

To: Chair and Members of Standards
Committee

Date: 15 January 2015

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Dear Member of the Committee,

You are invited to attend a meeting of the **STANDARDS COMMITTEE** to be held at **10.00 am** on **FRIDAY, 23 JANUARY 2015** in **CONFERENCE ROOM 1A, COUNTY HALL, WYNNSTAY ROAD, RUTHIN LL15 1YN.**

Yours sincerely

G. Williams
Head of Legal and Democratic Services

AGENDA

1 APOLOGIES

2 DECLARATION OF INTERESTS

Members to declare any personal or prejudicial interests in any business identified to be considered at this meeting.

3 URGENT MATTERS AS AGREED BY THE CHAIR

Notice of items which, in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act, 1972.

4 MINUTES OF THE LAST MEETING (Pages 5 - 10)

To receive the minutes of the Standards Committee meeting held on 18th July, 2014 (copy enclosed).

5 FORWARD WORK PROGRAMME (Pages 11 - 12)

To consider the Standards Committee Forward Work Programme (copy enclosed).

6 CHAIR'S ANNUAL REPORT (Pages 13 - 16)

To consider a report by the Deputy Monitoring Officer (copy enclosed) which enabled the Committee to have sight and contribute to the Chair's Annual Report, in advance of the item being presented to the full Council.

7 PUBLIC SERVICES OMBUDSMAN FOR WALES - PUBLIC INTEREST TEST (Pages 17 - 24)

To consider a report by the Monitoring Officer (copy enclosed) on a proposal by the Public Services Ombudsman for Wales' to introduce a new Public Interest Test when considering whether or not to investigate allegations that an Elected Member has breached the Code of Conduct.

8 NORTH WALES STANDARDS COMMITTEES FORUM (Pages 25 - 34)

To consider a report by the Monitoring Officer (copy enclosed) on the meeting of the North Wales Standards Committees Forum on 26th November, 2014.

9 ATTENDANCE AT MEETINGS

To note the attendance by members of the Standards Committee at County, Town and Community Council and to receive their reports.

10 DATE OF NEXT MEETING

The next meeting of the Standards Committee is scheduled for the 6th March, 2015.

PART 2: CONFIDENTIAL ITEMS

It is recommended in accordance with Section 100A(4) of the Local Government Act 1972, that the Press and Public be excluded from the meeting during consideration of the following item of business because it is likely that exempt information (as defined in paragraph "12 and 13" of Part 4 of Schedule 12A of the Act) would be disclosed.

11 CODE OF CONDUCT - PART 3 LOCAL GOVERNMENT ACT 2000 (Pages 35 - 36)

To consider a confidential report by the Monitoring Officer (copy enclosed) providing an overview of complaints against members lodged with the Public Services Ombudsman for Wales.

MEMBERSHIP

Independent Members:

Rev Wayne Roberts, Mr Ian Trigger (Chair) and Mrs Paula White

Town/Community Council Member

Councillor David E Jones

County Councillors

Councillor Bill Cowie

COPIES TO:

All Councillors for information

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STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee held in Conference Room 1a, County Hall, Wynnstay Road, Ruthin LL15 1YN on Friday, 18 July 2014 at 10.00 am.

PRESENT

Ian Trigger (Chair), Ms Margaret Medley and Mrs Paula White together with Councillors Bill Cowie and David Jones

ALSO PRESENT

Deputy Monitoring Officer (LJ) and Committee Administrator (SLW)

1 APOLOGIES

Monitoring Officer (GW), Councillor Colin Hughes and Reverend Wayne Roberts

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest were raised.

3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters were raised.

4 MINUTES OF THE LAST MEETING

The minutes of Standards Committee held on Friday 9 May 2014 were submitted.

RESOLVED that the minutes of the meeting held on 9 May 2014 be received and approved as a correct record.

At this juncture, Mrs Paula White requested the Standards Committee papers be sent out to Members 7 working days prior to the meeting to enable adequate time for perusal of papers. Members agreed to the request.

The Deputy Monitor Officer agreed to take the request to the Democratic Services Manager.

5 FORWARD WORK PROGRAMME AND REVIEW

The Deputy Monitoring Officer (DMO) submitted a report (previously circulated) presenting the Forward Work Programme and Review for consideration and adoption.

The DMO detailed the reasoning behind the production of a Forward Work Programme. The majority of Committees within the Council utilised a Forward Work Programme.

Members of the Committee were proactive, such as attending in person at County, City, Town and Community Council meetings. Feedback, following attendance at meetings, was presented at the Standards Committee meetings.

Within the report had been a list of indicative areas of work that the Committee were to discuss to make the decision whether to adopt within the Forward Work Programme.

In-depth discussion took place with the following points being raised:

- Training members on the Code of Conduct.
 - Face to face training by the Monitoring Officer (MO) and the DMO. There would be limited capacity to deliver the training throughout the year. Members suggested on attendance at City, Town and Community meetings, they could produce the training cd and elaborate on the same with the members.
 - E-learning – code of conduct training had been filmed. There was a possibility the film could be edited and copied for the Clerks to distribute to members.
 - Training of Clerks – this would be delivered by the MO and DMO. The Clerks would then be in a position to deliver training to their members. Members agreed specific training sessions could be held for the Clerks in County Hall, Ruthin.
 - Co-ordinated training via NW Standards Committee for City, Town and Community Councils. The training could be delivered and the costs shared.
- Raising awareness of the Code.
 - The DMO confirmed raising awareness of the Standards Committee and the Code could be achieved within a letter together with the enclosure of a cd. The City, Town & Community Council Clerk would be notified in advance of a request for a Member of Standards Committee to attend the meeting to raise the awareness of the Committee, and to include training. Ms Margaret Medley suggested a return receipt form be added at the bottom of the letter as acknowledgement from the Clerk that the letter and cd had been received.

