

To: Chair and Members of Standards  
Committee

Date: 17 September 2018

Direct Dial: 01824 712624

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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, 21 SEPTEMBER 2018** in **CONFERENCE ROOM 1A, COUNTY HALL, RUTHIN.**

Yours sincerely

G. Williams  
Head of Legal, HR and Democratic Services

## **AGENDA**

### **PART 1: THE PRESS AND PUBLIC ARE INVITED TO ATTEND THIS PART OF THE MEETING**

#### **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 10 July 2018 (copy enclosed).

**5 APPLICATION FOR DISPENSATION BY MEMBERS OF LLANBEDR DYFFRYN CLWYD COMMUNITY COUNCIL** (Pages 11 - 26)

To consider a report by the Monitoring Officer (copy attached) regarding an application for a dispensation made by members of Llanbedr DC Community Council.

**6 PUBLIC SERVICES OMBUDSMAN FOR WALES - CODE OF CONDUCT CASEBOOK** (Pages 27 - 38)

To consider a report by the Monitoring Officer (copy enclosed) informing members of the most recent edition of the Ombudsman's Code of Conduct Casebook.

**7 GRANTING OF DISPENSATIONS** (Pages 39 - 46)

To consider a report by the Monitoring Officer (copy enclosed) about the granting of dispensations by this Committee and the Guidance that it is proposed to give to Town, City and Community Councils as well as elected members of the County Council in respect of the process by which they may apply for a dispensation.

**8 ADJUDICATION PANEL FOR WALES - SANCTIONS GUIDANCE** (Pages 47 - 72)

To consider a report by the Monitoring Officer (copy enclosed) about the sanctions guidance issued by the Adjudication Panel for Wales for use when a Councillor has been found to have breached the Members' Code of Conduct by a Case Tribunal or an Appeal Tribunal.

**9 FEEDBACK FROM STANDARDS CONFERENCE**

To consider a verbal report by the Chair.

**10 ATTENDANCE AT MEETINGS**

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

**11 STANDARDS COMMITTEE FORWARD WORK PROGRAMME** (Pages 73 - 74)

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

**12 DATE OF NEXT MEETING**

The next meeting of the Standards Committee is scheduled for 10am on the 30<sup>th</sup> November 2018 in County Hall, Ruthin.

## **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 paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act) would be disclosed.

### **13 CODE OF CONDUCT - PART 3 LOCAL GOVERNMENT ACT 2000 (Pages 75 - 80)**

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:

Mr Ian Trigger (Chair), Julia Hughes, Anne Mellor, Peter Lamb and Gordon Hughes

Town/Community Council Member

County Councillors

Councillor Paul Penlington

Councillor Andrew Thomas

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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 Tuesday, 10 July 2018 at 10.00 am.

### PRESENT

Independent Members – Ian Trigger (Chair), Julia Hughes (Vice-Chair), Ann Mellor and Peter Lamb.

Councillors – Gordon Hughes, Paul Penlington and Andrew Thomas

### ALSO PRESENT

Monitoring Officer (GW) and Committee Administrator (SLW)

Observer – Heidi Roberts (Solicitor)

#### 1 APOLOGIES

None

#### 2 DECLARATION OF INTERESTS

Councillor Gordon Hughes declared a personal and prejudicial interest in item 11 as he is a member of Corwen Town Council.

Councillor Paul Penlington declared a personal interest in item 11 as he was the subject of a complaint (dismissed).

#### 3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

#### 4 MINUTES OF THE LAST MEETING

The minutes of the Standards Committee held on 3 April 2018 were submitted:

Page 6 (Item 6 – third paragraph) – should be “Flintshire County Council” not “Flintshire City Council”

Page 7 (Item 7 – third paragraph) – should be “set up to look ....” not “set up too look ....”

Page 8 (Item 8 – third paragraph) – statement to be added so the sentence reads “The DM confirmed that Standards Committee members could claim travel expenses if they attended Town, Community and City Council meetings on behalf of the Standards Committee, but not a daily fee”.

## **Matters Arising:**

Page 9 – it was agreed an updated list of City Town & Community Council visits would be circulated. Also a schedule of future visits would be looked into and the information would be circulated at the end of summer.

