures in respect of public speaking

## **9 Training**

Training on planning matters will be made available at convenient times for all Members of the Council, and in particular those serving on the Planning Committee.

Subject to resource availability places will be made available for new Members of the Planning Committee to attend the Annual Planning Summer School (run by the Royal Town Planning Institute "RTPI")

Refresher training for all Members of Planning Committee will be held throughout the year in the form of Briefing Sessions at Planning Policy Committee Meetings.

- **Do** ask the Chair or the Committee Clerk for the Planning Committee if you have not attended Planning Summer School and you would like to
- **Do** endeavour to attend any training sessions provided since these will be designed to extend your knowledge and thus assist you in carrying out your role properly and effectively

## **10 Site Visits**

Site visits by Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision.

The purpose of a site visit is to enable Committee Members:-

- to view the site of a planning application together with surrounding land;
- to place the application in its physical context;
- to assist the appraisal of constraints and opportunities afforded by the proposed development, and its potential impact on surrounding land;
- to have officers point out material considerations

A consistency of approach is required for site visits to ensure that any site visit undertaken adds to the Planning Process, and also that the interests of the applicant, any objectors and the local community are dealt with equitably

Members are asked to alert officers to impending requests for site visits at the earliest opportunity. This will then allow them to inform the Chairman and consider jointly whether site visits could be arranged in a way which minimises any delay to the processing of the application

When a member makes a request for a site visit the reason for the request must be stated and will be minuted. The decision on whether to agree a site visit lies with the Committee.

Site visits should only be made where necessary. Consideration should be given to what will the Planning Committee gain from a site visit that is not already evident from the Officer's Report and other supporting information.

Committee members should consider requests critically because they generally cause delay to the process, and are time consuming and costly. Alternative methods of obtaining the information should be considered i.e. digital photography.

When considering a request for a site visit which could lead to the deferment of the determination of the application, the Chairman will require the proposer and seconder of the motion to state the reason for the proposed visit and what the Committee will gain and this shall be recorded in the Minutes.

Whenever a site visit has been agreed by the Committee, it should specify whether the site should be viewed:

- from the public highway or public land only
- from the application site
- from other private land outside the application site

This should be recorded in the Minutes. This will enable officers to make appropriate requests to enter onto private land.

The Head of Development Control (or their representative) will make arrangements for site visits. This will include:

- obtaining the relevant permission to enter private land
- informing Local Members, Petitioners, and anyone who has made observations / representations / comments on the application
- sending a copy of the Site Inspection Protocol to the applicant or owner who has given consent for the site to be entered, the owner of any other land who has agreed that their land may be entered
- arranging for an attendance list to be taken of the visit

On attending a site visit Members should follow the Site Inspections Protocol (attached at Appendix 3)

- **Do** try to attend site visits and ensure that you treat them only as an opportunity to seek information and to observe the site
- **Do** ask the Officers at the site visit questions or seek clarification for them on matters which are relevant to the site inspection
- **Do not** express opinions or views to anyone
- **Do not** hear representations from any parties other than as set out in the Site Inspections Protocol. Make it clear that any representations must focus only on site factors and site issues. Where you are individually approached by an applicant or a third party advise them that they should make their representations in writing to the authority and direct them to or inform the officer present

- **Do not** enter a site which is subject to a proposal other than is part of an official site visit even in response to an invitation as this may give the impression of bias unless:
  - (a) you feel that it is essential for you to visit the site other than through attending the official site visit
  - (b) you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and you can ensure that you will comply with these good practice rules on site visits

## **11 Sanctions**

The purpose of this Code is to provide guidance to Members in relation to the performance of the Councils planning function. The application of and adherence to the Code is intended to build public confidence in the Councils planning system and to produce a strong platform for planning decision-making. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.

A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members, especially if this results in a pattern of inconsistency. The normal sanction of the democratic process is through the ballot box. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct.

Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning Committee.

Beyond the normal democratic process a number of specific consequences can be identified

- **The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the balance of argument in any planning decisions she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress which may take the form of compensation.

Councillors who breach the national Code of Conduct may open themselves up to complaints of misconduct which will be dealt with by the Local Government Ombudsman. The Local Government Ombudsman has extensive powers to investigate a complaint. If a complaint is upheld a formal report can be sent either to the Council's Standards and Ethics Committee or the Adjudication Panel for Wales.

Such complaints may be referred to the Council's Monitoring Officer for investigation and the Standards Committee for determination and remedy.



- **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent body established under Part III of the Local Government Act 2000. The role of the panel is to form tribunals to consider whether Members have breached their authority's statutory Code of Conduct.

The panel will also hear appeals by Members against decisions of the Council's Standards and Ethics Committee.

- **Appeals to the National Assembly for Wales**

An applicant who has been refused planning permission has a right of appeal to the National Assembly for Wales. If an appeal is successful and it shown that the Councils conduct in dealing with the matter was unreasonable to the appellant costs may be awarded against the Council. All appeals are administered by the Planning Inspectorate.

- **Powers of the National Assembly for Wales**

The National Assembly for Wales possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with National and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the National Assembly following a Public Inquiry. Where permission has already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council

- **Judicial Review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory observations to carry out all necessary procedures base their decision on the development plan and take in to account all representations they may apply for Judicial Review of the decision which might result in it being quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

- **District Auditor**

Each of the above courses of action could result in significant extraordinary costs to the Council. These costs will be closely examined by the District Auditor. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Councils accounts by the wilful misconduct of any person she/he is required to certify that the loss or deficiency is due to that person and it may therefore lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

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VALID ONLY AT TIME OF PRINTING. INFORMATION MAY BE UPDATED WITHIN 24 HOURS

**CITY AND COUNTY OF CARDIFF**

REGISTRATION OF PERSONAL AND/OR PREJUDICIAL INTEREST

MEMBERS CODE OF CONDUCT AND LOCAL GOVERNMENT ACT 1972

Name of Meeting e.g. Council, Committee, Executive (Please print your answer)	Date of Meeting (Please print your answer)	Agenda Item (Please print your answer)	Nature of Interest (Personal or Prejudicial) (Please print your answer)	Reason for Interest (Please print your answer)

Signed .....

Name (please print) .....

Date .....

4.CTC.CS.007	Issue 2	Date: 01/09	Process Owner: Principal Committee Officer	Authorisation : Senior Committee Administrator	Page 1 of 1
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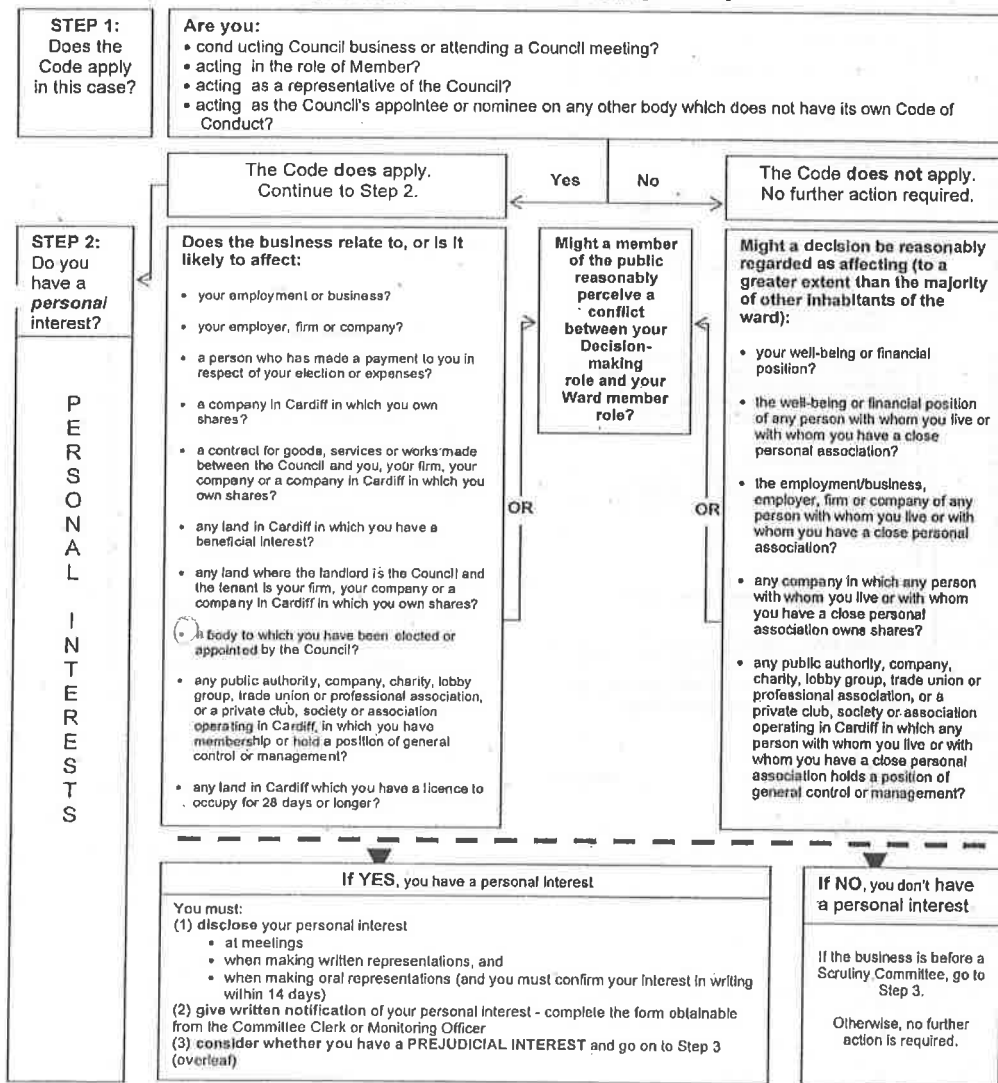
PART 5 – CODES AND PROTOCOLS

MEMBERS PLANNING CODE OF GOOD PRACTICE

APPENDIX 2 – DECLARABLE INTEREST FLOWCHART

Code of Conduct

DECLARING AN INTEREST - QUESTIONS TO ASK YOURSELF  
 [These charts are for illustration only and are not definitive]  
 [If in doubt, consult the Monitoring Officer]