It was agreed the draft letter together with a sample cd be presented at the next Standards Committee meeting.

It was also agreed the Code of Conduct be sent to all City, Town and Community Council Clerks electronically. The Clerks would be requested to print copies and to circulate to members.
- Standards Committee Report from the Chair to all City, Town and Community Councils with reference to PSOW case studies.
 - It was agreed to a copy of the case book which had been produced by the Ombudsman to be enclosed with the letter from the Chair.
- Review Standards Committee Terms of Reference.
 - A recommendation was made to approach the Corporate Governance Committee for their opinion regarding Standards Committee tackling more issues which were currently covered by their Committee.

- Annual Report to Full Council.
 - It had been agreed the Chair of Standards Committee present an Annual Report to Full Council at either the September or October meeting.
- Monitoring of Complaints across the County at Community and County level.
 - This was currently a standing item on the Standards Committee Agenda and all members agreed to the continued inclusion of this item.
- Attendance at meetings.
 - A checklist of all City, Town and Community Councils to be produced at the next Standards Committee meeting to enable Standards Committee members to indicate their preference, in advance, which meeting they would attend.
- Mandatory Code training.
 - This was already adopted at county level within the Code and the Council Constitution. It had been agreed training for City, Town and Community Council members would not be mandatory as there would be a possibility it could act as a deterrent to some members which could cause a problem in attracting people to become City, Town and Community Councillors.
- Publicly promoting work of Standards Committee.
 - Report to Full Council would raise awareness and promote the Standards Committee.
- Use of Social Media.
 - Work currently ongoing by the MO. This item would be added to the Forward Work Programme for a future meeting.

It was agreed that the Forward Work Programme become a standing item on the Agenda of all future Standards Committee meetings.

RESOLVED that subject to Members' comments and observations above, the Forward Work Programme be adopted by the Standards Committee.

6 PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL REPORT 2013/2014

The Deputy Monitoring Officer (DMO) presented a report (previously circulated) informing members of the Annual Report of the Public Services Ombudsman for Wales for the year 2013/14. The Ombudsman's Report had been included as an appendix.

The previous Ombudsman, Mr Peter Tyndall, had moved on to take up a new role as Irish Ombudsman and Information Commissioner. The Public Services Ombudsman was appointed by the Crown on the recommendation of the National Assembly for Wales. Nick Bennett, currently the Chief Executive of Community Housing Cymru, had been nominated by the National Assembly for Wales as the next Ombudsman. Royal approval for Mr Bennett's appointment was being sought at the time of the writing of the Ombudsman's Annual Report.

The Report had been prepared by the Acting Ombudsman, Margaret Griffiths, who had taken on the role in December 2013. The Acting Ombudsman would remain in post until such time as the new Ombudsman was able to take office.

Members' attention had been drawn to the following:

- Complaints received in respect of alleged breaches of the Code of Conduct fell by 22% compared to the previous year. Of those 228 complaints received, 115 related to City, Town or Community Councils, 111 related to Unitary Authorities and 2 related to Fire Authorities. No complaints had been received in respect of National Park Authorities.
- The majority of the complaints received during 2013/14 related to matters of "equality and respect" which accounted for 36% of complaints received. This was compared to a figure of 35% in 2012/13.
- The next largest areas of complaint related to disclosure and registration of interests which accounted for 21% of complaints and integrity which accounted for 20% of complaints.
- 229 cases were closed in 2013/14. Of those 229 complaints, 176 were closed following initial consideration.
- 33 investigations were completed, of which 10 concluded that there had been no evidence of breach. 17 concluded there was no action necessary, 5 were referred to Standards Committees and 1 had been referred to the Adjudication Panel for Wales.
- The number of cases referred to either a Standards Committee or to the Adjudication Panel had fallen significantly from 20 in 2012/13 to only 6 in 2013/14.
- The Ombudsman confirmed the practice of writing to local Monitoring Officers where the Ombudsman was minded not to investigate a complaint, or having commenced the investigation, was minded to close the case, had continued. In these circumstances, it was for the local Monitoring Officer to consider whether they took a different view to the Ombudsman on the likelihood of the Standards Committee applying a sanction. If the Monitoring Officer was of the view that the local Standards Committee may apply a sanction then they were able to have the investigation transferred to them for local consideration. During the year 2013/14, 16 complaints were referred to Monitoring Officers by the Ombudsman of which only 1 was called in for local investigation.
- In Denbighshire 4 complaints were received by the Ombudsman in respect of County Councillors. 2 were withdrawn and 2 were closed following initial consideration.
- 9 complaints were received in respect of Prestatyn Town Council, of which 8 were closed following initial consideration and 1 had been withdrawn.

