

STANDARDS AND ETHICS COMMITTEE:

22nd JUNE 2022

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

**DRAFT STATUTORY GUIDANCE ON STANDARDS OF CONDUCT
and DISCLOSURE OF MEMBERS' HOME ADDRESSES IN THE
MEMBERS' REGISTER OF INTERESTS**

Reason for this Report

1. To inform the Committee of the Welsh Government draft statutory guidance on:
 - (i) the new duties of political group leaders in relation to standards of conduct and corresponding new duties placed on standards committees (introduced by Part 4 of the Local Government and Elections (Wales) Act 2021, 'the 2021 Act'); and the response submitted by the Monitoring Officer; and
 - (ii) other parts of the 2021 Act (within consolidated guidance referred to as 'the Democracy Handbook', most of which falls outside of the remit of the Standards and Ethics Committee), in respect of potential implications of disclosure of Members' home addresses in the Members' Register of Interests.

Background

2. The Local Government Act 2000, Part III (and regulations made thereunder) sets an ethical framework for the conduct of local government members. Key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the members and co-opted members of the authority.
3. The Local Government and Elections (Wales) Act 2021 ('the 2021 Act'), Part 4 introduced certain changes to the statutory ethical framework which took effect from 5th May 2022. The legislative changes were reported to the Committee on 3rd March 2021 in the report titled 'Statutory Ethical Framework – New Legislation', and include:

- (a) New duties for leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by members of their group, and to co-operate with the standards committee in the discharge of its functions; and
 - (b) New duties for standards committees to monitor the compliance of political group leaders with their new duties; and for advising and training (or arranging training) of political group leaders in relation to those duties (referred to in paragraph (a) above); and to submit an annual report to full Council.
4. In complying with the new duties, political group leaders and standards committees must have regard to any guidance issued by the Welsh Ministers.

Issues

5. On 21st February 2022, the Welsh Government issued a consultation on draft statutory guidance on the new standards of conduct duties set out in the 2021 Act and invited responses by 16th May 2022: [Consultation on the Local Government and Elections \(Wales\) Act 2021: standards of conduct statutory guidance \[HTML\] | GOV.WALES](#)
6. The draft statutory guidance states that the purpose of the new provisions is ‘to ensure leaders of political groups in principal councils, supported by standards committees, promote and maintain high standards of conduct by the members of their group’; and notes that they ‘support the Welsh Government’s wider commitment to equality and diversity in public life’, within the context of other initiatives seeking to ensure councils ‘demonstrate an open and welcoming culture to all’ and promoting ‘civil, constructive and respectful political discourse’.
7. It makes clear that ‘The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise.’ The draft guidance goes on to list a number of reasonable steps the group leader *may* undertake and warns that ‘A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code (see the Ombudsman’s Guidance).’
8. The Committee may wish to note that the Ombudsman’s Guidance on the Code of Conduct includes the following in this regard:

‘2.32 When considering whether a member’s conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Leader, an Executive Member of Committee Chair, will attract higher public expectations and greater

scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their authority into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their authority into disrepute.’

9. In relation to the duty for political group leaders to co-operate with the standards committee, the new draft guidance issued by the Welsh Government says that ‘Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group leaders should also report compliance with their duty to the standards committee. This can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Group leaders should also report any serious concerns about members’ behaviour which have not been remedied by informal actions, in line with the requirement in the Code for councillors to report breaches.’
10. The draft guidance on the standards committee’s new duty to monitor group leaders’ compliance with their duties correspondingly says that ‘a council’s political group leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. The standards committee should then consider each report and provide feedback to the group leaders.’ A draft proforma for the group leaders’ report to the standards committee is attached for the Committee’s consideration as **Appendix A** to this report. In terms of the frequency of the report, the Committee may consider it appropriate to suggest an annual report be submitted prior to the Committee’s annual meeting with the group leaders.
11. With regard to providing training for group leaders on their new duties, Members will note that the draft guidance says ‘At the start of each administration this should take place within six months of the election and be reviewed at least annually.’ Within the Member Induction Programme 2022, the Monitoring Officer has included an overview of group leaders’ new duties as part of the Code of Conduct training sessions, and further specific training sessions will be arranged in due course. The annual meeting with group leaders may be an appropriate time to review and discuss training needs. The Committee will note that the next meeting with group leaders and whips is currently scheduled for Autumn 2022.
12. The Committee will note that the draft guidance includes prescribed contents for the Committee’s annual report to full Council, which largely reflects the contents of the reports the Committee has been submitting to Cardiff Council for over the last fifteen years, with the addition of the Committee’s assessment of compliance with the new duties under the 2021 Act, as set out in this report. The new legal requirements will be reflected in the Committee’s next annual report, scheduled for consideration in the Autumn.
13. The Monitoring Officer’s view is that, overall, the draft statutory guidance is helpful for understanding the scope of the new duties and how to fulfil them.