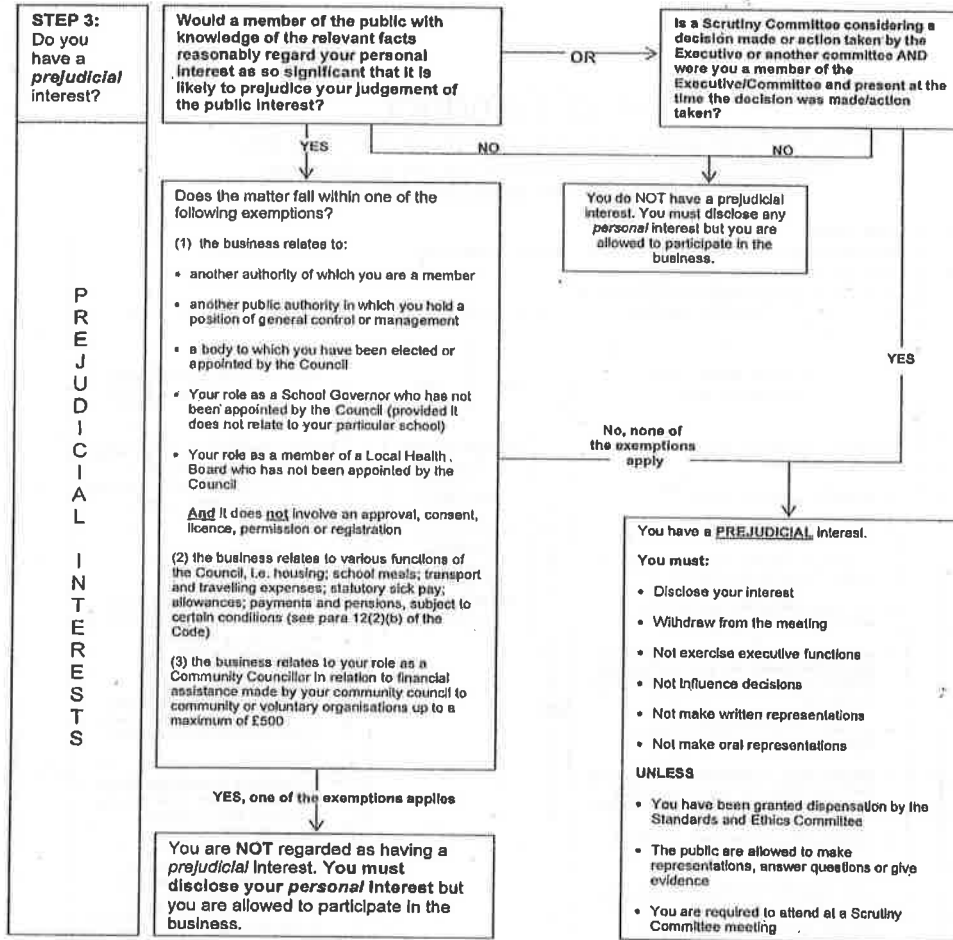


# Code of Conduct

## DECLARING AN INTEREST - QUESTIONS TO ASK YOURSELF

[These charts are for illustration only and are not definitive]

[If in doubt, consult the Monitoring Officer]



## PART 5 – CODES AND PROTOCOLS

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### MEMBERS PLANNING CODE OF GOOD PRACTICE

#### APPENDIX 3 – SITE VISIT CODE OF PRACTICE

- 1 Sometimes Members of the Planning Committee need to visit a site to help them make a decision on a planning application. These visits are an extension of the Committee Meeting to enable members to make a visual assessment of the site and its surroundings
- 2 When a site visit is required the Development Control Section of Regulatory Services notifies the owner, if access to the premises is necessary
- 3 Site visits are open to all interested parties, including the general public
- 4 The owner or applicant is advised that although he or his agent may be present at the site visit, it is not an opportunity to make representations to Committee Members. This does not prevent the owner, the applicant, or their advisers pointing out factual matters such as the height of the proposed buildings, position of a window, proposed parking spaces etc. This factual information may be brought to the attention of the planning officers who will communicate it to the Planning Committee.
- 5 The Development Control Section will notify those who have also submitted written objections to the application. However, where a petition of objection has been lodged, only one of the petitioners is notified of the site visit. Objectors should be aware that the Council cannot require an owner or applicant to allow objectors onto his land, and that their ability to attend the site visit is at the discretion of the owner or applicant. Objectors are advised that the site visit is not an opportunity to make representations to Committee Members. Factual matters may be pointed out to the planning officer who will communicate it to the Planning Committee.
- 6 Local Ward Members will also be notified of the site visit. Ward Members should be aware that they are also allowed to make representations to Planning Committee Members at the discretion of the Chair during the site visit. If a Ward Member wishes to raise a matters of fact, they should bring it to the attention of the planning officer who will then communicate it to the Planning Committee
- 7 The visit will follow a structured format as follows:-
  - If the applicant, owner or agent (“the applicant”) is present, the Chair and planning officer will introduce themselves and thank them for the right to enter their land, the Chair or officer will remind the people attending the site visit of this Code of Practice
  - The Chair will call the site visit to order and will ask the planning officer in attendance to summarise; the application, site history, features of the site, any other relevant matters

- The officer will also explain to all those attending the site visit that :
  - (a) the purpose of the site visit is to enable the Planning Committee Members to see the site to enable them to consider and determine the planning application;
  - (b) the visit is not the opportunity for interested parties to lobby any Council member to support or oppose the application;
  - (c) if there are matters of fact, that have not been indicated by the planning officer, or if an interested party would like the Members to consider the site from a particular position they should communicate this to the planning officer who will then bring this to the attention of the Planning Committee;
  - (d) interested parties should put any representations in writing to the Development Control Section of Regulatory Services prior to the application being considered at the Planning Committee Meeting;
  - (e) interested parties may discuss the matter with Local Ward Members prior to the Committee Meeting at which the application is to be considered, and be informed that the names, addresses and telephone numbers of Local Ward Members are available.
  
- At no time during the site visit will the applicant, or any member of the public be allowed to address or question Members of the Planning Committee. Only the Chair or an officer may address the applicant for clarification of matters of fact. Other Members should not address comments to the applicant or other interested parties.
  
- At no time will Planning Committee Members debate the merit(s) of the application, and no decision will be made.
  
- No hospitality will be accepted during the course of the site visit.
  
- The Chair/ officer will close the site visit and if appropriate thank the applicant again for the right to enter the land and for any other assistance.
  
- No formal notes will be made at the site visit. An officer will orally update Planning Committee at the Committee Meeting on any new findings or further developments when it next meets to consider the application.



**CITY OF CARDIFF COUNCIL  
CYNGOR DINAS CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE:**

**15 DECEMBER 2015**

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**REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES**

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**DRAFT LOCAL GOVERNMENT (WALES) BILL – WELSH  
GOVERNMENT CONSULTATION**

**Reason for this Report**

1. To enable the Committee to consider the Welsh Government's draft Local Government (Wales) Bill proposals in so far as they concern matters relevant to the Committee; and respond to the Welsh Government's consultation in this respect.

**Background**

2. In July 2014, the Welsh Ministers published the Devolution, Democracy and Delivery White Paper – Reforming Local Government, which stated the Welsh Ministers' intention to introduce legislation to deliver local government reform. Two further White Papers were published in October 2015 and February 2015 further developing these proposals. The first Local Government (Wales) Bill was passed by the Assembly on 20 October 2015, enabling preparations to be made for the programme of local government mergers and reform.

**Issues**

3. The Welsh Government is now consulting upon a second Local Government (Wales) Bill. The stated purpose of the Bill is to establish new Counties by the merger of existing Counties and County Boroughs, to establish a new and reformed legislative framework for local government democracy, accountability, performance and finance, and to establish a statutory Public Services Staff Commission. The consultation is intended to provide the opportunity for comments on the proposals to be considered by the Welsh Government after the May 2016 elections, to inform its decision on how to proceed. The deadline for responses is 15 February 2016.
4. The draft Bill and accompanying documentation total around 650 pages, and 'not only expands on the much heralded structural reform, but proposes

wholesale reform of how councils are governed and managed too' (extract from Welsh Local Government Association spokesperson's response to publication of the draft Bill).

5. Part 4 of the draft Bill imposes statutory duties upon the Members of the proposed new County Councils relating to the performance of their functions. Members are placed under a statutory obligation to attend meetings, hold regular ward surgeries, answer correspondence, complete compulsory training courses and publish an annual report. Leaders of political groups are required to take reasonable steps to promote and maintain high standards of conduct by Members of their group (draft Bill, Part 4, Chapters 2 and 4).
6. Standards Committees are given new functions to handle complaints that Councillors have breached the statutory duties imposed on them, and to monitor compliance of group leaders with the duties imposed on them and to advise on, and arrange, relevant training. Given the enhanced role of the Standards Committee, the Committee is given a statutory duty to make an annual report to Council, describing how the Committee's functions have been discharged during the year (draft Bill, Part 4, Chapter 7).
7. The procedure for handling complaints about an alleged failure by a Councillor to abide by the duties imposed, is set out in Chapter 3 of the draft Bill. The procedure requires the Monitoring Officer to refer the matter to the Chair of the Standards Committee. If the Monitoring Officer and the Chair both consider that a matter should not be investigated, no investigation may take place. If either the Monitoring Officer or the Chair considers a matter should be investigated, the Monitoring Officer must investigate it. After conducting an investigation the Monitoring Officer must provide the Standards Committee with a report of the investigation. The role of the Standards Committee and the actions it may take if a Councillor has breached a duty are prescribed (draft Bill, Part 4, Chapter 3)
8. Part 4 of the draft Bill is attached at **Appendix A**. Members are invited to provide comments on the provisions of Part 4 of the Bill in so far as they relate to matters within the remit of the Committee (current or proposed). Members are invited to give particular consideration to the proposed monitoring and reporting roles of the Standards Committee and the proposed duty on leaders of political groups.
9. Members may wish to note that other aspects of the draft Bill are being carefully considered by other relevant parts of the Council; and a corporate response will be collated in due course.

### **Legal Implications**

10. Relevant legal provisions are set out in the draft Bill, Part 4, attached at **Appendix A**.

### **Financial Implications**

11. There are no financial implications arising from this report.

## RECOMMENDATION

The Committee is recommended to:

1. Note the provisions of Part 4 of the draft Local Government (Wales) Bill, set out in **Appendix A**, in so far as they relate to matters within the (current or proposed) remit of the Committee, and provide comments as appropriate; and
2. Delegate authority to the Monitoring Officer, in consultation with the Chair, to prepare a response to the Welsh Government's consultation on behalf of the Committee.

**Marie Rosenthal**  
**Director Governance & Legal Services and Monitoring Officer**  
9 December 2015

## APPENDICES

Appendix A            Draft Local Government (Wales) Bill, Part 4

Background papers

[Consultation Documents, Draft Local Government \(Wales\) Bill](#) -

Welsh Local Government Association Statement on the Draft Local Government (Wales) Bill, 24<sup>th</sup> November 2015

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(4) In subsection (3) –

- (a) after “constitution” insert “or, as the case may be, their constitution guide”;
- (b) for the words “who requests” to the end of the subsection, substitute “on request, either free of charge or at a charge representing no more than the cost of providing the copy”.

## 80 Duty on county councils to publish official addresses

A county council must publish on its website, and in any other manner it considers appropriate, an official electronic and postal address for each member of the council, to which correspondence for the member may be sent.

