

Appendix A

Local Resolution Protocol

1. Introduction

1.1. By way of background, around a third of complaints referred to the Public Services Ombudsman for Wales (**Ombudsman**) are made by a Member against a fellow Member. Many of these complaints relate to low-level behavioural issues, typically during what may often be seen as the “cut and thrust” of normal Council debates and local politics. Many of these, if investigated by the Ombudsman, would not result in a sanction being imposed.

1.2.1.1. This Protocol has been adopted in response to the Ombudsman’s latest guidance on the Code of Conduct for Members (**Code**) which states that “low-level, Member-on-Member” complaints relating to breaches of the Code should be dealt with at a local level. The Ombudsman’s aim of this Protocol doing so is to seek the resolution of matters at an early stage so as to avoid unnecessary escalation of the situation which may damage personal relationships within the Council and the Council’s reputation.

1.3.1.2. This Protocol seeks to define what is meant by the types of “low-level”, Member-on-Member” complaints which are suitable for local resolution and sets out the procedure to be adopted in response to them.

1.4.1.3. It is important to note that this protocol does not preclude Members from referring any complaint to the Ombudsman if they so wish. However Members should note that the Ombudsman has made clear that, in normal circumstances, it is expected that in the first instance Members should exhaust the procedures set out in this Local Protocol before referring low-level complaints to the Ombudsman.

2. What is a “low-level, Member on Member” type of complaints fall within the remit of the Protocol?

2.1. The Monitoring Officer will use the following criteria to decide whether a complaint falls within the remit of this Protocol: In order to fall within the remit of this Protocol a complaint should satisfy all of the following criteria:

Within the remit of this Protocol:

- a. The complaint is made by a Member (or Co-Opted Member) of the Council and relates to a breach of the Code by a fellow Member.†

† Members should not encourage non-Members to make complaints simply to avoid the application of this Protocol. Doing so, in itself, is likely to be viewed as a breach of the Code (for example, under Paragraph 6(1) of the Code).

- b. The complaint is “low-level” in nature. Whether or not a complaint is “low-level” in nature will be dependant on the individual circumstances of a complaint.

The Ombudsman has indicated that *“typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty to not make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code”*.

If you are unsure whether a matter you wish to complain about is “low-level” then you may wish to discuss this with the Monitoring Officer (who may consult with the Ombudsman’s office) to obtain guidance.

- c. The complaint does not relate to repeated occurrences of similar conduct that has already been dealt with under this Protocol or by the Ombudsman. In the event that the complaint relates to such a “repeated offence” it is likely that it will be appropriate to refer the matter to the Ombudsman directly.

Outside the remit of this Protocol:

- Complaints made by members of the public, although if the Monitoring Officer considers it to be appropriate s/he may with the agreement of the member of the public, deal informally with a complaint made by a member of the public, while informing them of their right to complain to the Ombudsman
- Serious complaints of a breach of the Members’ Code of Conduct, such as a failure to disclose a personal and prejudicial interest, or alleged bullying.

If you are unsure whether a matter you wish to complain about is “low-level” or within the remit of this Protocol, then you may wish to discuss this with the Monitoring Officer (who may consult with the Ombudsman’s office) to obtain guidance.

3. Procedure

3.1. In the event of a Member seeking to make a complaint that may fall within the definition of a “low-level, Member on Member” complaint, that Member should first ~~arrange to meet~~ raise the matter with the Monitoring Officer (or their deputy or other appointed officer who may assume the role of the Monitoring officer under this Protocol). The purpose of doing so is to determine whether the matter should be dealt with under this Protocol or whether the matter should be referred directly to the Ombudsman.

3.2. If it is decided that the matter should be dealt with under this Protocol the following procedure shall be followed.

3.3. Firstly, the Monitoring Officer will consider whether the matter can may be able to be resolved by mutual resolution. If so, then the Monitoring Officer shall ~~arrange a meeting of the Members concerned~~ will make any appropriate arrangements with the aim of seeking an informal resolution of the matter. In doing so the Monitoring Officer may:

i Arrange to meet with the Members concerned, either together or separately;

iii require the attendance of any Group Leader, Member or Officer as they determine may be beneficial to resolving the complaint; and

iiii adopt such arrangements (such as "breaking out" of any joint meeting to meet with the individuals concerned privately or adjourning the meeting to ask individuals to reflect on their position) as they deem beneficial in an attempt to resolve the complaint.

3.4. If the matter cannot be resolved by mutual resolution, the Member bringing the complaint may ask the Monitoring Officer to refer the matter to the Standards & Ethics Member Hearing Sub-Committee (**Hearing Panel**).

4. Standards & Ethics Hearing Panel Proceedings

4.1. The Hearing Panel shall adopt and make available to all Members a procedure under which it shall carry out hearings. If a matter is brought before the Hearing Panel then the Hearing Panel shall hold a hearing to determine the matter in accordance with its hearing procedure.

4.2. The sanctions available to the Hearing Panel should it find that there has been a breach of the Code shall be:

- a. A statement that the complaint has substance, but no further action is required.
- b. Referral of the Member for training on a particular topic.
- c. A private or public written warning. If public, that warning shall be announced and circulated at the next meeting of Council.
- d. Censure of the Member at the next meeting of Council.
- e. Referral to the Ombudsman for investigation if the complaint is considered to be deserving of more serious sanctions than the Hearing Panel has the power to impose.

4.3. In making a decision on the sanctions to be imposed, the Hearing Panel may take into account (but is not limited to considering):

- a. The severity of the offence.
- a.b. Impact on others and any reputational impact on the Council
- c. The level of remorse the Member in question has shown and any apologies they have made.
- b.d. Any other action taken by the Member to redress the complaint.
- c.e. Whether there is an indication of the behaviour being repetitious or whether the Member has previously been found to have committed similar offences.

4. Standards & Ethics Hearing Panel Proceedings

- 4.1. The Hearing Panel shall adopt and make available to all Members a procedure under which it will carry out hearings. It is a matter for the Hearing Panel that the Hearing Panel shall hold a hearing to determine the matter in accordance with its hearing procedure.
- 4.2. The standards available to the Hearing Panel should be that there has been a breach of the Code shall be:
 - a. A statement that the complaint has substance, but no further action is required.
 - b. Referral of the complaint for training on a particular topic.
 - c. A private or public written warning. If public but warning shall be announced and disclosed at the next meeting of Council.
 - d. Censure of the Member at the next meeting of Council.
 - e. Referral to the Commission for investigation if the complaint is considered to be deserving of more serious sanctions than the hearing Panel has the power to impose.
- 4.3. In making a decision on the sanction to be imposed, the Hearing Panel may take into account (but is not limited to) the following: