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

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**WELSH GOVERNMENT CONSULTATION – RESPONSE TO THE  
RECOMMENDATIONS OF THE INDEPENDENT REVIEW OF THE ETHICAL  
STANDARDS FRAMEWORK (RICHARD PENN REPORT)**

**Reason for this Report**

1. To inform the Committee of the Welsh Government consultation on the response to the recommendations of the independent review of the ethical standards framework for Wales (the Penn Report, issued in October 2021) and to agree the Committee's response to the consultation.

**Background**

2. The Ethical Standards Framework for Wales was established by Part 3 of the Local Government Act 2000, to promote and maintain high standards of ethical conduct by members and officers of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), a community council, a corporate joint committee, a fire and rescue authority and a National Park authority in Wales.
3. The Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'). These are included in the Conduct of Members (Principles) (Wales) Order 2001. Further, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 ("Model Code of Conduct") provides for a set of enforceable minimum standards for the way in which Members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.
4. In March 2021, the Welsh Government commissioned an independent review of the ethical standards framework for Wales to assess whether the Framework remains fit for purpose. The review was undertaken between April and July 2021 and took into account the new legislative requirements introduced by the

Local Government and Elections (Wales) Act 2021, as well as the Well-being of Future Generations (Wales) Act 2015 and the Equality Act 2010.

5. As part of the investigation undertaken for the review, the former Chair of the Standards and Ethics Committee and the Monitoring Officer for Cardiff Council were amongst the wide range of stakeholders who were interviewed to share their experiences and views about the operation of the ethical standards framework in Wales.
6. The final report on the Independent Review of the Ethical Standards Framework in Wales ('the Independent Review Report') was published on 14th October 2021, and was considered by the Standards and Ethics Committee at its meeting on 9th February 2022.

## Issues

7. The Independent Review Report (**Appendix A**) concluded that the current Framework is 'fit for purpose' and works well in practice. However, it recommended a few amendments could lead to a greater emphasis in the Framework on prevention of complaints, improve the handling of complaints and result in already high ethical standards being further enhanced.
8. The Welsh Government has now issued its response to the twelve recommendations of the Independent Review Report: [Consultation on the recommendations of the Independent Review of the Ethical Standards Framework \(Richard Penn report\) \[HTML\] | GOV.WALES](#), (**Appendix B**), following engagement with stakeholders, including monitoring officers, the Public Services Ombudsman for Wales (PSOW), the Welsh Local Government Association (WLGA) and One Voice Wales (a member organisation for Community Councils in Wales).
9. In relation to the Welsh Government's response, the Committee may wish to note, in particular, the following:
  - (a) Gifts and Hospitality, threshold for registration (Recommendation 1 of the Independent Review Report) – the wide variation in the thresholds adopted by different Councils across Wales is acknowledged, but the Welsh Government's view is that a standard threshold may not be appropriate for Councils of different sizes, constitution and local circumstances. No amendment of the Code is proposed. However, it is suggested that individual councils should regularly review their thresholds and that this issue should be included within the standards committee's annual report to the council. Members may be aware that at the first National Standards Forum a discussion took place among Standards Committee Chairs about whether to agree to standardise the registration threshold. At this Committee's last meeting, this Committee had expressed a willingness to agree a national threshold, although there were reservations about lowering Cardiff's current threshold, and the Committee wanted assurance that any standardised threshold would be voluntary, meaning that Cardiff could set a different threshold if it was considered to be in Cardiff's interests to do so.
  - (b) Members' home addresses (Recommendation 2 of the Independent Review Report) – the Welsh Government's view is that the model Code of Conduct

does not specifically require the disclosure of Members' home addresses in their Register of Interests. It notes the updated guidance published by the Public Services Ombudsman for Wales advises Members that it is sufficient to provide only the street name or postcode of the property. (The Committee will be aware that this is the approach taken in Cardiff.) On this basis, the Welsh Government states that the issue has now been resolved and no further action is proposed.

- (c) Equality duties (Recommendation 4 of the Independent Review Report) – the recommendation that the duty to treat all people equally (paragraph 4a of the Members' Code of Conduct) should include reference to all nine protected characteristics under the Equality Act 2010 is accepted. The Welsh Government proposes to amend the Model Code of Conduct (and the Principles of Conduct Order) to align with the definition of protected characteristics set out in the Equality Act 2010. The consultation seeks views on whether this change is supported.
- (d) Social media (Recommendation 5 of the Independent Review Report) – the Welsh Government's view is that training is more effective in addressing concerns, rather than including specific provision about social media within the Model Code of Conduct. The Welsh Government proposes to promote training as the most appropriate way of preventing inappropriate behaviour through the medium of social media. The Committee will recall that Cardiff has, in any event, incorporated specific guidance about social media use within its Code of Conduct, as a permitted local variation to the Model Code.
- (e) Reporting criminal behaviour (Recommendation 6 of the Independent Review Report) - the Welsh Government has not accepted the recommendation that the Code should be amended to include an obligation on Members to report their own criminal conduct. It is suggested that this is a legally complex area, requiring consideration of the principles of natural justice and the interface with the Members' disqualification regime. The Welsh Government's view is that the principles set out in the Principles of Conduct Order are strong enough to rely upon a member self-reporting any action they may have taken which is potentially in breach of the principles and the related Code.
- (f) Mandatory training on the Code of Conduct (Recommendation 7 of the Independent Review Report) – the Welsh Government has not accepted the recommendation to include a commitment to undertaking the necessary training in the Declaration of Acceptance of Office that all elected Members are required to sign. It states that *'The requirement for and the provision of mandatory training on the code of conduct has wide ranging implications for prospective members, members and councils in terms of time commitment and cost. It would also potentially require primary legislation. We have therefore explored this issue further as part of the recent consultation on electoral administration and reform.'* It also suggests that inclusion of reference to the Code of Conduct in the Declaration of Acceptance of Office arguably makes training mandatory, so no amendments to the Declaration are proposed at this time. However, Welsh Government will continue to work with Councils, the WLGA and One Voice Wales to promote the importance of training and its take-up amongst councillors; and also to monitor the extent to which non-attendance at training may be a

