

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

MEMBER CONDUCT - HEARINGS PANEL & PROCEDURES

Reason for this Report

1. For the Committee to approve arrangements to hear and determine any referrals from the Ombudsman in relation to a complaint about member misconduct.

Background

2. Members of Cardiff Council are bound by the statutory Members' Code of Conduct adopted by the Council (pursuant to section 51 of the Local Government Act 2000, 'the Act').
3. The Ombudsman may investigate any alleged breach of the Code of Conduct by a Member (under section 69 of the Act.)
4. Under the Standards and Ethics Committee's terms of reference (paragraph (i)), the Committee has 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
5. Complaints about a Member's conduct may be referred to the Standards & Ethics Committee by (i) the Ombudsman (under Part 3 of the Local Government Act 2000); or (ii) the Monitoring Officer, under the Local Resolution Protocol adopted by the Council for resolving relatively low level complaints.
6. In May 2014, the Committee considered a misconduct complaint referred by the Ombudsman, and resolved to appoint a sub-committee, 'the Hearings Panel', (comprised of three independent members of the Committee) to determine that complaint and impose any appropriate sanctions. The Monitoring Officer, in consultation with the Chair of the Panel, was instructed to convene and take all necessary steps in advance of the hearing.
7. In May 2014, the Committee also considered its arrangements for hearings under the Local Resolution Protocol. The Committee approved the establishment of a sub-committee, 'the Hearings Panel' required under the Local Resolution Protocol, comprised of three out of the five independent members of the Committee; and

delegated authority to the Monitoring Officer (in consultation with the Chair) to take all steps necessary to convene a meeting of the Hearings Panel, as and when required.

8. The Committee has adopted separate procedures for the Hearings Panel to determine:
 - (i) complaints referred by the Ombudsman - this procedure was last amended in March 2012; and
 - (ii) complaints under the Local Resolution Protocol – this procedure was last amended in March 2016.

Issues

9. The Ombudsman may refer a misconduct complaint to the Monitoring Officer under section 70(4) or section 71(2) of the Local Government Act 2000. A referral under section 70(4) requires the Monitoring Officer to conduct an investigation into the complaint and then submit an investigation report to the Standards and Ethics Committee for determination of the complaint. A referral under section 71(2) is made when the Ombudsman has investigated the complaint and requires the Monitoring Officer to consider the investigation report and submit it, with recommendations, to the Standards and Ethics Committee for determination.
10. The powers and duties of the Monitoring Officer and the Standards and Ethics Committee and the procedure to be followed in dealing with a referral from the Ombudsman are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
11. Upon receiving a referral from the Ombudsman under section 71(2) of the Local Government Act 2000, the Monitoring Officer is obliged to consider the Ombudsman's investigation report and, if appropriate, make recommendations to the Standards and Ethics Committee (SI 2001/2281, Regulation 3(2)).
12. Under the Regulations, the Committee is required to:
 - (i) Make an initial determination that either there is no evidence of a breach of the Code, or that the Councillor should be given the opportunity to respond, either orally or in writing; and
 - (ii) If the Panel's initial determination is to give the Councillor the opportunity to respond, the Panel must then consider the Councillor's representations and make a final determination.
13. The Committee's final determination, if required, must be one of the following:
 - (a) that there is no evidence of any breach of the Code of Conduct and therefore no further action needs to be taken;
 - (b) that the Member has breached the Code of Conduct but that no action needs to be taken in respect of that breach;
 - (c) that the Member has breached the Code of Conduct and should be censured, or

(d) that the Member has breached the Code of Conduct and should be suspended or partially suspended from being a Member of the authority for a period of up to six months.

14. After making its final determination, the Panel is required to give notice of its determination to the persons concerned and the Ombudsman and to produce and publish a report on the outcome of the investigation.
15. If the Panel finds a breach of the Code, the Councillor may apply to the Adjudication Panel for Wales within 21 days from receiving notice of the Committee's determination for permission to appeal. If permission to appeal is granted, the Adjudication Panel for Wales may either uphold the Committee's determination, recommend a different sanction to the Committee for reconsideration or overturn the Committee's determination.

Monitoring Officer's Recommendations

16. The Monitoring Officer recommends that the Committee should:
 - (i) Approve the establishment of a Hearings Panel sub-committee, comprised of three Committee members, to include at least two independent members, to consider and determine complaints referred by the Ombudsman); and
 - (ii) Update the Hearings Panel's procedure to ensure it remains fit for purpose.