## PART 4

### FUNCTIONS OF COUNTY COUNCILS AND THEIR MEMBERS

#### CHAPTER 1

#### OVERVIEW OF PART

## 81 Overview

In this Part –

- (a) Chapters 2 to 4 impose duties upon members of a county council which relate to their performance, and make connected provision, including for the enforcement of those duties;
- (b) Chapter 5 makes provision –
  - (i) for objectives to be set relating to the performance of an executive of a council operating executive arrangements;
  - (ii) for candidates for election as executive leader of a council to produce written manifestos;
  - (iii) for the appointment of assistants to executives where a council is operating executive arrangements;
  - (iv) for issuing guidance to elected mayors and executive leaders on equality and diversity;
- (c) Chapter 6 makes provision –
  - (i) removing the requirement for a county council to designate a head of paid service and requiring instead that a chief executive be appointed for the council, whose functions will include duties imposed under that Chapter;
  - (ii) relating to the appointment of the head of democratic services of a county council, and a council’s pay policy as it relates to that post;
- (d) Chapter 7 makes provision –
  - (i) in respect of the meetings and functions of overview and scrutiny committees;

- (ii) requiring standards committees to produce annual reports on the exercise of their functions;
- (e) Chapter 8 makes minor amendments to the 2000 Act and the Local Government (Democracy) (Wales) Act 2013 (anaw 4).

5

## CHAPTER 2

### DUTIES ON MEMBERS OF COUNTY COUNCILS

#### *Performance duties*

#### **82 Members of county councils to attend meetings**

- (1) A member of a county council must attend all relevant meetings.
- 10 (2) But a member is not in breach of the duty under subsection (1) if the member has a good reason for not complying with the duty.
- (3) For the purposes of subsection (1), each of the following is a relevant meeting –
  - (a) a meeting of the county council of which the person is a member;
  - (b) a meeting of a committee or sub-committee of the county council, if the person is a member of that committee or sub-committee;
  - 15 (c) a meeting of any joint committee, joint board or other body of which the person is a member, if that committee, board or body is discharging any of the functions of the county council, or has been appointed to advise the council on any matter relating to the discharge of its functions;
  - 20 (d) if a county council is operating executive arrangements and the person is a member of the executive, a meeting of the executive or of a committee of the executive of which the person is a member;
  - (e) any other meeting that the person would reasonably be expected to attend in the exercise of his or her functions as a member of the county council.
- 25 (4) Subsection (1) does not apply to a member of a county council who is exercising a right to a family absence under Part 2 of the 2011 Measure.
- (5) Nothing in this section affects the operation of section 85 of the 1972 Act (vacation of office because of failure to attend meetings for six months).

#### **83 Members of county councils to hold surgeries**

- 30 (1) A member of a county council must hold a surgery at least four times in every relevant 12 month period.
- (2) But a member is not in breach of the duty under subsection (1) if the member has a good reason for not complying with the duty.
- (3) A member holds a surgery if the member makes himself or herself available for at least one hour to meet members of the public to discuss matters in private.
- 35 (4) In complying with subsection (1), the member must ensure that the location, date and time of the surgery is published on the council's website and in any other manner he or she thinks appropriate more than seven days before the day of the surgery.

- (5) For the purposes of this section, a relevant 12 month period is –
- (a) the period of 12 months starting with the day on which the member assumes office as member of the council, and
  - (b) each subsequent period of 12 months.
- 5 (6) For the purposes of subsection (5), any period during which a member is exercising a right to a family absence under Part 2 of the 2011 Measure is to be disregarded; accordingly, the following two periods are to be treated as consecutive –
- (a) any part of a 12 month period that falls immediately before the period of family absence, and
  - 10 (b) the period that begins immediately after the period of family absence.

#### **84 Members of county councils to answer correspondence**

- (1) A member of a county council must respond to all correspondence sent to his or her official address within 14 days of receipt.
- 15 (2) But a member is not in breach of the duty under subsection (1) if the member has a good reason for not complying with the duty.
- (3) A member's "official address" is any address (whether postal or electronic) which is published by the council under section 80.
- (4) This section does not apply to a member of a county council who is exercising a right to a family absence under Part 2 of the 2011 Measure.

#### **85 Members of county councils to complete training**

- 20 (1) A member of a county council must complete all compulsory training courses.
- (2) But a member is not in breach of the duty under subsection (1) if the member has a good reason for not complying with the duty.
- 25 (3) Training is compulsory if the county council of which a person is a member has notified the person that he or she must complete it.
- (4) This section does not apply to a member of a county council who is exercising a right to a family absence under Part 2 of the 2011 Measure.

#### *Duty to make an annual report*

#### **86 Members of county councils to make annual reports**

- 30 (1) A member of a county council must make a report –
- (a) about his or her activities as a member of the council during the period of 12 months to which the report relates;
  - (b) setting out the results of those activities, if known to the member.
- 35 (2) A member of a county council must submit his or her report made under subsection (1) (an "annual report") to the county council's head of democratic services in accordance with the council's standing orders made by virtue of subsection (3)(b).
- (3) A county council must specify in its standing orders –

- (a) the period to which annual reports must relate, and
  - (b) when annual reports must be submitted to the head of democratic services.
- (4) Standing orders made under subsection (3)(b) must not permit an annual report to be submitted after the end of the period of three months starting with the day of the annual meeting of the county council which follows the period to which the annual report relates.
- (5) A county council must publish the annual reports submitted by its members.

### CHAPTER 3

#### BREACHES OF DUTIES UNDER CHAPTER 2

10

##### *Possible breach of performance duties*

#### **87 Complaints about a member's non-compliance with duties**

- (1) A person may make a complaint about a possible breach by a member of a county council of a duty imposed by section 82, 83, 84 or 85 to the monitoring officer of that council.
- (2) A complaint under subsection (1) must be made in writing.

#### **88 Deciding whether to investigate possible breach of performance duties**

- (1) If the monitoring officer of a county council –
- (a) receives a complaint under section 87, or
  - (b) otherwise has reason to believe that a member has breached a duty under section 82, 83, 84 or 85,
- he or she must refer the matter to the chair of the standards committee of the county council.
- (2) The monitoring officer and the chair of the standards committee must together consider whether or not the matter should be investigated.
- (3) When considering whether a matter should be investigated, the monitoring officer and the chair of the standards committee must consider –
- (a) in cases where the monitoring officer has received a complaint under section 87 –
    - (i) whether the complaint is frivolous or vexatious, and
    - (ii) whether the complaint relates to the same, or substantially the same, facts as a complaint that has already been disposed of, and
  - (b) in all cases, whether it is appropriate for the matter to be investigated.
- (4) If either the monitoring officer or the chair of the standards committee consider that a matter should be investigated, the monitoring officer must investigate the matter.
- (5) If the monitoring officer and the chair of the standards committee both consider that a matter should not be investigated, no investigation may take place; and, in cases where the monitoring officer has received a complaint under section 87, the monitoring officer must as soon as practicable take reasonable steps to –
- (a) notify the person who made the complaint that the matter will not be investigated,



and

(b) give reasons for that decision.

- (6) The monitoring officer and the chair of the standards committee may, for the purpose of deciding whether to investigate a matter, make such enquiries as they think necessary.

5 *Possible breach of duty to make annual report*

### 89 Deciding whether to investigate possible breach of duty to make annual report

- (1) This section applies where the head of democratic services for a county council considers that a member of the county council may have breached the duty under section 86.

- (2) The head of democratic services may –

- 10 (a) notify the monitoring officer of the council, who may investigate the matter;  
 (b) if the head of democratic services is also the monitoring officer of the council, investigate the matter (in the exercise of his or her functions as monitoring officer).

- (3) When considering whether to conduct an investigation under this section, the monitoring officer must consult the chair of the standards committee of the county council on  
 15 whether it is appropriate for the matter to be investigated.

*Investigations, reports and sanctions*

### 90 Investigation by monitoring officer

- (1) This section applies if the monitoring officer of a county council investigates a matter under section 88 (possible breach of performance duties) or 89 (possible breach of duty to  
 20 make annual report).

- (2) The monitoring officer must give the member who is the subject of the investigation an opportunity to respond to the matter being investigated.

- (3) The monitoring officer may –

- 25 (a) ask any person for information relating to the matter being investigated, and  
 (b) ask any person to assist him or her in conducting the investigation.

### 91 Monitoring officer's report

- (1) After conducting an investigation under section 88 or 89, the monitoring officer of a county council must –

- 30 (a) provide the standards committee of the county council with a report on the investigation,  
 (b) make any recommendations to the standards committee that the monitoring officer considers appropriate,  
 (c) send a copy of the report, and any recommendations made, to the member of the county council who was the subject of the investigation, and  
 35 (d) if the investigation results from a complaint under section 87, take reasonable steps to send a copy of the report, and any recommendations made, to the person who made the complaint.

- (2) The standards committee must allow the monitoring officer to appear before it for the purpose of presenting the report and any recommendations made.
- (3) The Welsh Ministers may by regulations make provision about the publicity to be given to reports and recommendations provided under this section.

5 **92 Consideration of matter by standards committee**

- (1) This section applies if the standards committee of a county council receives a report from a monitoring officer under section 91.
- (2) The standards committee must determine whether there is any evidence of a breach of the duty in question.
- 10 (3) If the standards committee determines that there is no evidence of a breach of the duty, it must –
  - (a) notify the member who is the subject of the report, and
  - (b) if the report results from a complaint under section 87, take reasonable steps to notify the person who made the complaint.
- 15 (4) If the standards committee determines that there is evidence of a breach of the duty, it must give the member who is the subject of the report written notice that he or she may make representations to the standards committee, either orally or in writing, in respect of the report.
- 20 (5) The standards committee may, for the purposes of exercising its functions under this section –
  - (a) ask the monitoring officer to attend before it for the purposes of assisting it, and
  - (b) ask any person for information, or invite any person to make representations to it.
- (6) The monitoring officer may not unreasonably refuse a request made under subsection (5).
- 25 (7) The standards committee must determine the period within which a member may make representations under subsection (4); but the period must not be less than 28 days starting with the day on which the member is given notice under that subsection.

**93 Standards committee's determination**

- 30 (1) After the period determined under section 92(7) for making representations has ended, the standards committee must determine whether the member who is the subject of the report under section 91 has breached the duty in question.
- (2) If the standards committee determines that the member has breached the duty, it may decide to –
  - 35 (a) censure the member,
  - (b) suspend or partially suspend the member from being a member of the county council for a period not exceeding six months, or
  - (c) take no further action.
- (3) The standards committee must –
  - (a) notify the member of its determination under this section, and of any action that will follow, and

(b) if the report results from a complaint under section 87, take reasonable steps to notify the person who made the complaint of those matters.

(4) The Welsh Ministers may by regulations make provision about the publicity that is to be given to any determination under this section and to any action taken against a member.

(5) The Welsh Ministers must by regulations make provision conferring rights of appeal on members of a county council against any determination of a standards committee under this section.