contributory factor in complaints of poor behaviour. The Committee will note that in Cardiff it is mandatory for elected members to carry out Code of Conduct training in each term of office, and that only one Cardiff member has not done so to date.

- (g) Increased use of local resolution (Recommendation 8 of the Independent Review Report) – the Welsh Government has not accepted the recommendation that the Model Code of Conduct should be amended to require all complaints to be considered for local resolution before referral to the Public Services Ombudsman for Wales. Its view is that only ‘lower level’ complaints, usually involving an alleged failure to show respect and consideration, are suitable for local resolution. The Committee will recall raising concerns that this recommendation, if implemented, would result in a significant increase in the number of complaints to be dealt with by the Monitoring Officer and the Standards and Ethics Committee, with associated resource implications. The Welsh Government does indicate that the local resolution process should be visible and transparent to the public and therefore its statutory guidance will require standards committees to report on the operation of local resolution within its annual report. The Committee will note that local resolution is already included as a standard section within its annual report to Council.
  
- (h) Adjudication Panel for Wales (‘APW’), powers and procedures (Recommendation 10 of the Independent Review Report) – the Welsh Government is seeking views on whether the APW should have power to:
  - (i) make Restricted Reporting Orders, to impose a restriction on press reporting of cases where the fairness of the tribunal or the safety of witnesses, panel members or staff may be compromised;
  - (ii) protect the anonymity of witnesses;
  - (iii) summon witnesses to attend an Appeal Tribunal;
  - and (iv) recommend a different sanction be imposed by a standards committee (should it retain its existing power in this regard).Views are also being sought on the changes to Case Tribunal procedures which have been proposed by the President of the APW, intended to make the Case Tribunal procedure more efficient and fairer to witnesses; and on the range of sanctions which may be imposed by the APW (currently, a suspension of up to 12 months or a disqualification for up to 5 years). A number of questions are included within the consultation seeking views on these issues.
  
- (i) Additional Powers for Standards Committees (Recommendation 11 of the Independent Review Report) – the Welsh Government does not agree that further legislation is required for Standards Committees to be able to require the necessary training of Members or to require an apology to be given to a complainant, because it considers that these are matters which may be incorporated into local Codes and protocols without the need for further legislation.
  
- (j) Public accessibility of the Ethical Standards Framework (Recommendation 12 of the Independent Review Report) – the Welsh Government agrees that public awareness of the Ethical Standards Framework is important for maintaining public confidence in local democracy and is seeking views on how awareness raising might be taken forward in an inclusive manner.

(k) Independent members of Standards Committees – the Welsh Government is also seeking views on whether the requirement to advertise vacancies in newspapers should be removed; and also on the rules in relation to disqualification of former Council employees and former Councillors.

10. The Welsh Government is seeking responses to the twenty-one questions set out within its consultation document, to be submitted by 23<sup>rd</sup> June 2023. A draft consultation response for the Committee's consideration is attached as **Appendix C**.

### **Legal Implications**

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

### **Financial Implications**

12. The body of the report refers to the resource implications associated with an increased use of local resolution, which is a recommendation from the independent review that the Welsh Government has not accepted. An appropriate source of funding would need to be identified for any additional resources that may be required. The removal of a requirement to advertise vacancies of Independent Member of Standards Committees in local newspapers could provide a reduction in costs.

## **RECOMMENDATION**

The Committee is recommended to:

1. Note the information set out in the report and the Welsh Government's Consultation on the Response to the Independent Review of the Ethical Standards Framework (**Appendix B**);
2. Note the draft Consultation Response attached as **Appendix C**, and provide any appropriate comments; and
3. Delegate authority to the Monitoring Officer, in consultation with the Chair, to finalise and submit a consultation response on behalf of the Committee, taking account of all comments made by the Committee.

**Davina Fiore**

**Director of Governance and Legal Services and Monitoring Officer**

28 April 2023

## **Appendices**

Appendix A – Independent Review of the Ethical Standards Framework in Wales, [Local Government Ethical Standards framework: review | GOV.WALES](#)

Appendix B – Consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report): [Consultation on the recommendations of the Independent Review of the Ethical Standards Framework \(Richard Penn report\) \[HTML\] | GOV.WALES](#)

Appendix C – Consultation response, draft

## **Background papers**

Standards and Ethics Committee report, 'Review of the Ethical Standards Framework', 9<sup>th</sup> February 2022: [CITY AND COUNTY OF CARDIFF \(moderngov.co.uk\)](#)