RESOLVED that the contents of the Public Services Ombudsman for Wales Annual Report 2013/14 be noted.

7 ATTENDANCE AT MEETINGS

Members of the Standards Committee reported upon their attendance at meetings as follows:-

Skills Workshop – Councillor David Jones reported upon his attendance together with the Chair at the Skills Workshop presented by Julie Wright. The Workshop had been well presented and had been extremely informative. It was recommended that the event be held again in the future but Julie Wright would not be available as she was due to retire.

There were cost implications to running the Workshop but if the take-up was low then the Workshop would be cancelled.

Code of Conduct - Councillor David Jones reported upon his attendance at the Code of Conduct local investigations and hearings held at Anglesey County Council. Peter Keith Lucas had been the speaker at the event. The presentation had been very well executed and a wealth of detail had been presented regarding hearings held over the past two years in both England and Wales.

***RESOLVED** that the verbal reports from members' attending meetings be received and noted.*

8 DATE OF NEXT MEETING

Members noted the Standards Committee's next meeting had been scheduled for 10.00 a.m. on Friday 17 October, 2014 in Conference Room 1a, County Hall, Ruthin.

The Deputy Monitoring Officer informed Members of the closure of Ty Nant offices in Prestatyn. As a consequence, there were no planned meetings of the Standards Committee in the north of the county.

EXCLUSION OF PRESS AND PUBLIC

***RESOLVED** that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act.*

9 CODE OF CONDUCT - PART 3 LOCAL GOVERNMENT ACT 2000

The Deputy Monitoring Officer presented a confidential report (previously circulated) providing an overview of complaints against members lodged with the Public Services Ombudsman for Wales since 1 April 2012.

There were two ongoing complaints.

Regarding the first, a letter had been received from the Ombudsman with an explanation this had been the initial stage.

Regarding the second, contact from the Ombudsman had been awaited.

Members agreed it was adequate to bring to the Committee the cases covering the previous 12 months.

RESOLVED that the report be received and noted.

The meeting concluded at 11.45 a.m.

At this juncture, a presentation was made to Margaret Medley to wish her well on her retirement from the Standards Committee. Members expressed their gratitude to her for her hard work over the years on behalf of the Standards Committee.

STANDARDS COMMITTEE FORWARD WORK PLAN

Date of Meeting	Report Items/Area s
06/3/15	Standing Item: Attendance at Meetings Review Standards Committee Terms of Reference Adjudication Panel for Wales Annual Report Standing Item : Overview of Complaints in Denbighshire
22/5/15	Standing item: Attendance at Meetings Standing Item: Overview of Complaints in Denbighshire

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Report To: Standards Committee

Date of Meeting: 23rd January 2015

Lead Member / Officer: Ian Trigger, Chair of Standards Committee

Report Author: Lisa Jones – Deputy Monitoring Officer

Title: Chair's Annual Report

1. What is the report about?

This report to Standards Committee is to enable the full Committee to have sight and contribute to the Chair's Annual Report, in advance of the item being presented to the full council. The Monitoring Officer is particularly keen to take into consideration the Chair and the Committee's views on the content, and sets out in section 4 the proposed details.

2. What is the reason for making this report?

It was agreed by Members of this Committee that an Annual Report should be presented on the work of the committee and its findings and observations, to all Council Members as part of the Committee's drive to increase standards of ethical behaviour and compliance with the Members Code of Conduct.

3. What are the Recommendations?

That Members:

- (a) Note the contents of the report.
- (b) Provide the Monitoring Officer with comments on its content in order to ensure that it accurately reflects the views of this Committee.
- (c) Recommend its presentation by the Chair to the Full Council.

4. Report details

- 4.1 This is the first Annual Report of the Chair of Standards Committee to the Full Council and covers the calendar year January to December 2014 only. It is intended that the Chair will present their report on this basis annually from now on, to the Full Council, in order to keep Members informed of trends; issues in respect of compliance with the Members Code of Conduct generally across the County and the work of the Committee in driving up standards of behaviour at the County level, but also at Town, City and Community levels.

- 4.2 The Committee consists of the following Member types – 2 County Councillors, 4 Independent (co-opted) Members, and 1 Community Council Member (who is not also a twin hatted Member). The majority of the Members are therefore not elected, but are recruited from members of the public as per the requirements of the Standards legislation in Wales. The Committee can also only be quorate when at least half of those Members present are the independents.

Independent members are recruited via a public advert, which is open to all save for strict criteria in respect of previously being an Officer or Member of the Council within certain time frames, being of good standing and having certain attributes as laid down in the legislation. Other than this the opportunity is open to persons from all walks of life, in order to represent the views of the public with regard to the standards they expect of their elected members; and who will also then if required to do so, sit in judgement in respect of any references to the Committee from the Public Services Ombudsman for Wales, where there has been a breach of the Code of Conduct, which falls above the relevant threshold. The decision to investigate a breach, is at the discretion of the Ombudsman; based on the facts, evidence and nature of the breach and whether there is corroborative evidence or not, but also now if there is a public interest in exhausting time and public financial resources in the investigation and hearing itself; similar to the Crown Prosecutors Service (CPS) approach to charges and prosecutions.

