

## **PART 5 – CODES AND PROTOCOLS**

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### **PROTOCOL ON THE ROLE OF ELECTED MEMBERS IN SAFEGUARDING CHILDREN AND VULNERBLE ADULTS**

#### **1. Purpose of the Protocol**

To provide guidance and advice to Elected Members on:

- their roles and responsibilities in relation to safeguarding children and vulnerable adults; and
- how Members should raise any concerns and receive assurance about children and adults who may be at risk.

#### **2. Introduction**

Safeguarding and Protection is not something that can be achieved by one person or organisation. The emotional reaction of the public when children and adults have been harmed, neglected or exploited is understandable and experienced by those people who are professionally skilled practitioners who are directly working with and responsible for safeguarding and protecting people from harm.

Key public statutory agencies, together with independent, private and third sector organisations that provide services to the public who are vulnerable, have a critical role in safeguarding and protecting children and adults.

Responsibility for protecting people, who through no fault of their own are vulnerable, rests with parents, families, and those professional staff who have a duty to care. Analytical and accurate assessments, good, relevant and focused communication, dynamic multi agency intervention and treatment is critical in safeguarding and protecting vulnerable children and adults.

#### **3. The All Wales Safeguarding Procedures (2019)**

The All Wales Safeguarding Procedures have been developed to ensure policy and practice in Wales consistently applies the legislation and statutory guidance as required by The Social Services and Well-Being (Wales) Act 2014.

The Procedures are designed and intended to standardise practice across Wales. Awareness amongst policy makers and practitioners has emphasised the need for common systems and processes to protect both children and adults at risk of abuse and neglect.

The Procedures identify arrangements for responding to safeguarding concerns about practitioners and people in a position of trust, power or influence. The Procedures provide a clear process for investigation where the nature of activity of a practitioner or person who is in a position of trust has raised concerns.

## **4. The Members' Code of Conduct**

The Members' Code of Conduct places a number of duties on Elected Members, which will apply whenever they are responding to the concerns raised by their constituents or other members of the public. The Code of Conduct requires Elected Members to ensure their comments do not disclose confidential information. They must not conduct themselves in a manner likely to bring the Council (or the office of councillor) into disrepute. They should show respect and consideration for others, and not use bullying behaviour or harass anyone. They should not use their position, or Council resources, improperly. The application of the Code is explained further in paragraphs 7.3 to 7.7 below.

Breaches of this Protocol by Elected Members may lead to complaints that the Cardiff Council Member Code of Conduct has been breached. Complaints about a breach of the Code of Conduct will be dealt with by the Council's Monitoring Officer and/or the Public Services Ombudsman for Wales and may lead to a public hearing by a Hearings Panel of the Council's Standards and Ethics Committee. If an Elected Member is found by the Hearings Panel to have breached the Code of Conduct, a sanction may be imposed of up to six months suspension from office and forfeiture of the Members allowance for the relevant period.

## **5. Social Media**

The Welsh Local Government Association (WLGA) Social Media: A Guide for Councillors provides helpful guidance and advice about issues to consider when using social media. The WLGA guidance helpfully refers to the Code of Conduct and offers an overview and important detail to consider when dealing with complex casework matters.

The Code of Conduct applies to Elected Members when conducting the business of your authority, acting, claiming to act or giving the impression you are acting in your official capacity as a member or representative of your authority. The Code also applies even when you are not acting in your capacity as a Member if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute.

Key messages include:

- Maintaining respect for others and not disclosing confidential information about individuals or the council.
- Avoid making negative comments about or to individuals which could be interpreted as bullying or intimidation.
- Making unfair or inaccurate criticism of your authority in a public arena may be regarded as bringing your authority into disrepute.

## **6. The Role of the Council and its Elected Members**

6.1 All Members of the Council have a strategic role in relation to Social Services and need to satisfy themselves that the Council as a whole is discharging its statutory responsibilities and demonstrates good practice wherever possible.

6.2 A number of high profile public inquiries have highlighted the importance of ensuring that safeguarding services are prioritised and adequately resourced, and all Elected Members have responsibility in this regard.

6.3 The Council as a whole is the 'corporate parent' of all Children Looked After. This requires Elected Members, relevant Council managers and staff to work together to discharge their different roles and responsibilities, to ensure the best possible care and opportunities are provided for Children Looked After. The responsibility to ensure the best possible care and opportunities also applies to children receiving Care and Support services.

6.4 Elected Members have an important role to play in safeguarding children and vulnerable adults, as the eyes and ears in the community. This particularly applies where ward surgeries and local ward networks enable Members to be alerted to early signs of safeguarding concerns, whether general patterns of behaviour or concerns about a particular child or vulnerable adult.

