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## AGENDA

<b>Committee</b>	STANDARDS & ETHICS COMMITTEE
<b>Date and Time of Meeting</b>	WEDNESDAY, 18 MARCH 2020, 5.30 PM
<b>Venue</b>	COMMITTEE ROOM 3 - COUNTY HALL
<b>Membership</b>	Independent Members: James Downe (Chair) Jason Bartlett, Hollie Edwards-Davies, Arthur Hallett and Chrissie Nicholls Councillors Cunnah, Sandrey and Williams Community Councillor Stuart Thomas

### 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 3 - 6*)

To approve as a correct record the minutes of the meeting held on 11 December 2019.

### 4 **Hearing Panel Report** (*Pages 7 - 134*)

*Report of the Director of Governance and Legal Services and Monitoring Officer.*

**Appendices A, B & C to this report are exempt from publication under the Local Government Act 1972, Section 100I & Schedule 12A paragraphs 12, 18A, 18C & 21; and Regulation 26 (2A) of the Standards Committee (Wales) Regulations 2001.**

### 5 **Members Survey 2019 - 2020** (*Pages 135 - 174*)

*Report of the Director of Governance and Legal Services and Monitoring Officer.*

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**6 Whistleblowing Reports (Pages 175 - 186)**

*Report of the Director of Governance and Legal Services and Monitoring Officer.*

**Appendix 1 and 2 of the report is exempt from publication as it contains exempt information of the description contained in paragraph 13 and 14 of Part 4 of Schedule 12A of the Local Government Act 1972.**

**7 Code of Conduct Complaints - Quarter 3, 2019 - 2020 (Pages 187 - 190)**

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

**8 Observations of Meetings (Pages 191 - 194)**

*Report of the Director of Governance and Legal Services and Monitoring Officer.*

**9 Forward Work Plan 2020 - 2021 (Pages 195 - 198)**

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

**10 Senior Officers' Personal Interests (Pages 199 - 222)**

*Report of the Deputy Monitoring Officer*

**11 Urgent Items (if any)**

**12 Date of next meeting - 8 July 2020**

**Davina Fiore**

**Director Governance & Legal Services**

Date: Thursday, 12 March 2020

Contact: Kate Rees,

02920 872427, [KRees@cardiff.gov.uk](mailto:KRees@cardiff.gov.uk)

STANDARDS & ETHICS COMMITTEE

11 DECEMBER 2019

Present: Independent Members: James Downe (Chair),  
Jason Bartlett, Hollie Edwards-Davies, Arthur Hallett and  
Chrissie Nicholls

Councillors Sandrey and Williams

Community Councillor Stuart Thomas

47 : APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Stephen Cunnah.

48 : DECLARATIONS OF INTEREST

The Director of Governance & Legal Services declared a potential conflict of interest in item 11.

49 : MINUTES

The minutes of the meeting held on 30 July were approved by the Committee as a correct record and signed by the Chairperson.

50 : WELCOME TO THE NEW INDEPENDENT MEMBERS

The Committee noted that Council on 28 November 2019 appointed Chrissie Nicholls, Jason Bartlett and Arthur Hallett as Independent Members of the Committee for a term of four years.

51 : OBSERVATION OF MEETINGS

The Committee considered the feedback provided by Committee Members following observation of meetings of Council and Community Councils.

The Committee discussed the benefits of name plates being available for Community Council Members to help members of the public feel more at ease and address their questions to the relevant Council Member.

The Committee noted that oral questions at Council are published in advance of the meeting and are available on the Council's website, however, believed that questions should be shown on screens to ensure context for members of the public present or watching, and if questions cannot be shown on screens, that the question be asked at the meeting before the answers are given.

RESOLVED:

- 1) To note the meetings observation feedback and responses received, as set out in appendices;

- 2) To continue to observe appropriate meetings of the Council, Committees and Community Councils and provide feedback to a future meeting of the Committee; and
- 3) Recommend to Constitution Committee that questions at full Council should be displayed on screens or read out orally at the meeting.

## 52 : MEMBERS' GIFTS AND HOSPITALITY REGISTER

The Committee noted the extract from the Register of Member's Hospitality, Gifts & Other Benefits for the period 17 November 2018 to 31 October 2019

The Committee noted that the value of some of the hospitality remains unquantified and discussed the need for an estimate to be provided if the precise value is unknown. The Committee discussed the means by which Members could be reminded of that; raising it with group leaders and whips and Member Briefings. The Committee did note that in respect of events attended by the Lord Mayor, it is much more difficult for an estimate to be provided.

Whilst the Committee discussed the current threshold for registration of gifts and hospitality, £25 and whether the figure should be increased, it was decided that it would not be amended.

RESOLVED: to note the information supplied in the appendices on registration of hospitality, gifts and other benefits received by Members.

## 53 : CODE OF CONDUCT COMPLAINTS QUARTER 4 2018/19, QUARTER 1 & QUARTER 2 2019/20

The report provided the Committee with an update on complaints made during Quarter 4 of 2018/19 and Quarters 1 & 2 of 2019/20 (the period running from 1<sup>st</sup> January 2019 to 30<sup>th</sup> September 2019) against Members of Cardiff Council or any of Cardiff's Community Councils, alleging a breach of the Members' Code of Conduct. Details of the complaints were set out in the report. During that period a total of ten complaints alleging a breach of the Members' Code of Conduct were reported to the Monitoring Officer.

The committee discussed the procedure for hearings arranged under the local resolution protocol and noted that Elected Members were unable to sit on such Hearings panels. A query was raised about legal advice for Elected Members, the Committee were advised that the political parties can provide support for their Members.

There was a discussion in respect of the manner in which low level complaints are dealt with, there could be discussion with Group Leaders and Party Whips.

The nature of complaints was discussed by the Committee bearing in mind the figures provided, in particular in relation to the number of Member on Member complaints.

A Member of the Committee expressed concern about having a discussion with the Party Whip, feeling that in most instances contact with the Monitoring Officer would be the best course of action.

The Committee discussed the number of complaints that arose as a result of Social Media. It was noted that the WLGA had issued updated guidance on the subject and it has been forwarded to all Elected Members.

RESOLVED: To note the content of the report.

#### 54 : STANDARDS AND ETHICS COMMITTEE ANNUAL REPORT 2018/19

To enable the Committee to consider the content of its Annual Report 2018/19 before being presented to full Council in January.

RESOLVED:

- 1) To note the content of the Committee's Annual Report;
- 2) To delegate authority to the Monitoring Officer, in consultation with the Chair, to draft and finalise the Annual Report; and
- 3) That the Chair presents the Annual Report to Council in January 2020.

#### 55 : FORWARD WORK PLAN 2019/20

The Committee discussed a number of items contained in the Forward Work Plan, during that discussion a number of points were raised:

- A log of Members Briefings is being maintained;
- Code of Conduct training has been provide for newly elected members;
- Refresher training will be provided if there are any changes;
- It was noted that the potential date of the Annual Meeting with Group Leaders and Whips was on a Wednesday afternoon. Wednesday is difficult for some Members of the Committee but it is hoped that all Members will be present;
- The results of the Members Survey will be provided to the Democratic Services Committee. The Committee noted that dates of the future meetings of that Committee will be provided.

RESOLVED: To note the content of the Work Plan.

#### 56 : SENIOR OFFICERS' PERSONAL INTERESTS

The Director of Governance and Legal Services reaffirmed her conflict of interest in this item and left the meeting. The report was presented by the Deputy Monitoring Officer.

Members of the Committee previously expressed the view that Senior Officers should be subject to the same disclosure requirements that apply to elected Members, as they exercised significant decision making powers. Specifically, Senior Officers should be required to publicly disclose Trade Union membership and home addresses and this information should be published on the Council's website. The Committee were advised that Directors have indicated that they will not consent to publication of their Trade Union Membership as there are concerns that it would compromise their ability to negotiate effectively with Trade Unions on behalf of the Council. Further, in respect of home addresses, the Committee were advised that there were data protection, safety and employment law implications around the publication of home addresses and that the duty to protect employees outweighs any potential public interest arguments for the disclosure of Senior Officers' home addresses.

The Committee discussed the information provided and confirmed that they would accept the recommendation of the Deputy Monitoring Officer and take no further action, but suggested instead that the information contained in The Senior Officers' Personal Interests Declaration Form, save for information relating to a Senior Officer's Trade Union membership status and home address, be brought to the Committee annually for them to review.

The Deputy Monitoring Officer agreed to consult with the Senior Management Team (SMT) on this proposal and to bring a further report to Committee.

RESOLVED: to make no changes to the current disclosure requirements for Senior Officers' Personal Interests, and instruct the Deputy Monitoring Officer to consult with SMT on the information contained within the Senior Officers' Personal Interests Declaration Form, save for information relating to a Senior Officer's Trade Union membership status and home address, being brought to Committee on an annual basis as an exempt item.

57 : URGENT ITEMS (IF ANY)

No urgent items were tabled.

58 : DATE OF NEXT MEETING - 18 MARCH 2020

The next meeting of the Committee is scheduled for Wednesday 18 March.

The meeting terminated at 6.30 pm

## **STANDARDS AND ETHICS COMMITTEE**

**18<sup>th</sup> MARCH 2020**

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

### **HEARINGS PANEL – DECISION (SUBJECT TO APPEAL AGAINST SANCTION) & RECOMMENDED AMENDMENT OF THE CARDIFF UNDERTAKING, AND PROCEDURAL AND ADMINISTRATIVE ARRANGEMENTS FOR HEARINGS**

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**APPENDICES A, B & C TO THIS REPORT ARE EXEMPT FROM  
PUBLICATION UNDER THE LOCAL GOVERNMENT ACT 1972, SECTION  
100I & SCHEDULE 12A PARAGRAPHS 12, 18A, 18C & 21; AND  
REGULATION 26(2A) OF THE STANDARDS COMMITTEES (WALES)  
REGULATIONS 2001**

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

1. To inform the Committee of the recent decision of the Hearings Panel (currently subject to appeal in respect of sanctions) in relation to a complaint referred to the Committee by the Public Services Ombudsman for Wales; and, in light of experience gained from this hearing, to consider:
  - (a) recommended amendments to the Cardiff Undertaking;
  - (b) amendments to the Committee's Hearings Procedure; and
  - (c) improvements made to administrative arrangements for hearings.

#### **Background**

2. The Standards and Ethics Committee's terms of reference (paragraph (i)), include the responsibility:
  - i) To hear and determine any complaints of misconduct by Members or a report of the Monitoring Officer, whether on reference from the Ombudsman or otherwise.

3. On 7<sup>th</sup> June 2019, the Monitoring Officer received a referral from the Public Services Ombudsman for Wales ('the Ombudsman') in relation to misconduct allegations made against a Councillor.
4. The duties and powers of the Monitoring Officer and the Standards and Ethics Committee in relation to any misconduct complaints referred by the Ombudsman are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
5. On 1st July 2019, the Standards and Ethics Committee resolved to set up a sub-committee, 'the Hearings Panel', comprised of three members of the Committee, including at least two independent members, to consider the Ombudsman's referral and determine the matter on behalf of the Committee, in accordance with the Committee's approved Hearings Procedure.
6. A Hearings Panel was duly convened and met on 30<sup>th</sup> July 2019 to consider the evidence presented in the Ombudsman's investigation report and to make its initial determination (as required under Regulation 7 of the Regulations). The Panel was advised by the Deputy Monitoring Officer, because the Monitoring Officer had declared a potential conflict of interest in the matter as she was named in the evidence submitted by the Councillor during the course of the Ombudsman's investigation. The Panel made its initial determination that the Councillor should be given an opportunity to make representations, either orally or in writing, in respect of the Ombudsman's investigation findings and the allegations. The Panel asked the Deputy Monitoring Officer, in consultation with the Chair, to make all necessary arrangements to prepare for a hearing, in accordance with the provisions of the Hearings Procedure.
7. The Panel met, in closed session, on 15<sup>th</sup> October 2019, 16<sup>th</sup> December 2019 and 3<sup>rd</sup> January 2020 to discuss administrative and procedural matters in preparation for the hearing,

## **Issues**

8. A full hearing was held on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2020 at City Hall, Cardiff. The hearing was attended by the Councillor and a representative of the Ombudsman, and heard evidence from five witnesses, in addition to the Councillor. The hearing was open to the public, except for certain parts of the proceedings when the Panel resolved to exclude the public. The hearing attracted considerable attention from the public and was reported in the press and on social media.
9. On the final day of the hearing, 14<sup>th</sup> January 2020, the Panel deliberated in private with its legal advisor, and at 5pm the Chair announced the Panel's decision. The Panel's decision was that the Councillor had breached the following duties of the Members' Code of Conduct:
  - i Paragraph 4(b), duty to show respect and consideration to others;

- ii Paragraph 4(c), duty to not using bullying behaviour or to harass any person; and
  - iii Two separate breaches of paragraph 6(1)(a), duty to not conduct yourself in a manner which could reasonably be regarded as bringing the office of Councillor or the authority into disrepute.
10. After hearing representations from the parties in respect of potential sanctions, and deliberating in private with the Panel's legal advisor, the Chair announced that the decision of the Panel was that the Councillor would be suspended as a Councillor for 4 months.
  11. The draft minutes of the hearing and of the preliminary Panel meeting on 3<sup>rd</sup> January 2020 are appended as **Appendix A (Exempt from publication)**.
  12. The Panel's written decision, with a full account of the facts and reasons, was issued on 24<sup>th</sup> January 2020 and sent to the Councillor, the Complainant and the Ombudsman. The timescale for issuing the Panel's decision was extended by the Chair, by variation of the Procedure, as permitted under paragraph 7(a) of the Procedure), to ensure it fully reflected all the evidence considered during the 5 day hearing. A copy of the Panel's decision is attached as **Appendix B (Exempt from publication)**.
  13. Under the Regulations, any period of suspension takes effect after the end of the appeal period (21 days from the full written decision), or after any appeal is concluded.
  14. On 18th February 2020, the Monitoring Officer received notification from the Adjudication Panel for Wales (APW) that an application for permission to appeal against the Panel's decision had been submitted on 14<sup>th</sup> February 2020. The President of the APW wrote to the Monitoring Officer by letter dated 5<sup>th</sup> March 2020 with notification of her decision to allow the appeal against the sanction imposed, based on the findings of the Panel about facts and breach alone. This means that the Appeals Tribunal will decide whether, on the basis of the facts and breaches found by the Hearings Panel, the sanction of 4 months is disproportionate or not. However it will not reconsider the determinations of the Hearings Panel about the facts in the case, or whether the facts constitute a breach of the Code of Conduct. The decision and cover letter received from the President of the APW is attached as **Appendix C (Exempt from publication)**.
  15. The APW may hold a hearing to determine the appeal or, with the agreement of the parties, may determine the matter by written representations. It may endorse the penalty imposed by the Hearings Panel or refer the matter back to the Standards Committee with a recommendation that a different penalty be imposed, giving reasons for its decision.
  16. If the Standards Committee receives a recommendation from the APW that a different penalty be imposed, the Committee may either uphold its original sanction or decide to accept the recommendation, giving reasons for its decision, which must be notified to the APW and the parties.

17. If the APW endorses the suspension imposed by the Hearings Panel, the suspension will take effect the day after notification of the APW's decision. If the APW recommends a different sanction to the Panel for reconsideration, any suspension imposed by the Panel will take effect the day after the Panel's further determination .
18. After conclusion of the appeal proceedings in respect of the sanction (either by determination of the APW or a further determination of the Hearings Panel following a referral back), the Committee is required to produce a report on the outcome of the investigation within 14 days. The report must be published on the Council's website and made available for public inspection for a period of 21 days; and a newspaper notice must be published to inform the public of the availability of the report (Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001).
19. Members are advised that further discussion in public of the details of this case is not appropriate until the APW has dealt with the appeal. The Committee should consider exclusion of the public for discussion about any details of this particular case.

#### **Compliance with Safeguarding Protocol – Amendment to Cardiff Undertaking**

20. In January 2016, the Council adopted a Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults ('the Safeguarding Protocol'), based upon the recommendations of the Standards & Ethics Committee. The Protocol (appended as **Appendix D**) provides 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. An independent review of the Safeguarding Protocol is currently being undertaken.
21. At the hearing, the Councillor sought to argue that Councillors are not obliged to follow the Safeguarding Protocol as it is not legally binding. However, the Council obtained a Counsel's opinion on this issue in August 2016, which concluded that 'given it has been duly adopted, then it binds all Council Members'.
22. Members of the Hearings Panel have recommended that the Committee gives consideration to recommending that the Cardiff Undertaking or the Members' Code of Conduct should be amended to include a commitment to complying with the Safeguarding Protocol. As the Members' Code of Conduct is based on the statutory model Code, and any changes to the Code must be publicised by way of public notice and notified to the Ombudsman, an amendment of the Cardiff Undertaking would be more straightforward than amending the Code of Conduct.
23. Under the Council Meeting Procedure Rules, Rule 2(b)(vi), all Members are asked to publicly affirm their commitment to the Cardiff Undertaking at

Annual Council each year. If the Committee is minded to recommend amendment of the Cardiff Undertaking, this recommendation could be submitted to Constitution Committee for consideration at its next meeting (scheduled for 27th April 2020), prior to submission to Annual Council for approval. All Members would then be asked to affirm their commitment to the revised Undertaking at the Annual Council meeting in May 2020.

24. Suggested amendments to the Cardiff Undertaking (including some minor drafting improvements) are shown in **Appendix E**.
25. It is also recommended that the Committee recommend to Constitution Committee that the Safeguarding Protocol adopted by Council should be incorporated within the Constitution (Part 5 Codes and Protocols) for clarity, transparency and ease of reference.

### **Arrangements for Hearings**

26. In light of the experience gained from this hearing, a number of potential improvements to procedural and administrative arrangements have also been identified, for the Committee's consideration, as follows:

#### Recording of the Hearing

27. There is currently no provision for audio recording of hearings. As the Hearings Panel is a sub-committee of the Standards and Ethics Committee, a clerk produces minutes of the proceedings in line with standard practice for committee and sub-committee meetings. The minutes are not a verbatim record of the proceedings, but they record the decisions made and information (evidence) upon which those decisions are based. During the recent hearing, it was suggested that hearings should be digitally recorded. Members are invited to consider whether provision should be made for audio recording of hearings, to avoid any dispute over the evidence heard or discussions during the proceedings.
28. The recording of hearings is not universal, and practice varies depending on the type of proceedings concerned. Hearings before the Adjudication Panel for Wales are audio recorded. Where an audio recording is made, clear rules are needed to clarify which parts of the hearing will be audio recorded, for example, to make clear that the Panel's deliberations will not be recorded. Also, to set out when, how and by whom the recording may be accessed. It is suggested that recordings should only be made available after the end of the hearing, to avoid the proceedings being disrupted and delayed by requests to listen to the recording whilst the hearing is in progress.
29. As the Hearings Panel is a sub-committee of the Standards and Ethics Committee, the Committee Meeting Procedure Rules apply. [Rule 18 of the Committee Meeting Procedure Rules](#) states that committee meetings may be webcast (in accordance with the Webcasting Protocol set out in Part 5 of the Constitution), although Standards and Ethics Committee meetings are not included in the list of committees which are currently webcast. Rule 18

also permits other filming, recording and use of social media during committee meetings, as long as the meeting is being held in public, and the recording is not disruptive or hidden, and subject to various other conditions. The Chair is given discretion to prohibit recording if he/she thinks it appropriate, after considering legal advice and representations from the parties.

30. In respect of hearings, it is possible that recordings by third parties could distract witnesses, raise questions about the purpose for the recording and the risk of misrepresentation or information being presented out of context. For these reasons, it may potentially impede the administration of justice. Private recording is not permitted in civil or criminal court proceedings; nor in misconduct hearings before the Adjudication Panel for Wales. If an official audio recording is available, then this may obviate any need for private recording.
31. Members are invited to give views on whether provision should be made for audio recording of hearings, and if so, the rules to be applied. A draft rule for consideration is shown within the marked up copy of the Hearings Procedure, attached as **Appendix F**.

#### Late evidence

32. It is important that advance notice is given of all evidence and documents which are to be relied upon at the hearing, so that they can be shared with both parties and properly considered, allowing an opportunity for response. This is important in order to ensure a fair hearing. If evidence is submitted after the hearing has commenced, the proceedings will be delayed whilst the Panel considers whether the evidence is relevant to the allegations, and if so, to share it with the other party and allow time for proper consideration and response.
33. It is recommended that the Hearings Procedure rules should be amended to make it clearer that late evidence must be provided at the earliest opportunity (and no later than 2 days prior to the hearing, as currently stated); and that late evidence will only be accepted at the hearing in exceptional circumstances. The marked up copy of the Hearings Procedure (at **Appendix F**) includes draft amendments to this effect. Members should note, however, that in practice, the Panel may be advised to accept late evidence which is relevant to the alleged breach, in order to comply with principles of natural justice and avoid giving grounds for appeal.