As the Welsh Government's deadline for consultation responses on the draft statutory guidance was 16th May 2022, the Monitoring Officer has submitted a response on behalf of Cardiff Council, which is attached as **Appendix B**, for information. The Committee is invited to endorse the response and provide any other comments, as appropriate.

Other Draft Statutory Guidance (Democracy Handbook)

14. To support other parts of the 2021 Act provisions, aimed at promoting diversity, involvement and participation in Councils, the Welsh Government has also issued for consultation a consolidated set of draft statutory guidance (being referred to as part of 'the Democracy Handbook'): [Local Government Guidance for Principle Council Consultation document - \(Final version\)](#) This includes guidance on Members' support, training and development; participation strategies and petition schemes; and political governance. The deadline for this consultation is 22nd July 2022.
15. Whilst most of this guidance falls outside the remit of the Standards and Ethics Committee, Chapter 2, 'Training, Development and Support for Elected Members' does refer to the potential well-being and safety implications of publishing Members' home addresses in the Members' Register of Interests. The relevant parts of the draft guidance are as follows:

'2.30 Councils should take every opportunity to support the well-being and personal safety of councillors and their families and should note carefully legislation which requires councils to provide councillors with an office contact address, both electronic and postal, (section 43 of the 2021 Act) to ensure members' privacy and that of their families is preserved and protected. This is critical to member's well-being and encouraging and supporting a diversity of membership which reflects the diversity in the council's area.

2.31 The Welsh Government considers the protection of members addresses should be a priority for councils to support their members' well-being and promote diversity of membership. Therefore, the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022 amend sections 100G (4) of the Local Government Act 1972 and the Regulation 12 (1) of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 to remove the requirement to make the register of members addresses and the register of members of the executive addresses available for public inspection.

2.32 It is, of course, important that the public are aware of the interests members may have or hold, in particular where those interests could influence the decisions they may be involved in making in their role or roles on the council. Therefore, Part 4, paragraph 15 of the Model Code of Conduct requires members to register personal interests in the authority's register of members interests falling within a category mentioned in paragraph 10(2)(a), by providing written notification to the members' authority's monitoring officer. This includes any land and property in the authority's area in which members have a beneficial interest (or a licence to occupy for more than 28 days).

2.33 The Welsh Government is therefore mindful of the need to protect members' safety and welfare, whilst ensuring all relevant interests are captured and openness and transparency is maintained. However, it is the view of the Welsh Government that

while members have an obligation to declare interests and not to participate in or influence council business, there is no requirement for members to include their full primary address (or any other address) when registering beneficial interests in land in the authority's area. It would be sufficient for members to state that they own a property in the authority's area (for example identifying the road or ward), in order to discharge their duties under paragraph 15 of the Code.

2.34 In addition, councils are reminded, under paragraph 16 of the Model Code, members, with their agreement, need not include information relating to any of the members' personal interests that is deemed sensitive information. In the code, "sensitive information" means the availability of the information for inspection by the public creates, or is likely to create, a serious risk that the member or a person who lives with the member may be subjected to violence or intimidation.'

16. The consultation on the draft guidance, Question 6, asks:

'Do you have any comments on the view of the Welsh Government that whilst members must register their home as a beneficial interest under the Code of Conduct, there is no statutory requirement for the register of members' interests to be published including the home addresses of members?'

17. In considering this matter, the Committee will note that the Code of Conduct requires Members to register a description of 'any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days).'

18. The power to issue guidance in relation to Code of Conduct duties rests with the Public Services Ombudsman for Wales (under s.68 of the Local Government Act 2000). The Ombudsman's Guidance on the Code of Conduct (paragraph 4.5) states that:

'When you are completing your Register of Interests your Monitoring Officer will be able to assist you on how best to describe your interests. The description must be clear enough to maintain openness and public confidence in any business of the Council you may influence or decisions you take on behalf of the Council, whilst also protecting your personal information and safety. For example, when describing property which you own or rent which you live in, the description may include the street name or postcode in which your property is situated (as opposed to your full address).'