6.5 The Members of the Cabinet, the Corporate Parenting Advisory Committee, the Children and Young People's Scrutiny Committee and the Community and Adults Scrutiny Committee have additional specific responsibilities, as outlined in section 12 below.

## **7. Responsibilities of Elected Members**

7.1 It is the responsibility of all Elected Members to bring concerns they have about vulnerable children or adults to the attention of the responsible officer. **If a Member is concerned that a child or vulnerable adult may be at risk of harm, this should be reported immediately - please refer to Section 8, and the contact list at the end of this Protocol. Briefly:**

**Children (up to 17 years old) – Multi Agency Safeguarding Hub (MASH).**

**Adults (age 18 and over) – The Adult Safeguarding Team.**

**Out of Hours – The Emergency Duty Team (EDT).**

**Note: Flowchart at Annex 1. Making a Safeguarding Referral.**

7.2 Where constituents or other members of the public have sought advice/assistance from a Member, the Elected Members may also wish to make written/oral representations in order to satisfy themselves that concerns or problems are being dealt with appropriately.

**7.3 Members' Code of Conduct** - Whilst Elected Members have an important role to play in responding to the concerns of their constituents or other members of the public, they must be mindful of their obligations under the Members' Code of Conduct, in particular:

**7.4 Personal Interests** – Members must be mindful of their duty under the Members' Code of Conduct to disclose any personal interest in a particular case in which they may be making representations. For example, a personal interest may arise from the Member's personal relationship with a service user or from the Member's involvement in a particular organisation. Members must ensure that their personal or private interests do not conflict with their public duties, to the Council as a whole or to all ward constituents.

**7.5 Advocacy for Service Users** – Although Members may routinely respond to queries and investigate concerns on behalf of constituents and other members of the public as part of their casework role, it is not appropriate for an Elected Member, unless exceptional circumstances apply, to act as an independent advocate for a service user during case conferences or other formal meetings attended by Council officers or Members, due to the potential conflict of interest and confusion over the role in which the Member is acting. Elected Members are part of the Council and have a duty to make decisions in the public interest and to represent all ward constituents fairly and equally; whereas the role of an independent advocate is to represent and act on behalf of an individual, to provide emotional support and help them to understand the process and to raise questions and issues as necessary. An Elected Member seeking to act as an independent advocate is likely to have an actual or perceived conflict between his/her duties to:

- (i) the Council and its Officers.
- (ii) the individual service user, and
- (iii) other ward constituents.

An Elected Member's involvement may also create an impression to those involved of undue influence being exerted in any relevant decision making process, in view of the Member's position within the Council. The Council has a responsibility to ensure that service users have access to advocacy services wherever necessary, and can provide contact details of independent advocacy service providers and professional advocates upon request. In certain court proceedings, service users will also have the benefit of accessing free legal advice, should they choose, and can be legally represented in Court, therefore always having a voice in Court and their interests protected. In court proceedings where there is limited/no access to free legal advice, the service user can again have access to advocacy services where necessary and can seek guidance/assistance from the Support from Court service that is available.

It is only in exceptional circumstances (such as where an Elected Member is a family member of a service user or is a professional advocate), that it may be appropriate for an Elected Member to act as an advocate for a service user. However, any such exceptional circumstances must be explained and agreed in advance with the Director of Social Services or the Monitoring Officer.

**7.6 Criticism of Officers** – Elected Members should ensure that any concerns about Council officers are raised with the relevant Director. In accordance with the Protocol on Member/Officer Relations, staffing issues are the statutory responsibility of the Chief Executive. Elected Members should note that case law regarding a Councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights (Heesom v. Public Services Ombudsman for Wales 2014) has held that:

- Council officers are not expected to tolerate the same level of criticism as politicians during political debate;
- Unwarranted criticism of officers by Councillors damages the mutual duty of trust and confidence between Councillors and officers; and that
- There is a public interest in ensuring that officers are not subjected to unwarranted criticism which could undermine the performance of their public duties and public confidence in the administration.

**Note: Flowchart at Annex 2. Process for Raising Other Safeguarding Concerns or Criticism of Officers.**

**7.7 Political/Public Debate** – When raising issues politically in public debate, during Council meetings, using social media etc, Members must ensure their comments do not disclose confidential information or personal information about identifiable individuals; must not make unwarranted criticism of officers, and must not conduct themselves in a manner likely to bring the Council (or the office of Councillor) into disrepute.