#### Timescale for written decision

34. The Hearings Procedure currently states that the Panel's written decision, with full reasons, will be issued within 5 working days from the end of the hearing. However, for complex, multi-day hearings, this timescale is too short. It is important that the Panel's decision is fully and clearly set out, including all the evidence considered, the Panel's assessment of the evidence and reasons for its decision. This enables all parties to understand the basis for the Panel's decision and to inform any prospective appeal.

35. It is recommended that the timescale should be extended to 'within 10 working days' and amended to include explicit provision for the timescale to be extended if necessary. It should be noted that this amendment will not, in any way, delay the issue of decisions on less complex cases. Draft amendments are included in the amended Hearing Procedure appended as **Appendix F**.

#### Administrative arrangements

36. A detailed checklist has been drawn up for officers' internal use, informed by feedback from Panel members and officers involved in the recent hearing, to improve the administrative arrangements for hearings. The checklist includes matters such as scheduling of the hearing; rooms and layout; security; equipment and stationery; refreshments; contents and checking of the hearings bundle; training, advice and support for Panel members; and clarification of roles. The new checklist will be used to facilitate arrangements for all future hearings.

#### **Legal Implications**

37. The duties and powers of the Standards and Ethics Committee and the Monitoring Officer, and the procedure to be followed in dealing with a misconduct complaint referred by the Ombudsman, are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
38. Subject to any express provisions in the Regulations (or the Standards Committees (Wales) Regulations 2001), the procedure to be followed by a Standards Committee in exercising its functions under the Regulations is for the Committee to decide (Regulation 8).
39. When a meeting of a Standards Committee or sub-committee is convened to consider a misconduct complaint referred by the Ombudsman, the statutory access to information rules (which apply to meetings of the Council and its committees and sub-committees under Part VA of the Local Government Act 1972) provide the following exemptions:
- (i) There is no requirement to publish or make publicly available the agendas, reports, minutes or background papers connected to this matter until after the conclusion of the proceedings (after the appeal period ends or any appeal is concluded) – Regulation 26(2A) of the Standards Committee (Wales) Regulations 2001;
  - (ii) The deliberations of the committee or sub-committee in reaching its findings; and any confidential information are exempt, if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information – Regulation 4 of the Standards Committees (Wales) Amendment Regulations 2007 and paragraphs 18A and 18C of Schedule 12A of the Local Government Act 1972; and

- (iii) The public may be excluded from any meeting where exempt information is to be discussed. The categories of exempt information for these purposes includes information about an individual, provided the committee or sub-committee is satisfied that the public interest in exempting the information outweighs the public interest in disclosing it (Local Government Act 1972, Schedule 12A, paragraphs 12 and 21).
40. Any changes to the Cardiff Undertaking or the Constitution should be submitted to the Constitution Committee for consideration, prior to submission to full Council for approval.
41. Other relevant legal implications are set out in the body of the report.

### **Financial Implications**

42. There are no direct financial implications arising from this report. Any costs associated with the proposed changes to the Procedure for Hearings, through the provision of audio recordings, are to be contained within the Democratic Services budget.

### **Recommendations**

The Committee is recommended to:

- (i) Note and approve the minutes of the hearing held on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2020; and the preliminary Panel meeting held on 3<sup>rd</sup> January 2020, appended as **Appendix A (Exempt)**;
- (ii) Note the decision of the Hearings Panel appended at **Appendix B (Exempt)**;
- (iii) Note the decision of the President of the Adjudication Panel for Wales, appended at **Appendix C (Exempt)**; and the next steps in relation to this matter, as set out in paragraphs 15 to 19 (inclusive) of this report;
- (iv) Note that the Hearings Panel is authorised to discharge the functions of the Standards & Ethics Committee in relation to determination of this complaint, to include consideration of any recommendations which may be issued by the Adjudication Panel for Wales in relation to the appeal and any further determinations required to be made; and the production and publication of a report on the outcome of this matter, all of which will be reported back to the Committee for information;
- (v) Consider the amendments to the Cardiff Undertaking shown in **Appendix E**, and recommend any agreed amendments to the Cardiff Undertaking and or the Constitution, as set out in paragraphs 24 and 25 of this report, to Constitution Committee;
- (vi) Consider the draft amendments to the Hearings Procedure set out in

**Appendix F** and provide any further comments; and

- (vii) Authorise the Monitoring Officer, in consultation with the Chair, to approve the revised Hearings Procedure, as set out in **Appendix F**, subject to any further amendments.

**DAVINA FIORE**  
**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING OFFICER**

11<sup>th</sup> March 2020

### **APPENDICES**

- Appendix A Draft minutes of the Panel's preliminary meeting held on 3<sup>rd</sup> January 2020; and the full hearing held on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2020 **(Exempt from publication)**
- Appendix B Decision of the Hearings Panel, Case Reference CDC 18/003, dated 24<sup>th</sup> January 2020 **(Exempt from publication)**
- Appendix C Decision of the President of the APW in respect of the application for permission to appeal, with cover letter, dated 5<sup>th</sup> March 2020 **(Exempt from publication)**
- Appendix D Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults, January 2016
- Appendix E Cardiff Undertaking, marked up to show proposed amendments
- Appendix F Standards and Ethics Committee, Procedure for Hearings (Ombudsman Referrals) – marked up to show proposed amendments

### **Background papers**

Standards and Ethics Committee report 'Hearings Panel and Procedure', 1<sup>st</sup> July 2019

Standards and Ethics Sub-Committee report 'Ombudsman Referral – Alleged Breach of the Code of Conduct by a Councillor', 30<sup>th</sup> July 2019

Minutes of Hearings Panel meetings held on 15<sup>th</sup> October 2019 and 16<sup>th</sup> December 2019

Letter from APW to the Monitoring Officer, dated 18<sup>th</sup> February 2020

Counsel's Opinion, Ruth Henke QC, 18/08/2016

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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'

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## PART 5 – CODES AND PROTOCOLS

### YMRWYMIAD CAERDYDD I GYNGHORWYR THE CARDIFF UNDERTAKING FOR COUNCILLORS



Dylid ystyried yr ymrwymiad hwn ochr yn ochr â'r Cod Ymarfer I Aelodau ac mae'n ffurfio rhan o'r cod moesegol y mae pob Aelod o Ddinas a Sir Caerdydd yn rhwym wrtho.

This undertaking should be considered in conjunction with the Members' Code of Conduct and forms part of the ethical code which binds all members of the City & County of Cardiff.

Fel Cynghorydd a etholwyd I Gyngor Sir Dinas a Sir Caerdydd, ac yn unol ag egwyddorion bywyd chyhoeddus:-

As a Councillor elected to the County Council of the City and County of Cardiff, and in accordance with the principles of public life:-

#### YMRWYMAF I: I UNDERTAKE TO:-

##### Hyrwyddo cydraddoldeb a pharch I eraill Promotion of equality and respect for others

- |  |   |
|--|---|
| 1. <del>Cynrychioli Caerdydd a phobl Caerdydd a chynnal y cyfrifoldeb hwn o ran cynrychioli pawb yng Nghaerdydd yn gyfartal. Cynrychioli Caerdydd a holl bobl Caerdydd y fyfartal.</del> | 1. Represent Cardiff and all the people of Cardiff <del>and to hold this duty of representation equally to all the people of Cardiff equally.</del> |
|--|---|

Commented [AK1]: Suggested drafting improvement.

##### Gwrthrychedd a phriodoldeb Objectivity and propriety

- |   |  |
|---|--|
| 2. Ystyried yr holl faterion ac achosion a gyflwynwyd I mi yn ôl eu rhinweddau eu hunain. | 2. Consider all issues and cases brought to me on their merits.    |
| 3. Cydbwyso buddiannau fy Ward gyda   | 3. Balance the interests of my Ward with                           |
| 4. buddiannau'r Cyngor a phobl Caerdydd yn ei chyfanrwydd.                                | the interests of the Council and the people of Cardiff as a whole. |

##### Ystyried eraill a stiwardiaeth Selflessness and stewardship

- |  |   |
|--|---|
| 4. <del>Rhoi blaenoriaeth I fuddiannau'r Cyngor, Caerdydd a phobl Caerdydd. Wrth weithredu fel cynghorydd yng Nghaerdydd, rhoi blaenoriaeth i fuddiannau'r Cyngor, Caerdydd a phobl Caerdydd</del> | 4. <u>When acting as a Cardiff Councillor,</u> Give priority to the interests of the Council, Cardiff and of the people of Cardiff. |
|--|---|

Commented [AK2]: Amended to reflect the fact that Members may have different duties when acting in different roles, eg. when acting as a company director, a Member must act in the best interests of the company.

Updated 23 March 2017

- |   |   |
|---|---|
| <p>5. Diogelu a hyrwyddo cyfleoedd bywyd plant sy'n derbyn gofal gan y Cyngor a chyflawni fy nghyfrifoldebau'n ddiwyd fel Rhiant Corfforaethol y'r plant hynny, <a href="#">gan weithredu bob amser yn unol â'r Protocol ar Rôl Aelodau Etholedig wrth ddiogelu Plant ac Oedolion Agored i Niwed.</a></p> | <p>5. Safeguard and promote the life chances of children looked after by the Council and diligently discharge my responsibilities as Corporate parent of those children, <a href="#">acting always in accordance with the Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults.</a></p> |
|---|---|

#### **Cywirdeb Integrity**

- |   |  |
|---|--|
| <p>6. Gweithredu'n unol â'r safonau uchaf o ran cywirdeb wrth gyflawni fy nyletswyddau amrywiol fel Cyngorydd</p> | <p>6. Act according to the highest standards of probity in carrying out my various duties as a Councillor.</p> |
|---|--|

#### **Dyletswydd I gydymffurfio â'r gyfraith Duty to uphold the law**

- |  |  |
|--|--|
| <p>7. Cydymffurfio â'r Cod Ymddygiad I Aelodau a'i barchu, ac ystyried y cyngor a'r canllawiau a gyhoeddir gan y Pwyllgor Safonau a Moeseg yn briodol.</p>       | <p>7. Adhere to and respect the Members' Code of Conduct and have proper regard to the advice and guidance issued by the Standards &amp; Ethics Committee.</p> |
| <p>8. Parchu darpariaethau unrhyw Brotocolau Datrys Lleol a gynigiwyd gan y Pwyllgor Safonau a Moeseg ac a fabwysiadwyd gan y Cyngor, a chydymffurfio â nhw.</p> | <p>8. Adhere to and respect the provisions of any Local Resolution Protocol proposed by the Standards &amp; Ethics Committee and adopted by Council</p>        |

#### **Atebolrwydd a gonestrwydd Accountability and openness**

- |  |   |
|--|---|
| <p>9. Peidio â datgelu gwybodaeth a roddir I mi yn gyfrinachol.</p>  | <p>9. Not to disclose information given to me in confidence</p>   |
| <p>10. Cefnogi a hyrwyddo ymddygiad y Cyngor I sicrhau bod ei fusnes yn cael ei gynnal mewn ffordd onest a chllir.</p> | <p>10. Support and promote the conduct of the Council's business being carried out in an open and transparent manner.</p> |

**Er mwyn i mi allu cyflawni fy nyletswyddau, rwy'n ymrwymo i ddilyn hyfforddiant priodol, i gynnwys pob math o hyfforddiant a nodwyd yn hanfodol yn y Rhaglen Gyflwyno i Fyfrwyr/Cynllun Hyfforddi a Datblygu Aelodau, neu hyfforddiant cyfatebol, fel y gallaf gyflawni fy nyletswyddau fel Cyngorydd. Er mwyn fy ngalluogi i gyflawni fy nyletswyddau, addawaf ymhellach y byddaf yn ymrwymo i hyfforddiant priodol, i gynnwys yr holl hyfforddiant y nodwyd ei fod yn orfodol yn y rhaglen datblygu aelodau, neu'r hyn sy'n cyfateb iddi, i'm galluogi i gyflawni fy nyletswyddau fel Cyngorydd**

In order to enable me to carry out my duties I further undertake that I will commit to appropriate training, to include all training which has been identified as ~~essential-mandatory~~ in the Member ~~Induction Programme/Member Training and Development Plan~~ **Programme**, or equivalent, to equip me to carry out my duties as a Councillor.

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Commented [AK3]: Amended to reflect current Member Development Programme

Enw/Name: ..... Dyddiad/ .....  
Date:

Llofnod/Signed: .....

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CARDIFF COUNTY COUNCIL  
STANDARD AND ETHICS COMMITTEE

PROCEDURE FOR HEARINGS (OMBUDSMAN REFERRALS)

***Adopted by Standard and Ethics Committee on 1<sup>st</sup> July 2019***

**1. Introduction**

- 1.1 The Standard and Ethics Committee ('the Committee') needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor, Community Councillor or co-opted member of any committee or sub committee in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority.
- 1.2 The Committee has adopted a separate procedure for conducting hearings under the Local Resolution Protocol.
- 1.3 Standard and Ethics Committee Hearings may also be required to determine a complaint referred to the Committee by the Ombudsman under Part 3 of the Local Government Act 2000 ('the Act'). This may occur as the result of either:
- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer (under section 70(4) of the Act). The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standard and Ethics Committee; ~~or-~~
  - (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer (under section 71(2) of the Act), for reporting to the Standard and Ethics Committee.
- 1.4 The following procedure should be used in respect of both instances of Ombudsman referrals set out above and provides the Standard and Ethics Committee with a consistent approach in determining matters locally.

**2. Interpretation**

- (a) "Councillor" means the Member or former Member of the County or Community Council or the co-opted member of any committee or sub committee who is the subject of the allegation being considered by the Standards and Ethics Committee, unless stated otherwise. Unless the context requires otherwise it also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the Public Services Ombudsman for Wales and includes his/her nominated representative. In the case of matters that have been referred to the Monitoring Officer for investigation, references to the "Investigating Officer", means the Monitoring Officer, or a person appointed by the Monitoring Officer to undertake the investigation, and his/her nominated representative.

- (c) "Legal Advisor" means the person- responsible for providing legal advice to the Hearings Panel.

### **3. Hearings Panel Sub-Committee**

- 3.1 A sub-committee of the Standards and Ethics Committee, referred to as 'the Hearings Panel' or 'the Panel', shall be set up to consider investigation reports, conduct hearings, make determinations, impose any sanctions and exercise any associated powers of the Committee granted by law or under this Procedure.
- 3.2 The Hearings Panel shall be composed of three members of the Committee, at least two of whom must be independent members of the Committee.
- 3.3 For complaints about a member of a community council, the Panel shall include the community council representative on the Committee, unless the complaint concerns a member of his/her own community council.
- 3.4 The Hearings Panel shall elect one of the independent Panel members to serve as Chair for each meeting.
- 3.5 Except for any decisions that may be expressed in this Procedure to be taken by the Chair, any decision of the Hearings Panel shall be made on the basis of a simple majority vote.

### **4. Initial Determination**

- 4.1 Following receipt of a report and any recommendations from the Monitoring Officer, or a report from the Ombudsman, together with any recommendations of the Monitoring Officer, the Hearings Panel must make an initial determination, either:
  - (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned (and must then notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly); or
  - (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.
- 4.2 If the Hearings Panel makes a determination under paragraph 4.1(b) above, the Panel will instruct arrangements to be made for a Hearing in accordance with the rules below.

## 5. Prior to the Hearing

- 5.1 The Investigating Officer shall set out in writing the results of their investigation, including copies of all written evidence the report relies upon in an 'Investigation Report'; and send copies of the Investigation Report to the Committee and to the Councillor.
- 5.2 The Panel shall write to the Councillor to notify him/her of the Panel's initial determination (made under paragraph 4.1 above); provide information about the possible sanctions open to the Hearing if a breach of the Code of Conduct is found; and invite a written response to the findings of the Investigation Report to be submitted to the Panel within three weeks from receipt of the Panel's notification letter.
- 5.3 The Councillor shall be informed that his/her written response need not set out the Councillor's position in full, but it should:
  - (a) indicate whether or not the Councillor will be represented and if so, by whom;
  - (b) indicate whether the Councillor intends to apply to the Panel to have the press and public excluded from the hearing and any grounds for doing so;
  - (c) indicate all areas of the Investigation Report that the Councillor intends to dispute, with brief reasoning;
  - (d) attach all written evidence the Councillor intends to rely upon;
  - (e) indicate any witnesses the Councillor wishes to call (which may include any witnesses referred to in the Investigation Report) and brief reasons for doing so (if any); and
  - (f) indicate any dates or times when the Councillor, the representative and any witnesses they wish to call will be unavailable to attend a Hearing.
- 5.4 The Panel shall also write to the Investigating Officer to notify him/her of the Panel's initial determination (made under paragraph 4.1 above), and to:
  - (a) request that the Investigating Officer should attend the Hearing to present the Investigation Report and explain any matters in it, if the Panel considers it appropriate OR to ask if the Investigating Officer wishes to attend the Hearing for this purpose;
  - (b) ask if there are any dates or times when the Investigating Officer will be unavailable to attend a Hearing; and
  - (c) ask the Investigating Officer to indicate any witnesses he/she wishes to call and brief reasons for doing so (if any).

5.5 Following receipt of the Councillor's and the Investigating Officer's written response (or after the end of the three weeks allowed for the Councillor's written response, if no response is received), the Panel shall write to the Investigating Officer and the Councillor confirming the following:

- (a) the date, time and location set for the hearing (having taken reasonable steps to accommodate the availability of the Councillor and the Investigating Officer);
- (b) whether the witnesses the Investigating Officer and the Councillor wishes to call will be allowed (giving reasons and allowing opportunity to respond if any witnesses are not to be allowed); and
- (c) any other steps the Panel may in its discretion require prior to the Hearing.

**Commented [AK1]:** Inserted to make clear that the Panel may proceed to make arrangements for a hearing, even if the Cllr does not provide a written response.

## 6. The Monitoring Officer

- 6.1 The Monitoring Officer, Deputy Monitoring Officer or another Legal Advisor shall be in attendance to advise the Hearings Panel.
- 6.2 If the Monitoring Officer has investigated a complaint, he/she (or a nominated representative) will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another Legal Advisor will be present to advise the Committee.

## 7. Powers of the Hearings Panel

- (a) The Chair, having taken legal advice from the Legal Advisor, may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
- (b) The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
  - (i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the Councillor and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and
  - (j) the ability to request that the proceedings be conducted by exchange of written submissions only if the Councillor so agrees.

- (c) The members of the Panel may question anyone taking part in the proceedings on a point they raise in their representations or to seek clarification of views on points raised by others appearing at the Hearing. They may also request advice from the Legal Advisor.
- (d) The Panel may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve conflict on facts.
- (e) The sanctions and other powers available to the Panel are set out under paragraph 14 below.

## **8. Representation**

The Councillor and the Investigating Officer may be represented or accompanied during the Hearing by Counsel or a Solicitor, or any other person he or she desires. The Councillor and the Investigating Officer are responsible for meeting the cost of any representation.

## **9. Legal Advice**

The Committee may take legal advice from its Legal Advisor at any time before or during the Hearing or while the outcome is being considered. The substance of any legal advice given to the Panel should be shared with the Councillor and the Investigating Officer, if they are present, but not the detail of the request for legal advice.

### **9A. Recording**

9A.1 An audio recording of the hearing proceedings shall be made by the Council, but no recording shall be made at any time during the Panel's deliberations or when the Panel is seeking advice from its legal advisor.

9A.2 Access to the recording made under paragraph 9A.1 may be granted, upon request, at any time after the hearing has ended, provided that no exempt or confidential information shall be publicly disclosed.

9A.3 Save for the recording made under paragraph 9A.1, no other digital recording, audio or visual, or use of social media, shall be permitted during the hearing.

## **10. Introductions at the Hearing**

- 10.1 At the start of the Hearing, the Chair shall introduce each of the Members of the Hearings Panel and everyone involved in the Hearing.
- 10.2 The Chair shall then explain the procedure which the Panel is to follow in its conduct of the Hearing and should obtain confirmation from

everybody taking part in the Hearing that they have understood the procedure.

### 11. Preliminary Procedural Issues

- (a) The Panel should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.
- (b) If either party want to adduce further information to the Panel they should make an application to the Panel for permission to do so prior to the commencement of the formal part of the Hearing. ~~It will assist if the Legal Advisor and the other party have been provided with details of the~~ Any late information must be relevant to the alleged breach/es and must be provided to the Monitoring Officer as early as possible, ~~but~~ and at least two days before the commencement of the Hearing. Late evidence will not be accepted at the hearing, unless the Panel is satisfied that there are exceptional circumstances. The Panel retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Panel.
- (c) If the Councillor fails to attend the Hearing, the Panel may, depending on the reason for such non-attendance, continue with the proceedings or adjourn the Hearing to another date to give the Councillor a last opportunity to make representations.

### 12. Stage 1 — Formal Findings of Fact

- (a) After dealing with any preliminary issues, the Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
- (b) If there is no disagreement about the facts, the Panel can move on to the next stage of the Hearing.
- (c) If there is a disagreement about the facts, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Report (for the avoidance of doubt, the Investigating Officer may choose to invite the Panel to consider the evidence given in the Investigation Report and not make any further submission). With the Panel's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may allow the Councillor an opportunity to challenge or comment

upon any evidence put forward by any witness called by the Investigating Officer.

- (d) The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the Panel's permission, to call any necessary witnesses to give evidence.
- (e) At any time, a Member of the Panel may question any of the people involved or any of the witnesses. The Panel may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- (f) If the Councillor disagrees with any relevant fact in the Investigation Report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the Panel will consider whether or not it would be in the public interest to continue in his/her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Panel may then:
  - (i) continue with the Hearing, relying on the information in the Investigation Report;
  - (ii) allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - (iii) adjourn the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present, if he or she is not already present.
- (g) The Panel shall then retire to consider their decision. Depending on the number of persons attending the Hearing, the Panel will either move to another room to deliberate on the representations and evidence in private or request the parties to leave the room during the deliberations.
- (h) Once the decision is reached and the meeting re-convened, the Chair will announce the Panel's findings of fact.

**13. Stage 2 — Did the Member fail to follow the Code?**

- (a) The Panel then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case in question.
- (b) The Councillor should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code.

- (c) The Panel should then consider any verbal or written representations from the Investigating Officer.
- (d) The Panel may, at any time, question anyone involved on any point they raise in their representations.
- (e) The Councillor should be invited to make any final relevant points.
- (f) The parties shall then retire or the Panel will then move to another room to consider the representations and make its decision as to whether or not the Member has failed to follow the Code of Conduct.
- (g) Once the Panel has reached its decision, the Hearing ~~being~~ will be re-convened, and the Chair will announce the Panel's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

#### **14. Stage 3 — Breach of the Code and Sanctions**

##### **14.1 If it is found that the Councillor has not failed to follow the Code of Conduct.**

If the Panel decides that the Councillor has not failed to follow the Code of Conduct, the Panel can nevertheless consider whether it should make any general recommendations to the Authority in question.

##### **14.2 If it is found that the Councillor has failed to follow the Code of Conduct (representations on sanction)**

- (a) If the Panel decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:
  - (i) whether or not the Panel should set a sanction; and
  - (ii) what form any sanction should take.
- (b) The Panel may question the Investigating Officer and the Councillor and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
- (c) The parties shall then retire or the Panel will then move to another room to consider whether or not to impose a sanction on the Councillor and, if so, what the sanction should be.
- (d) On reconvening the Hearing, the Chair will announce the Panel's decision.

14.3 If it is found by the Standards and Ethics Panel that a Councillor has failed to comply with an Authority's Code of Conduct (potential sanctions)

14.3.1 If the Panel finds that a Councillor has breached the Code, it can decide.

- (a) that no action needs to be taken in respect of that failure; or
- (b) that the Councillor should be censured; or
- (c) that the Councillor should be suspended or partially suspended from being a Member or Co-opted Member of the Authority in question, for a period not exceeding six months.

14.3.2 The Panel may request the Cllr to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

**15. Recommendations to the Authority**

After considering any verbal or written representations from the Investigating Officer and the Councillor (should it choose to do so), the Panel will consider whether or not it should make any recommendations to the Authority concerned, with a view to promoting high standards of conduct among Councillors.

**16. The Written Decision**

The Panel will announce its decision on the day the decision is made and provide a short written confirmation of its decision on that same day. It will issue a full written decision, with reasons, within five-ten working days of from the end of the hearing, although this time may be extended by the Chair, in consultation with the Monitoring Officer, if necessary- and The written decision will be formally notified to all parties ('the Decision Notification')

**17. Appeals**

17.1 Where the Standards and Ethics Panel determines that a person has failed to comply with the Code of Conduct, that person may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

17.2 Any such application must be instigated by giving notice in writing to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the Hearings Panel's determination (the Decision Notification).

**18. Publication**

18.1 The Panel will produce a report on the outcome of the investigation and send a copy of this report to all parties, the Ombudsman and the Monitoring Officer within 14 days after the period for an appeal or after the appeal process has been completed, whichever is the later.

18.2 Upon receipt of the Panel's report, the Monitoring Officer shall arrange for the report to be published on the Authority's website for a period of 21 days, make copies of the report publicly available upon request and publish a notice in a newspaper circulating in the area to explain the availability of the report.

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

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**2019-20 MEMBERS SURVEY**

**Reason for this Report**

1. To provide the Standards and Ethics Committee with the analysis of information gathered from the 2019-20 Members Survey under which falls within the remit of the Committee.
2. For the Committee to identify any trends or matters which require further consideration or action.

**Background**

2. In 2016, Democratic Services undertook an Exit Survey to enable lessons to be learned about the experiences of Councillors during their five year term of office, and reasons for leaving or not standing for re-election. All Elected Members (81) who had held the Office of Councillor during the period 2012 to 2017 were invited to participate in the Exit Survey in early 2017.
3. The Standards & Ethics Committee in 22 March 2017 (Min No: 30) considered the responses from the Exit Survey 2017 and one of the recommendations was that a repeat survey of the Elected Members from May 2017 be undertaken at the end of the 2017. This would allow the Committee to review and analyse responses and any trends.
4. As part of the 2017-18 Survey all 75 Councillors were invited to complete the survey either electronically or in hard copy from 30 November 2017 to 2 January 2018. 47 out of 75 Councillors (63%) answered all or part of the survey. 21 Councillors of the 47 who responded were newly elected in May 2017.
5. The 2017-18 Survey provided Members feedback mainly on the Members Induction and to establish training and development needs, as well as identify some of the challenges Members may have encountered during the first six months of their term of office.
6. The Standards and Ethics Committee considered the outcomes of the 2017-18 Survey on 5 December 2018. The report was noted but it was requested that future Members Surveys should include a question specifically related to resilience and/or wellbeing. (Min No: 9).

## The 2019-20 Survey

7. The latest survey was developed in 2019 and primarily intended to seek Members views on the effectiveness of the services provided to them and the delivery of appropriate member development opportunities. As part of this survey, Members were also asked the same questions about their experiences of bullying, discrimination, and other unacceptable behaviours as in the previous surveys.
8. The survey was launched electronically on 27 January 2020 to all Elected, Independent and Co-opted Members which was a total of 89 individuals. The survey was able to be completed using a range of devices including laptops, tablets and smartphones. Members were also offered assistance to complete the survey should it be needed. Reminders were included on the Members Weekly Diary and targeted emails were sent to those who had not been recorded as completing the survey.
9. A closing date for the survey was set for 9 February 2020 when a review of completions was undertaken. It was considered prudent to leave the survey open and to follow up with individuals who had not been recorded as completing the survey. Democratic Services staff contacted individuals by email and telephone which led to an increase in the total number of completions. The survey was finally closed on 14 February 2020.
10. A detailed analysis of 2019-20 Survey responses to the questions within the remit of the Standards and Ethics Committee was undertaken and are included in the Members' Survey 2019-20 Outcomes Report set out in **Appendix A**. It should be noted that the Independent and Co-opted Members did not respond to these questions and were not considered with the data from Elected Members to ensure that appropriate comparisons could be made with the previous surveys.

## The Outcomes

11. Appendix A, (Charts 1 – 5) provides a detailed analysis of the profiles of the Elected Members who responded to the survey by gender, political group, new and returning members and age group. The Committee will note that:
  - a) A greater number of Elected Members (40) completed the “unacceptable behaviours” section of this survey than in previous years (39 & 33). It also shows that a larger percentage (95%) of Elected Members who undertook this survey completed this section compared to the 2017-18 Survey figures (44%).
  - b) The number of female respondents to the 2019-20 survey (15) was slightly higher than in both Exit Survey (14) and the 2017-18 Survey (9) although the percentage of female respondents was reasonably consistent.
  - c) The distribution of respondent by political group is consistent with the political make-up of the Council.

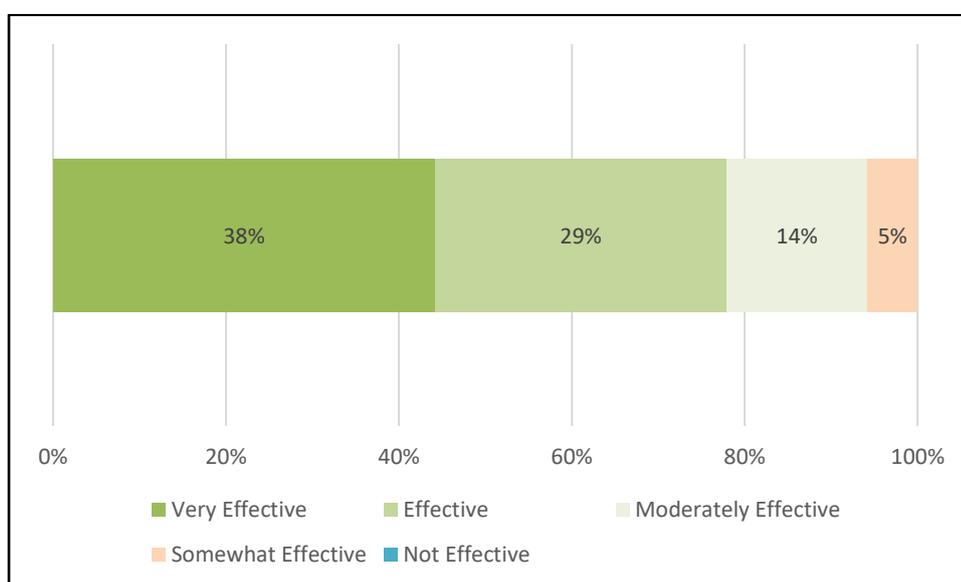
- d) The number of new and returning Elected Members was comparable with the level of responses provided in the 2017-18 Survey.
  - e) The age range of respondents showed an increase in the number of respondents who were in the 35-55 year age bracket which reflects the current average age of Councillors which is approximately 50 years old.
12. Charts 6-9 illustrate the Members' experience of bullying, discrimination and unacceptable behaviours as follows:
- a) The number (12) and proportion (30%) of respondents who have experienced unacceptable behaviours in the 2019-20 Survey is lower than in previous years (45% in the 2017-18 Survey and 56% in the Exit Survey).
  - b) 12% of Members identified that they have experienced bullying since January 2018. This is comparatively lower than those reported during 2017-18 Survey (21%) and the Exit Survey (36%).
  - c) A number (6) or proportion (15%) of respondents confirmed that they have experienced discriminatory behaviours. These figures are comparatively lower than the number or proportion of those who have confirmed experiencing discrimination in the Exit Survey and the 2017-18 Survey.
  - d) The percentage of respondents who experienced other types of unacceptable behaviours which are listed in Paragraph 3.13 of Appendix A, has declined since the Exit Survey and the 2017-18 Survey.
13. Charts 10 - 13 illustrate the experiences of unacceptable behaviours by gender type as follows:
- a) A significant proportion of female respondents (43%) have confirmed that they had experienced some form of unacceptable behaviour including bullying or discrimination. Compared to the previous 2017-18 Survey (5), there is a slightly higher total number of female respondents (6) in the 2019-20 Survey who experienced these behaviours. However, this number is much lower figure when compared to the results in the Exit Survey. It should be noted that the percentage of female respondents who have experienced unacceptable behaviours has reduced from 55% (5) in 2017-18 to 43% (6) in 2019-20.
  - b) Of the total number of female respondents (6) who experienced unacceptable behaviours, most of them (67%) have indicated they had experienced discriminatory behaviours. Half of them (50%) indicated that they have experienced bullying, with one (17%) stating that she had experienced "Other" unacceptable behaviour. This represents a slight decrease in bullying and other unacceptable behaviours identified from previous surveys but a corresponding increase in the level of discrimination experienced.

- c) 20% (5 of male respondents who have experienced some form of unacceptable behaviour. The results show that the percentage of male respondents who have experienced unacceptable behaviours has decreased from 50% in the Exit Survey and 35% in the 2017-18 Survey.
  - d) Of the 5 male respondents who confirmed experiencing unacceptable behaviours, only 1 (20%) indicated that they have experienced bullying whilst 2 (40%) experienced some form of discriminatory behaviours. Three male respondents (60%) indicated that they experienced other forms of unacceptable behaviours. A comparison of the 2019-20 results with the findings from previous years show that the total number and percentage of male respondents who have experienced bullying and discriminatory behaviours has declined.
14. Charts 14 - 18 illustrate the experiences of unacceptable behaviours by age group as follows:
- a) Less than a third of respondents (27%) over the age of 55, identified that they had experienced some form of “unacceptable behaviours”. A comparison of the survey results from previous years show that the number and percentage of the over 55 respondents who have experienced unacceptable behaviours had declined from 72% in the Exit Survey and 54% in the 2017-18 Survey.
  - b) Of the 4 respondents, aged over 55 only 2 (50%) of them confirmed that they experienced bullying whilst 2 (50%) experienced discriminatory behaviours. One of the respondents also indicated that they had experienced “other” unacceptable behaviours.
  - c) The number and proportion of respondents under 55 years of age who indicated that they had experienced bullying and other unacceptable behaviours (33%) was not dissimilar to those reported in the Exit and 2017-18 Surveys.
  - d) 7 respondents aged under 55 in the 2019-20 Survey experienced unacceptable behaviours. Two (29%) experienced bullying whilst 4 (57%) experienced discriminatory behaviours. Three respondents (43%) stated that they had experienced “other” unacceptable behaviours which included: sexist language; patronising condescending behaviours; unwanted attention / friendliness and heckling and goading at Council meetings.
15. Charts 18 – 20 illustrate the reporting of experiences of unacceptable behaviours as follows:
- a) The results of the 2019 -2020 Survey show that more than half of respondents (58%) did not report their experience of unacceptable behaviours at the time. These figures are quite significant as this suggests that more respondents have chosen not to report these incidents.

- b) The percentage of those reporting their experience of unacceptable behaviours in the 2019-20 Survey (42%) showed a marked improvement when compared with the results of the 2017-18 Survey (27%).
  - c) The reasons that incidents were not reported are listed in Paragraph 3.4.2 of Appendix A. Some these incidents were identified as being a political issues or because the incidents were witnessed so did not need reporting.
  - d) A total of 5 respondents in the 2019-2020 Survey reported incidents that they had experienced. Most of these respondents (60%) reported the incidents to the Monitoring officer. Another respondent (20%) reported to their Group Leader whilst one (20%) did not disclose to whom they reported the incident the experienced.
  - e) Of the 5 respondents who reported the incidents they experienced, 3 were reported to the Monitoring Officer with another being reported to a Group Leader. One respondent did not identify who they reported the incident to. All who reported the incident to the Monitoring Officer or Group Leader were satisfied with how this was dealt with by them.
16. Charts 21- 24 illustrate the responses of Members' who witnessed unacceptable behaviours as follows:
- a) 18 respondents confirmed witnessing unacceptable behaviours. This included; 8 respondents (44%) who had witnessed bullying with 9 respondents (50%) who witnessed discriminatory behaviours. A total of 10 respondents (55%) witnessed "other" unacceptable behaviours.
  - b) The number of respondents (18) who indicated that they had **witnessed** unacceptable behaviours (45%) was greater than the 12 Elected Members who stated that they had **experienced** unacceptable behaviours (30%).
  - c) The other types of unacceptable behaviours which were witnessed are listed in Paragraph 4.1 of Appendix A. The majority of these responses related to unacceptable behaviours in Council or other formal meetings.
  - d) Of the 18 individuals who witnessed unacceptable behaviours, only 2 indicated that they had reported the incidents. There were 6 respondents who indicated that they did not report these incidents and a further 10 individuals who did not respond to this question. This suggests that more work is needed to establish the reasons why Elected Members are reluctant to report these incidents and to encourage them to report any unacceptable behaviours that they witness.
  - e) The reasons for not reporting witnessed incidents are listed in Paragraph 4.3 of Appendix A. The respondents identified that the incident had been dealt with by others or had been recorded so that no further action was needed by them,

- f) Of the 18 respondents who witnessed unacceptable behaviours only one (1) reported the incident to the Monitoring Officer and was satisfied with how the matter was dealt with. The other respondent did not indicate to whom they reported the incident they witnessed.
17. A list of suggestions regarding what could be done to prevent bullying and other unacceptable behaviours is shown in Paragraph 5 of Appendix A. The Monitoring Officer has provided feedback on these free text comments which is shown at Appendix B.
18. In the 2019-20 Survey the following question was included:

“Please rate the effectiveness of the support and services provided by the Democratic Services team in relation to your personal safety and wellbeing”.



The responses indicate that although the personal safety and wellbeing of members is supported that further work is needed to identify what support is lacking for some of the Elected Members who responded to this question.

### Further Consideration

19. Further consideration may be needed to determine how some of the issues raised in the 2019-20 Members’ Survey could be addressed:
- a) With 42 responses to the 2019-20 survey and only 40 completed responses to the unacceptable behaviours questions, it would be beneficial to identify how more Elected Members could be encouraged to complete all elements of the next survey. The Head of Democratic Services has indicated that the next survey could potentially be held in 2021-22 and be an Exit Survey). However this would need to be discussed in more detail with the Democratic Services Committee. The views of the Standards and Ethics Committee would be welcomed as to when the next survey should be held.

- b) Are there additional questions which could be included in the next survey to enhance or clarify information from the survey. Is greater clarification needed for what constitutes “unacceptable behaviour”.
- c) What measures are needed to further reduce the levels of experienced and witnessed unacceptable behaviours identified in the survey and in particular the small increase in incidents of:
- discrimination experienced by female councillors.
  - bullying experienced by male councillors.
  - discrimination experienced by those under the age of 55.
- d) What measures are needed to increase the levels of reporting for witnessed incidents of unacceptable behaviours and to promote the reporting of incidents to the most appropriate person.
- e) Other than “Members’ Code of Conduct”, “Chairing Skills” and “The Council’s Decision Making Process” identified by the Monitoring Officer in Appendix B as planned learning for Elected, Independent and co-opted members, are there additional Member Learning opportunities which would improve the outcomes from the survey.

### **Legal Implications**

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

### **Financial Implications**

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

### **Recommendations**

The Committee is recommended

- (1) to consider the analysis of the responses received from the 2019-20 Member Survey which fall within the remit of this Committee;
- (2) to consider potential actions to support responses received; and
- (3) to consider whether any areas require further consideration by the Committee as part of its 2020/21 Work Programme.

**DAVINA FIORE**

**Director of Governance & Legal Services**

11 March 2020

Appendix A – Members’ Survey 2019-20 Outcomes Report

Appendix B – Monitoring Officer Responses to Free Text Comments

Background papers: Member Exit Survey (2017)  
Member Survey 2017-18  
Minutes of Standards & Ethics Committee dated 22 March 2017 and 5 December 2018.

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**MEMBERS' SURVEY  
2019-20  
OUTCOMES REPORT**

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## 1. Background and introduction

In 2017, a Members' **Exit Survey** sought the views of all Elected Members who had held the office of Councillor on their experiences during their term in office (which for most members was five years up to May 2017). As part of this survey, Members were asked about their experiences of bullying, discrimination, and any other unacceptable behaviours.

Following the Local Elections in May 2017, a survey of Members was undertaken to establish their training and development needs, as well as identify some of the challenges that they encountered during the first six months of their term in office. In this survey, Members were also asked about their experience of bullying, discriminatory and unacceptable behaviours.

To allow for comparability of responses, the **2017-18 Survey** used the same questions that were used during the Exit Survey. In addition to the questions in respect of "*Member's experience*" that used in the Exit Survey, a question on whether "*Members have witnessed*" an incident of bullying, discrimination and other unacceptable behaviours was also included in the 2017-18 Survey. The data from the Members' Exit Survey in 2017 and the 2017-18 Members' Survey was the basis for this comparative analysis.