## CHAPTER 4

### FURTHER PROVISION ABOUT DUTIES ON MEMBERS

#### *Regulations and guidance relating to Chapters 2 and 3*

#### **94 Regulations**

(1) The Welsh Ministers may by regulations make further provision about the way in which a possible breach of a duty imposed by Chapter 2 is to be dealt with.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) about matters to be taken into account in considering whether a possible breach of a duty should be investigated;

(b) about matters to be taken into account in determining whether a member has breached a duty;

(c) enabling a monitoring officer or a standards committee to refer a possible breach of a duty, or any other matter that comes to the monitoring officer or the standards committee's attention in the course of an investigation, to the monitoring officer or the standards committee of another relevant authority;

(d) about procedures to be followed by a monitoring officer or a standards committee;

(e) about the disclosure of information;

(f) enabling sums to be paid to persons by way of expenses and allowances or costs;

(g) about how appeals are to be made, considered and determined.

(3) For the purposes of subsection (2)(c), a "relevant authority" means—

(a) a county council;

(b) a fire and rescue authority;

(c) a National Park authority for a National Park.

#### **95 Guidance**

A person exercising functions under Chapter 2 or 3 must have regard to any guidance issued by the Welsh Ministers.

#### *Related amendments*

#### **96 Standards committee to provide training**

In section 54 of the 2000 Act (functions of standards committees), before subsection (3)

insert –

“(2B) A standards committee of a county council in Wales also has the specific function of advising, training or arranging to train members of the council on matters relating to the duties imposed by sections 82 to 86 of the Local Government (Wales) Act 2017 (duties to attend meetings, hold surgeries, answer correspondence, complete training and make annual reports).”

## 97 Amendments to the 2011 Measure

(1) The 2011 Measure is amended as follows.

(2) Section 5 is repealed.

(3) In section 7, after subsection (1), insert –

“(1A) A local authority must –

(a) consider whether it should be compulsory for its members to complete any training under section 85 of the Local Government (Wales) Act 2017, and

(b) in exercising its functions under subsection (1), secure the provision of any training which it is compulsory for a member to attend under section 85 of that Act.”

### *Role of leaders of political groups on county councils*

## 98 Duties of leaders of political groups in relation to standards of conduct

(1) The 2000 Act is amended as follows.

(2) After section 52 insert –

### “52A County councils: duties of leaders of political groups in relation to standards of conduct

(1) A leader of a political group consisting of members of a county council in Wales –

(a) must take reasonable steps to promote and maintain high standards of conduct by the members of the group, and

(b) must co-operate with the council’s standards committee (and any sub-committee of the committee) in the exercise of the standards committee’s functions.

(2) In complying with subsection (1), a leader of a political group must have regard to any guidance issued by the Welsh Ministers.

(3) The Welsh Ministers may by regulations make provision for the purposes of this section about the circumstances in which –

(a) members of a county council in Wales are to be treated as constituting a political group;

(b) a member of a political group is to be treated as a leader of the

group.

(4) Before making regulations under subsection (3), the Welsh Ministers must consult such persons as they consider appropriate.”

(3) In section 54 (functions of standards committees), after subsection (2) insert –

“(2A) A standards committee of a county council in Wales also has the specific functions of –

(a) monitoring compliance by leaders of political groups on the council with their duties under section 52A(1), and

(b) advising, training or arranging to train leaders of political groups on the council about matters relating to those duties.”

## CHAPTER 5

### EXECUTIVES OF COUNTY COUNCILS

#### 99 Objectives to be met by council executives

In the 2000 Act, at the appropriate place insert the following section –

##### “15A Duty to set objectives etc. in relation to discharge of functions

(1) As soon as practicable after an elected mayor or, as the case may be, executive leader of a local authority is elected, he or she must set objectives to be met by the executive in the discharge of functions which, under executive arrangements, are the responsibility of the executive.

(2) An elected mayor or executive leader must keep objectives set under this section under review, and may revise the objectives at any time.

(3) As soon as is reasonably practicable after 31 March in each year, the elected mayor or the executive leader of a local authority must prepare a report on the extent to which objectives set under this section have been achieved.

(4) An elected mayor or executive leader must arrange for the publication of –

(a) objectives set under this section, and

(b) reports prepared under subsection (3).”

#### 100 Manifestos: election of executive leader

(1) In paragraph 2 of Schedule 1 (leader and cabinet executives, Wales) to the 2000 Act –

(a) insert –

“(1A) The executive arrangements –

(a) must include provision requiring a candidate for election as the executive leader to prepare a written manifesto, and provision for ensuring that copies of the manifesto are made available before the election to the other members of the authority;

(b) may include other provision with respect to the election of the executive leader.”;

(b) in sub-paragraph (2)–

(i) after “may” insert “also”, and

(ii) in paragraph (a) omit “election and”.

(2) After paragraph 2 of Schedule 1 insert –

“2A The standing orders of a local authority operating executive arrangements which involve a leader and cabinet executive (Wales) must include provision for the purpose of ensuring that a candidate for election as the executive leader is given the opportunity to promote his or her written manifesto at a meeting of the authority held before the election.”

## 101 Appointment of assistants to executive

(1) Schedule 1 to the 2000 Act (executive arrangements in Wales: further provision) is amended as follows.

(2) Before paragraph 4 insert –

### *“Assistants to the executive*

3A (1) Executive arrangements by a local authority may make provision for councillors of the authority to be appointed to assist the executive in discharging functions which are the responsibility of the executive.

(2) Such a councillor is referred to in this Schedule as an assistant to the executive of the authority.

(3) Assistants to the executive of an authority are to be appointed –

(a) in the case of an authority operating a mayor and cabinet executive, by the elected mayor;

(b) in the case of an authority operating a leader and cabinet executive (Wales), by the executive leader or the authority.

(4) Executive arrangements which make provision for the appointment of assistants to an executive may include provision about –

(a) the number of assistants that may be appointed,

(b) their term of office, and

(c) their responsibilities.

(5) The assistants to the executive of a local authority may not include –

(a) the chairman and vice-chairman of the authority;

(b) the presiding member and deputy presiding member of the authority (if the authority has a presiding member).

(6) An assistant to the executive of an authority is not a member of the executive of the authority.

(7) Section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities) does not apply to a local authority's function of making appointments under sub-paragraph (3) (b)."

5 (3) In paragraph 5—

(a) at the beginning insert—

"(1) An assistant to the executive of a local authority is entitled to attend, and speak at, any meeting of the executive or of a committee of the executive.

10 (2) “;

(b) for “not a member of the authority's executive” substitute “neither a member of the authority's executive nor an assistant to the executive”.

(4) Schedule 6 contains further amendments relating to assistants to local authority executives.

## 15 102 Guidance

(1) Section 38 of the 2000 Act (guidance) is amended as follows.

(2) In subsection (1), after “local authority” insert “, an elected mayor or an executive leader”.

(3) After subsection (1) insert—

20 “(1A) The guidance may, among other things, include provision designed to encourage good practice in relation to equality and diversity (within the meaning of section 8(2) of the Equality Act 2006).”

## CHAPTER 6

### APPOINTMENT ETC. OF CERTAIN CHIEF OFFICERS

## 25 103 Appointment and reports of chief executive

(1) A county council must appoint a chief executive.

(2) The chief executive of a county council must—

(a) keep each of the matters specified in subsection (3) under review, and

30 (b) where he or she considers it appropriate to do so, prepare a report to the council setting out his or her proposals in respect of any of those matters.

(3) Those matters are—

(a) the manner in which the exercise by the council of its different functions is co-ordinated;

35 (b) the number and grades of staff required by the council for the exercise of its functions;

(c) the organisation of the council's staff;

(d) the appointment of the council's staff;

(e) the arrangements for the management of the council's staff (including arrangements for training and development).

5 (4) As soon as practicable after preparing a report under subsection (2)(b), the chief executive of a county council must arrange for a copy of the report to be sent to each member of the council.

(5) A county council must consider a report prepared under subsection (2)(b) at a meeting held not more than three months after copies of the report are first sent to members of the council; and section 101 of the 1972 Act does not apply to the duty imposed by this subsection.

10 (6) A county council must provide its chief executive with such staff, accommodation and other resources as are, in the chief executive's opinion, sufficient to allow the chief executive's duties under this section to be carried out.

(7) Schedule 7 makes amendments to other legislation in consequence of this section.

#### 104 Council leaders to set objectives for chief executives etc.

15 (1) This section applies where a county council is operating executive arrangements.

(2) The council's senior executive member must, as soon as is practicable after a person is appointed as chief executive of the council, set objectives to be met by the chief executive.

(3) The council's senior executive member must annually –

20 (a) review the extent to which the chief executive has met objectives set under this section, and

(b) review and, if the senior executive member considers it appropriate, revise the objectives.

(4) The council's senior executive member must arrange for objectives set under this section to be published.

25 (5) The council's senior executive member must –

(a) prepare a report on each review under subsection (3)(a),

(b) arrange for the report to be published, and

(c) arrange for a copy of the report to be sent to each member of the council.

30 (6) The council must consider a report on a review under subsection (3)(a) at a meeting held not more than three months after the date on which the report is published; and section 101 of the 1972 Act does not apply to the duty imposed by this subsection.

(7) The council's senior executive member may not do anything mentioned in subsection (2), (3), (4) or (5) without consulting its chief executive.

(8) The Welsh Ministers may issue guidance to –

35 (a) a senior executive member of a county council;

(b) a county council,

on the exercise of functions under this section, and the person to whom any guidance is issued must have regard to it.

(9) In this section "senior executive member" means –



- (a) in the case of a council operating a leader and cabinet executive, the executive leader;
- (b) in the case of a council operating a mayor and cabinet executive, the elected mayor.

5 (10) In subsection (9) –

“executive leader” (“*arweinydd gweithrediaeth*”) has the same meaning as in section 11(3)(a) of the 2000 Act;

“leader and cabinet executive” (“*gweithrediaeth arweinydd a chabinet*”) means a leader and cabinet executive (Wales) within the meaning of section 11(3) of the 2000 Act.

## 105 Head of democratic services

(1) In section 8(4) of the 2011 Measure –

(a) omit paragraph (b), and

(b) in paragraph (c), for “that section” substitute “section 5 of the Local Government and Housing Act 1989”.

(2) In section 43(2) of the Localism Act 2011 (c.20) (meaning of “chief officer” for the purposes of pay policy statements), after paragraph (e) insert –

“(f) its head of democratic services designated under section 8(1) of the Local Government (Wales) Measure 2011 (designation by council of a county or country borough in Wales).”

## CHAPTER 7

### OVERVIEW AND SCRUTINY COMMITTEES AND STANDARDS COMMITTEES

## 106 Voting rights of co-opted members of overview and scrutiny committees

(1) The 2000 Act is amended in accordance with subsections (2) and (3).