**8. What to do if you are concerned that a child or vulnerable adult may be at risk of harm?**

**(Please see Flowchart at Annex 1: Making a Safeguarding Referral)**

**8.1 Children (up to 17 years old)** - If an Elected Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Multi Agency Safeguarding Hub (MASH) or, if outside office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an appropriately trained Social Worker will ensure Children in Need of Care and Support or Child Safeguarding Procedures are initiated if needed, and will provide you with any required advice or guidance.

**8.2 Adult (age 18 and over)**- If any information raises concerns about harm or potential harm to a vulnerable adult, these concerns should be reported immediately to the Adult Safeguarding Team or, if outside of office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an appropriately trained Social Worker will ensure that any appropriate procedures are initiated, and will provide you with any required advice and guidance.

**8.3 If a Member has concerns about immediate danger needing a emergency response or thinks a crime is being committed, the police should be contacted on 999. You should never delay taking emergency action to safeguard a child or vulnerable adult.**

## 9. Raising any other safeguarding concerns

**(Please see Flowchart at Annex 2: Process for Raising Other Safeguarding Concerns or Criticism of Officers)**

If an Elected Member has any other concern relating to safeguarding, such as:

- any concerns following a referral made to the Children's Multi-Agency Safeguarding Hub (MASH) or the Adults Safeguarding Team;
- any concerns about a specific case where the Member knows that Social Services are already involved; or
- any general concerns about safeguarding arrangements, not relating to a specific child or vulnerable adult,

the Member should bring this to the attention of the Director of Children's Services, the Assistant Director or Director of Adult Services (as appropriate), or the Director of Social Services.

## 10. What to Expect?

10.1 All concerns will be investigated and assurances given to the Councillor that the welfare of the child or vulnerable adult is being safeguarded.

10.2 All referrals of children or vulnerable adults at risk of harm will be promptly investigated in accordance with the timescales provided for in the **All Wales Safeguarding Procedures** and a response will be given to the Councillor within 24 hours to confirm that relevant/appropriate action has been taken. The Council will not, however, be able to confirm the outcome of any particular investigation due to confidentiality and data protection laws.

10.3 Any other safeguarding queries or non specific casework concerns will be carefully considered and a response will be given to the Councillor within 10 working days. If a full response cannot be provided within 10 working days, the response will indicate a reasonable timescale within which a full reply will be given.

10.4 Any complaints made by or on behalf of the service users will be considered in accordance with the council's complaints procedures, which fully comply with all relevant statutory provision and best practice.

- (i) Complaints about the handling or outcomes of child protection conferences will be dealt with under the "Procedure for handling complaints from parents, caregivers, and children about the functioning of the child protection conference". This procedure is appended as Annex 3 to this Protocol.
- (ii) All other complaints about Cardiff Social Services will be dealt with under the 'Social Services Complaints Policy and Procedure' (established in accordance with The Social Services Complaints Procedure (Wales) Regulations 2014 and The Representations Procedure (Wales) Regulations 2014). This procedure is appended as Annex 4 to this Protocol.

## 11. Members' Rights to Information and Information Sharing

11.1 The Protocol on Members' Rights of Access to Information and Documents (set out in Part 5 of the Constitution), sets out Members' rights to information held by the Council and how to access such information.

11.2 **Personal Information** - Access to personal information is restricted by data protection legislation (see below); and any information provided under the "need to know" principle must only be used in connection with the Member's duties as a Councillor, and must not be disclosed to any other persons (unless and until the information properly enters the public domain).

Under the "need to know" principle, all Members have a right to inspect any Council documents if access to the documents is reasonably necessary to enable the Member to properly perform their duties as a Member of the Council.

11.3 The Council will ensure that all Elected Members have access to general information about trends and issues affecting children and vulnerable adults as well as the quality and range of services provided.

### **Personal information/information about individual cases**

11.4 Information relating to individuals is protected (as 'personal data') under data protection legislation, and such information may also be confidential. Personal data includes any information relating to an identifiable individual, even if the individual is not explicitly named. General advice on Members' data protection responsibilities is set out in the 'Data Protection' section of the Members' Handbook.

11.5 The Council is legally responsible (as the 'Data Controller') for personal information held by the Council (or held by Members for the purpose of Council business). Each Elected Member is legally responsible (as 'Data Controller') for personal information held for constituency work purposes. The Council and all Elected Members must carefully consider, on a case by case basis, their legal obligations in respect of any particular personal information they may hold.