This methodology was also used to compile the **2019-20 Survey** with the findings from each of the surveys being considered where this is appropriate and using cross-tabulation of variables such as gender, age or political party have been presented.

## 2. Member Respondents' Profile

### 2.1 Number of respondents

**Chart 1** displays the total of 39 Members who responded to the bullying, discriminatory and unacceptable behaviours questions in the Exit Survey at the end of the political term in 2017.

Following the elections in 2017, 47 out of 75 Elected Members responded to the 2017-18 Survey. Of this number, 33 Members (44%) responded to the bullying discriminatory and unacceptable behaviours questions.

In 2019-2020 a total 42 respondents completed the survey and of this number, 40 (95%) responded to the questions on bullying, discriminatory and unacceptable behaviours.

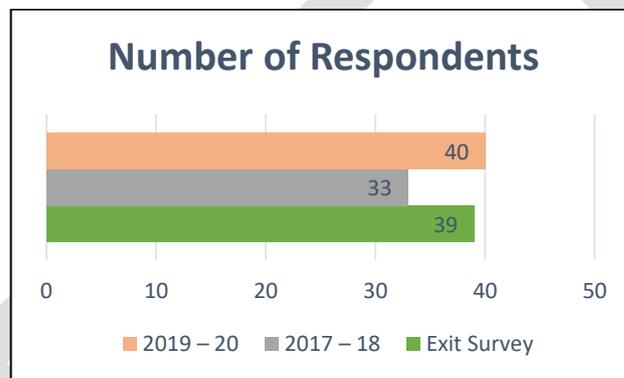


Chart 1

### 2.2 Respondents by Gender Type

The results in **Chart 2**, shows that most of the respondents to the surveys were "Male".

Males represented 54% of respondents in the Exit Survey and nearly two-thirds (61%) in the 2017-18 Survey. There was a greater proportion (36%) and number of Female (14) respondents who completed the Exit Survey compared with the 2017-18 Survey where they represented just over a quarter (27%) of respondents. Similarly, in both surveys, a few respondents did not disclose their gender category.

The results of the 2020 Survey indicate a similar distribution of respondents by gender categories. The majority of respondents were "Male" (62%) with just over a third (36%) declaring as "Female". One of the respondents did not disclose their gender.

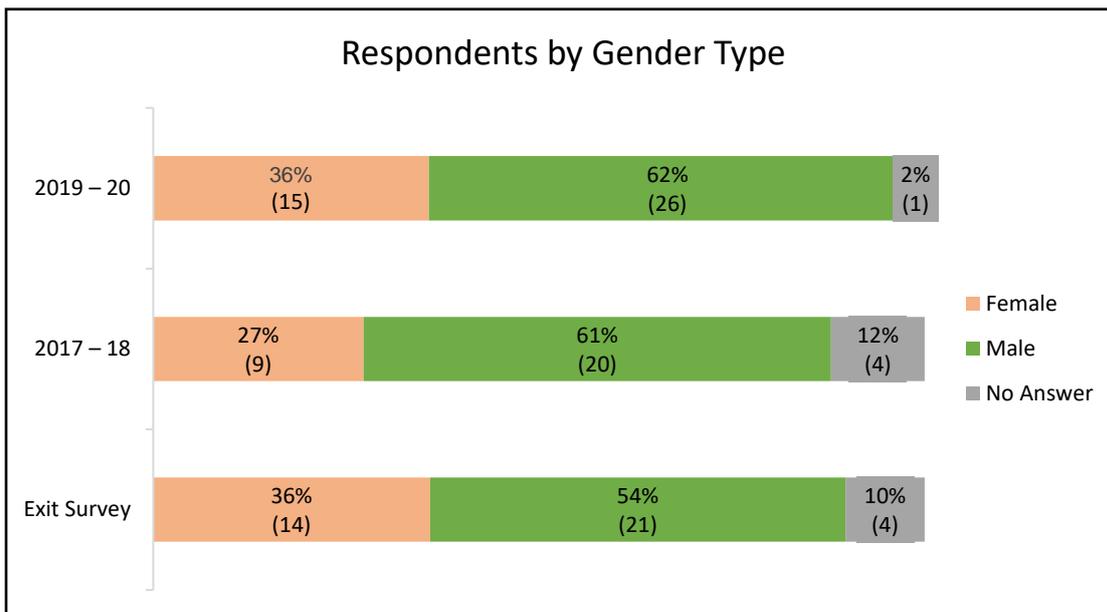


Chart 2

### 2.3 Distribution of Respondents by Political Group

There were more respondents to the bullying and other discriminatory behaviour questions in the Exit Survey (44%) and the 2017 Survey (45%) from the Labour group.

There were also more respondents from the Conservative group in the 2017-18 survey (27%) compared to (17%) in the Exit Survey. This was likely to be as a result of the increase in Conservative Councillors following the Local Government Elections in May 2017 which saw their representation on the Council rise from 11 to 20.

The distribution of respondents by political party in the 2019-2020 Survey as shown in **Chart 3**, reflects a similar trend to the previous surveys. Most of the respondents (45%) represent the Labour group, with a significant proportion (30%) from the Conservative group. A total of 3 respondents did not disclose the political group that they are affiliated to.

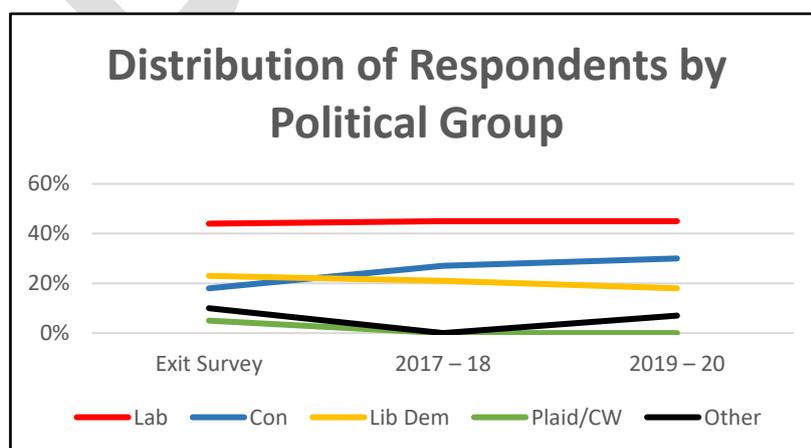


Chart 3

## 2.4 Number of Returning and New Councillors

Of the 75, Elected Members, a total of 47 responded to the 2017-18 Survey. Of this number, only 33 Members responded to the bullying, discriminatory and unacceptable behaviours questions. The majority (58%) of those who completed these questions were “Newly Elected” Members (19) with “returning” Members (14) accounting for 42% of total respondents.

In the 2019-20 Survey more than half (55%) were elected at or since the Local Government Elections in 2017. (See Chart 4)

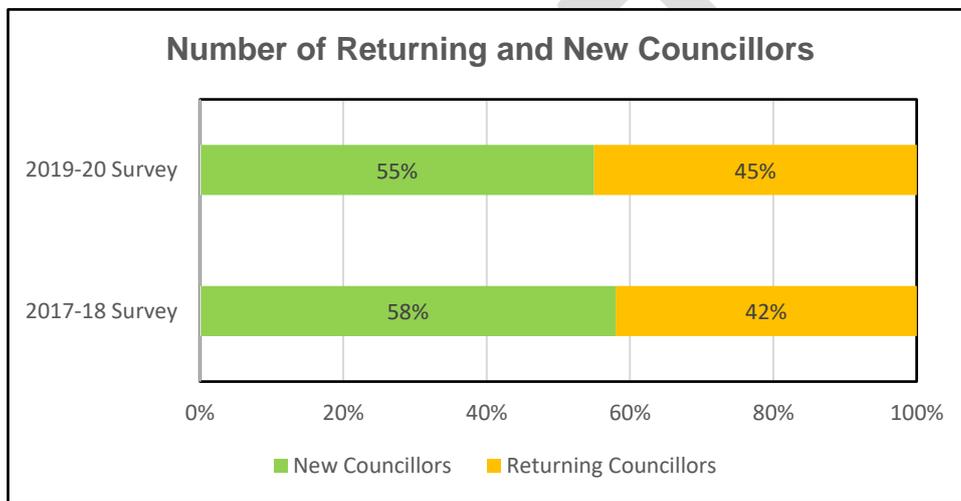


Chart 4

## 2.5 Number of Respondents by Age Group

In **Chart 5**, slightly over a third (36%) of respondents to the Exit Survey were under 55, while nearly half (46%) were over 55. In comparison, the age distribution of respondents in the 2017-18 survey showed that most of the respondents (45%) were under 55 years old. Those who were over 55 years old accounted for 33% of total respondents.

In both the Exit Survey (18%) and the 2017-18 Survey (15%), several respondents did not disclose their age.

As with the previous surveys, the largest proportion of respondents in the 2019-20 survey were over 55 years old. The percentage of respondents who were between 35 – 55 years old was 35% (14) and represents a significant proportion.

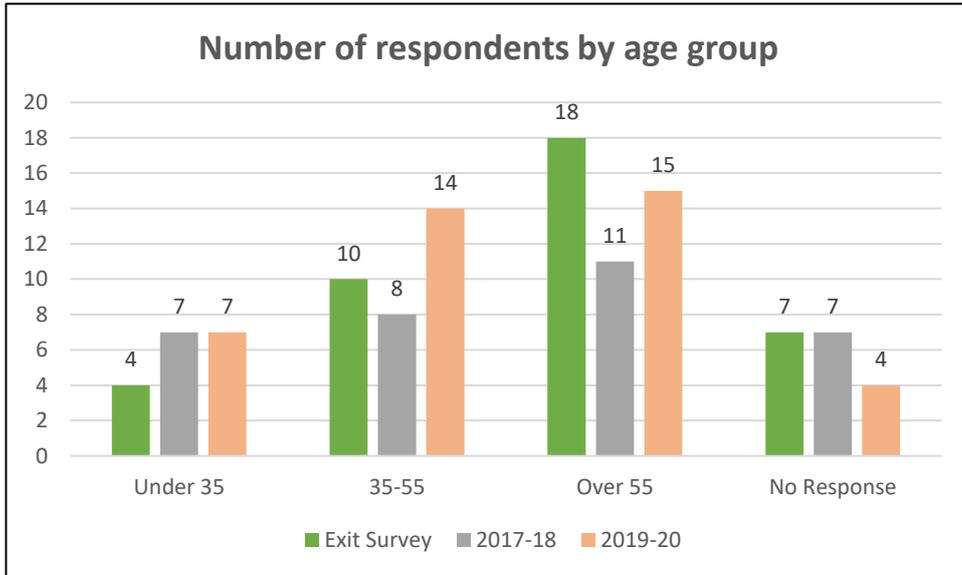


Chart 5

### 3. Member’s Experience of Unacceptable Behaviours

#### 3.1 Respondents Experience of Unacceptable behaviours

As part of the Exit Survey and the 2017-18 Survey, respondents were asked, “During your term in office have you personally experienced bullying, discriminatory or any other unacceptable behaviours?”

In **Chart 6** a proportion (in the range of 45% - 56%) of Members indicated that they have experienced either bullying, discriminatory or other unacceptable behaviours. A higher proportion of respondents (56%) to the Exit Survey identified that they had experienced an incident compared to respondents (45%) in the 2017-18 Survey.

The results of the 2019-20 Survey show that there is a proportion of respondents who indicated that they have experienced some form of bullying, discriminatory or other unacceptable behaviours.

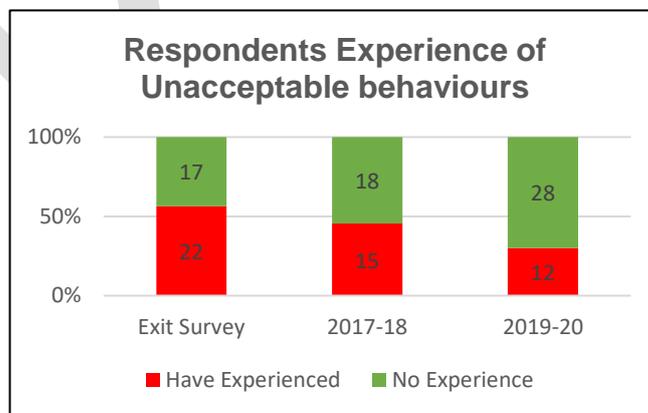


Chart 6

The number (12) and proportion (30%) of respondents who confirmed that they had experienced these behaviours in the 2019-20 survey was lower in comparison with previous years (45% in 2017-18 and 56% in the Exit Survey).

During the previous administration, as indicated by the results of the Exit Survey, a higher proportion of Members had experienced bullying (36%) and or discrimination (31%).

The results show that a proportion of Members elected at the Local Government Elections 2017 had experienced bullying (21%) and discrimination (15%) other unacceptable behaviours (21%).

### 3.1.1 Bullying

The results from the 2019-2020 Survey in **Chart 7** that a proportion of Members (12%) confirmed that they have experienced bullying since the period from January 2018. This is comparatively lower than those reported during 2017-18 Annual Survey (21%) and the Exit Survey (36%).

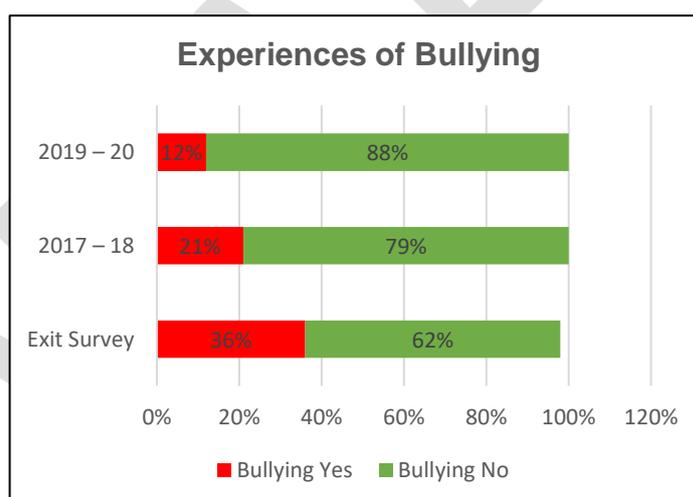


Chart 7

### 3.1.2 Discrimination

In the 2019-2020 Survey there was a number (6) or proportion (15%) of respondents who experienced discriminatory behaviours. **Chart 8** indicates that this figure is comparatively lower than the number or proportion of those who experienced discrimination in the Exit Survey and the 2017-18 Survey

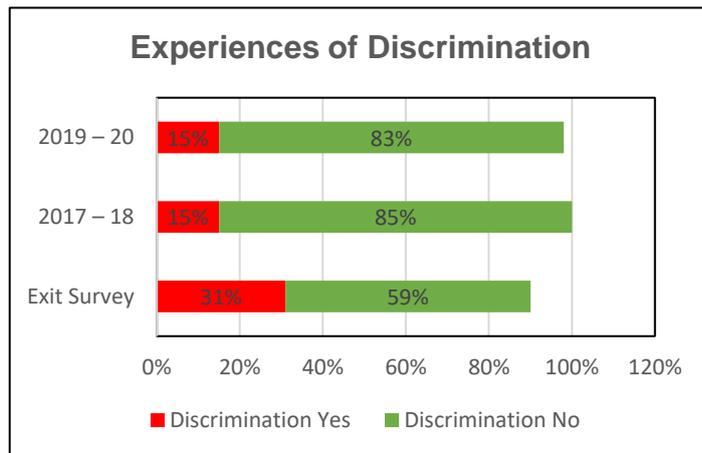


Chart 8

### 3.1.3 Other Unacceptable Behaviours

The comparative data in **Chart 9** shows that the percentage of respondents who experienced various types of unacceptable behaviours has declined since the Exit Survey and the 2017-18 Survey.

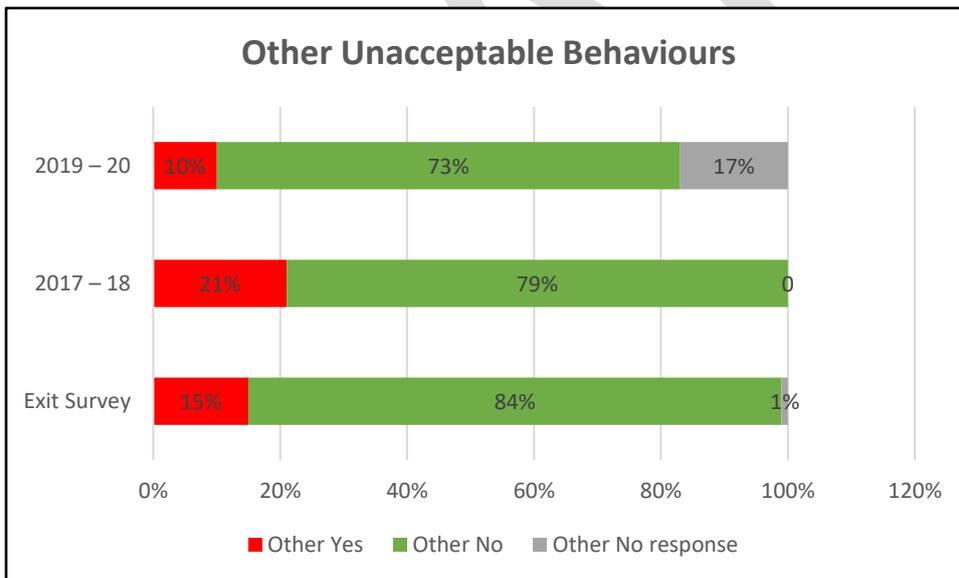


Chart 9

Those respondents (4) who responded that they had experienced other types of unacceptable behaviours have described these as:

- Patronising and condensing attitudes, dismissing concerns
- Very friendly
- Voicemail left by one Member and formal complaint being considered Heckling and goading at council meetings. Although this is accepted as normal within

political environments it is not a respectful way to behave and engage with your peers

It must be noted that there is a significant number of respondents (7) who have not responded to either confirm or deny whether they have experienced any “Other” types of unacceptable behaviours. This may suggest that these respondents were reluctant to disclose whether they experienced what is regarded as unacceptable behaviour. Furthermore, this may also suggest that there are respondents who are unclear or unsure of what constitutes or could be regarded as unacceptable behaviours.

### 3.2 Experience of Unacceptable Behaviours by Gender Type

#### 3.2.1 Female Respondents experience of Unacceptable Behaviours

The results from the Exit and 2017-18 Surveys show that majority of the female respondent’s experienced bullying, discrimination, or other unacceptable behaviour.

In the Exit Survey, as many as 10 (71%) female respondents experienced such incidents. There is a slightly smaller proportion (56%) of female respondents in the 2017-18 Survey who had similar experiences. Although the figures are lower in the 2017-18 Survey, the results from both surveys would suggest that most female Elected Members have experienced either bullying, discrimination or other unacceptable behaviours. See **Chart 10** below.

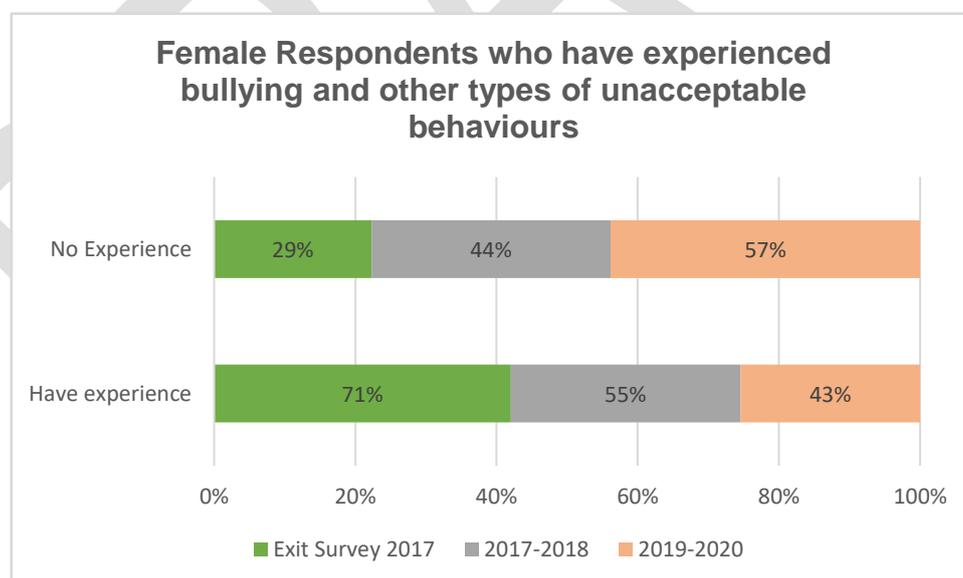


Chart 10

The 2019-20 survey results show that a significant proportion of female respondents (43%) had experienced some form of unacceptable behaviour including bullying or discrimination. Compared to the previous 2017-18 Survey (5), there is a slightly higher total number of female respondents (6) who experienced these behaviours. This number is, however, a much lower figure when compared to the results in the Exit Survey. It should be noted that the percentage of female respondents who have

experienced unacceptable behaviours has reduced from 55% in 2017-18 to 43% in 2019-20.