(2) In Schedule 1 (further provision about executive arrangements), at the end insert –

*“Overview and scrutiny committees: voting rights of co-opted members*

15 (1) A local authority may –

(a) permit a co-opted member of an overview and scrutiny committee of the authority to vote at meetings of the committee;

(b) permit a co-opted member of a sub-committee of an overview and scrutiny committee of the authority to vote at meetings of the sub-committee.

(2) Permission to vote at meetings of an overview and scrutiny committee may include permission to vote at meetings of its sub-committees (including sub-committees it may appoint in the future).

(3) Permission under this paragraph may only be given with the

agreement of the overview and scrutiny committee.

- (4) Permission must relate to a specific co-opted member.
- (5) Permission may be given subject to limitations.
- (6) A limitation may, in particular, relate to—
  - (a) the questions on which the co-opted member is entitled to vote;
  - (b) the duration of the co-opted member's entitlement to vote.
- (7) The Welsh Ministers may by regulations make provision about the exercise of the functions of local authorities and overview and scrutiny committees under this paragraph.
- (8) Regulations under sub-paragraph (7) may, in particular, include—
  - (a) provision for a maximum or minimum number of co-opted members of an overview and scrutiny committee or sub-committee that may be permitted to vote at meetings;
  - (b) provision about the procedure for giving permission.
- (9) Section 101 of the Local Government Act 1972 (c.70) (arrangements for discharge of functions by local authorities) does not apply to the functions of a local authority under this paragraph.
- (10) In this paragraph, "co-opted member", in relation to an overview and scrutiny committee of a local authority or a sub-committee of such a committee, means a member of the committee or sub-committee who is not a member of the authority."

- (3) In section 21(10) (co-opted members of overview and scrutiny committees), after "that meeting" insert "unless permitted to do so under paragraph 15 of Schedule 1".
- (4) In section 58(3)(c)(i) of the 2011 Measure (provisions that may be applied to joint overview and scrutiny committees), after "section 21 of" insert ", or paragraphs 8 to 15 of Schedule 1 to,".
- (5) In section 185(3)(b)(i) of the National Health Service (Wales) Act 2006 (c.42) (provisions that may be applied to joint overview and scrutiny committees with functions relating to the health service), after "(6) to (17) of" insert ", and paragraph 15 of Schedule 1 to,".

### 30 **107 Making information available to overview and scrutiny committees**

In section 22(10) of the 2000 Act (power to require information to be made available about decisions), for "or members of the authority" substitute ", members of the authority, an overview and scrutiny committee of the authority or a sub-committee of such a committee".

### 35 **108 Power to require authorities to appoint joint overview and scrutiny committees**

- (1) Section 58 of the 2011 Measure (joint overview and scrutiny committees) is amended as follows.
- (2) In subsection (1), after "authorities may" insert "or must".
- (3) In subsection (3), for paragraph (a) substitute—

- “(a) provision about the circumstances in which arrangements may be made;
- (aa) provision prescribing circumstances in which arrangements must be made;
- 5 (ab) provision for arrangements to be made subject to prescribed conditions or limitations;”.

## 109 Duty of standards committee to make annual report

In Part 3 of the 2000 Act, at the end of Chapter 1 insert—

### “56B Annual reports by standards committees

- 10 (1) As soon as reasonably practicable after the end of each financial year, a standards committee of a relevant authority must make an annual report to the authority in respect of that year.
- (2) The annual report must describe how the committee’s functions have been discharged during the financial year.
- 15 (3) In particular, it must include a summary of—
- (a) what has been done to discharge the general and specific functions conferred on the committee by section 54 or 56;
- (b) reports and recommendations made or referred to the committee under Chapter 3 of this Part;
- 20 (c) action taken by the committee following its consideration of such reports and recommendations;
- (d) notices given to the committee under Chapter 4 of this Part.
- (4) An annual report by a standards committee of a county council in Wales must include—
- 25 (a) the committee’s assessment of the extent to which leaders of political groups on the council have complied with their duties under section 52A(1) during the financial year;
- (b) a summary of—
- 30 (i) matters referred to the chair of the committee under section 88 (possible breach of performance duties by members) of the Local Government (Wales) Act 2017, and
- (ii) matters considered under section 92 of that Act (consideration by standards committee of possible breaches of duties), and determinations made under section 93 of that Act (standards committee’s determination in relation to possible breaches of duties).
- 35 (5) An annual report by a standards committee of a relevant authority may include recommendations to the authority about any matter in respect of which the committee has functions.
- 40

- (6) A relevant authority must consider each annual report made by its standards committee before the end of 3 months beginning with the day on which the authority receives the report.
- (7) The function of considering the report may be discharged only by the relevant authority (and is accordingly not a function to which section 101 of the Local Government Act 1972 applies).
- (8) In this section “financial year” means a period of 12 months ending with 31 March.”

## CHAPTER 8

### MINOR AMENDMENTS TO OTHER LEGISLATION

#### 110 Minor amendments to other legislation

- (1) Section 106 of the 2000 Act (orders and regulations) is amended in accordance with subsections (2) and (3).
- (2) Omit subsection (5).
- (3) In subsection (6) –
- (a) after “made under” insert “section 52A(3),”;
  - (b) after “54(5)” insert “or under paragraph 15(7) of Schedule 1”.
- (4) In the Local Government (Democracy) (Wales) Act 2013 (anaw 4), omit section 68(4)(a).

## PART 5

### COUNTY COUNCILS: IMPROVEMENT OF GOVERNANCE

#### CHAPTER 1

##### DUTY TO MAKE ARRANGEMENTS TO SECURE GOOD GOVERNANCE ETC.

#### 111 Governance arrangements

- (1) A county council must, in relation to the exercise of its functions, make, implement and comply with arrangements (“governance arrangements”) for the purpose of securing –
- (a) good governance;
  - (b) accountability;
  - (c) economy, efficiency and effectiveness in its use of resources.
- (2) In making governance arrangements, a county council must comply with the principles, processes and practices set out or otherwise prescribed by the Welsh Ministers in regulations made under subsections (3) and (4).
- (3) The Welsh Ministers must by regulations make provision about principles, processes and practices relating to good governance, and they may do so by prescribing in the regulations any code of practice or guidance (whether or not issued by the Welsh Ministers).

**CITY AND COUNTY OF CARDIFF  
DINAS A SIR CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE:**

**15 DECEMBER 2015**

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**REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES**

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**LOCAL GOVERNMENT ETHICAL FRAMEWORK – WELSH GOVERNMENT  
CONSULTATION ON AMENDMENTS TO SUBORDINATE LEGISLATION**

**Reason for this Report**

1. To enable the Committee to consider the Welsh Government's proposed amendments to subordinate legislation relating to the local government ethical framework; and respond to the consultation on this matter.

**Background**

2. The Local Government Act 2000, Part III (and regulations made thereunder) sets an ethical framework for the conduct of local government members. In its 2012 White Paper, 'Promoting Local Democracy', the Welsh Government indicated its view that the current framework provides an appropriate balance between guiding Members on the standards of conduct expected of them, and giving reassurance to the public that misconduct will be dealt with consistently and appropriately. However, the White Paper also set out a number of proposals for improving the operation of the framework. Some of these proposals were addressed in the Local Government (Democracy)(Wales) Act 2013.

**Issues**

3. The Welsh Government is consulting upon two draft statutory instruments (to be made under Part III of the Local Government Act 2000), intended to give effect to the policy proposals set out in the 2012 White Paper and consequential upon legislative changes introduced by the Local Government (Democracy)(Wales) Act 2013 and related matters.
4. The Welsh Government Consultation Document, 'Local Government Act 2000 – Part III, Conduct of Local Government Members, Amendments to Subordinate Legislation', issued 30<sup>th</sup> November 2015 is attached as **Appendix A**. The deadline for responses is 10<sup>th</sup> January 2016.

5. Members will note that the proposals are largely technical. Substantive changes to the law have already been made by the Local Government (Democracy)(Wales) Act 2013. The current proposals are mostly consequential changes to subordinate legislation and the Model Code of Conduct to make them compatible with the primary legislation.
6. Members are invited to consider the proposals and consultation questions set out in **Appendix A**, and provide comments, as appropriate.

### **Legal Implications**

7. Relevant legal provisions are set out in the Consultation Document, **Appendix A**.

### **Financial Implications**

8. There are no financial implications arising from this report.

## **RECOMMENDATION**

The Committee is recommended to:

1. Note the proposed amendments to subordinate legislation and consultation questions, as set out in **Appendix A**, and provide comments as appropriate; and
2. Delegate authority to the Monitoring Officer, in consultation with the Chair, to prepare and submit a response to the Welsh Government's consultation on behalf of the Committee.

**Marie Rosenthal**  
**Director Governance & Legal Services and Monitoring Officer**  
9 December 2015

## **APPENDICES**

Appendix A            Consultation Document, 'Local Government Act 2000 – Part III, Conduct of Local Government Members, Amendments to Subordinate Legislation, 30 November 2015

Number: WG26292



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## Consultation Document

# Local Government Act 2000 – Part III, Conduct of Local Government Members

Amendments to Subordinate Legislation

Date of issue: 30 November 2015

Action required: Responses by 23:59, 10 January 2016

## Overview

This consultation seeks views on the content of two draft statutory instruments:

The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) Regulations 2016; and

The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016)

to be made under Part III of the Local Government Act 2000 (the “2000 Act”), in relation to the conduct of local government members in Wales and related matters.

The statutory instruments amend existing subordinate legislation made under the 2000 Act, consequential upon provisions in the Local Government (Democracy) (Wales) Act 2013 and other proposals to improve the operation of the local government ethical standards framework in Wales.

## How to respond

Please submit your comments using the online response form or by e-mail to:

ReformingLG@wales.gsi.gov.uk.

## Further information and related documents

**Large print, Braille and alternative language versions of this document are available on request.**

## Contact details

For further information:

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## **Data protection**

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## 1. Introduction

1.1 The Welsh Government's 'Programme for Government' included a commitment to review the process for making an allegation that a local government member may have breached the member Code of Conduct, to ensure it remains fit for purpose.

1.2 In taking forward this commitment, the 2012 'Promoting Local Democracy' White Paper<sup>1</sup> restated the Welsh Government's view that the current statutory ethical standards framework in Wales provides an appropriate balance between guiding members on the standards of conduct expected of them, and giving reassurance to the public that misconduct would be dealt with consistently and appropriately. However, the White Paper set out a number of proposals for improving the operation of the framework:

- i. The voluntary adoption by certain relevant authorities<sup>2</sup> of local low-level member-on-member complaint resolution processes, as an alternative to the full investigatory process involving the Public Services Ombudsman for Wales ("the Ombudsman");
- ii. The voluntary adoption by all relevant authorities (i.e. including community councils) of a cap on indemnities, where authorities provide indemnities to members who are the subject of misconduct proceedings;
- iii. Removal from the Model Code of Conduct<sup>3</sup> of the obligation on members to report to the Ombudsman any conduct by another member which may amount to a breach of the Code, to facilitate the operation of local complaints resolution processes; and
- iv. The removal of any legal barriers to the establishment by relevant authorities of joint standards committees. Provision for this was made in section 68 of the Local Government (Democracy) (Wales) Act 2013 (the "2013 Act").