The Committee which receives a reference from the Public Services Ombudsman for Wales following his investigation into the complaint, will then sit in a quasi-judicial capacity whilst they hear the matter. They have powers to suspend a Member from Office for a maximum of 6 months, during which time they will not be able to act in their capacity as an elected member and will not receive any member salary. The Committee has discretion to impose lesser sanctions such as a partial suspension from duties or a 'public censure' and to impose other conditions such as attendance at training.

- 4.3 Prior to 2014 the Committee has been instrumental in the Council amending its Code of Conduct to make training on the Code a mandatory obligation; the introduction of a Self Regulatory Protocol, ensuring that County wide training to the County and 'Code' roadshow events are delivered by the Monitoring Officer and his deputy at the Town City and Community level, providing training to Chairs of Town City and Community Councils and publicity material to assist Clerks in the communities.
- 4.4 During the past year the Committee scheduled to meet five times and met on 4 occasions due to the October meeting being cancelled. The table below sets out a summary of the items under discussion: -

Date of Meeting	Report Items/Area s
31/1/14	Standing Item: Attendance at meetings Registration of Members Interests online Standing Item : overview of complaints in Denbighshire against Members
21/3/14	Standing Item: Attendance at meetings Annual Report of the Adjudication Panel for Wales PSOW Code of Conduct casebook Standing Item : overview of complaints in Denbighshire against Members.
9/5/14	Standing Item: Attendance at meetings Social Media Protocol Declarations of Interests by members of the County Council (a sample review by the Monitoring Officer) Standing Item : overview of complaints in Denbighshire against Members.
18 / 7/14	Standing Item: Attendance at meetings Adoption of a Forward Work Programme Public Services Ombudsman for Wales Annual Report. Standing Item: Overview of Complaints against Members.
17/ 10/ 14	Meeting cancelled.

4.5 Standing Items

There are now 3 standing items the Committee receives: -

- (a) Reports from Standards Members in respect of their attendance and observations at Committee and Council meetings whether at County or Community level. Denbighshire County Council Standards Committee is fairly unique in it's proactive approach to raising standards and awareness of the Code of Conduct. Committee Members will then report back to the Committee who will make recommendations in respect of any training needs or trends or patterns of conduct in particular communities.
- (b) Overview of Complaints lodged against Members with the Public Services Ombudsman for Wales. The report is presented in a closed session and members are provided with a limited amount of detail in respect of the complaint but with sufficient detail to enable members to consider if training or other actions can be recommended to particular town city and community councils which are experiencing issues or an increase in complaints.

(c) Forward Work Programme. This is new initiative in order for the committee to adopt the same strategic approach as other Committees and to target its resources into priority areas.

5. How does the decision contribute to the Corporate Priorities?

A fully functioning and representative Standards Committee which upholds the high standards expected of members helps underpin the Council's exercise of its democratic functions.

6. What will it cost and how will it affect other services?

There are no implications for other services as a result of this report. .

7. What consultations have been carried out?

No consultations have been carried out save for this report to the Standards Committee, as a consultee, to obtain feedback on its appropriateness, content and recommendations.

8. Chief Finance Officer Statement

Not required.

9. What risks are there and is there anything we can do to reduce them?

There are no identified risks.

10. Power to make the Decision

The Local Government Act 2000; the Standards Committee (Wales) Regulations 2001 and the Standards Committee (Wales) (Amendment) Regulations 2006.

Report To: Standards Committee

Date of Meeting: 23rd January 2015

Lead Member / Officer: Gary Williams, Monitoring Officer

Report Author: Gary Williams, Monitoring Officer

Title: Public Services Ombudsman for Wales – Public Interest Test

1. What is the report about?

1.1 The proposal by the Public Services Ombudsman for Wales' (the Ombudsman) to introduce a new Public Interest Test when considering whether or not to investigate allegations that an elected member has breached the Code of Conduct.

2. What is the reason for making this report?

2.2 To seek Members' views on the proposed introduction of a Public Interest Test as set out in the paper received from the Ombudsman attached as Appendix 1 to this report.

3. What are the Recommendations?

3.3 That members of the Committee give their views on the proposed introduction of a Public Interest Test as set out in the paper received from the Ombudsman attached as Appendix 1 to this report.

4. Report details.

4.1 The Ombudsman has produced a discussion paper, a copy of which is attached to this report as Appendix 1, on a proposal that he introduce an additional test when considering whether or not to investigate a complaint made to him that a member has breached the Code of Conduct.

4.2 The Ombudsman's office has for a number of years applied a two stage test in considering whether or not to investigate an alleged breach of the Code of Conduct by a member.

4.3 The first stage is to establish whether there is evidence that a breach of the Code actually took place.

4.4 The second stage is to consider whether the alleged breach, if proved, would be likely to lead to the imposition of a sanction by a Standards Committee or the Adjudication Panel for Wales. In considering the likelihood of a sanction being

imposed, the Ombudsman's office takes into account the cases that have been considered by Standards Committees across Wales and the action that those committees have taken.