### 3.2.3 Incidents Experienced by Female Respondents

**Chart 11** shows that of the 6 female respondents who experienced unacceptable behaviours, most of them (67%) indicated that these were discriminatory behaviours. Half of the female respondent (s) also indicated that they had experienced bullying. One respondent (17%) stated that she had experienced “Other” unacceptable behaviour and had described this as “heckling and goading at Council meeting” which she regarded as a disrespectful way of behaving and engaging with peers.

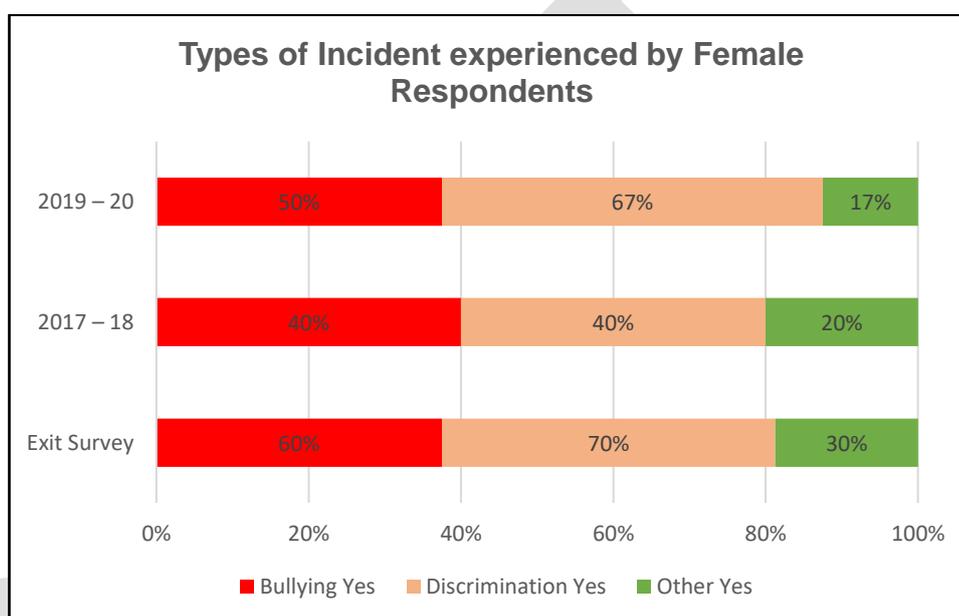


Chart 11

### 3.2.4 Male Respondents Experience of Unacceptable Behaviours.

The results in Chart 12 show that half of male respondents (50%) in the Exit Survey experienced bullying or other unacceptable behaviours. There is a smaller proportion of male respondents (35%) in the 2017-18 Survey who experienced similar incidents.

The 2019-20 survey results show that there is a smaller proportion (20%) of male respondents who experienced some form of unacceptable behaviours.

A comparison of the findings from the various surveys show a decreasing trend in the number and proportion of male respondents who “experienced” unacceptable behaviours. The results show that during the Exit Survey as many as 50% experienced these behaviours with the figures declining to 35% in the 2017-18 Survey, and have decreased further to 20% in the 2019-20 Survey.

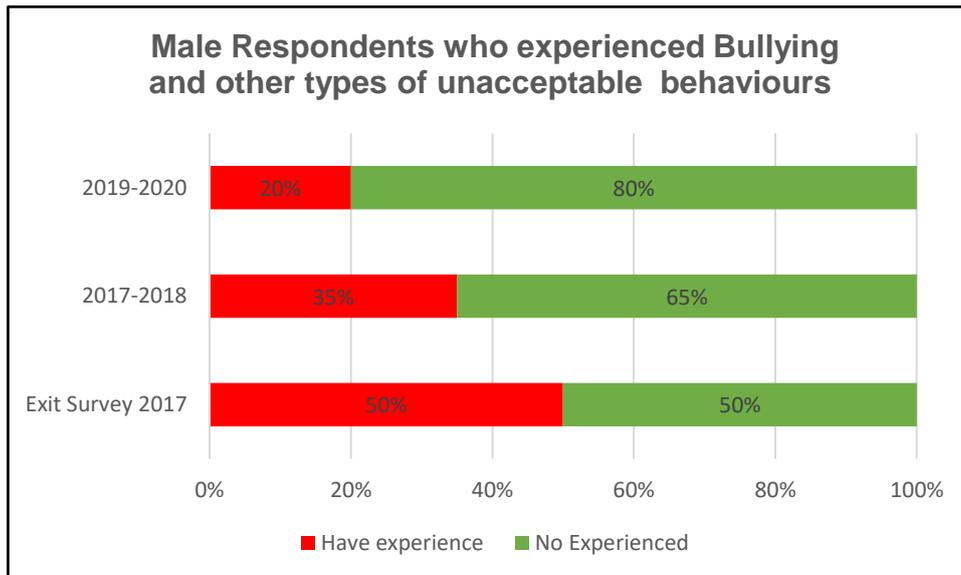


Chart 12

### 3.2.5 Incidents Experienced by Male Respondents

**Chart 13** illustrates the percentage and distribution of male respondents who have experienced various types of unacceptable behaviours.

The results show that in the Exit Survey a greater number and proportion of male respondents experienced bullying and other unacceptable behaviours compared with those in the 2017-18 Survey.

Of the 5 male respondents who experienced unacceptable behaviours, only 1 (20%) indicated that they had experienced bullying, whilst 2 (40%) experienced some form of discriminatory behaviours. Three of the 5 male respondents (60%) experienced other forms of unacceptable behaviours. The “other” unacceptable behaviours that were cited by these male respondents included: “Patronising and condensing attitudes, dismissing concerns”; unwelcome attention that is referred to as “very friendly” and unwelcome/unacceptable telephone messages.

A comparison of the 2019-20 results with the findings from previous years show that the total number and percentage of male respondents who had experienced bullying and discriminatory behaviours had declined.

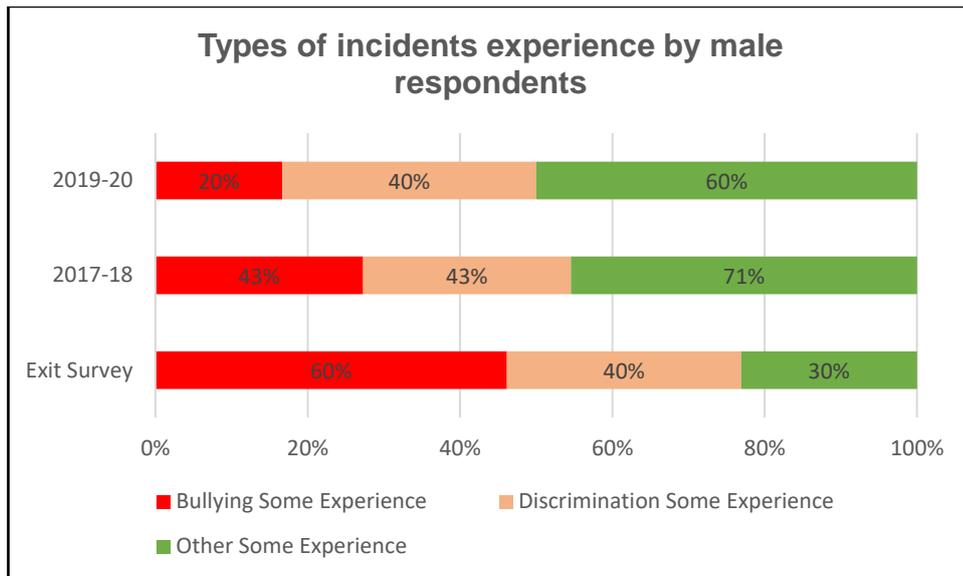


Chart 13

### 3.3 Experience of Unacceptable Behaviours by Age Group

#### 3.3.1 Over 55's Experience of Unacceptable Behaviours

Chart 14 illustrates the distribution of respondents and their experience by age group.

The results from the previous surveys shows that the majority of respondents over the age of 55 had experienced an incident of bullying, discrimination, or other unacceptable behaviour. In the Exit survey, this accounts for 72% of respondents and for 54% in the 2017-18 Survey.

The 2019-20 Survey result show that less than a third of respondents over the age of 55 experienced some form of “unacceptable behaviours”.

A comparison with the survey results from previous years the number and percentage of the over 55 respondents who have experienced unacceptable behaviours has been declining. In the Exit Survey as many as 72% had experienced these behaviours, but this figure had decreased to 54% in the 2017-18 Survey and declined further to 27% this in the latest survey.

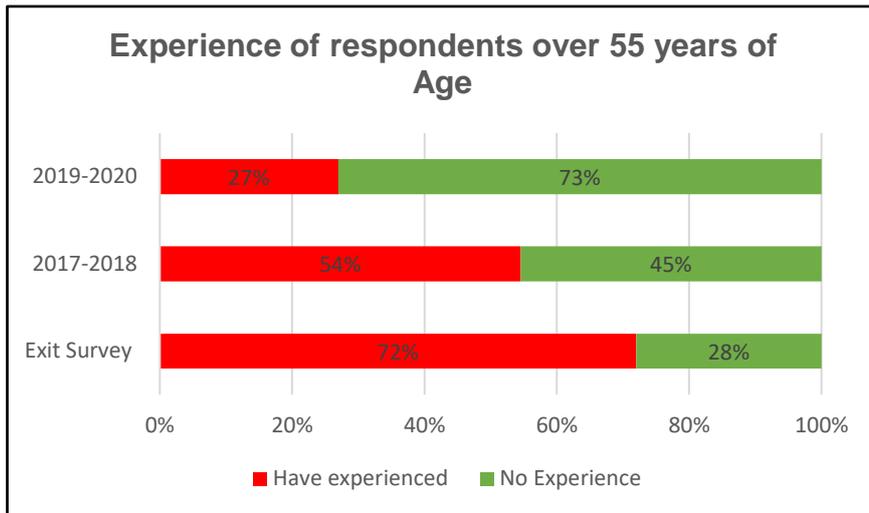


Chart 14

### 3.3.2 Incidents Experienced by over 55 year olds

**Chart 15** shows that in the 2017-18 Survey a smaller number and proportion of male respondents over 55 years old had experienced bullying or unacceptable behaviours.

Of the 4 respondents aged over 55, only 2 (50%) of them confirmed that they experienced bullying whilst two (50%) respondents experienced discriminatory behaviours. One of these respondents also indicated that they had experienced “other” unacceptable behaviours and had described this as “unacceptable telephone messages”.

The results of the 2019-20 survey showed that the number and percentage of the aged over 55 respondents who experienced these behaviours were generally lower when compared to the survey findings in previous years.

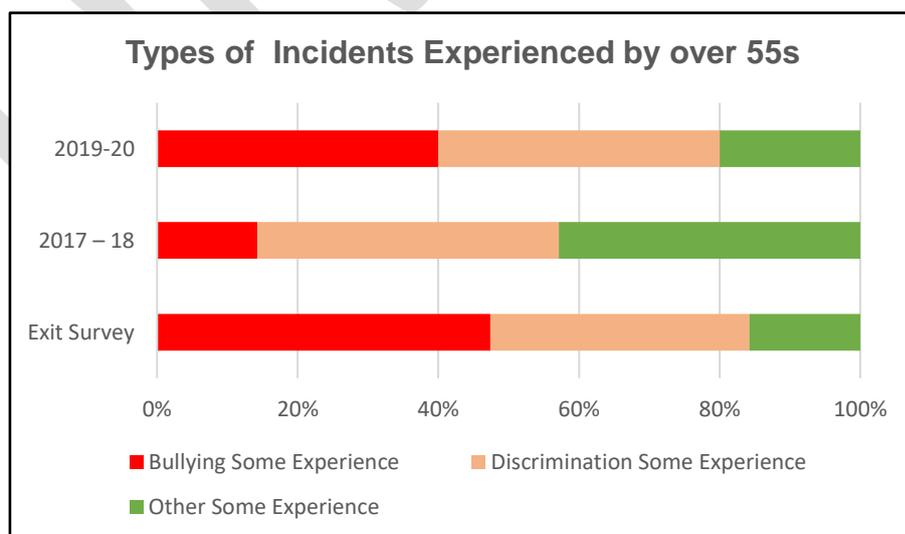


Chart 15

### 3.3.3 Under-55 year olds Experience of Incidents of Unacceptable Behaviours

**Chart 16** shows the number and proportion of respondents in Exit Survey (36%) and 2017-18 Survey (33%) under 55 years of age who had experienced bullying and other unacceptable behaviours were not hugely dissimilar.

The results of the 2019-20 survey show that a third (33%) of respondents aged under 55 years had experienced some form of unacceptable behaviours.

The total number of under 55 respondents in the 2019-20 Survey who experienced these behaviours is slightly higher compared to those in previous years. However when analysed as a proportion of total respondents, the percentage under 55 respondents this year (33%) who have had these experiences is the same (33%) as the in the previous 2017-18 Survey.

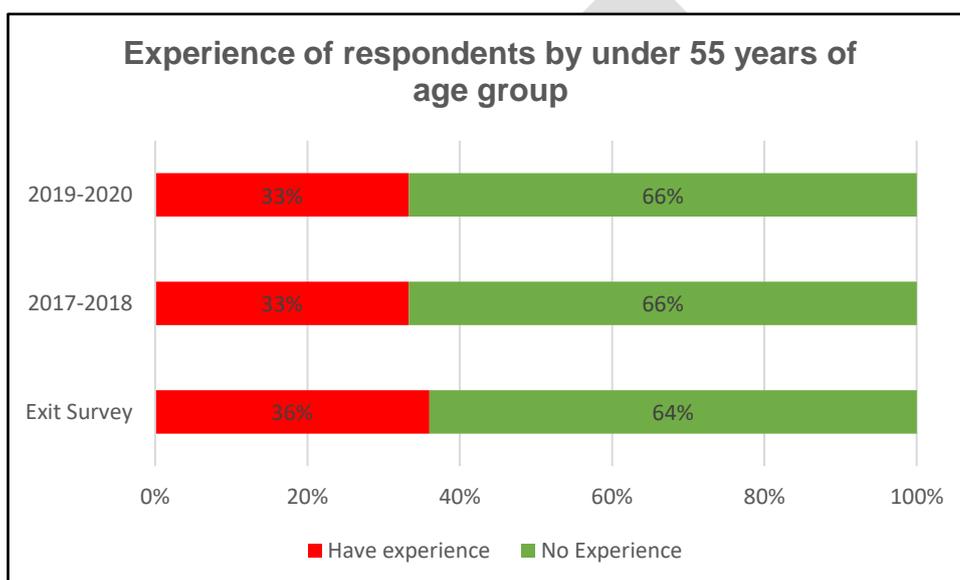


Chart 16

### 3.3.4 Types of incidents experienced by under-55's

In **Chart 17**, of the 7 respondents aged under 55 in the 2019-20 Survey who had experienced unacceptable behaviours, 2 (29%) experienced bullying whilst 4 others (57%) experienced discriminatory behaviours. Three respondents (43%) stated that they had experienced "other" unacceptable behaviours. These included: sexist language; patronising condescending behaviours; unwanted attention/friendliness and heckling and goading at Council meetings.

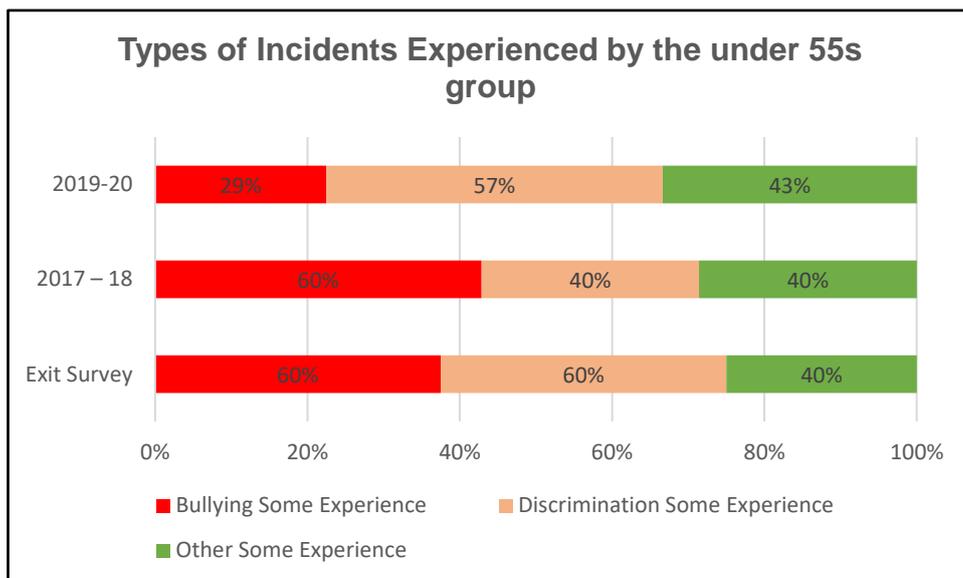


Chart 17.

### 3.4 Reporting of Experienced Incidents

#### 3.4.1 Reporting Experience of Unacceptable Behaviours

When asked whether they had reported the incidents which they had witnessed or experienced, the results **Chart 18** show that the majority of respondents in both the Exit Survey (56%) and the 2017-18 Survey (in the range of 73% - 85%) did not report these incidents.

Compared to the Exit Survey, there was a greater proportion of respondents to the 2017-18 Survey who did not report the incidents that they experienced (73% of respondents) or witnessed (85% of respondents).

The results of the 2019-2020 Survey show that more than half of respondents (58%) did not report their experience of unacceptable behaviours. These figures are quite significant as this suggests that more respondents have chosen not to report these incidents. When compared with the results of the 2017-18 Survey a marked improvement (27% in 2017/18, increasing to 42% in 2020) in the percentage of respondents who reported their experiences of unacceptable behaviours.

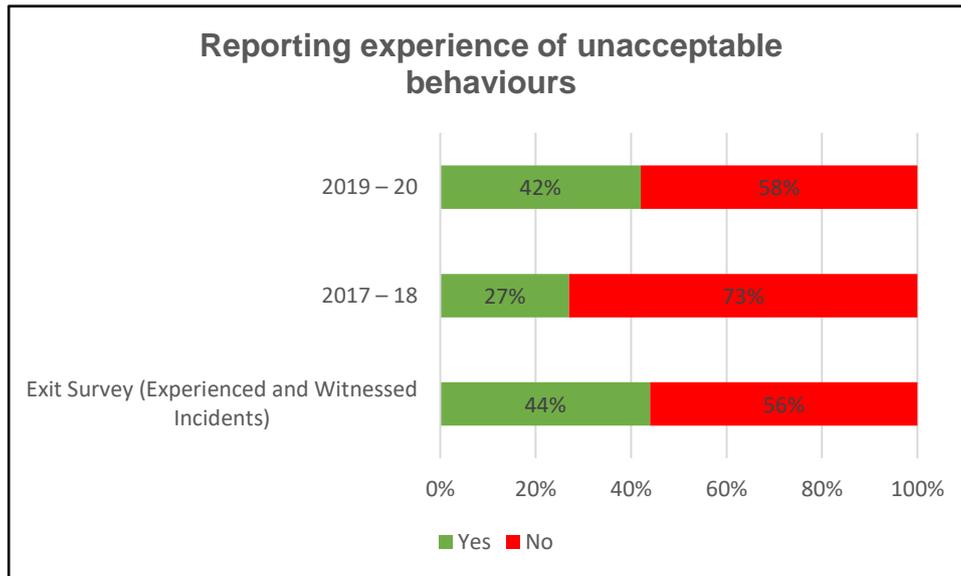


Chart 18

### 3.4.2 Reason Why Experience was Not Reported

- It involved a member of the public.
- It was in full council - in my view sexist language - and I intend to complain but as it was witnessed no need to report as such
- Anticipate that the response will just be "that's politics".
- Why do you think? Party on Party issues are never dealt with properly I dealt with personally
- Not sure
- Doesn't actually break any code of conduct.

