

COUNCIL:

30 MARCH 2023

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

LOCAL RESOLUTION PROTOCOL AND PROCEDURE

Reason for this Report

1. To enable Council to consider proposed amendments to the Local Resolution Protocol and Procedure recommended by the Standards and Ethics Committee.

Background

2. In May 2013, Cardiff Council adopted a Local Resolution Protocol, upon the recommendations of the Standards and Ethics Committee, to deal with relatively low-level 'member on member' complaints.
3. The Local Resolution Protocol was developed in response to representations made by the Ombudsman advising Councils to establish local resolution procedures to reduce the number of complaints referred to the Ombudsman relating to 'low-level' behavioural issues between Members, which typically arise in what may be regarded as the "cut and thrust" of normal Council debates and local politics. In the Ombudsman's guidance on the Members' Code of Conduct, paragraphs 1.17 and 1.18), the Ombudsman states that "In my view such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints. The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation."
4. The Council last updated the Local Resolution Protocol, on the recommendations of the Standards and Ethics Committee, in November 2017.
5. At the last meeting of the Standards and Ethics Committee, on 14th February 2023, the Committee reviewed the Local Resolution Protocol and Procedure and recommended certain further changes.

Issues

6. The Local Resolution Protocol aims to seek the early resolution of 'low level, Member on Member' conduct complaints (often about an alleged failure to show respect and consideration) and avoid the unnecessary escalation of situations which may damage personal relationships within the Council and the Council's reputation. The Local Resolution Protocol approved by Council in November 2017, is attached as **Appendix A**.
7. The Protocol provides a 2-stage process:
 - i) Informal Resolution - Firstly, the Monitoring Officer must consider whether the complaint may be resolved informally; and
 - ii) Hearing Panel – if the complaint cannot be resolved informally, the complainant may ask the Monitoring Officer to refer the matter to the Hearing Panel (a sub-committee of the Standards and Ethics Committee).
8. The Protocol provides that the Hearing Panel shall adopt and make available a procedure under which it shall carry out hearings. The Standards and Ethics Committee adopted a procedure to govern its local resolution hearings in 2013, the Local Resolution Hearings Procedure. The Procedure was revised and updated in March 2016. The Procedure is attached as **Appendix B**.
9. The Standards and Ethics Committee noted that the informal resolution process is found to be working well. A significant proportion of complaints are resolved by the Monitoring Officer through discussion with the Members concerned, and complainants are often satisfied with an apology or other action, such as deletion of a comment on social media.
10. In cases where matters cannot be resolved informally, however, a referral to the Hearings Panel may be required. The Protocol (paragraph 3.4) states:

'If the matter cannot be resolved by mutual resolution, the person bringing the complaint may ask the Monitoring Officer to refer the matter to the Standards Ethics Member Hearing Sub-Committee (Hearing Panel).'
11. However, the Local Resolution Hearings Procedure goes further and states that in such cases (or in cases where the Monitoring Officer considers informal resolution to be inappropriate), *'the Monitoring Officer will make arrangements to convene a meeting of the Hearings Panel and to refer that matter to it.'* (Procedure paragraph 2.5).
12. Members of the Committee noted the significant resource involved in arranging a hearing by the Hearing Panel, in terms of obtaining all relevant evidence from the parties; preparation of reports and administrative arrangements for the hearing; Members, officers' and witnesses' time in attending and administering the hearing; and arrangements for preparing and issuing the decision of the Panel. It was observed that the amount of work involved in arranging a hearing may sometimes be seen as disproportionate to the seriousness of the complaint, particularly when the conduct complained about may not meet the threshold for the Panel to find a breach of the Code.

13. The Committee noted that the Public Services Ombudsman for Wales does not automatically investigate all complaints made to her, but applies a two stage test to consider whether the complaint should proceed to investigation and then a hearing. Firstly, the Ombudsman considers whether there is direct evidence that a breach of the Code has occurred; and secondly, considers whether an investigation or referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. If the Ombudsman decides not to investigate a complaint, the complainant is given the opportunity (within 20 working days) to ask for a review of the Ombudsman's decision, although they will not re-open a complaint solely because the complainant disagrees with their decision.
14. The Committee agreed to recommend that the Local Resolution Protocol and Procedure should be amended to provide that the Monitoring Officer shall not refer a complaint to the Hearings Panel *unless s/he is satisfied that there is direct evidence of a breach of the Code and that it is in the public interest to do so*, with the proviso that any decision to not refer an unresolved complaint to the Hearings Panel must be made with the agreement of the Chair of the Standards and Ethics Committee (or the Vice-Chair in the absence of the Chair). This proviso is intended to introduce an element of independence into any decision to not refer a complaint to the Hearings Panel, as the Council does not have another appropriate senior officer to review the decision of the Monitoring Officer. The Committee agreed that the recommended change, if approved by Council, should take effect upon approval, including to any complaints which have already been made.
15. The recommended amendments to the Local Resolution Protocol are shown, using tracking, in **Appendix A**. Subject to Council's approval of these amendments to the Protocol, the Committee agreed that the Local Resolution Hearings Procedure should be amended to the same effect (as shown in **Appendix B**).

Legal Implications

16. Amendments to the Local Resolution Protocol require the approval of full Council, save that the Monitoring Officer, in consultation with the Standards and Ethics Committee Chair, may make any minor amendments as may be required from time to time (under the delegated authority granted by Council in November 2017).
17. The Committee may make any amendments to the Local Resolution Hearings Procedure, as long as the Procedure remains consistent with the Local Resolution Protocol and the principles of natural justice.
18. Other relevant legal implications are set out in the body of the report.

Financial Implications

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

RECOMMENDATION

Council is recommended to:

1. Approve the recommended amendments to the Local Resolution Protocol, as shown in **Appendix A**; and
2. Subject to approval of recommendation 1, to note that corresponding amendments will be made to the Local Resolution Hearings Procedure (as shown in **Appendix B**), by the Monitoring Officer, in consultation with the Standards and Ethics Committee Chairperson, under the delegated authority granted by the Standards and Ethics Committee.

Davina Fiore

Director of Governance and Legal Services and Monitoring Officer

24 March 2023

Appendices

Appendix A Local Resolution Protocol (draft amendments)

Appendix B Local Resolution Hearings Procedure (draft amendments)

Background Papers

- Guidance from the Public Services Ombudsman for Wales, 'The Code of Conduct for members of local authorities in Wales', October 2022 ([General : 27 FINAL Investigation Report Template s21 casework support only \(ombudsman.wales\)](#))
- Standards and Ethics Committee report, 'Local Resolution Protocol and Procedure', 14th February 2023 [CITY AND COUNTY OF CARDIFF \(moderngov.co.uk\)](#)
- Council report, 'Local Resolution Protocol', 30th November 2017, [CITY AND COUNTY OF CARDIFF \(moderngov.co.uk\)](#) and minutes thereof [Minutes Template \(moderngov.co.uk\)](#)
- Standards & Ethics Committee report 'Hearings Panel Procedure', 22nd March 2016, [Hearing Panel Report.pdf \(moderngov.co.uk\)](#) and minutes thereof [Minutes Template \(moderngov.co.uk\)](#)