- 4.5 The Ombudsman is concerned about the number of low level complaints received by his office and is seeking to introduce an additional test which would consider whether an investigation or a referral to a Standards Committee or the Adjudication Panel is required in the public interest.
- 4.6 The Ombudsman makes clear in the paper attached as Appendix 1 that he sees his role as investigating serious cases in order to maintain public confidence in standards in public life. He will not open an investigation unless he considers it proportionate to do so, given the circumstances of the breach alleged.
- 4.7 In determining whether an investigation is in the public interest, the Ombudsman will consider a number of factors that are set out in Appendix 1. Not all of these factors will apply in every case and the weight to be given to each will depend on the circumstances of each case.
- 4.8 In a recent visit to the North Wales Standards Forum, which is the subject of a separate report, the Ombudsman made it clear that at a time of diminishing resources he would have to prioritise the matters that his office would be investigating, and it may no longer be appropriate to apply resources to the investigation of low level complaints.
- 4.9 In addition the Ombudsman is considering whether or not to continue the practice of referring cases that, although there may be evidence of a breach he has decided not to investigate, to local monitoring officers for investigation because of the second limb of his current test. Members' views are also sought on this point.

5. How does the decision contribute to the Corporate Priorities?

- 5.1 The report has no direct impact on the corporate priorities.

6. What will it cost and how will it affect other services?

- 6.1 There are no costs directly associated with the report.

7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.

- 7.1 This report does not require an equality impact assessment.

8. What consultations have been carried out with Scrutiny and others?

- 8.1 This matter has not been reported or consulted upon elsewhere.

9. Chief Finance Officer Statement

9.1 There are no direct cost implications arising from this report

10. What risks are there and is there anything we can do to reduce them?

10.1 There is a risk that if the Ombudsman's Public Interest Test is applied at too high a threshold there could be the possibility of breaches of the Code of Conduct which should be the subject of a sanction not being investigated.

11. Power to make the Decision

11.1 Article 9.2 of the Council's Constitution

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Guidance on the Code of Conduct for Local Authority Members

Public Interest Test

- 1) Whilst the local resolution processes within county or county borough councils appear to have had the effect of resolving many of the low level member versus member code of conduct complaints within those bodies, the Ombudsman remains concerned about the number of frivolous, trivial and vexatious complaints being received from community and town council members. It is proposed that we introduce a further public interest test when deciding whether to investigate a complaint or whether to continue an investigation of a breach of the Code to the stage of referring the matter to the Adjudication Panel for Wales.
- 2) The attached paper outlines the proposed new test and we would be grateful to receive any feedback prior to incorporating it into the Ombudsman's revised Guidance on the Code of Conduct for Local Authority Members in the new year.
- 3) It would be helpful to receive any feedback from monitoring officers on:
 - how PSOW's system of referring member versus member cases for local resolution is working; and
 - how beneficial monitoring officers consider the system of offering cases which the Ombudsman considers are unlikely to attract a sanction for local investigation. Take up on this has been fairly low (1 case during 2013/14 and 4 cases so far this year).
- 4) Also, following the Ombudsman's recent appearance before the National Assembly for Wales's Finance Committee it has made the following recommendation to the Ombudsman:

"The Committee recommends that the Ombudsman increase his liaison with the local government sector to ensure that complaints between politicians at local authority and community council level are resolved locally, wherever possible. The Ombudsman should publish a policy to make it clear what action he may take against those politicians who breach their code of conduct by making vexatious complaints."

It would also therefore be helpful if monitoring officers could give their views on this proposal.

Katrin Shaw
Investigation Manager & Legal Adviser

Public Interest Test

It is my role as Public Services Ombudsman to investigate complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code to the stage of referring the matter to the Adjudication Panel for Wales ("the Adjudication Panel) or a standards committee my office has for a number of years applied the following two stage test.

The first test which has been applied is to establish whether there is evidence that a breach of the Code actually took place. The second test is whether the breach alleged would be likely to lead to a sanction. When exercising my discretion to investigate or to refer a matter for further consideration account is taken of previous cases considered by standards committees across Wales cases are decided accordingly.

Since taking up office I have become increasingly concerned about the number low level complaints my office is receiving. Whilst the local resolution processes within county or county borough councils appears to have had the effect of resolving many of the low level member versus member complaints within those bodies, I remain concerned about the number of frivolous, trivial and vexatious complaints I am receiving from community and town council members.

I have therefore decided to expand upon the two stage test and also consider whether an investigation or a referral to the Adjudication Panel or a standards committee is required in the public interest.

When applying the public interest test I consider each of the following public interest factors set out below. These factors are not exhaustive, and not all may be relevant in every case. The weight to be attached to each of these factors, and the factors identified, will also vary according to the facts and merits of each case.

- the seriousness of the breach, for example, has the member brought their authority seriously into disrepute? The more serious the breach the more likely investigation and referral for further hearing is required.
- has the member deliberately sought personal gain for himself or another person at the public expense? If there is evidence of this I am likely to investigate and refer the matter for further hearing.
- are the circumstances of the breach such that a member has misused a position of trust or authority and caused harm to a person? If there is evidence of this I am likely to investigate and refer the matter for further hearing.

- was the breach motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity? If a member's conduct is motivated by any form of discrimination I am likely to investigate and refer the matter for further hearing.
- is there evidence of previous similar behaviour on the part of the member? If so and the matter complained about is serious enough I am likely to investigate and refer the matter for further hearing.
- is the breach such that an investigation or referral to the Adjudication Panel for Wales or a standards committee is required to maintain public confidence in elected members in Wales? If so I am likely to investigate and if evidence of a serious breach is found refer the matter for further hearing.
- is investigation or referral to the Adjudication Panel for Wales or a standards committee a proportionate response? namely, would the cost of an investigation or hearing by the Adjudication Panel for Wales or a standards committee be regarded as excessive when weighed against any likely sanction?