### 3.4.3 To Whom the Incident was Reported

When asked to whom did they report the incident that they had experienced, most respondents in the Exit Survey and the 2017-18 Survey stated that they reported this to the Monitoring Officer and/or the Group Whip.

The results from the 2017-18 Survey also showed that only 2 respondents who experienced an incident indicated that they had reported this to the Group Whip. Other respondents in this category reported their experience to the Monitoring Officer (1 respondent) and to an undisclosed person (1 respondent).

In **Chart 18**, a total of 5 respondents to the 2019-2020 Survey confirmed reporting incidents that they had experienced. The results in **Chart 19** showed that most of these respondents (60%) reported the incident they had experienced to Monitoring officer. Another respondent (20%) reported it to their Group Leader while one (20%) of the respondents did not disclose to whom they reported the incident they experienced.

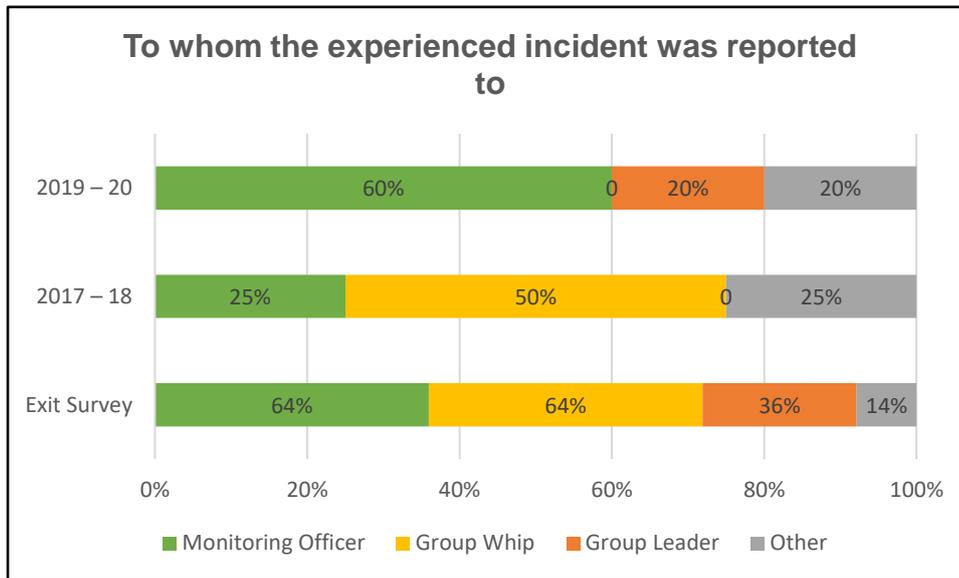


Chart 19

### 3.4.3 Satisfaction on how the Incident(s) was Dealt with

**Chart 20** shows that the four respondents in the 2017-18 Survey who experienced an incident had different views on their satisfaction of how the incident was dealt with.

The respondent (1) who reported to the Monitoring Officer was satisfied with how the incident was dealt with. Of the (2) respondents who reported to their Group Whip, one stated that they were not satisfied with how the incident was dealt with while the other respondent did not provide any response. It must be noted that the number of respondents who have reported an incident as with the number of respondents who confirmed their satisfaction of how this was dealt with are very small.

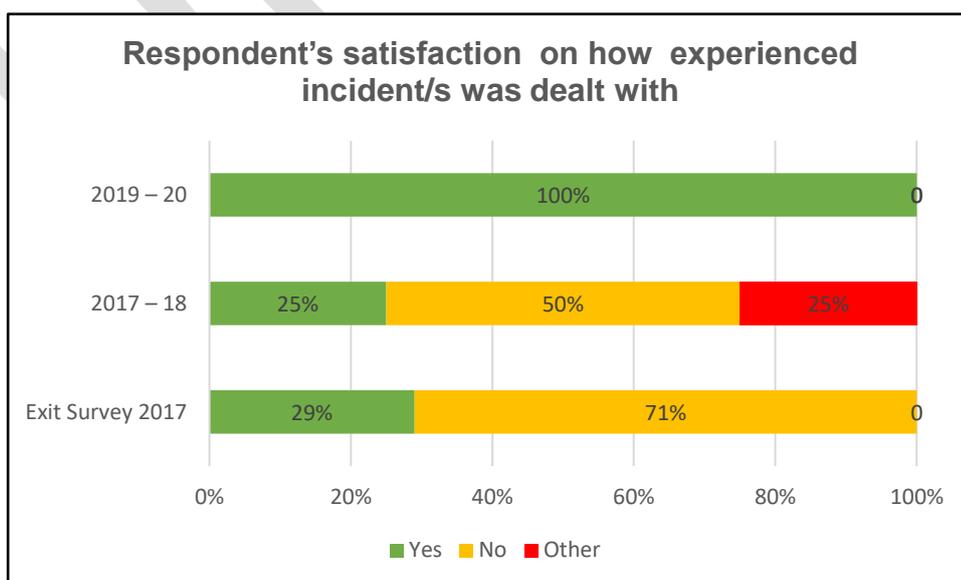


Chart 20

The results of the 2019-20 Survey show that a total of 4 respondents reported the incident they had experienced. Three (3) reported the incident to the Monitoring Officer and one (1) to a Group Leader, resulting in all of these respondents being satisfied with how this was dealt with.

#### 4. Respondents who Witnessed Unacceptable Behaviours

**Chart 21** shows that of the 18 respondents who confirmed witnessing unacceptable behaviours, 8 respondents (44%) had witnessed bullying, while 9 respondents (50%) witnessed discriminatory behaviours. A total 10 (55%) also specified “other” unacceptable behaviours that they had witnessed.

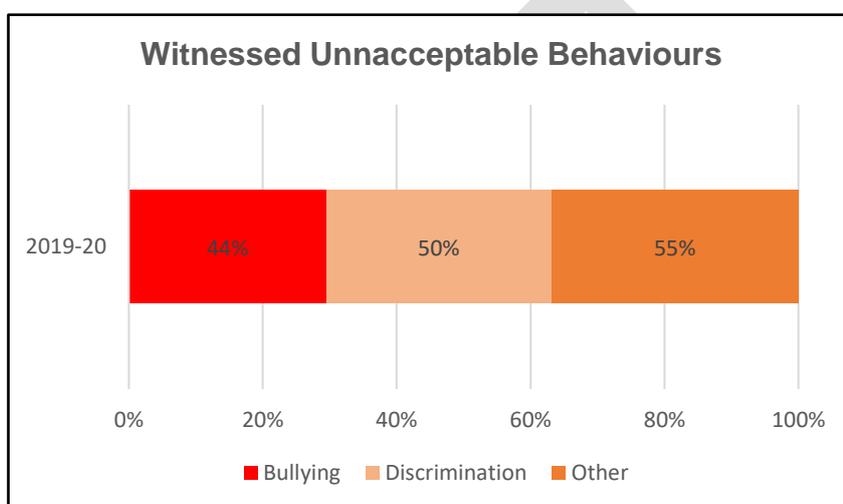


Chart 21

The results of the 2019-20 survey show that nearly half of respondents (45%) had witnessed some form of unacceptable behaviours. Only 1 respondent did not provide a response.

A comparison in Chart 22a and 22b shows that there were a greater number of respondents who reported that they have witnessed various unacceptable behaviours compared to those who had experienced unacceptable behaviours. A total of 12 female and male respondents (30%) had experienced unacceptable behaviours. In contrast to a total of 18 respondents (45%) who indicated that they had witnessed unacceptable behaviours.

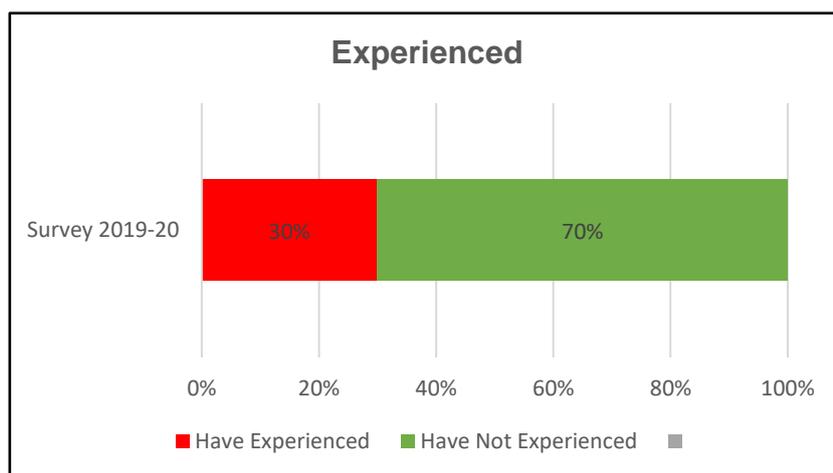


Chart 22a

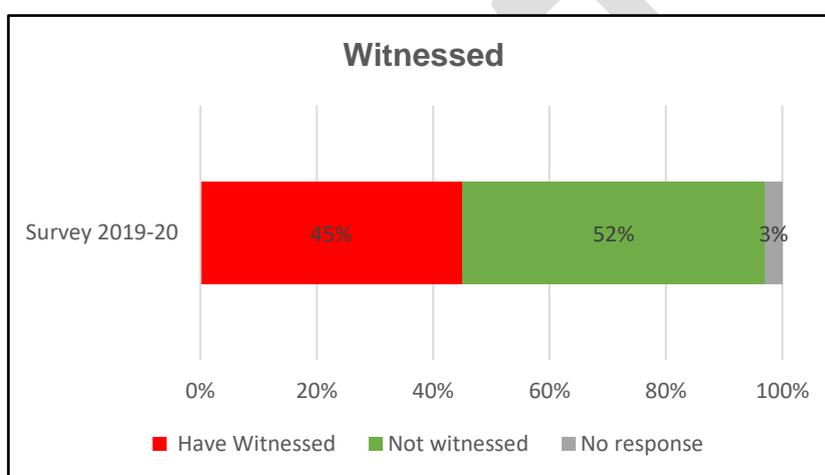


Chart 22b

#### 4.1. Other Types of Witnessed incidents:

- Instigated by an external party
- Treatment of backbench members, particularly from cabinet members in the chamber.
- Occasionally some slightly poor behaviours in council and extremely poor behaviour by "Councillor *Named*".
- Some general rudeness and shouting In meetings
- I've watched the "*the individual*" in action often at council meetings
- Hearing Panel 14/1/2020
- Councillors who make their point either in meetings or on line in a bullying and aggressive way Councillors who say and do things without thinking of the consequences to other councillors, staff, residents and service users
- General comments made in committee and council
- Hectoring in Council meetings.

## 4.2 Reporting of Witnessed Unacceptable Behaviours

The results in the 2019-20 Survey illustrated in **Chart 23** that only a small number of respondents (2) who had witnessed unacceptable behaviours reported these incidents.

**Chart 22** shows that a total of 18 individuals confirmed that they had witnessed various types of unacceptable behaviours, however only 2 of them had reported the incidents that they had witnessed. There were 6 respondents who did not report the incidents that they had witnessed and an additional 10 others who did not respond to this question. This suggests that more work needs to be done to establish the reasons why they are reluctant to report these incidents and to encourage Members to report any unacceptable behaviours that they witness.

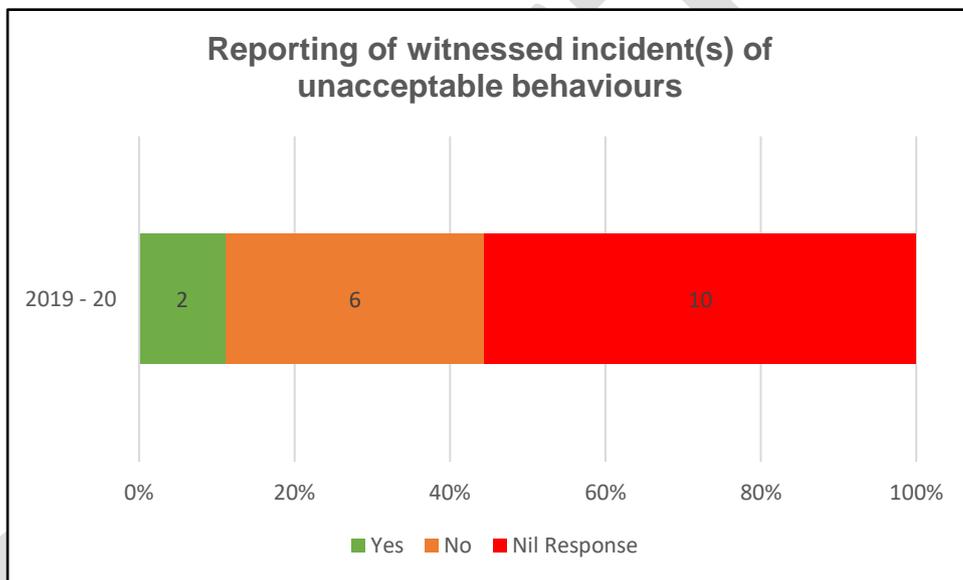


Chart 23

## 4.3 Reasons For Not Reporting Witnessed Incidents

Respondents in the 2019-20 survey have provided the following reasons for not reporting the incidents they witnessed

- It was at a public meeting and was recorded. Just answered!
- Not always possible None witnessed
- Same as my previous answer
- Most were being addressed by others and other incidents the victim did not want to take it further I don't want

#### 4.4 To Whom the Witnessed Incident was Reported To

Of the 18 respondents in **Chart 22b** who witnessed unacceptable behaviours only one (1) reported this to the Monitoring Officer as shown in **Chart 24**. The other respondent did not indicate to whom they reported the incident they had witnessed.

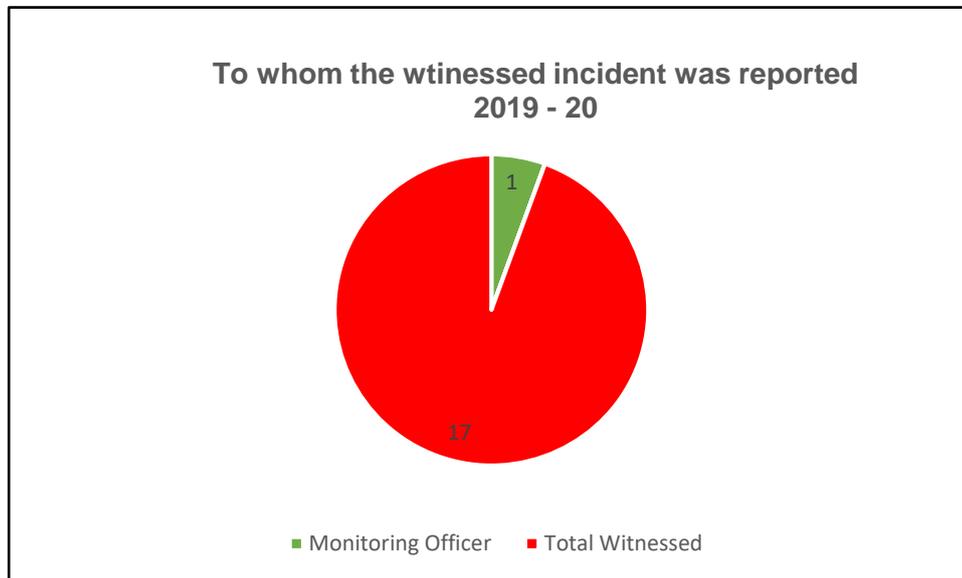


Chart 24

#### 4.5 Satisfaction of How Witnessed Incident Was Dealt With

The respondent who reported the unacceptable behaviour they have witnessed to the Monitoring Officer was satisfied with how it was dealt with.

#### 5. What should be done to prevent bullying and discriminatory behaviours

- Educate individuals as to what are classified as discriminatory views and actions. Continue the status quo that seems to work very well
- Be much stricter on those who exhibit bullying behaviour. Training for those identified displaying those kinds of behaviours.
- I think sexist, patronising or bullying behaviour in the chamber should be called out as it happens and the person asked to withdraw it. Groups should be challenging that kind of behaviour with their own members too
- Educate politicians that politics does not have to be a game of personal insults suspend offenders
- Zero tolerance. Zero tolerance
- Those who do breach behaviours should be quickly told they have
- Learn how to respond appropriately & remember that the perpetrator will not change With the consent of the complainant, name and shame
- You can protect officers as employees but you can't protect councillors as they are politicians, and the rules of normal decency do not apply to politicians
- Have clear guide lines and if they cross that line then ban them from those meetings until they apologise.

- Effective sanctions and swifter S&E response
- The council should engage political parties and other interested parties in the code of conduct and the principles of public life to ensure that any prospective candidate is aware of these prior to being approved or selected.
- Some could have been reported but if it is dealt with and does not reoccur I am satisfied.
- It is helpful to reissue guidance so that new members of the council are aware of the policy.
- Have a workshop on what constitutes bullying and unacceptable behaviour as I'm not sure people necessarily understand what some people class as such behaviour.
- Good quality awareness training that specifically looks at types of discriminatory behaviour and how it manifests itself.
- Members training and protocol needs to be mandatory Effective chairing.
- Training on respectful behaviours and expectations of behaviour. Calling out any inappropriate behaviour. Over time I think a culture change is needed to address dis-respectful behaviours between political members (this is widely accepted as normal in a political environment). Wider structural changes are needed throughout the council to address all forms of inequality - this should be part of every departments role, senior managers portfolio to normalise discussion on these issues, and address
- Code of conduct should be adhered too

**COMPARATIVE ELECTED MEMBER ANNUAL SURVEY DATA FOR STANDARDS AND ETHICS**

**Monitoring Officer Responses to “Free Text” Comments**

<b>Comments</b>	<b>Monitoring Officer Responses</b>
Patronising and condensing attitudes, dismissing concerns	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
Very friendly	
Voicemail left by one Member and formal complaint being considered	
Heckling and goading at council meetings. Although this is accepted as normal within political environments it is not a respectful way to behave and engage with your peers	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
It involved a member of the public	
It was in full council - in my view sexist language - and I intend to complain but as it was witnessed no need to report as such	The Monitoring Officer often raises unacceptable behaviour with members when she has witnessed it, but without a formal complaint it is not formally recorded and no formal action is taken.
Anticipate that the response will just be "that's politics".	If the behaviour has been in breach of the Code of Conduct, it will not be ignored as “that’s politics”. However robust challenge and criticism of policies is not a breach of the code of conduct in the cut and thrust of debate in the Council Chamber, but personal attacks are not acceptable.
Why do you think? Party on Party issues are never dealt with properly I dealt with personally	
Not sure	
Doesn't actually break any code of conduct	
Instigated by external party	

Comments	Monitoring Officer Responses
Treatment of backbench members, particularly from cabinet members in the chamber	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
Occasionally some slightly poor behaviours in council and extremely poor behaviour by Cllr <i>Named</i> in particular at his Standards hearing.	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
Some general rudeness and shouting In meetings	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
I've watched " <i>the Individual</i> " in action often at Council meetings	
Hearing Panel 14/1/2020	
Councillors who make their point either in meetings or on line in a bullying and aggressive way Councillors who say and do things without thinking of the consequences to other councillors, staff, residents and service users	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
General comments made in committee and council heckling in Council meetings	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
It was at a public meeting and was recorded	
Not always possible None witnessed	
same as my previous answer	
Most were being addressed by others and other incidents the victim did not want to take it further	

Comments	Monitoring Officer Responses
Educate individuals as to what are classified as discriminatory views and actions. Continue the status quo that seems to work very well	
Be much stricter on those who exhibit bullying behaviour Training for those identified displaying those kinds of behaviours.	If formal complaints are made and a Cllr is found to have been in breach of the Code of Conduct by bullying or failing to respect others, an elected member can be asked to attend a training course. Otherwise training on the Code of Conduct is compulsory and provided for all Cllrs.
I think sexist, patronising or bullying behaviour in the chamber should be called out as it happens and the person asked to withdraw it. Groups should be challenging that kind of behaviour with their own members too	The Lord Mayor chairs the meeting robustly to try to prevent this type of behaviour. Challenge and “behind the scenes” action from Group Whips and Group Leaders is encouraged and the Monitoring Officer will provide support for this if requested. For example, Groups could withdraw the group whip and membership of committee places for a period of time.
Educate politicians that politics does not have to be a game of personal insults suspend offenders	Code of Conduct training does cover this point. If formal complaints are made in relation to serious or repeat breaches of the Code of Conduct and a Hearing Panel finds that there has been a breach, the Panel may suspend a Cllr. Or if a member behaves improperly or offensively in a meeting, the Chair may move that the member be not heard, or that the member leaves the meeting. However, this can be difficult to enforce.
Zero tolerance. Zero tolerance	
Those who do breach behaviours should be quickly told they have	
Learn how to respond appropriately & remember that the perpetrator will not change With the consent of the complainant, name and shame	The Chair of a meeting, Group Leaders, whips, other members, may call out unacceptable behaviour.
You can protect officers as employees but you can't protect councillors as they are politicians, and the rules of normal decency do not apply to politicians	Principles of Standards in public life do apply to Cllrs and politicians and we should not tolerate unacceptable behaviours.