11.6 The law requires that all personal information must be handled fairly, lawfully and securely. In particular, personal information about individual cases must not be disclosed without the consent of the individual/s, concerned, unless a legal exemption applies. This means that **the Council can only disclose information about individual cases to Members if it is satisfied that the individual/s concerned have consented to such disclosure and that the individual has the capacity to give such consent.**

11.7 If a Member is asked by a ward constituent or other member of the public to assist them in resolving a Social Services matter, the Member will be dealing with personal information, some of which will be sensitive personal information ('special category data', defined by law as information about a person's racial or ethnic origin; political opinions religious or philosophical beliefs; trade union membership; physical or mental health or condition; genetic or biometric data; or sexual life or orientation; and 'criminal offence data' meaning information about alleged criminal activity; or court proceedings), and subject to additional legal protection and restrictions.

## 11.8 Members must ensure that:

- The individual/s concerned understand how the Member intends to use their personal information and have consented to this. Members should be mindful that some service users' level of understanding may require further consideration and assistance due to their vulnerabilities.
- If the Member intends to make enquiries with the Council about a particular case, then the Member should obtain written consent from all individuals involved, expressly authorising the Council to disclose their personal information to the Member; and provide a copy of this consent to the Council. (If it is not possible to obtain written consent in any particular case, the Member should discuss this with the appropriate Assistant Director)
- All personal information relating to individual cases must be used only as necessary and appropriate in order to take the agreed action on behalf of the individual; and must not be used or disclosed for any other purpose, for example, political purposes.
- Members must have robust systems for holding personal information securely and only for as long as necessary.

11.9 Further advice is available from the Council's Information Management Operational Manager. The Information Commissioner's Office website also publishes helpful guidance for Councillors on their data protection responsibilities (see Background Documents listed at the end of this Protocol).

## 12. Decision Makers and Accountability

In addition to the strategic role of full Council, referred to in section 6 above, the key decision makers and their accountabilities are as follows:

### **Cabinet; Cabinet Member, Children and Families; and Cabinet Member, Social Care, Health, and Wellbeing**

12.1 The Cabinet has a collective corporate leadership role and decision making powers in respect of children's and adults' services, subject to compliance with the Council's approved Policy Framework. The Cabinet Member for Children and Families has particular responsibility to lead and inform the Cabinet's work on safeguarding, child protection, corporate parenting and looked after children matters. The Cabinet Member for Social Care, Health and Well-being has particular responsibility to lead and inform the Cabinet's work on adult social care and safeguarding vulnerable adults matters. Both Cabinet Members are regularly briefed by the Statutory Director of Social Services on the performance of Social Services functions, any identified weaknesses and recommended improvement actions.

### **Statutory Director of Social Services**

12.2 The Statutory Director of Social Services is responsible for providing professional leadership and discharging core responsibilities in respect of all Social Services functions of the Council. The Director submits a Statutory Annual Report to Cabinet



on the discharge of the Council's Social Services functions, including a report on all Social Services complaints.

### **Corporate Parenting Advisory Committee**

12.3 The Corporate Parenting Advisory Committee is responsible for advising the Council and the Cabinet on the discharge of the authority's corporate parenting functions. The Committee provides advice and makes recommendations to the Cabinet or Council regarding the discharge of corporate parenting functions. The Committee ensures that Corporate Parenting has a role and status within the Council.

### **Children and Young People Scrutiny Committee**

12.4 The Children and Young People's Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to children and young people, including children's social services.

### **Community and Adult Services Scrutiny Committee**

12.5 The Community and Adult Services Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to community and adults' services, including adults' social services.

#### CONTACT LIST:

The Multi Agency Safeguarding Team (MASH)	029 2053 6490
The Adult Safeguarding Team	029 2233 0888
Emergency Duty (out of hours) Team (EDT)	029 2078 8570
Director of Children's Services	xx
Assistant Director of Adult Services	xx
Director of Adult Services	xx
Director of Social Services	029 2087 2900

#### APPENDICES:

- Annex 1. Flowchart – Making a Safeguarding Referral.
- Annex 2. Flowchart – Process for Raising Other Safeguarding Concerns or Criticism of Officers.

- Annex 3. "Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference', Cardiff and Vale of Glamorgan Local Safeguarding Children Board.
- Annex 4. 'Social Services Complaints Policy and Procedure', City of Cardiff Council.

#### BACKGROUND DOCUMENTS:

- Members' Code of Conduct.
- WLGA Social Media Guidance.
- Social Services and Well-Being (Wales) Act 2014, Part 10 Code of Practice (Advocacy)
- Protocol on Member/Officer Relations.
- Protocol on Members' Rights of Access to Documents and Information.
- Members' Handbook, 'Data Protection' section.
- Information Commissioner's Office, 'Advice for elected and prospective councillors'.
- GDPR and Data Protection Act.