Hearings Panel

17. The Committee may appoint a sub-committee to discharge any of its functions, comprised of not less than three members of the Committee (pursuant to section 54A of the Local Government Act 2000 and SI 2001/2283, Regulation 3). For a sub-committee to be quorate, at least two members, including the chairperson, must be present; and at least half the members present, including the chairperson, must be independent members (SI 2001/2283, Regulation 24)
18. Setting up a sub-committee for misconduct hearings allows matters to be determined effectively and efficiently. As noted in paragraphs 6 and 7 above, a Hearings Panel sub-committee comprised of three independent members has been set up to determine previous misconduct complaints referred to the Committee by the Ombudsman and under the Local Resolution Protocol.
19. For hearings under the Local Resolution Protocol, the Committee has approved the appointment of a Hearings Panel and authorised the Monitoring Officer to make any necessary arrangements to convene a meeting of the Panel as and when required (please see paragraph 7 above).
20. The Constitution, Article 9.3 provides for a sub-committee to be appointed to deal with misconduct referrals from the Ombudsman relating to a community councillor. Such sub-committee is 'to include at least two independent members and one community committee member, unless the matter before the sub-committee relates to the community committee member's Council or a member of that council, in which case the community committee member's place will be taken by another member of the Standards & Ethics Committee'.

21. As misconduct referrals need to be dealt with promptly, without the delays involved in waiting until the next scheduled Committee meeting or convening an extra full Committee meeting, it is recommended that the Committee approve similar arrangements for determining any complaints referred by the Ombudsman. Accordingly, the Committee is recommended to approve the establishment of a Hearings Panel, comprised of three members of the Committee, at least two of whom must be independent members; and including the community council member on the Committee for any complaint relating to a community councillor, unless the complaint relates to a member of his/her own community council. The Hearings Panel should be given delegated authority to conduct any hearings, impose any sanctions and take any other steps considered necessary in relation to misconduct complaints referred to it, from time to time, by the Ombudsman; and the Monitoring Officer should be authorised, in consultation with the Chair, to make all associated administrative arrangements.

Hearings Panel Procedure

22. The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 make certain provision regarding the procedure to be followed for the investigation and determination of Member misconduct complaints. Subject to any express provisions in these 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).
23. As noted in paragraph 8 above, the Committee adopted a procedure for the Hearings Panel to deal with complaints referred by the Ombudsman in March 2012.
24. The procedure seeks to comply with:
 - a. The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001; and
 - b. The principles of natural justice. In particular, it seeks to ensure that the hearing is fair and gives adequate opportunity for each party to present their case.
25. The procedure has been reviewed and a number of changes are recommended to reflect current legislative requirements, clarify procedures and ensure they remain fit for purpose. The proposed amendments to the current procedure are shown in **Appendix A** (marked up copy showing proposed amendments) and **Appendix B** (clean, formatted copy).

Legal Implications

26. Members may wish to note that where 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 and Housing Act 1989) provide the following specific 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; and
 - (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.
27. The public may also 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. This means that the Hearings Panel will be required to decide whether the hearing (or any part of it) should be conducted in public or private. The Councillor complained of will be given the opportunity to make representations on this point. However, as noted in paragraph 14 above, the Hearings Panel is required produce a report on the outcome of the investigation, which is to be published by the Monitoring Officer after the conclusion of the matter (Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001).
28. Other relevant legal implications are set out in the body of the report.

Financial Implications

29. There are no direct financial implications as a result of the changes recommended in this paper.

RECOMMENDATION

The Committee is recommended to:

1. Approve the establishment of a sub-committee, 'Hearings Panel', comprised of three members of the Committee, to include at least two independent members (and for complaints against a community councillor, to include the community committee member in accordance with Article 9.3 of the Constitution), to deal with referrals from the Ombudsman;
2. Delegate authority to the Hearings Panel established under recommendation 1, to exercise all the functions of the Committee in relation to any misconduct hearings which may be referred to the Committee by the Ombudsman from time to time;

3. Delegate authority to the Monitoring Officer, in consultation with the Chair, to convene a Hearings Panel, as and when required, and make all associated administrative arrangements; and
4. Authorise the Monitoring Officer to amend the Hearings Panel Procedure as shown in **Appendix A**, subject to any further amendments agreed by the Committee.

Davina Fiore

Director of Governance and Legal Services and Monitoring Officer

25 June 2019

Appendices

- Appendix A Procedure for Hearings (Ombudsman's Referrals) - marked to show proposed amendments
- Appendix B Revised draft Procedure for Hearings (Ombudsman's Referrals) - clean, formatted copy

Background Papers

Standards & Ethics Committee reports March 2012, May 2014, October 2014, March 2016
Local Resolution Protocol Panel Hearing Procedure