1.3 During the course of the National Assembly for Wales' scrutiny of the 2013 Act (then Bill), the Welsh Government accepted the recommendations of the Stage 1 Committee that the Bill should be amended to:

- enable a standards committee which has received a report on an alleged breach of the Code of Conduct, but considers it has a conflict of interest in dealing with the matter, to refer the report to another authority's standards committee for adjudication; and
- require relevant authorities to publish registers of members' interests online.

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<sup>1</sup> <http://gov.wales/consultations/localgovernment/promlocdemocracy/?lang=en>

<sup>2</sup> i.e. county / county borough councils, fire and rescue authorities and national park authorities

<sup>3</sup> See schedule to the 'Local Authorities (Model Code of Conduct) (Wales) Order 2008'

1.4 Following late representations by Lawyers in Local Government during the Bill’s passage, the Welsh Government also signalled that it would bring forward subordinate legislation to exempt authorities from publishing misconduct reports whilst standards committee proceedings were ongoing. This commitment, and the intention to modify the Model Code of Conduct in respect of members’ constituency interests and the obligation to report potential breaches to the Ombudsman, were reaffirmed in the ‘Reforming Local Government: Power to Local People’ White Paper<sup>4</sup> published on 3 February 2015.

1.5 This consultation paper invites views on the draft statutory instruments giving effect to the above provisions of the 2013 Act and other proposals.

## 2. Draft Statutory Instruments

### **Draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order (“the Code Amendment Order”)**

2.1 The Code Amendment Order amends the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (SI 2008 / 788), as described below.

#### *Register of Member’s Interests*

2.2 Section 81 of the Local Government Act 2000 (“the 2000 Act”) makes provision requiring the disclosure and registration of members’ interests and related matters. Section 58 of the 2013 Act amended section 81 to:

- i. transfer responsibility for maintaining the register of interests of members of community councils from the monitoring officer of the county / county borough council for the area, to the ‘proper officer’ of each community council; and
- ii. require all relevant authorities in Wales to publish the register of members’ interests electronically.

2.3 These changes came into force on 1 May 2015. The Code Amendment Order makes a number of consequential changes to the Model Code of Conduct so that, in relation to a community council, a reference to a monitoring officer is replaced with a reference to the proper officer of the community council as follows:

<b>Code Paragraph</b>	
11(4)	Requirement to give written notice of a personal interest disclosed for the first time.

<sup>4</sup> Section 3.5, The Role and Responsibilities of Elected Members;  
<http://gov.wales/consultations/localgovernment/power-to-local-people/?lang=en>

Code Paragraph	
15(2)	Requirement to give written notification of a new or changed personal interest.
16(2)	Requirement to register information related to a personal interest which is no longer sensitive information.
17	Requirement to give written notification of any gift, hospitality etc.

2.4 The Welsh Government is aware that confusion has arisen over the interpretation of paragraph 15(2) of the Code in respect of those personal interests which should be entered in the register of members' interests. The Code Amendment Order amends paragraph 15(2) of the Model Code to put it beyond doubt that all personal interests disclosed under paragraph 11 of the Code, not just those financial and other interests falling within a category mentioned in paragraph 10(2)(a), should be entered in the register of members' interests. This is not a change of approach, but clarification of the existing underlying policy intention. However, there is no change to the exemption for members of community councils from the requirement to register interests falling within paragraph 10(2)(a) of the Model Code within 28 days of their taking up office.

**Question 1:** Are any further amendments required to the Model Code to give practical effect to the provisions of the 2013 Act?

### Obligation to Report Potential Breaches

2.5 Paragraph 6(1)(c) of the Model Code provides that a member must report to the Ombudsman and the relevant authority's monitoring officer any conduct by another member which they reasonably believe breaches the Code of Conduct.

2.6 The 2012 White Paper signalled the Welsh Ministers' support for the introduction by relevant authorities of non-statutory local protocols for resolving low-level member-on-member complaints. The Ombudsman's guidance on the Code of Conduct states that, typically, such complaints will be about alleged failure to show respect and consideration (paragraph 4(b) of the Code), or breach of the requirement not to make vexatious, malicious or frivolous complaints against another member (paragraph 6(1)(d) of the Code). Such complaints, particularly when aired in the media, have potential to escalate and to bring disproportionate damage to relationships within an authority and to the authority's reputation.

2.7 Local complaints protocols provide an opportunity for a speedy and cost-effective resolution of such complaints, before matters escalate. Whilst it remains open to a member to refer such matters to the Ombudsman, the Ombudsman has indicated that he is likely to refer the matter back for local resolution in the first instance.

2.8 The 2012 White Paper indicated that, to support the operation of local complaints protocols, the obligation on a member to report a potential breach would be removed from the Model Code. In part, this would remove the opportunity for a member to seek to thwart the operation of a local complaints protocol by citing the statutory obligation to report a matter to the Ombudsman.

2.9 The Code Amendment Order, therefore, omits from the Model Code the requirement to report a potential breach to the Ombudsman, but the requirement to report a breach to the monitoring officer is retained. This does not prevent a member from quite properly reporting a potentially serious breach of the Code to the Ombudsman.

**Question 2:** Do you agree that whilst the obligation on members to report potential breaches of the Code to the Ombudsman is removed, the obligation to report such breaches to the relevant monitoring officer should be retained?

### Constituency Interests

2.10 Paragraph 10(2)(b) of the Model Code provides that a member has a personal interest in a matter if a member of the public might reasonably perceive a conflict between their role in taking a decision on that matter on behalf of the authority as a whole, and their role in representing the interests of constituents in their ward or electoral division, as appropriate.

2.11 This aspect of the Code has given rise to unintended consequences in its practical application. The equivalent provision in the 2001 Model Code of Conduct was framed so as to apply to an executive member acting alone in taking a decision on behalf of the authority. The wider wording of the provision in the 2008 Code has been read by authorities as applying to members when acting collectively, e.g. on a planning or licensing committee, and has been seen as potentially precluding members from participating in any decisions affecting their ward.

2.12 Paragraph 10(2)(b) is also potentially in conflict with section 25 of the Localism Act 2011, which aims to clarify the law covering predetermination in England and Wales. In essence, the Act seeks to clarify that simply expressing a prior view on a matter is not in itself evidence of predetermination.

2.13 The Code Amendment Order omits paragraph 10(2)(b) from the Model Code in order to overcome the practical difficulties encountered. However, a member taking a decision on a matter should keep an open mind until they are in full possession of all relevant facts and to act objectively and in the public interest in accordance with paragraph 8 of the Model Code.

**Question 3:** Do you agree that the omission of paragraph 10(2)(b) appropriately addresses the difficulties experienced in applying this aspect of the Code in practice?

### Other Amendments

2.14 In addition to the above changes, a number of minor textual amendments have been made to reflect changes in other legislation since the Model Code was introduced, e.g. removal of references to police authorities. These have no material effect on the operation of the Code itself.

### **Draft Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 (the “Standards Committees Amendment Regulations”)**

2.15 The Standards Committees Amendment Regulations amend the following existing statutory instruments:

- Standards Committees (Wales) Regulations 2001 (SI 2001 / 2283)
- Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (SI 2001 / 2281)
- Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI 2001 / 2279)

### **Amendments to the Standards Committees (Wales) Regulations 2001 (the “2001 Standards Committees Regulations”)**

#### Joint Standards Committees (“joint committee or committees”)

2.16 Section 53 of the 2000 Act requires a relevant authority (other than a community council) to establish a standards committee. Section 68 of the 2013 Act amended section 53 so that one or more authorities may establish a joint committee. The arrangements for establishing a joint committee, including the apportionment of costs, are a matter for agreement between the authorities entering into such arrangements.

2.17 The 2001 Standards Committees Regulations (as amended) make provision as to the size and composition of standards committees and matters relating to the conduct of meetings, including public access to meetings, agendas and papers etc.

2.18 The draft Standards Committees Amendment Regulations make consequential amendments to the 2001 Standards Committees Regulations, reflecting authorities’ new powers to establish joint committees. Attention is drawn to the following points (a reference to regulations in the sub-headings is to the provisions of the 2001 Standards Committees Regulations):

i. *Regulation 2 - interpretation*

A number of minor consequential amendments are made to the interpretation and other provisions to clarify the meaning of terms used, and the application of provisions, in the 2001 Standards Committees Regulations in relation to a joint committee. This includes expanding the definition of a standards committee to include a joint committee.

The opportunity is also taken to update the interpretation and other provisions to reflect changes in legislation since the 2001 Standards Committees Regulations were made e.g. references to 'fire and rescue authorities' instead of 'fire authority'. These amendments have no material impact on the operation of the Regulations.

ii. *Regulation 3 – size of standards committee*

The 2001 Standards Committees Regulations provide that a standards committee must consist of between 5 and 9 members of which at least half, including the chairperson, must be independent of the authority.

Informal soundings of Lawyers in Local Government have suggested that there is no need to increase the number of members for the purposes of establishing a joint committee. No amendment is proposed, therefore, but the Welsh Government would welcome views on this.

It will be a matter for the constituent authorities to determine the number, and proportion from each authority, of elected members to be appointed to a joint committee.

iii. *Regulation 9 - number of executive members*

The 2001 Standards Committees Regulations provide that a standards committee of a local authority operating executive arrangements may not include more than one member of the authority's executive. It is proposed to amend the Regulations so that a joint committee may include no more than one executive member from each constituent authority.

iv. *Regulation 10 – community committee members*

Under the 2001 Standards Committees Regulations (as amended by the proposed Standards Committees Amendment Regulations), a 'community committee member' means a standards committee member who is also a member of a community council within the area of the relevant authority or in the case of a joint committee, authorities concerned.

Regulation 10 provides that the membership of a standards committee which is to discharge functions in relation to members of community councils, must include at least one 'community committee member'.