Comments	Monitoring Officer Responses
Have clear guide lines and if they cross that line then ban them from those meetings until they apologise.	The Code of Conduct for Cllrs is clear, and breaches of the Code have to be dealt with in accordance with an agreed process. Unless a member is suspended as a result of that process, or the group decides to withdraw the group whip or a committee place, there is no power to ban a Councillor from a meeting, and even then they may attend as a member of the public to observe (unless they have declared a personal and prejudicial interest).
Effective sanctions and swifter S&E response	The process for dealing with complaints is set out and includes having an investigation and following a prehearing process giving the Cllr complained of and the complainant the opportunity to put forward their case. Hearings then need to be set up taking into account the availability of witnesses. Unfortunately it is not always possible to progress smoothly and swiftly through the process.
The council should engage political parties and other interested parties in the code of conduct and the principles of public life to ensure that any prospective candidate is aware of these prior to being approved or selected.	The Monitoring Officer did offer to the Group Whips to hold seminars for would be Cllrs /candidates making them aware of the help available and requirements made of councillors, including the Code of Conduct. The Groups did not take this up.
Some could have been reported but if it is dealt with and does not reoccur I am satisfied.	
It is helpful to reissue guidance so that new members of the council are aware of the policy.	All newly elected members attend a training session with the Council's Monitoring Officer on the member Code of Conduct and Council decision making requirements.
Have a workshop on what constitutes bullying and unacceptable behaviour as I'm not sure people necessarily understand what some people class as such behaviour.	A refresher session on Council decision making and the Code of Conduct is being planned.
Good quality awareness training that specifically looks at types of discriminatory behaviour and how it manifests itself.	

<b>Comments</b>	<b>Monitoring Officer Responses</b>
Members training and protocol needs to be mandatory Effective chairing.	<p>The member Code of Conduct and training on it is mandatory.</p> <p>A Member development session has recently been held on chairing skills.</p>
<p>Training on respectful behaviours and expectations of behaviour. Calling out any inappropriate behaviour. Over time I think a culture change is needed to address disrespectful behaviours between political members (this is widely accepted as normal in a political environment). Wider structural changes are needed throughout the council to address all forms of inequality - this should be part of every departments role, senior managers portfolio to normalise discussion on these issues, and address</p>	
Code of conduct should be adhered too	

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL  
SERVICES AND MONITORING OFFICER****WHISTLEBLOWING REPORTS 2018-2019**

Appendix 1 & 2 of this report is exempt information and is not for publication as it contains exempt information of the description in paragraph 13 (information likely to reveal the identity of an individual) and paragraph 14 (information relating to financial or business affairs) of Part 4 of Schedule 12A of the Local Government Act 1972. It is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, having regard to the duty of confidence owed by the Council to its employees and the protection of personal data under the Data Protection Act 1998, and the potential prejudice to the Council of disclosing financial control information which may be fraudulently exploited.

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**Reason for this Report**

1. To provide the Committee with information to enable it to oversee and monitor the Council's whistleblowing procedures and to consider any ethical issues arising.

**Background**

2. The Standards & Ethics Committee has responsibility to 'oversee and monitor the Council's Whistleblowing procedures and to consider ethical issues arising' (paragraph (e) of the Committee's terms of reference).
3. The Whistleblowing Policy sets out the arrangements adopted by the Council aimed at ensuring that workers are able to raise concerns in the public interest about a danger, risk, malpractice or wrongdoing within the Council without fear of adverse consequences. The Policy explains the statutory protection available to workers under the Public Interest Disclosure Act 1998, and is intended to encourage and enable workers to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.
4. The Whistleblowing Policy was revised and approved by Cabinet in October 2014 on the recommendations of this Committee, to reflect legislative

changes, clarify certain provisions and adopt best practice. The Policy is publicised through posters in all core Council buildings, and articles in the Core Brief, an information bulletin disseminated to all staff; and guidance for staff and managers is published on the Council's intranet.

5. Under the Policy, the Monitoring Officer is required to keep a record of all reports made and their outcomes and to report periodically to the Standards Committee. At its meeting in March 2018, the Committee considered a report on whistleblowing reports made during 2017, with brief details of the concerns raised and outcome in each case.

## Issues

6. The number of whistleblowing reports notified to the Monitoring Officer during 2018 and 2019, along with comparative numbers for the two previous years, is set out below:

<b>YEAR</b>	<b>NUMBER OF WHISTLEBLOWING REPORTS</b>
2016	4
2017	3
<b>2018</b>	<b>1</b>
<b>2019</b>	<b>6</b>

7. Further information on the concerns raised and the outcomes in each case is attached as Appendix A & B.
8. The Committee is invited to note the contents of this report and further information provided at the meeting, and make any observations considered appropriate.
9. Members are also invited to note that a review of the Whistleblowing Policy is being programmed for 2020/21 and will be reported to Committee this year.

## Legal Implications

10. The legal implications are contained within the body of the report.

## Financial Implications

11. There are no direct financial implications resulting from this report.

## RECOMMENDATIONS

The Committee is recommended to note the information provided and make any observations as appropriate.

**Davina Fiore**  
**Director of Governance and Legal Services and Monitoring Officer**  
12 March 2020

The following Background Papers have been taken into account:

Report of Monitoring Officer to the Standards & Ethics Committee - 'Whistleblowing Reports 2017'  
March 2018

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By virtue of paragraph(s) 13, 14 of Part(s) 4 and 5 of Schedule 12A of the Local Government Act 1972.

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By virtue of paragraph(s) 13, 14 of Part(s) 4 and 5 of Schedule 12A of the Local Government Act 1972.

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**STANDARDS AND ETHICS  
COMMITTEE**

**18<sup>th</sup> MARCH 2020**

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

---

**MEMBERS' CODE OF CONDUCT COMPLAINTS – QUARTER 3 OF  
2019/20**

**Reason for Report**

1. To provide the Committee with an update on complaints made during Quarter 3 of 2019/20 (the period running from 1<sup>st</sup> October 2019 to 31<sup>st</sup> December 2019) against Members of Cardiff Council or any of Cardiff's Community Councils, alleging a breach of the Members' Code of Conduct.

**Background**

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

(paragraphs (a), (c) and (g) respectively, of the Committee's terms of reference).

3. The Committee considers the number of complaints made and any themes or patterns emerging, but does not consider the specific details of each individual case, unless the complaint is formally referred to the Committee for a decision.
4. Complaints received during Quarter 4 of 2018/19 and Quarters 1 & 2 of 2019/20 were reported to the Committee meeting on 11<sup>th</sup> December 2019.

## Issues

5. During Quarter 3 of 2019/20, covering the period running from 1<sup>st</sup> October 2019 to 31<sup>st</sup> December 2019, one complaint alleging a breach of the Members' Code of Conduct was reported to the Monitoring Officer.
6. The table below shows the type of complaint received during this period and includes comparative figures for the previous four quarters.

	Q3 Oct, Nov, Dec 2018	Q4 Jan, Feb, Mar 2019	Q1 Apr, May, Jun 2019	Q2 Jul, Aug, Sept 2019	Q3 Oct, Nov, Dec 2019
Member on Member	3	2	1	4	0
Public on Member	0	1	2	0	1
Officer on Member	3	0	0	0	0
Community Councillors	0	0	0	0	0
<b>Total</b>	<b>6</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>1</b>

7. The single complaint received during Quarter 3 was submitted by a member of the public and alleged that a Member had made unsubstantiated comments about that individual to the public, which besmirched their character within the local community. It was alleged that this constituted a breach of various duties in the Code of Conduct, including the duty to treat others with respect and consideration; not to use bullying behaviour; to have regard to equal opportunities; and not to use the position of Member improperly. It was also alleged that the Member had misused Welsh Assembly resources and had breached Data Protection laws. The Monitoring Officer responded to the complainant by explaining the scope of the Members' Code of Conduct (which applies to Members when they act, or give the impression they are acting, in the role of a Councillor, except for certain limited parts of

the Code which apply at all times, namely, the duty to not bring the office of Councillor or the Council into disrepute, or to use their position improperly to obtain an advantage/disadvantage for themselves or others). The complainant was advised, in relation to the complaints raised, of the respective remits of the Public Services Ombudsman for Wales, the Standards Commissioner for Wales and the Information Commissioner, and advised to refer the complaints to those bodies, as appropriate.

### **Legal Implications**

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

### **Financial Implications**

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

### **Recommendation**

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

**Davina Fiore**

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

2<sup>nd</sup> March 2020

#### Background papers

Standards and Ethics Committee report 'Member Code of Conduct Complaints, Quarter 4 of 2018/19 and Quarters 1 and 2 of 2019/20', 11<sup>th</sup> December 2019

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CYNGOR CAERDYDD  
CARDIFF COUNCIL



STANDARDS AND ETHICS COMMITTEE:

18<sup>TH</sup> MARCH 2020

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

---

**OBSERVATION OF MEETINGS**

**Reason for this Report**

1. To allow the Committee to consider the feedback provided by Committee members following observation of meetings of the Council.

**Background**

2. The Committee has agreed that observation of Council, Committee and Community Council meetings is helpful for members, in particular the Independent Members of the Committee, to gain experience of the Council and Committee processes, and to provide opportunities for first hand feedback to the Committee of any issues relating to standards and conduct.
3. The Committee has approved a feedback profroma for use by the Members of the Committee when observing meetings. Members have been asked to complete a form for each meeting they attend and submit it for consideration at the next appropriate Committee meeting.

**Issues**

4. A completed meeting observation feedback form has been received in respect of the full Council meeting on 30<sup>th</sup> January 2020. The completed Observation form is appended as **Appendix A**.
5. Members will note that the feedback is generally positive in relation to standards of conduct. The feedback has also been shared with the Lord Mayor, as Chair of Council, for his information. In relation to comments about the public screens, Members may wish to note that the Council is in the process of planning replacement of the systems used in the Council chamber and will seek to ensure the screens can display more information.
6. All forthcoming Council and Committee meetings are listed in the calendar of meetings, which is regularly circulated to Standards and Ethics Committee

members and is published on the Council's website, here:

<http://cardiff.moderngov.co.uk/mgCalendarMonthView.aspx?GL=1&bcr=1&LLL=0>

Independent members, and in particular, newly appointed members, are encouraged to observe a full Council meeting and a Committee meeting.

7. Details of forthcoming Community Council meetings are published on the respective Councils' websites. Members are similarly encouraged to observe a Community Council meeting. Before attending a Community Council meeting, Members are advised to contact the Clerk to confirm the meeting is going ahead and, as a courtesy, to inform the Clerk they will be attending. Community Council website links and Clerks contact details are accessible here:

<https://www.cardiff.gov.uk/ENG/Your-Council/Voting-and-elections/Community-councils/Pages/Community-councils.aspx>

## **Legal Implications**

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

## **Financial Implications**

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

## **RECOMMENDATION**

The Committee is recommended to:

- (1) Note the meeting observation feedback received, as set out in **Appendix A** to the report, and provide any further comments in this regard; and
- (2) Continue to observe appropriate meetings of the Council, Committees and Community Councils and provide feedback to a future meeting of the Committee.

**Davina Fiore**

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

9<sup>th</sup> March 2020

### Appendix

Appendix A Meeting Observation Feedback Form for Council meeting January 2020

### Background papers

Standards & Ethics Committee report, 'Observation of Council, Committee and Community Council Meetings, 11<sup>th</sup> December 2019

# STANDARDS AND ETHICS COMMITTEE

## FEEDBACK ON OBSERVATIONS OF COUNCIL & COMMITTEE MEETINGS

Meeting:	FULL COUNCIL
Date:	30.1.20

Please provide feedback on the following:

Topic	Comments
Room Layout:	COUNCIL MEETING
Name plates/ identification of Committee; Witnesses and Officers:	✓ ALL NAME PLATES AVAILABLE + VISIBLE
Ability to hear proceedings:	✓
Agenda and reports availability:	✓
Management of meeting:	EXCELLENT. WELL + FAIRLY CHAIRED
Clarity of decision making:	✓

Possible Code of Conduct/ Standards and Ethics Issues:	GENERAL FEEDBACK
<p>INFORMATION PROVIDED ON PUBLIC SCREENS COULD BE IMPROVED:</p> <ul style="list-style-type: none"> <li>• ABBREVIATION OF "PARTIC" FOR INDEPENDENT MEMBERS WOULD NOT BE KNOWN TO OBSERVERS e.g: CWI</li> <li>• WOULD HELP UNDERSTANDING OF PROCEEDINGS TO GIVE MORE INFORMATION. E.G: 1) STATE THE CLR IS STATING A REFERENCE BACK. 2) BRIEF OF WRITTEN <del>SETTER</del> QUESTION ON SCREEN - 1 LINE OF WHAT IT IS + WHAT NO. &amp; IT IS.</li> </ul> <p>ON THE WHOLE STANDARDS WERE GOOD, HOWEVER SOME PERSONAL REPROCHES USED. WOULD NOT WANT TO SEE THIS ESCALATED. IN THESE CIRCUMSTANCES WOULD BE VALUE IN CHAIR REMINDING CLRS + CHALLENGING BEHAVIOUR.</p>	

I agree that my feedback can be shared with the Council and/ or the Community Council (if applicable).

Name:	C. NICHOLLS
Date:	30.1.20

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**CYNGOR CAERDYDD  
CARDIFF COUNCIL****STANDARDS AND ETHICS COMMITTEE:****18 MARCH 2020**

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

---

**WORK PROGRAMME 2020 - 2021****Reason for this Report**

1. To consider the Committee's Work Plan and agree the items for consideration by the Standards and Ethics Committee in 2020/21.

**Background**

2. The Standards and Ethics Committee's Terms of Reference set out the remit of the Committee to monitor, review and advise on matters relating to the Ethical code; Members Code of Conduct; matters of governance and probity; and compliance of Members in completing the essential Code of Conduct session.
3. To enable the Committee to fulfil its role an annual work plan is developed to reflect the Council's Annual Governance Statement; give consideration to standard monitoring reports; and any issues arising from the Committee's work in promoting high standards of conduct and managing complaints. The views of this Committee assist in the development of an ongoing work plan.

**Issues**

4. Attached as **Appendix A** is the Work Plan for 2020/21 which reflects ongoing priorities and standard reports and the frequency of reporting. The Committee is invited to review the plan taking into account available resources, and add or remove items and agree the frequency of reporting.

**Legal Implications**

5. There are no direct legal implications arising from the content of this report. However, the Committee is reminded of its statutory role contained in the extract from the Local Government Act 2000 set out below which should be considered alongside its terms of reference when setting the Forward Plan:

#### 54 Functions of standards committees

- (1) *The general functions of a standards committee of a relevant authority are--*
- (a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and*
  - (b) assisting members and co-opted members of the authority to observe the authority's code of conduct.*
- (2) *Without prejudice to its general functions, a standards committee of a relevant authority has the following specific functions—*
- (a) advising the authority on the adoption or revision of a code of conduct,*
  - (b) monitoring the operation of the authority's code of conduct, and*
  - (c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.*

6. The Committee has the same statutory functions in relation to Community Councils and Community Councillors as it has in relation to the County Council and County Councillors (pursuant to section 56(1) of the Local Government Act 2000).

#### **Financial Implications**

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

#### **RECOMMENDATION**

The Committee is recommended to consider the Work Plan as set out in Appendix A, and, taking into account its terms of reference and available resources, to agree with the Director of Governance and Legal Services and Monitoring Officer any amendments and how it wishes to progress the various items or topics contained therein.

**Davina Fiore**  
**Director of Governance and Legal Services and Monitoring Officer**  
**12 March 2020**

#### Appendix

Appendix A                      Work Programme March 2020

Background Papers  
Standards & Ethics Committee Annual Report 2018/19.

**STANDARDS AND ETHICS COMMITTEE – WORK PLAN – 2020/21**

**APPENDIX A**

<b>TOPIC</b>	<b>OBJECTIVE/OUTCOME</b>	<b>WHO IS RESPONSIBLE?</b>	<b>PRIORITY</b>	<b>STATUS</b>	<b>REPORT TO COMMITTEE</b>
(1) Gifts and Hospitality  <i>Frequency of reporting – annual</i>	(1) To consider the Council’s procedures for Officers’ gifts and hospitality; and  (2) To monitor and review the acceptance of gifts and hospitality by Members.	Monitoring Officer	Medium	Scheduled	(1) July 2020  (2) December 2020
(2) Code of Conduct Complaints  <i>Frequency of reporting – quarterly</i>	To receive information on complaints made against Members of the Council alleging breaches of the Code of Conduct.	Monitoring Officer	Medium	Ongoing	ON AGENDA
(3) Member Briefings	To publish Member Briefings on the work of the Committee and member conduct issues	Chair / Monitoring Officer	Medium	Annual Report presented to Council in February 2020, with reminders and guidance for Members	July 2020
(4) Training	To consider refresher training on the Members’ Code of Conduct	Monitoring Officer	High	Ongoing	As necessary
(5) Feedback from Observation of Council & Committee meetings	Independent Members to attend Council, Committee and Community Council meetings to become more acquainted with the work of the Councils; and report feedback for consideration by the Committee	Independent Members of the Committee	Medium	Ongoing	ON AGENDA

<b>TOPIC</b>	<b>OBJECTIVE/OUTCOME</b>	<b>WHO IS RESPONSIBLE?</b>	<b>PRIORITY</b>	<b>STATUS</b>	<b>REPORT TO COMMITTEE</b>
(6) Whistleblowing Policy	To monitor and review the operation of the Council's whistleblowing arrangements; and consider any ethical issues arising.	Monitoring Officer	Medium	Scheduled	ON AGENDA
(7) Officers Personal Interests	To review the Council's rules in relation to senior officers' personal interests	Monitoring Officer / HR	Medium	Scheduled	ON AGENDA
(8) Annual Meeting with Group Leaders and Whips	To facilitate ongoing engagement with representatives from all political groups.	Elected Members	Medium	Scheduled	March 2020
(9) Annual Report 2019/20	Prepare Annual Report 2019/20	Committee Chair/ Monitoring Officer	Medium	Scheduled	Autumn 2020
(10) Member Survey	To consider the results of the Members Survey in relation to conduct and ethical issues	Head of Democratic Services / Monitoring Officer	Medium	Scheduled	ON AGENDA

# CYNGOR CAERDYDD CARDIFF COUNCIL



**STANDARDS AND ETHICS COMMITTEE: 18<sup>th</sup> March 2020**

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## REPORT OF THE DEPUTY MONITORING OFFICER

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### SENIOR OFFICERS' PERSONAL INTERESTS

#### Reason for this Report

1. To enable the Committee to review the Council's arrangements in relation to Senior Officers' personal interests disclosures.

#### Background

2. All Council employees are obliged, under the Employees' Code of Conduct, to ensure that their private interests do not conflict with their public duties, and to comply with the Council's rules on the registration and declaration of financial and non-financial interests (paragraph 8(1) of the Code).
3. The Standards and Ethics Committee has responsibility to advise the Council on this issue, pursuant to paragraph (c) of its approved terms of reference:
 

“(c) To advise the Council on the effective implementation of [its Ethical] Code including such matters as the training of Members and employees on the Code's application.”
4. The Council's policy on Officers' Personal Interests and Secondary Employment (“the Policy”), adopted in February 2015, says the Monitoring Officer is responsible for reviewing the policy, in consultation with the Standards and Ethics Committee, to ensure it is effective.
5. At its meeting in March 2019, the Committee reviewed the Council's rules and resolved to recommend publication of a Register of Senior Officers' Outside Business Interests with effect from April 2019. This recommendation has been implemented. The information can be found on the Council's Register page of its Website: <https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/registers/Pages/default.aspx>
6. Members of the Committee also expressed the view that Senior Officers should be subject to the same disclosure requirements that apply to elected Members, as they exercise significant decision-making powers. Specifically, Senior Officers should be required to publicly disclose Trade Union membership and home addresses and this information should be published on the Council's website. It was agreed that the Committee should receive a further report in this regard.

7. A further report was brought to Committee on 11<sup>th</sup> December 2019 by the Deputy Monitoring Officer who recommended that the Committee make no changes to the current disclosure requirements for Senior Officers' Personal Interests on employment law and data protection grounds.
8. The Committee accepted this recommendation, and suggested instead, that the information contained in The Senior Officers' Personal Interests Declaration Form (**Appendix A**), save for information relating to a Senior Officer's Trade Union membership status and home address – should be brought to the Committee annually for them to review.
9. It was agreed that the Deputy Monitoring Officer would consult with the Senior Management Team on this proposal and that the Committee should receive a further report in this regard.

### Issues

10. The Council should not interfere unnecessarily with the private lives of its staff, but it needs to have effective arrangements in place to ensure Council staff carry out their duties in a fair and unbiased way, without being influenced by their own personal interests.

### Current disclosure requirements

11. The Council's Policy on Officers' Personal Interests and Secondary Employment (**Appendix B**) aims to provide rules and guidance to help protect the Council and its staff from criticism, misunderstanding and allegations of impropriety; and to ensure that any conflicts of interest are managed effectively and transparently.
12. Under the Policy, Senior Officers (defined as Chief Officers, Assistant Directors and above, in keeping with the definition of Chief Officers under the Localism Act 2011 and reflected in the Council's Pay Policy) are subject to additional disclosure requirements in the interests of transparency and accountability. They are required to disclose any:
  - a) Outside business interests – this requirement is imposed in employment contracts and, in accordance with the Information Commissioner's Office model Publication Scheme, a register of such interests is published on the Council's website;
  - b) Conflicts of interest between their personal interests and duties to the Council – this duty is imposed in the statutory Employees Code of Conduct (paragraph 8);
  - c) Financial interests in a Council contract (existing or proposed) – this is a statutory requirement imposed by section 117 of the Local Government Act 1972; and
  - d) Details of any company or body owned or controlled by the Senior Officer or their spouse or partner or any of their children or dependents (this is an audit requirement) in relation to 'related party' disclosures for the Council's

Statement of Accounts, imposed by the CIPFA Code of Practice and section 21(2) of the Local Government Act 2003.

13. The Senior Officers' Personal Interests Declaration Forms are held by the Monitoring Officer and officers are asked to update their declarations annually.
14. The Council's Policy provides detailed guidance on what constitutes a conflict of interest and which must be avoided or disclosed. This includes the requirement for Officers to:
  - i. Disclose any apparent conflicts as well as actual conflicts of interest.
  - ii. Seek advice from their line manager in the case of any doubt about a possible conflict of interest.
  - iii. Include the personal interests of close family and friends when considering if they have a potential conflict of interests
  - iv. Disclose any links with (i) Council suppliers or contractors (or those tendering for a Council contract); (ii) any organisations which campaign, lobby or seek to influence the Council's policies; and (iii) any organisation applying for Council grants, if the officer is involved in the grant allocation process.
  - v. Disclose any personal interest in a matter being dealt with at the Council (eg. regulatory applications) by anyone with whom the Officer has any connection or personal relationship.

#### The Law

15. The rules governing officers' personal interests are set out above and reflected in the Council's current Policy, as noted in paragraphs 12 and 14, above.

#### Employment issues

16. Senior Officers have been consulted, through discussions at Senior Management Team, about the information contained in The Senior Officers' Personal Interests Declaration Form being made available to the Committee.
17. Senior Officers have raised no objections on the basis that Officer's home address and information relating to their trade union membership status be excluded from the information provided to the Committee.

#### Data protection / privacy issues

18. Data Protection laws (the General Data Protection Regulation 2016, 'GDPR', and Data Protection Act 2018) control the use of personal information (any information about living identifiable individuals). Information about officers' home addresses and membership of other organisations is 'personal data' – meaning it may only be processed, for specified purposes, if there is a lawful basis for the Council to do so.

19. Where there is a statutory requirement for officers to disclose certain personal interests (eg. interests in Council contracts and 'related party disclosures' required under audit rules), the legal obligation provides the GDPR lawful basis for the Council's processing of this information. GDPR also allows the Council to process certain personal information about its staff (home address, next of kin, bank details etc) in order to discharge its employment rights and duties under its contracts of employment. However, this information may not be used for other purposes unless the Council can demonstrate it has a lawful basis to do so.

### **Legal Implications**

20. As the Monitoring Officer is one of the Council's Senior Officers, she has a conflict of interest in this matter, so this report and the legal advice have been provided by the Deputy Monitoring Officer.
21. Whilst there is no legal requirement for Senior Officer's to disclose their interests to anyone other than the Monitoring Officer in accordance with the Policy outlined in paragraph 12; the Deputy Monitoring Officer has advised that the Senior Management Team have been consulted, and are in agreement with the proposal that the information contained in The Senior Officers' Personal Interests Declaration Form (save for information relating to Trade Union membership status and officer home address) be brought to the Committee on an annual basis.
22. The information contained within The Senior Officers' Personal Interests Declaration Form is 'exempt information' as defined by Paragraph 12 of Schedule 12A, Part 4 of the Local Government Act 1972, i.e. 'information relating to a particular individual.' Given that the Council's Policy already provides for the scrutiny of Senior Officer's interests by the Monitoring Officer who has a statutory duty to uphold the standards of officers, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Deputy Monitoring Officer therefore advises that the public should be excluded when this information is brought to Committee.
23. Members may wish to note that the Monitoring Officer is authorised to make minor amendments to ensure the effectiveness of the Policy, but any substantive changes would require further consultation with staff and Trade Unions and then a report to Cabinet for approval.
24. Other relevant legal provisions are set out in the body of the report.

### **Financial Implications**

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

## **RECOMMENDATIONS**

The Committee is recommended to:

1. Agree to recommend that the information contained in the The Senior Officers' Personal Interests Declaration Form, except for information relating to Trade Union membership status and the officer's home address, is brought to the Committee to review on an annual basis as an exempt report.
2. Note that minor amendments to the Policy may be agreed by the Monitoring Officer, but any substantive amendments will require consultation with staff and Trade Unions, and approval by Cabinet.

**James Williams**

**Operational Manager, Litigation & Deputy Monitoring Officer**

9<sup>th</sup> March 2020

## **Appendices**

Appendix A Senior Officers Personal Interests Declaration Form

Appendix B Officers' Personal Interests and Secondary Employment Policy

## **Background Papers**

1. Standards and Ethics Committee report 'Officers' Personal Interests and Secondary Employment Policy', March 2019
2. Standards and Ethics Committee report 'Senior Officers' Personal Interests, December 2019

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**SENIOR OFFICERS' PERSONAL INTERESTS DECLARATION FORM**

**(TO BE COMPLETED BY ALL ASSISTANT DIRECTORS, CHIEF OFFICERS & ABOVE)**

<b>Name:</b>	
<b>Post Title:</b>	

**SECTION A. Your Other Business Interests or Appointments**

Please list all outside business (trade or professional) interests or appointments, including any Council appointments to outside bodies. Please note, it is a condition of your contract of employment that you seek written consent from the Council before engaging in any other business or taking up any other appointment.

**The information provided in this section is likely to be made available to the public, as part of the Council's commitment to transparency and accountability, and is required for purposes of the Council's Statement of Accounts.**

<b>Position</b>	<b>Name and Address of Company / Organisation</b>	<b>Details of your interest or appointment, including work undertaken, responsibilities, time commitment, whether you are appointed by the Council etc</b>

**SECTION B. Any companies or bodies owned or controlled by your Spouse or Partner, or the Children or Dependents of either of you**

Please note: This information is a ('Related Parties') audit requirement for the purpose of the Council's Annual Statement of Accounts. The term 'control' includes joint control. The Council's finance officers will assess whether reference should be made in the Statement of Accounts and seek further information from you if necessary. Individual or company names are not disclosed in the Statement of Accounts.

<b>Spouse / Partner / Dependent / Child</b> (please give name and relationship)	<b>Name and Address of Company / Body</b>	<b>Details of interest</b>

**SECTION C. Other Potential Conflicts of Interest**

Please Note: You only need to disclose other personal interests which conflict, or may conflict, with your duties to the Council. If you are at all unsure, you should disclose your interest using this form or discuss this with your Manager.

<b>Membership or management of a club, organisation, charity, professional association or other body</b>	
<b>Land or property interests</b>	

<b>Other financial interests</b>	
<b>Any other potentially conflicting personal interests</b>	

<b>Notification of Changes</b>	<b>I undertake to notify the Council in writing of any changes which may occur within 28 days from the date of the change.</b>		
<b>Signature:</b>		<b>Date:</b>	

**COMPLETED FORMS (INCLUDING 'NIL RETURNS') SHOULD BE RETURNED TO THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES**

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# OFFICERS' PERSONAL INTERESTS & SECONDARY EMPLOYMENT POLICY

<b>APPROVED BY</b>	Cabinet
<b>APPROVAL DATE</b>	19/02/2015
<b>DOCUMENT OWNER</b>	Monitoring Officer

## Contents

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<b>Introduction</b>	<b>Aims and Scope of Policy</b>	<b>3</b>
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	<b>Conflicts of Interest</b>	<b>5</b>
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<b>Roles and Responsibilities</b>	<b>Staff Responsibilities</b>	<b>8</b>
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## INTRODUCTION

1. The public is entitled to expect the highest standards of conduct from all Council staff. In performing their duties, staff must act with integrity, honesty, impartiality and objectivity, as set out in the Nolan principles of public life.
2. The Council is committed to undertaking its work in a fair and professional way. Whilst the Council does not wish to interfere unnecessarily with its staff's private lives or activities outside of their contracted hours, it is essential that staff do not allow any private or personal interests, including interests arising from any other employment or business outside of the Council, to conflict with their duties to the Council.

### Aim of this Policy

3. The aim of this Policy is to provide rules and guidance that will help to protect the Council and its staff from criticism, misunderstanding and any allegations of impropriety.
4. The Policy aims to ensure that all conflicts of interest are managed transparently, and that an officer's secondary employment does not undermine the performance of their Council duties in any way.

### Scope - Who is covered by this Policy?

5. This Policy applies to all Council staff (including interim staff and school based employees other than teachers), irrespective of their employment status or grade.
6. Agency workers must comply with the requirements for disclosing conflicts of interests (paragraphs 16 to 24 of this Policy), but do not need to disclose any other work, unless that work also presents a conflict of interest.
7. The Policy is also commended to School Governing Bodies.

## RULES and REQUIREMENTS

### Key Requirements

8. All Council staff are required under this Policy to disclose:
- i) any personal interest which conflicts, or may conflict, with their duties to the Council;
  - ii) any secondary employment; and
  - iii) any financial interest in a contract with the Council.

Guidance on these requirements is set out below.

### The Law

9. All Council employees are required to comply with the statutory Code of Conduct for Local Government Employees, which is embedded within the Council's Constitution and published on the Council's website (except teachers, who have their own Code of Conduct).
10. Under paragraph 8 of the Employees Code of Conduct, employees are under a duty not to allow private interests to conflict with their public duties and to comply with the Council rules on declarations and registration of interests.
11. The Code of Conduct is incorporated by law into the employment contracts of all Council employees, and failure to comply with the Code may result in disciplinary action.
12. Employees' contracts of employment also impose legal obligations in respect of any other employment (see paragraph 26 (i) and paragraph 27 below.
13. Council officers have a statutory duty (under the Local Government Act 1972, section 117) to give written notice of

Ref:	Issue: 1	Date: May 2017	Process Owner : Monitoring Office	Authoriser: Cabinet	Page 4 of 13
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any financial interest they may have in a Council contract (any contract which has been, or is to be, entered into by the Council). Failure to do so is a criminal offence.

14. The Council has a duty of care under the Working Time Regulations to monitor the number of hours worked by its staff.
15. Senior Officers (Chief Officers and above) are subject to additional disclosure obligations in respect of their outside business interests, to meet the legal requirements of the Council's annual Statement of Accounts (see paragraph 28 below).

### Conflicts of Interest

16. You must not:
  - i) allow your private interests or beliefs to conflict with your professional duty; or
  - ii) misuse your position within the Council or information acquired in the course of your job to advance your personal interests or the interests of others.
17. In order to protect the reputation of the Council and its employees, you are required to formally disclose all potential conflicts of interest (as well as actual conflicts) – this means you must disclose any interest which may, or may be seen to, conflict with your Council duties, using **Form 1** (or for Senior Officers, Form 2). If you are unsure about a possible conflict of interest, you should seek advice from your line manager.
18. Private and personal interests include those of your close family and friends (that is, anyone with whom you have a close personal association), as well as those arising through business and financial interests and membership of clubs, societies or other organisations.
19. It is impossible to list every situation in which a conflict of interest may arise, as this will depend on the particular circumstances of each case, but guidance is given below.

20. You must formally disclose any links you may have (including, but not limited to, as a director, company secretary, trustee, partner, shareholder, owner, contractor or employee) with an outside organisation which may:
- i) receive (or be applying for) grants or other benefits from the Council, IF you are involved in the grant allocation process
  - ii) work for the Council, or supply goods and services to it (or tendering for such work or preparing to do so)
  - iii) campaign, lobby or seek to influence the Council's policies
21. You must formally disclose:
- i) any regulatory applications made to the Council by yourself or any person or body with which you are associated, IF you have any connection or personal relationship with a member of staff within the relevant section dealing with the application
  - ii) any personal interest you may have in a matter being dealt with at the Council by yourself or a member of staff with whom you have any connection or personal relationship.
22. You must ensure that if you enter into a personal relationship with an Officer or a Councillor, who is able to apply influence to your benefit, you declare this to your line manager, to avoid accusations of favouritism and bias.
23. You must avoid:
- i) Involvement in any appointment decision or other decision relating to discipline, promotion, pay and conditions for any other employee (or prospective employee) to whom you are related or with whom you have a close personal relationship outside work. This includes appointments to, and employees of, Cardiff

Works. If you have any such relationship, you must disclose it to your manager and HR.

- ii) Acting as a professional representative on behalf of a friend, partner or relative in their dealings with the Council, except in relation to disciplinary or grievance proceedings so long as this does not conflict with your normal duties to the Council.

24. It is a fundamental principle that no related people should be employed in Council jobs where one is involved in the ordering of goods and services and the other passes the invoices for payment.

### **Private or Other Work, Business or Employment**

25. You must not engage in any other work if there is a conflict of interest with the Council. Before you take up any other work, whether it is paid or unpaid, for yourself, other organisations or other parts of the Council, there are some rules which you must follow to ensure that this does not conflict with the interests of the Council or affect your ability and credibility to do your job.

26. You must:

- i) Formally disclose any other employment (whether inside or outside the Council) – this is a requirement of your contract of employment with the Council. You should note that the Council reserves the right to advise you that you may not carry out any additional employment, IF this may create a conflict of interest or health and safety / duty of care implications.
- ii) Ensure that any other work is done in your own time and not:
  - a) During Council time (or the contracted hours for that job)
  - b) Use Council property (including information which belongs to the Council), premises or equipment (other than for the job for which it has been supplied)

- c) When you are on sick leave (unless your manager has given written consent or you can demonstrate to the Council's satisfaction that this is reasonable)
  - d) When it may adversely affect performance of your Council duties (or your main job within the Council)
  - e) When it may be seen to be against the interests of the Council or reduce public confidence in the Council
- iii) Ensure there is no conflict of interest (please see paragraphs 16 to 24 above).
  - iv) Get formal written permission from your manager before you take up any (paid or unpaid) private work for any person or organisation that supplies, or is tendering to supply, goods or services to or from the Council or its contractors and suppliers.
  - v) Declare in writing to your manager any fees paid to you from outside bodies for any work you do in the course of your job and on behalf of the Council (for example, fees for a lecture). You should be entitled to retain any fees paid for work done during your own time.
27. Senior officers (Chief Officers, Assistant Directors and above), must obtain consent from the Council before engaging in any other business or taking up any other appointment – This requirement is imposed in their contracts of employment.
28. Senior officers (Chief Officers, Assistant Directors and above) must also disclose any companies or other bodies in which they, or a close member of their family, have control or ownership – This is an audit requirement for the Council's annual Statement of Accounts (and further advice on these audit requirements is available from the Technical Accountancy Team in Financial Services).

## ROLES and RESPONSIBILITIES

29. It is important that everyone clearly understands their roles and responsibilities within this process.

### Staff Responsibilities

30. All staff must:
- i) Consider whether their private and personal interests conflict, or have the potential to conflict, with their official duties; and avoid such conflicts wherever possible
  - ii) Formally disclose all actual or potential conflicts of interest
  - iii) Formally disclose all secondary employment
  - iv) Disclose any relevant changes as and when they occur.

### Management Responsibilities

31. Managers must:
- i) Comply with the policy in respect of your own conflicts and potential conflicts of interest and any secondary employment.
  - ii) Facilitate compliance by your staff by being aware of the risks inherent in the type of work they do and monitoring the work of staff and the risks to which they are exposed.
  - iii) Forward any Form 1 completed by staff to your Operational Manager
  - iv) Report breaches of this Policy to your Operational Manager or next level of management (if appropriate), HR People Services and external agencies where appropriate.

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32. Operational Managers and above – You must:
- a) Consider, determine and manage conflicts of interest and secondary employment of your staff
  - b) Ensure that records of disclosures under this Policy are kept, regularly reviewed and kept up to date.

### **Monitoring Officer Responsibilities**

33. The Monitoring Officer will:
- i) Establish a system for managing conflicts of interest in the form of a clear policy for all staff to follow
  - ii) Review the Policy, in consultation with the Standards and Ethics Committee, and have authority to make any minor amendments, to ensure that it is effective
  - iii) Advise on any specific queries regarding the implementation of the Policy, as necessary
  - iv) Maintain a register of personal interests disclosed by Senior Officers.

### **HR People Services Responsibilities**

34. HR People Services will advise on any employment or staffing issues arising from the operation of this Policy, for example, disciplinary action in the event of a breach.

## PROCEDURE

### What do I need to do?

35. You must complete Form 1\* to disclose:
- (i) Any actual or potential conflict of interest – please note, you only need to disclose a personal interest if it conflicts, or may conflict, with your duties to the Council;
  - (ii) any secondary employment – all secondary employment must be disclosed, inside or outside of the Council; and
  - (iii) any changes in the above information, which must be notified within 28 days of the change.

You do not need to complete Form 1 in any other case.

[\*Senior Officers, that is, Assistant Directors and above, must complete Form 2.]

36. The Operational Manager (or next level of management, where appropriate), in consultation with the staff member, will determine whether:
- i) a personal interest exists; and
  - ii) the personal interest (if one exists) is such that there is a conflict with the staff member's duties,

And will notify the staff member of their decision within 10 working days from receipt of the Form (“the Decision Notification”).

37. If it is determined that a conflict does exist, the Operational Manager (or next level of management, where appropriate) will need to assess whether there can be an adjustment of duties, or any other action should be taken, to avoid the conflict.
38. If it is not possible for management to readjust work duties or take other precautions to avoid the conflict, the staff member

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will be notified within 10 working days from the Decision Notification (“the Conflict Notification”) and given the opportunity to appeal against this decision – see paragraphs 40 to 46, ‘Appeal Rights’ below.

39. Where a staff member declines to cease the activity pending the appeal, the Manager shall consider whether it is possible to agree a temporary reallocation of tasks to remove the conflict, failing which, the Manager may instigate a disciplinary investigation in accordance with the Council’s Disciplinary Policy, and will consider whether the staff member should be suspended from duty.

## APPEALS

40. Where the Operational Manager (or next level of management, where appropriate) has confirmed that there is a conflict, the staff member shall have a right of appeal.
41. The staff member must indicate the grounds for their appeal e.g. that there is no personal interest or there is no conflict, and explain the reasons for their view.
42. The appeal must be submitted within 10 working days from the Conflict Notification (see paragraph 38 above).
43. The appeal will be considered by the next level of management within the Directorate, or by another Director, as appropriate.
44. The staff member will be contacted with the outcome of the appeal within 10 working days from submission.
45. If the appeal is not upheld and the conflict is still considered to exist, then the staff member will have the option of immediate cessation of the activity or resignation from their post within the Council.
46. If the staff member chooses to remain employed by the Council and it is found that the activity has not ceased then a Disciplinary Investigation will be instigated in accordance with the Council’s Disciplinary procedure.

## OTHER GENERAL PROVISIONS

### Data Protection

47. Information held in relation to this Policy will be managed in accordance with data protection law.

## RELATED DOCUMENTS

Form 1 Declaration of Personal Interests and Secondary Employment  
Form 2 Senior Officers' Personal Interests Declaration Form

Employee Code of Conduct

Code of Guidance Working Time Regulations

Disciplinary Policy

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