

**GOVERNANCE AND AUDIT COMMITTEE:
20th JULY 2021**

MEMBER BREACH OF CODE OF CONDUCT COMPLAINTS

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

AGENDA ITEM: 8.3

Reason for the Report

1. To allow the Committee to consider the arrangements in place for dealing with complaints relating to alleged breaches of the the Members' Code of Conduct.

Background

2. As part of the changes introduced by Part 6 of the Local Government and Elections (Wales) Act 2021, section 115 makes provision for Governance and Audit Committees to have responsibility for new functions, including to the functions to 'review and assess the authority's ability to handle complaints effectively', and 'make reports and recommendations in relation to the authority's ability to handle complaints effectively'.
3. The new functions are incorporated within the Committee's revised terms of reference by the addition of the following:
 - To review and assess the authority's ability to handle complaints effectively, and make any associated reports and recommendations.

Issues

4. Part III of the Local Government Act 2000 sets the statutory framework governing the conduct of local government Members, which includes provision for:
 - a. A Model Code of Conduct, which must be adopted by authorities (with or without permitted variations), setting out mandatory duties with which all Members and Co-Opted Members of County and Community Councils must comply.
 - b. The Public Services Ombudsman for Wales, who has responsibility for producing guidance on the Members' Code of Conduct and investigating complaints that a Member has breached the Code of Conduct.
 - c. Standards Committees, with statutory functions in relation to the promotion and maintenance of high standards of conduct by the Members of the authority and community councils, including the determination of any Member conduct complaints referred by the Ombudsman.

- d. The Adjudication Panel for Wales, with responsibility for determining generally more serious complaints of misconduct referred by the Ombudsman.
 - e. The Monitoring Officer, to whom the Ombudsman may refer complaints for investigation or reporting to the Standards Committee.
 - f. Regulations to be made in relation to the detailed operation of the statutory framework, including rules and procedures for investigating, determining and reporting on complaints of misconduct.
5. Cardiff Council has adopted the statutory Model Code of Conduct without variation. The Members' Code of Conduct is included within Part 5 of the Constitution: [Members Code of Conduct.pdf \(moderngov.co.uk\)](#) The Code of Conduct sets out various duties with which Members must comply.
 6. The formal mechanism for enforcing the Members' Code of Conduct is set out in Part III of the Local Government Act 2000 and regulations made under it. The Public Services Ombudsman for Wales has responsibility and powers to investigate complaints that a Member has failed to comply with the Code of Conduct and may make referrals to the Monitoring Officer or Standards Committee of an authority or the Adjudication Panel for Wales.
 7. 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. If a Member is found to be in breach of the Code of Conduct, the Standards and Ethics Committee has power to censure or suspend the Member for a period of up to six months.
 8. For more serious breaches of the Code of Conduct, the Adjudication Panel for Wales has power to suspend a Member for a period of up to one year or to disqualify them from being a Member of any authority for a period of up to five years (under the Local Government Act 2000, section 79).
 9. In 2013 the Ombudsman indicated that the majority of "Member on Member" complaints referred to him were relatively low level behavioural issues, typically during what could often be seen as the cut and thrust of Council debate and local politics. The Ombudsman indicated that such complaints would be more appropriately resolved informally by the adoption of "Local Resolution Protocols", which are voluntary arrangements having no statutory force.
 10. Community Councils are also encouraged to adopt their own local resolution processes and a Model Local Resolution Protocol has been produced specifically for Community Councils.
 11. Cardiff Council adopted a Local Resolution Protocol in May 2013 which was then revised in 2017 and Members make a commitment to adhere to it as part of the Cardiff Undertaking affirmed publicly by all Members at each Annual Council meeting. The Local Resolution Protocol (attached as **Appendix A**) provides that a complaint may first be informally mediated by the Monitoring Officer. If this informal approach does not resolve the complaint, the Protocol provides for the complaint to be referred to a Sub-Committee of the Standards and Ethics Committee, referred to as the Hearings Panel.
 12. The Standards and Ethics Committee is comprised, in accordance with relevant regulations and Article 9 of the Constitution, of five independent members, three county councillors representing each of the largest political groups on the Council and one community councillor representative. The Committee Chair and the Deputy Chair are independent

members. The Committee meets as needed, usually four times each year. The Committee's terms of reference, as approved by Council, are:

- (a) 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.
- (b) To advise the Council on the content of its Ethical Code and to update the Code as appropriate.
- (c) 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.
- (d) To consider and determine the outcome of complaints that Councillors and co-opted members have acted in breach of the Code in accordance with procedures agreed by the Standards Committee, including the imposition of any penalties available to the Committee.
- (e) To oversee and monitor the Council's whistleblowing procedures and to consider ethical issues arising from complaints under the procedure and other complaints.
- (f) To grant or refuse requests for dispensations in respect of Members' interests under the Members Code of Conduct in accordance with the relevant statutory provisions.
- (g) 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.
- (h) To recommend to Council and the Cabinet any additional guidance on issues of probity.
- (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.
- (j) To recommend the provision to the Monitoring Officer of such resources as he/she may require for the performance of his/her duties.

All Members of the Committee will be required to undertake relevant training to enable them to properly discharge their duties.

13. Complaints about a Member's conduct may be referred to the Standards & Ethics Committee by (i) the Ombudsman (under Part III 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. Referrals from the Ombudsman are governed by regulations, which require an initial determination of whether or not there is a case to answer, before proceeding to a hearing. However, for referrals under the Local Resolution Protocol, the Committee has discretion to decide the procedure to be followed. The Committee has therefore adopted separate procedures for dealing with each type of referral, which are appended as **Appendix B**.
14. A Sub-Committee of the Standards and Ethics Committee, referred to as a Hearings Panel is convened to hear and determine any Member conduct complaints referred to the Committee. All members of the Hearings Panel receive training on hearings, covering all relevant issues such as the principles of natural justice, human rights considerations, evidence and hearing procedures.
15. The Monitoring Officer maintains a record of all Member conduct complaints notified to her and reports on them to the Standards and Ethics Committee.
16. Standards and Ethics Committee receives a quarterly Complaints Update report, setting out the number of Member conduct complaints received, brief details of the nature of the complaint and its outcome. The Committee monitors the number of complaints and any themes or patterns emerging (but only considers specific details of individual cases if a complaint is formally referred to the Committee by the Monitoring Officer or the Ombudsman). The Complaints Update report for Quarter 4 of 2020/21 and Quarter 1 of 2021/22 is attached as **Appendix C**.

17. The Standards and Ethics Committee presents an Annual Report to Council. The Local Government and Elections (Wales) Act 2021 places the Annual Report onto a statutory footing from May 2022. The Annual Report includes an overview of Member conduct complaints reported during the year. The Standards and Ethics Committee's Annual Report 2019/20 is attached as **Appendix D**. The Annual Report 2020/21 is scheduled for consideration in the Autumn.

18. In January 2020, the Hearings Panel held a five day public hearing to determine a complaint referred by the Ombudsman. The hearing attracted considerable attention from the public and was reported in the press and on social media. The Panel found that the Councillor had breached the Members' Code of Conduct and imposed a four month suspension from office. The decision was appealed by the Councillor. The Adjudication Panel for Wales (APW) refused permission for an appeal against the Panel's findings in respect of breach of the Code, and after considering the appeal against the sanction, fully upheld the Panel's decision. The Ombudsman commended the Council for the extremely professional way in which the hearing was managed in very challenging circumstances and personally attended a Standards Committee meeting to thank the Committee for the support they gave in maintaining high standards in the Council.

Legal Implications

19. Relevant legal provisions are set out in the body of the report.

Financial Implications

20. There are no financial implications directly arising from this report.

Recommendations

The Committee is recommended to note the information set out in the report.

Davina Fiore
Director of Governance and Legal Services and Monitoring Officer
7th July 2021

APPENDICES

Appendix A	Local Resolution Protocol
Appendix B	Hearings Procedure for Ombudsman Referrals; and Local Resolution Hearings Procedure
Appendix C	Complaints Update, report to Standards and Ethics Committee, 7 th July 2021 Item 6 - Conduct Complaints - July 2021 Report.pdf (modern.gov.co.uk)
Appendix D	Standards and Ethics Committee Annual Report 2019/20 SE Annual Report Final 21.01.21.pdf (modern.gov.co.uk)