As drafted, the Standards Committees Amendment Regulations amend Regulation 10 so that in the case of a joint committee, a designated local authority may exercise the function of appointing a community committee member. Before making such an appointment, the authority concerned must consult community councils and any associations operating within the combined area of the constituent authorities of the joint committee. It should be noted, however, that the Welsh Government intends to consider further whether it is necessary or appropriate to make express provision for a designated local authority to exercise functions under the 2001 Standards Committees Regulations. This is a technical drafting matter, not an issue of policy, and applies to other references to a designated authority in the draft Regulations.

v. *Regulations 13-17 - appointment of independent members*

New provision is inserted to clarify that a requirement or act of a relevant authority or local authority in respect of its area, includes the combined area of the constituent authorities in the case of a joint committee.

vi. *Regulations 21 and 21A – reappointment of members*

These Regulations are amended to provide express provision for a lead authority to be designated for the purpose of re-appointing members to a joint committee. The proposed amendments are subject to the further consideration noted under '*Regulation 10 – community committee members*' above in respect of provision for a designated authority.

vii. *Regulation 25 - meetings of standards committee*

The 2001 Standards Committees Regulations require that the monitoring officer, or a representative, of the relevant authority must attend every meeting of the committee. Again informal soundings of Lawyers in Local Government suggest that the agreement between the constituent authorities would normally specify the arrangements for servicing a joint committee. It is proposed, therefore, to amend the 2001 Standards Committees Regulations so it is clear that the monitoring officer, or a representative, of one of the constituent authorities must attend every meeting. This will provide flexibility for the authorities to determine attendance between them.

viii. *Regulation 28 - minutes of proceedings*

The 2001 Standards Committees Regulations provide that the minutes of a standards committee shall be drawn up and entered in a book provided for the purpose by the proper officer of the relevant authority concerned. It is proposed to amend the 2001 Standards Committees Regulations so that this becomes the duty of the proper officer of a constituent authority of a joint committee.



ix. *Regulation 29 - terms of reference*

The 2001 Standards Committees Regulations require every relevant authority to prepare the terms of reference of its standards committee and to send a copy of these to the Ombudsman. In the case of a joint committee, this will be the responsibility of the designated lead authority specified in the arrangements for establishing the committee. Again, the need for express provision of this kind is to be considered further by the Welsh Government.

**Question 4:** Are any further amendments required to facilitate the establishment and operation of a joint standards committee?

**Question 5:** Do you agree that it is unnecessary to increase the maximum permissible number of members of a joint committee?

*Local Authority Members of Standards Committees - Term of Office*

2.19 The term of office of a member of a local authority or a community committee member serving on a standards committee is currently limited to the shorter of four years or the period to the next ordinary election following that member's appointment. A member may serve two such terms. Similar provision applies to a member appointed to a fire and rescue authority or a national park authority standards committee.

2.20 In November 2014, the Welsh Ministers made the '*Local Authority Elections (Wales) Order 2014*', which postponed the next ordinary elections until 2017. An unintended consequence of this postponement is that authorities would need to appoint new local authority and community committee members of standards committees for a period of one year only, i.e. to cover the period from the original planned elections in May 2016 to May 2017.

2.21 To overcome this unintended consequence, new transitional provision is inserted as Regulation 30(4) of the 2001 Standards Committees Regulations. This enables a relevant authority to determine that local authority and community committee members of a standards committee in place on the date the Standards Committees Amendment Regulations come into force may continue to serve on the standards committee until the date of the next ordinary election in 2017.

2.22 In order to future-proof the 2001 Standards Committees Regulations, further amendments are made to Regulations 18-19 to remove the four year restriction on a member's term of office. In future, the term of office of local authority and community committee members is to be such as the authority determines, up to the period ending with the next ordinary elections following the member's appointment. In the case of a member appointed to a fire and rescue authority or national park authority standards committee, the term of office is the period until the member's appointment to the authority ceases.

**Question 6:** Are there any unanticipated consequences arising from the proposed change to the term of office of local authority members of standards committees?

*Publication of Misconduct Reports – Exemption*

2.23 Standards committees have functions under the ‘Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001’ (as amended) (the “2001 Functions Regulations”), to consider and adjudicate upon alleged breaches of the Code of Conduct, following investigation by the Ombudsman or by the relevant authority’s monitoring officer.

2.24 It is expected that a standards committee would normally hear evidence and submissions in relation to an alleged breach of the Code of Conduct in public. Among other things, this recognises a member’s right under Article 6 of the European Convention on Human Rights to a fair and public hearing. However, the legislative framework recognises there may be circumstances in which it is appropriate for a standards committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination.

2.25 Regulation 26 of the 2001 Standards Committees Regulations apply, with modification, certain provisions of Part VA and schedule 12A of the Local Government Act 1972 (access to meetings etc) to a standards committee. These, and related provisions in other subordinate legislation, have been interpreted by some standards committees as requiring the report of a misconduct investigation to be published in advance of a standards committee meeting at which the matter is to be considered, along with the agenda and other papers for that meeting. This has given rise both to unhelpful advance publicity in the media, and the potential for witness evidence that is to be given orally at a hearing to be influenced by prior knowledge of the contents of the report, such as the written statements of other witnesses.

2.26 The Standards Committees Amendment Regulations amend the 2001 Standards Committee Regulations by inserting a new regulation 27(2A) which provides that:

- i. A standards committee may exempt from publication agendas, records or information connected to the consideration of a misconduct report, until such time as the misconduct proceedings are concluded.
- ii. The conclusion of proceedings is the later of:
  - a) the expiration of the time allowed to lodge a notice seeking the permission of the President of the Adjudication Panel for Wales (“the Adjudication Panel”) to appeal the standards committee’s decision,

under Regulation 10(2) of the 2001 Functions Regulations (as amended);

- b) receipt of notification of the decision of the President of the Adjudication Panel on the application for permission to appeal;
- c) receipt of notification of the conclusion of an appeal where the Adjudication Panel appeals tribunal endorses a finding by the standards committee that there has been a breach of the Code of Conduct and the sanction imposed, or where it overturns the determination of the standards committee that there has been a breach of the Code; or
- d) a further determination by the standards committee after receiving a recommendation from an appeals tribunal that a different sanction should be imposed.

2.27 It is not intended that the period of exemption should extend to any application for judicial review of the appeal tribunal's determination. Such a review is concerned primarily with potential procedural failings and is unlikely to be affected by the concerns described above regarding adverse publicity and potential influence of oral evidence.

**Question 7:** Do the proposed changes appropriately and sufficiently address the problems that have arisen from the publication of misconduct reports prior to standards committee hearings?

### **Amendments to the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001**

#### **Referral of Misconduct Cases**

2.28 The 2001 Functions Regulations, made under section 73 of the 2000 Act, make provision for the way in which a monitoring officer and standards committee are to deal with alleged breaches of the Code of Conduct referred to them by the Ombudsman.

2.29 Section 69 of the 2013 Act amended the regulation-making power in section 73 of the 2000 Act, with effect from 1 May 2015, so that the Welsh Ministers may make provision enabling a monitoring officer or a standards committee to refer a report or recommendations relating to a misconduct investigation to another authority's standards committee. The Welsh Ministers do not intend to specify the circumstances in which authorities might utilise these powers, but typically this would enable arrangements to be made where the "home standards committee" considers that it may have a conflict of interest. The terms of any referral are to be a matter for agreement between the relevant authorities concerned.

2.30 To give effect to section 73 of the 2000 Act (as amended), the 2001 Functions Regulations are amended to provide that:

- i. A monitoring officer who is to make a report, or recommendations, to the standards committee of the relevant authority concerned under the 2001 Functions Regulations may, with the written agreement of the Chair of the committee, make arrangements for the report or recommendations to be made to another authority's standards committee.
- ii. A standards committee which receives a report or recommendations from a monitoring officer may make arrangements with another authority's standards committee to exercise its functions under the 2001 Functions Regulations in relation to that report or recommendations.
- iii. Where a monitoring officer or standards committee make such arrangements, the monitoring officer or the standards committee, as appropriate, must give written notice to any person who is the subject of the investigation; to any person who made an allegation giving rise to the investigation; and to the Ombudsman stating:
  - that the matter has been referred to another authority's standards committee for determination;
  - the name of the other standards committee; and
  - the reason why the matter has been referred.
- iv. It is not intended that any of the persons to whom notice must be given should be entitled to challenge the referral and no provision is made for this.
- v. A standards committee that has dealt with a matter referred to it under these provisions must, in addition to the requirements of Regulations 9(3) and (4) to give notification of its determination to certain persons, give written notice of its determination to the referring standards committee.
- vi. The requirement in Regulation 13(1) to produce a report of the outcome of the investigation is to rest with the standards committee determining the matter. The monitoring officer to whom the report must be sent under this Regulation is the monitoring officer of the member's home authority.
- vii. The obligations in Regulation 13(2) to publish the standards committee's report etc. fall on the monitoring officer of the member's home authority.

**Question 8:** Do these proposals make adequate and appropriate provision for the referral of misconduct reports to another authority's standards

committee?

### Period of Suspension

2.31 Regulation 9(1)(d) of the 2001 Functions Regulations provides that a standards committee may determine that a member who has failed to comply with the authority's Code of Conduct should be suspended or partially suspended for a period not exceeding six months. The Regulation does not make express provision for situations where a local election is due to take place within six months of such a determination.

2.32 In contrast, the corresponding provision in section 79(5) of the 2000 Act relating to a decision of an Adjudication Panel case tribunal provides that a period of suspension must not exceed one year '*....or, if shorter, the remainder of the person's term of office.*'

2.33 Questions have arisen from time-to-time as whether a suspension imposed by a standards committee is subject to the same limitation. To put this issue beyond doubt, Regulation 9(1)(d) is amended to make it clear that a period of suspension cannot exceed the remainder of a member's term of office.

**Question 9:** Do you agree that a period of suspension imposed by a standards committee should not extend beyond the end of a member's term of office?

### Appeals to the Adjudication Panel for Wales

2.34 Regulation 10 of the 2001 Functions Regulations provides a right of appeal against the determination of a standards committee to an "appeal tribunal" drawn from the Adjudication Panel.

2.35 The Regulations make no provision requiring a member contemplating bringing an appeal to obtain prior permission to do so. In contrast, a member seeking to appeal the decision of an Adjudication Panel case tribunal under section 79 of the 2000 Act requires the leave of the High Court to bring the appeal. Further, prior to the abolition of police authorities, the equivalent regulations that governed appeals against the decision of a standards committee of such an authority required a member to obtain the permission of the President of the Adjudication Panel to do so.

2.36 This anomaly is to be addressed by requiring a member seeking to appeal the decision of a standards committee first to obtain the permission of the President of the Adjudication Panel. The requirement to obtain permission to appeal is intended to ensure that only appeals that have a reasonable prospect of success (in whole or in part) will proceed. A member will have no

right to challenge, or indeed seek to delay implementation of, a sanction imposed by a standards committee on entirely frivolous or spurious grounds.