My role is to investigate serious cases in order to maintain public confidence in standards in public life. If I am not satisfied that an investigation or referral to the Adjudication Panel or standards committee is proportionate in the circumstances I will decline to investigate or if, having started any investigation this becomes apparent, I will close my investigation.

Nick Bennett
Ombudsman

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Report To: Standards Committee

Date of Meeting: 23rd January 2015

Lead Member / Officer: Gary Williams, Monitoring Officer

Report Author: Gary Williams, Monitoring Officer

Title: North Wales Standards Committees Forum

1 What is the report about?

- 1.1 The report is about the meeting of the North Wales Standards Committees Forum on 26th November 2014.

2 What is the reason for making this report?

- 2.1 To report to Members the discussion that took place at the Standards Committees Forum on 26th November 2014 which was attended by the Public Services Ombudsman for Wales (the Ombudsman).

3 What are the Recommendations?

- 3.1 That Members note the contents of this report.

4 Report details.

- 4.1 The latest meeting of the North Wales Standards Committees Forum took place at the office of the Isle of Anglesey County Council in Llangefni on 26th November 2014.
- 4.2 The primary business of the meeting was to meet the new Public Services Ombudsman for Wales, Mr Nick Bennett, and to seek his views on current issues facing Standards Committees in Wales.
- 4.3 In preparation for the meeting the North Wales Standards Committees Forum had posed 13 written questions in order to structure the discussion with the Ombudsman.
- 4.4 A copy of the questions put to the Ombudsman together with a note of his responses is set out in Appendix 1 to this report.
- 4.5 In summary, the Ombudsman was keen to meet with representatives of Standards Committees and to listen to their views and concerns about current issues. The Ombudsman was very supportive of the work of the North Wales Standards Committees Forum and the support that the Standards Committees in North Wales provided to each other through the Forum.

- 4.6 The Ombudsman set the work of his office into the context of diminishing public resources and the need for the work of his office to maintain public confidence in the democratic process while prioritising the scarce resources at his disposal. The Ombudsman stressed the dim view that he took of vexatious complaints and the need for investigations conducted by his office to be proportionate with the public interest in the matter under investigation.
- 4.7 The Ombudsman was keen to support the local resolution of complaints in respect of the Code of Conduct which would increase the speed at which complaints were dealt with.
- 4.8 The Ombudsman confirmed his intention to issue revised guidance to local authorities in light of a recent judgement and to simplify the guidance provided to Members, particularly in respect of the declaration of interests.
- 4.9 The Ombudsman also confirmed his intention to introduce a public interest test into his consideration of whether or not his office would investigate complaints made to it about breaches of the Code of Conduct. This public interest test is the subject of a separate report to Committee.
- 4.10 Following the discussion with the Ombudsman the Forum considered one other item which related to the training being provided to Town and Community Councils in respect of the Code of Conduct. The Forum was informed of the approach taken by the Isle of Anglesey County Council which had been to provide tailored training to the clerks to Town and Community Councils to enable them to be the first line of advice to their members in respect of issues relating to the Code of Conduct. This approach had resulted in a development of the relationship between clerks and the Monitoring Officer and following the training several clerks had taken the opportunity to contact the Monitoring Officer to discuss issues concerning their Councils. There followed a discussion of the merit of other authorities taking a similar approach to the provision of training to Town and Community Councils.

5 How does the decision contribute to the Corporate Priorities?

- 5.1 The Committee is not asked to make a decision in respect of this report.

6 What will it cost and how will it affect other services?

- 6.1 There are no direct costs associated with this report.

7 What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.

- 7.1 There is no requirement for an Impact Assessment in respect of this report.