19. The explanatory notes provided for Cardiff Councillors on the Members' Register of Interests refers to the guidance provided by the Ombudsman, making clear that full home addresses do not need to be provided, and that a street name or postcode will suffice.

20. In considering the Welsh Government's consultation Question 6 (set out in paragraph 15 above), the Committee may wish to note the following points:

(a) The WG draft guidance (paragraph 2.33) indicates that identifying the *ward* in which property is located may be sufficient to discharge a Member's duties under the Code of Conduct; whereas the Ombudsman's guidance refers to the *street name* or *postcode*. The Monitoring Officer's view is that the ward may be too large an area to sufficiently identify a Member's

property interest, however members are understandably cautious about disclosing their street name and address because of incidents of violence and harassment against those in public life, such as the murders of Jo Cox MP and David Amess MP, and less severe incidents which have occurred locally and which are distressing to the targeted elected member and members of their family. As it is the individual member's decision about what to include in their register of interests (the Monitoring Officer offers advice) she refers members to the ombudsman's guidance on this, and allows them to complete their register of interests as they see fit, which may be just stating the relevant ward. It is worth noting that where a member can show that the availability of this information for inspection by the public creates, or is likely to create, a serious risk that they or a person who lives with them may be subjected to violence or intimidation, and the Monitoring Officer agrees with that, we do not have to include any information about a member's home address on the register. The Monitoring Officer has taken the view that in order to balance the public interest in openness and accountability with understandable security concerns, for a member to show that there is or is likely to be a serious risk of violence or intimidation, justifying no information being included on the register, as opposed to the ward area they live in, there should be evidence of security concerns.

- (b) There is separate legislation requiring a register of Members' addresses (referred to in paragraph 2.31 of the WG draft statutory guidance), which has been amended to provide that Members' full addresses must be included in the register kept by the Council, but do not have to be included in the published register. The legislative requirements governing the Members' Register of Interests have not been similarly amended, so whatever information is entered on the Register is required to be published. Members will note that the Ombudsman's guidance indicates that full home addresses do not need to be included in the Register of Interests, and no distinction is made between the Register held by the Council and the published Register.
- (c) The Members' Code of Conduct requires Members to register all property interests in Cardiff, including home address/es, business addresses and rental property. The Ombudsman's guidance indicates that 'The description must be clear enough to maintain openness and public confidence in any business of the Council you may influence or decisions you take on behalf of the Council, whilst also protecting your personal information and safety.' Whilst the example given refers to a Member's residence, it is understood that this is not restrictive, and the same safety considerations may apply to a Member's business address/es.

21. The Committee may wish to prepare a response to consultation question 6, to reflect the Committee's views on the above, and to submit it in response to the consultation.

Legal Implications

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

Financial Implications

23. There are no direct financial implications arising from this report. Any costs of providing training and advice for political group leaders are to be met from the allocated budget.

RECOMMENDATIONS

The Committee is recommended to:

- (1) Note the information set out in the report and appendices;
- (2) Agree the proforma Group Leader's Report to Standards and Ethics Committee at **Appendix A**, with any agreed amendments, and the proposed frequency of reporting (annual);
- (3) Agree that the completed proforma Group Leader's Reports (**Appendix A**, with any agreed amendments) should be discussed at the next meeting with group leaders and whips, scheduled for Autumn 2022;
- (4) Endorse the Consultation Response submitted by the Monitoring Officer, **Appendix B**; and
- (5) Provide any comments to be submitted on behalf of the Committee in response to the WG consultation on the Democracy Handbook, in relation to the disclosure of Members' addresses in the Members' Register of Interests (paragraph 15 of the report), and authorise the Monitoring Officer, in consultation with the Chair, to finalise a response to be submitted on behalf of the Committee.

Davina Fiore

Director of Governance and Legal Services and Monitoring Officer

16th June 2022

Appendices

Appendix A Group Leader's Report to Standards and Ethics Committee (draft)

Appendix B WG Consultation, Guidance on Standards of Conduct, MO's Response

Background papers

Ombudsman's Guidance on the Members' Code of Conduct: [General : 27 FINAL](#)

[Investigation Report Template s21 casework support only \(ombudsman.wales\)](#)