2.37 In terms of the detail, the amendments to the 2001 Functions Regulations provide that:

- i. A member seeking permission to appeal must give written notice to that effect to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the standards committee's determination.
- ii. The member's notice seeking permission to appeal must specify:
  - a) The grounds for appeal; and
  - b) If permission to appeal is granted, whether or not the member consents to the appeal being conducted by way of written representations.
- iii. An application for permission to appeal will be decided by the President of the Adjudication Panel or, in his/her absence, a member of the Panel nominated by the President for this purpose. Unless the President or nominated person considers that special circumstances render a hearing desirable, the decision on whether or not to give permission to appeal is to be made in the absence of the parties.
- iv. The President, or nominated person, may request further information from the parties, to be submitted within 14 days from receipt of the request.
- v. In reaching a decision on an application for permission to appeal, regard must be had to whether there is a reasonable prospect of the appeal being successful, either wholly or in part.
- vi. Written notice of the decision on whether or not to grant permission to appeal must be given no later than 21 days after receipt of the application for permission to appeal, or 14 days of receipt of any further information requested by the President of the Adjudication Panel or a nominated person.
- vii. Written notice of the decision made on the application for permission to appeal must be sent to:
  - i. The member seeking permission to appeal;
  - ii. The Ombudsman; and
  - iii. The standards committee of the relevant authority concerned.
- viii. If permission to appeal is refused, the notice must give the reasons for that decision.

- ix. Where permission is granted, the person making the decision shall refer the matter to an appeal tribunal for adjudication under the provisions of Regulations 11 and 12 of the 2001 Functions Regulations.

2.38 Whilst making these amendments, the opportunity is also being taken to make a number of minor related amendments to the 2001 Functions Regulations:

- i. The Adjudication Panel's address in Regulation 10(2) for giving notice of appeal is obsolete. In order to future-proof the Regulations, the address is being omitted as this is readily available via the Panel's website; and
- ii. As the Adjudication Panel does not have a Deputy President, Regulation 11(2) is amended so that, in the absence of the President, a member of the Panel nominated by the President is to appoint the members of an appeal tribunal.

**Question 10:** Do you agree that the proposed procedure for an application for permission to appeal a standards committee determination is appropriate?

### **Amendments to the Local Authorities (Grant of Dispensations) (Wales) Regulations 2001 (the "2001 Dispensations Regulations")**

#### *Referral of Dispensation Applications*

2.39 Section 81(3)(b) of the 2000 Act provides that the Model Code of Conduct must include provision preventing or restricting the participation of a member in any business of that member's authority for which that member has disclosed an interest.

2.40 Section 81(4) provides that any participation by a member in any business in which that member has an interest and which is otherwise prohibited by the Code, is not a failure to comply with the Code if the member has acted in accordance with a dispensation granted by the authority's standards committee.

2.41 The 2001 Dispensation Regulations prescribe the circumstances in which a standards committee may grant a dispensation.

2.42 Section 69 of the 2013 Act, amends section 81 of the 2000 Act so that:

- i. A dispensation may be granted by the standards committee of the member's authority or of another relevant authority; and
- ii. Regulations under section 81(5) may prescribe the procedure to be followed for the granting of a dispensation.

2.43 The underlying policy objective of these amendments is to enable a standards committee to refer a dispensation application to another relevant authority's standards committee. As with the referral of misconduct reports, it is not intended to prescribe the circumstances in which such arrangements may be made, but typically it would enable a dispensation application to be referred where a standards committee considered that it may have a conflict of interest in dealing with a dispensation application. However, it might also enable an urgent application to be dealt with in circumstances where it is impractical for the member's home standards committee to meet at short notice, e.g. due to the unavailability of members. The terms of any referral are to be a matter for agreement between the relevant authorities concerned.

2.44 To give effect to this provision, the 2001 Dispensation Regulations are amended to provide that:

- i. The monitoring officer of a relevant authority, with the written agreement of the Chairperson of the standards committee, may make arrangements for a dispensation application from a member to be considered by another authority's standards committee.
- ii. The Vice-Chairperson of the standards committee may exercise the above function where reasonable efforts to contact the Chairperson have been unsuccessful (this might be appropriate when an application needs to be considered urgently).
- iii. Where an application for dispensation has been submitted to the standards committee of a relevant authority, the committee may determine not to consider the application and to make arrangements for the application to be considered by another authority's standards committee.
- iv. Where a monitoring officer or standards committee make such arrangements, the monitoring officer or the standards committee, as appropriate, must give written notice to the member requesting a dispensation stating:
  - that the application has been referred to another authority's standards committee for determination;
  - the name of the other standards committee; and
  - the reason why the matter has been referred.
- v. It is not intended that the member concerned should be entitled to challenge the referral.
- vi. A standards committee that has dealt with a dispensation request referred to it by another authority's monitoring officer or standards committee must give written notice of its determination to the member applying for the dispensation and to the standards committee of the referring authority.



**Question 11:** Do you agree that the proposed procedure for the referral of a dispensation application to another authority's standards committee is appropriate?

*Criteria for Granting Dispensations - Disability*

2.45 As a general principle, the Welsh Ministers consider that a member with a prejudicial interest in any business being considered by that member's authority at a meeting should comply with the Code of Conduct and disclose that interest and withdraw from the meeting. This approach recognises that a member's continued presence at a meeting may (inadvertently or otherwise) inappropriately influence the authority's consideration of a matter, even if the member does not actively participate in the discussion or decision. The Courts considered this general principle in relation to the Code of Conduct in England<sup>5</sup> in place at that time and the former Standards Board for England and an Adjudication Panel for Wales case tribunal<sup>6</sup> have since interpreted the judgment as supporting the proposition that a member with a prejudicial interest should not remain in the room, chamber or place where the meeting was being held.

2.46 The Welsh Government is aware that requiring a member with a disability to withdraw from a meeting could be problematic for that member. In such circumstances, a local authority would be obliged to consider making reasonable adjustments (short of requiring the member to withdraw from the meeting) to accommodate that member's disability, for example, by placing the item of business in which the member has an interest at the end of the agenda. However, this approach may not always be possible, particularly where the interest only becomes apparent during the course of a meeting.

2.47 The law in relation to dispensations in England differs from that in Wales. In England, dispensation provisions are governed by Section 33 of the Localism Act 2011 (the "Localism Act"). In addition to a number of specific circumstances specified in the Localism Act, Section 33 includes a broad general provision which enables a local authority to grant a dispensation in circumstances where the authority "*considers that it is otherwise appropriate to grant a dispensation.*"

2.48 Whilst it is unclear whether it was intended that the general provision in section 33(2)(e) of the Localism Act would apply to the making of a reasonable adjustment for a member with a disability, it would be possible to utilise this provision to grant a dispensation for such a purpose.

2.49 It is proposed that a similar general power should be available in Wales and, therefore, that the 2001 Dispensation Regulations should be amended to add a further category of dispensation comparable to that in section 33(2)(e) of the Localism Act. It is anticipated that such provision would enable a

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<sup>5</sup> Richardson & Orme v North Yorkshire County Council [2003] EWCA Civ 1860

<sup>6</sup> APW-006-2006-07-CT

standards committee to grant a dispensation, if it considered it appropriate in all the circumstances to do so, where it was not otherwise possible to make reasonable adjustments to accommodate a member's disability.

2.50 It is recognised that such a general power could have wider application and might potentially be utilised by a standards committee where a member seeks a dispensation in circumstances which are not covered by one of the specific dispensation categories in the Regulations. However, a standards committee would need to weigh carefully whether to grant a dispensation under the general category against the potential risk of external challenge to a decision taken by the authority in which that member had participated in reliance upon that dispensation.

**Question 12:** Do you agree that it is appropriate to provide a general dispensation category in the Regulations?

#### Other Amendments

2.51 Regulation 2(i) of the 2001 Dispensation Regulations enables a standards committee to grant a dispensation where it appears to the committee to be in the interests of the inhabitants of the area to do so. The Regulations provide that written notification of such a dispensation must be sent to the National Assembly for Wales (now the Welsh Ministers) within seven days.

2.52 Only a handful of such notifications have been received over the past 14 years. The Welsh Government is not aware of any concerns about the granting of dispensation applications under this category. It is proposed, therefore, to remove the notification requirement from the 2001 Dispensation Regulations.

2.53 A number of minor amendments are also made consequential upon authorities' powers to establish joint standards committees.

**Question 13:** Do you agree these amendments are appropriate?

# Local Government Act 2000 – Part III, Conduct of Local Government Members

## Amendments to Subordinate Legislation

### Consultation Response Form

<b>Title / Name</b>		
<b>Organisation</b>		
<b>Address</b>		
<b>Email address</b>		
<b>Type</b> (please tick one of the following)	County / County Borough Council	
	Community or Town Council	
	Fire and Rescue Authority	
	National Park Authority	
	Standards Committee	
	Local government representative body	
	Public sector body	
	Voluntary / third sector body	
	Voluntary / third sector representative body	
	Professional body	
	Business	
	Private individual	
Other (please specify):		
Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:		

**Draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order**

**Register of Member's Interests**

<b>Q.1</b>	Are any further amendments required to the Model Code to give practical effect to the provisions of the 2013 Act?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Obligation to Report Potential Breaches**

<b>Q.2</b>	Do you agree that whilst the obligation on members to report potential breaches of the Code to the Ombudsman is removed, the obligation to report such breaches to the relevant monitoring officer should be retained?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Constituency Interests**

<b>Q.3</b>	Do you agree that the omission of paragraph 10(2)(b) appropriately addresses the difficulties experienced in applying this aspect of the Code in practice?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Draft Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations**

**Amendments to the Standards Committees (Wales) Regulations 2001**

Joint Standards Committees

<b>Q.4</b>	Are any further amendments required to facilitate the establishment and operation of a joint standards committee (if yes, please comment below)?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

<b>Q.5</b>	Do you agree that it is unnecessary to increase the maximum permissible number of members of a joint committee?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Local Authority Members of Standards Committees – Term of Office

<b>Q.6</b>	Are there any unanticipated consequences arising from the proposed change to the term of office of local authority members of standards committees (if yes, please comment below)?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Publication of Misconduct Reports - Exemption

<b>Q.7</b>	Do the proposed changes appropriately and sufficiently address the problems that have arisen from the publication of misconduct reports prior to standards committee hearings?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Amendments to the Local Government investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001**

Referral of Misconduct Cases

<b>Q.8</b>	Do these proposals make adequate and appropriate provision for the referral of misconduct reports to another authority's standards committee?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Period of Suspension

<b>Q.9</b>	Do you agree that a period of suspension imposed by a standards committee should not extend beyond the end of a member's term of office?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Appeals to the Adjudication Panel for Wales

<b>Q.10</b>	Do you agree that the proposed procedure for an application for permission to appeal a standards committee determination is appropriate?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Amendments to the Local Authorities (Grant of Dispensations) (Wales) Regulations 2001**

Referral of Dispensation Applications

<b>Q.11</b>	Do you agree that the proposed procedure for the referral of a dispensation application to another authority's standards committee is appropriate?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Criteria for Granting Dispensations - Disability

<b>Q.12</b>	Do you agree that it is appropriate to provide a general dispensation category in the Regulations?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

Dispensations – Other Amendments

<b>Q.13</b>	Do you agree these amendments are appropriate?	<b>Yes</b>	<b>No</b>
<b>Comments:</b>			

**Other**

<b>Q.14</b>	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to comment upon them.
<b>Comments:</b>	