8 What consultations have been carried out with Scrutiny and others?

8.1 This matter has not been the subject of reports or consultation with others.

9 Chief Finance Officer Statement

9.1 There are no direct cost implications arising from this report

10 What risks are there and is there anything we can do to reduce them?

10.1 There are no direct risks associated with this report.

11 Power to make the Decision

11.1 Article 9.2 of the Council's Constitution

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Questions to the Ombudsman

Question	
1	<p>The Local Government (Democracy) (Wales) Act 2013 allows for regional Standards Committees to be formed. When the regulations are in place, how does the Ombudsman suggest that this power should be exercised among the North Wales Authorities. What is the current timetable for bringing this power into effect?</p>
Answer	<p>The Ombudsman confirmed that he was very supportive of the North Wales Regional Forum as he considered that it promoted a consistency of approach by Standards Committees of various authorities. He confirmed that his support for the introduction of regional Standards Committee, having been a member of the Williams Commission that had looked at the need to rationalise the number of public bodies.</p>
2	<p>Why do cases accepted by the Ombudsman take so long to investigate?</p> <p>Surely a member who has been accused of misconduct has a reasonable expectation that the allegation(s) be addressed and determined as soon as possible?</p> <p>There is also a public interest for the electorate in knowing as soon as possible whether their democratically elected representative has breached the code of conduct.</p>
Answer	<p>The Ombudsman began his response by confirming that he had only been in post for four months at the time of the meeting.</p> <p>He wanted to put the issue into the context of reducing levels of public spending. The information provided by civil servants to the Williams Commission confirmed that public spending would not return to the level seen in 2011 until approximately 2022 to 2025.</p> <p>There is an ageing population, leading to an increased demand for public services, and is likely that the number of complaints in respect of service delivery will continue to go up. The Ombudsman pointed out that over the past five years the number of complaints to the Ombudsman's office has more than doubled.</p> <p>Complaints about local government services have increased by 117% and complaints about health bodies have increased by 146%.</p> <p>The only area where there has not been a large increase in complaints is in respect of complaints alleging breaches of the Code of Conduct. Local resolution has, in the Ombudsman's view, reduced the number of complaints that are referred to his office.</p> <p>However the Ombudsman recognised that the next three years are all election years and that sadly, the trend is that complaints in respect of the Code of Conduct are likely to increase during election years. The Ombudsman</p>

	<p>reiterated that he takes a dim view of vexatious complaints and that his office does receive complaints which are simply not worthy of investigation.</p> <p>The Ombudsman informed the forum that his office receives £4 million per annum and that this money has to be spent on all of the Ombudsman's activity which includes the investigation of complaints relating to the delivery of public services and that he would have to prioritise those resources. The public may take the view that complaints about some areas of public services activity, for example health, may be more deserving of the Ombudsman's attention.</p> <p>The Ombudsman referred to the data for the previous year and confirmed that 81% of decisions on whether to investigate a complaint were made within 4 weeks. Of those matters that were investigated 85% were completed within 9 months and the remaining 15% between 9 and 12 months. The Ombudsman confirmed that he would seek to improve those timescales where possible but also suggested that the use of local resolution could speed up the process by which matters were dealt with.</p> <p>Of those complaints that were received by the Ombudsman in respect of the Code of Conduct only 19% of complaints in respect of the Code of Conduct that relate to County Councils are actually investigated, and only 1% of those result in a Standards Committee hearing. As far as Town and Community Councils are concerned, 16% of the overall complaints are investigated, with 5% resulting in a hearing.</p> <p>The Ombudsman referred to his desire to introduce a public interest test on top of the current two stage test in determining whether or not an investigation should be conducted.</p> <p>The Ombudsman indicated that 10 years ago 15% of complaints received by his office related to health matters but this figure had now risen to 30%. In his view, decisions to investigate need to take into consideration value for money and the public interest.</p>
3	<p>In a letter to the Ombudsman from the Chairman of the North Wales Standards Committee Forum (NWSCF) it was asked whether:-</p> <ul style="list-style-type: none"> (i) The Ombudsman would be willing to provide sanctions guidance specifically tailored to the needs and powers of standards committees rather, than seeking to apply relevant passages from the Adjudication Panels Guidance; and (ii) The first issue of "The Ombudsman's Code of Conduct Casebook" was considered very useful. However, the NWSCF considers that it would be even more useful if case summaries could be published as and when the cases are concluded, perhaps on the Ombudsman's website? It was asked whether or not this could be accommodated or, alternatively, might the case summaries be published quarterly? <p>Negative responses to each request was received from the former Ombudsman. Is the current Ombudsman willing to re-visit these issues and, if not, could he elaborate on the reasoning behind his predecessor's decision.</p>
Answer	<p>The Ombudsman did not think that he had sufficient resources available to produce a monthly casebook but did confirm that the Ombudsman's office would release details of cases onto its website as soon as they became live.</p>

	As far as sanctions guidance was concerned, the Ombudsman confirmed that he had no plans to issue sanctions guidance. In reply to a supplementary question as to whether or not sanctions guidance would improve consistency, the Ombudsman said that he was not convinced that there was a significant problem with regard to consistency of approach to sanctions, or that Standards Committees would necessarily appreciate being told what to do. He did however confirm that he would ask his officers to look again at whether there was value in producing sanctions guidance.
4	<p>In the Ombudsman's Guidance on Local Resolution Protocols (page 6 of the guidance to the code) it is mentioned that there is an expectation on County Councils to implement local resolution procedures to deal with low level complaints and that: “these mechanisms are initially being adopted by principal councils, but I am supportive of this extending to cover community councils in due course”.</p> <p>This anticipates that County Councils may be expected to operate local resolution protocols in community council disputes? Alternatively, does the Ombudsman envisage that such protocols should be adopted by Community Councils themselves and operated by those Councils? Even if these anticipated arrangements are not “rolled out” does the Ombudsman think that Standards Committees should take an active role in sorting out minor complaints within Town and Community Councils, before they are escalated to the Ombudsman?</p>
Answer	The Ombudsman indicated that although there had been a decrease in the overall level of Code of Conduct complaints received by his office there were still over 200 each year and 50% of these came from Town and Community Councils. At a recent One Voice Wales Conference, people had been sympathetic to Town and Community Council complaints being included in local resolution procedures. Issues were raised by members of the Forum regarding the resources required to operate local resolution procedures for Town and Community Councils. Some members of the Forum also raised the issue of whether or not there would be sufficient resources for clerks of Town and Community Councils to operate a local resolution protocol.
5	It is understood that the Ombudsman will publish new guidance on the code of conduct (particularly in light of Calver). Is the Ombudsman able to give any indication as to when this new guidance will be available and to provide some information regarding the timeframe for consultation on any draft?
Answer	<p>The Ombudsman confirmed that guidance in respect of the Calver judgement had been issued and was contained within the reissued guidance document.</p> <p>The Ombudsman confirmed that he was going to have to change the guidance again in light of a recent judgement and was also looking to simplify the guidance relating to the declaration of interests. In addition he wanted to include a public interest test in the consideration of whether or not to investigate. The Ombudsman will be consulting soon on these issues.</p>
6	Within our Whistleblowing Policy we refer to the Ombudsman as a regulator to whom an employee may speak regarding their concerns. Does the Ombudsman have a role here? If so, what kind of whistleblowing complaints would fall within the Ombudsman's remit? Should this be removed from our policy?
Answer	The Ombudsman pointed out that he was not a regulator. He did however point out that he understood, in particular in relation to Code of Conduct issues, why people may want to raise issues with him in that way and he would not want to stop people raising such issues.

7	What percentage of complaints received by the Ombudsman, investigated by the Ombudsman, referred by the Ombudsman to a Standards Committee/Adjudication Panel, are from Community Councils as opposed to unitary authorities? The concern is that the public will see the word "Councillor" and be unable to distinguish between County Councillors and Community Councillors.
Answer	The Ombudsman referred to the earlier statistics he had given in respect of the number and make up of complaints to his office. He confirmed that his office would continue to monitor the split between County Councils and Town and Community Councils over the next few years.
8	Where the Ombudsman refers a matter to a Standards Committee for hearing and the Council's own Legal Section is conflicted by the subject matter of the referral, what (if any) are the Ombudsman's views on whom should provide the legal advice to the Standards Committee?
Answer	As far as conflicts of interest were concerned the Ombudsman confirmed it was a matter for each individual to consider and suggested that where everyone within a specific department felt that they were conflicted, then they may turn to their neighbouring authorities for assistance.
9	How does the Ombudsman intend to develop his role in relation to the Code of Conduct? Does he have any new initiatives in mind?
Answer	The Ombudsman confirmed that he had no new initiatives as such to bring forward. He did however confirm that he intended to develop and consult on the public interest test and update his guidance in the light of recent judgements and to simplify the guidance given to members in respect of Code of Conduct.
10	The NWSCF wrote to One Voice Wales earlier this year requesting support for Community Councils in developing the ethical content of their websites when this becomes a statutory requirement (see letter attached). We are yet to receive a response. What advice will the Ombudsman provide to Community Councils on this issue?
Answer	The Ombudsman said that he had no specific advice to give. He hoped that the Forum would receive a response to its correspondence and he would be interested to see it.
11	Will you as the Ombudsman, consider passing more breaches of the Code of Conduct, to the Standards Committees to deal with at a local level.
Answer	<p>The Ombudsman confirmed that he would consider passing more breaches of the Code of Conduct to a local level. The take up on this has been limited, with one case being taken up in 2013 and four cases since April 2014. In response to a supplementary question on whether or not a review should be conducted into the length of sanctions available, the Ombudsman indicated that he did not necessarily believe that the length of sanction was the issue but more the appetite to take investigations on. The Ombudsman confirmed that given the reducing resources available there was a desire to see a more local approach to investigations.</p> <p>The Ombudsman was asked about his views in respect of the public perception of the approach to investigations. There may be occasions where a genuine complaint appears to have no substance but if dismissed out of hand may lead to a public perception of unfairness.</p> <p>The Ombudsman confirmed that public confidence in the democratic process was vital. The Ombudsman confirmed that he was accountable to the National Assembly for Wales for the resources that were at his disposal and the way in which they had been deployed. He pointed out that all of the Standards Committees that he had spoken to took the issue of fairness seriously but there</p>

	was a need to consider how to deal with vexatious complaints. The Ombudsman considered that there was a need to take a balanced view. The Ombudsman's desire is to maintain capacity to deal with the issues that weigh most heavily in the public interest.
12	Whether the Ombudsman has any intention of clarifying paragraph 10 (2) (b) of the Members' Code beyond that contained in the guidance issued in September 2012 (page 27). That guidance indicated that the then Ombudsman would review that guidance in light of any future decisions and case law on the effect of this provision.
Answer	The Ombudsman confirmed that his understanding was that Welsh Government had indicated that it intended to amend the Code of Conduct and remove paragraph 10(2)(b) by regulation once they had introduced the Local Government Democracy Wales Act. The Ombudsman's guidance would be amended following such a change.
13	A complaint is usually made against a member as a member of a particular authority. Consequently any suspension would be from acting as a member of that authority. Often however, the member will also be a member of another relevant authority (e.g. a county councillor who is also a community councillor). This can lead to a situation, where a member is suspended for behaviour which is considered unacceptable for a member of any authority (e.g. conduct that brings the office into disrepute) but he/she is free to continue to act as a member of another authority in the meantime.
Answer	The Ombudsman confirmed that, where appropriate, it would be possible to extend the remit of an investigation to cover another relevant authority as well as the one in respect of which the conflict arose.

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By virtue of paragraph(s) 12, 13 of Part 4 of Schedule 12A of the Local Government Act 1972.

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