***RESOLVED** that, subject to the above, the minutes of the meeting held on 3 April 2018 be received and approved as a correct record.*

## **5 PUBLIC SERVICES OMBUDSMAN FOR WALES - CODE OF CONDUCT CASEBOOK**

The Monitoring Officer presented a report (previously circulated) informing members of the most recent editions of the Ombudsman's Code of Conduct Casebook covering the period January 2018 – March 2018.

Details of the three complaints investigated during the period had been outlined in the report and were summarised by the Monitoring Officer. None of the cases related to Councillors in Denbighshire.

Two cases involved the disclosure and registration of interest when their respective Community Councils were considering planning applications. In both cases, the Ombudsman found that the relevant Councillors had failed to properly disclose personal and prejudicial interests and to leave the room during the consideration of those items. In both cases, the Ombudsman concluded that there was sufficient mitigation in respect of the circumstances of the allegations that no action was considered necessary.

The third case involved an allegation that a Councillor who was Chair of the relevant Council and a community project, had arranged for a sum of money intended for the Council to be paid direct to the project, and, in doing so, had improperly used the Council's resources and brought the Council into disrepute. The Ombudsman found that the money could not have been paid to the Council so the allegation relating to the use of resources was not made out, but, in representing himself as acting on behalf of the Council at the expense of other groups, he had brought the Council into disrepute. The Ombudsman determined that no action was necessary given that the Councillor was inexperienced, believed himself, mistakenly, to be acting in the public interest and had not benefitted personally in any way.

There were no cases referred to either a Standards Committee or the Adjudication Panel for Wales.

***RESOLVED** that the Standards Committee note the information contained within the Code of Conduct Casebook.*

## **6 CHAIR'S ANNUAL REPORT FOR 2017**

The Monitoring Officer introduced the report (previously circulated) presenting the Chairs Annual Report 2017 for consideration prior to submission to Full Council.

The Monitoring Officer opened the debate asking members if they felt any further issues or points should be covered when discussed at Full Council.

During discussion, the following items were highlighted to be included within the Annual Report:

- Danger of social media
- Training
- Visits to City, Town & Community Councils.
- It was also requested that the cancelled meeting be stipulated it was due to adverse weather conditions.

The Chair requested information as to what percentage of County Councillors were also City, Town & Community Councillors. The Monitoring Officer confirmed he would obtain the information and circulate to the Committee members.

The Chair expressed concern as not all applications for dispensation were being put forward to the Standards Committee. It was confirmed that notification on the process would be circulated to all Town Clerks in the form of a "How to" Guide.

It was confirmed that the Monitoring Officer would bring the information sheet to Standards Committee in September 2018.

***RESOLVED*** that, subject to the above, members note the report and recommend its presentation by the Chair to Full Council.

## **7 GUIDANCE ON THE USE OF SOCIAL MEDIA**

The Monitoring Officer introduced the report (previously circulated) to inform the Committee about the draft guidance on the use of social media by staff and Members, and the WLGA draft guidance and seek their comments.

A working group of staff and elected members had met to discuss the guidance required. The draft Social Media Guide, attached to the report, had been developed by the Communications Team following the discussions.

The Guide would provide staff and elected members with tips on the use of social media in an effective, lawful and respectful way.

The Ombudsman had stressed the need for elected members to apply the principles of the Code of Conduct in their use of social media.

The WLGA were in the process of updating a Guidance document. The WLGA document was a larger document than the Denbighshire guide but included a lot of explanatory information regarding the different social media channels available.

The Monitoring Officer confirmed that the Denbighshire Social Media Guide was in draft form and once approved, would be translated and be made available in both Welsh and English. A copy of the finalised documents would be sent out to all City, Town & Community Councils.

Additional training on the appropriate use of social media was mentioned and it was confirmed that the Communications team would be approached to ask if they could hold a social media workshop for Councillors and independent members of Committees.

The issue of publication of photographs of children was raised, and the Monitoring Officer confirmed consent from the parent/guardian would be required but he would confirm with the Communications Team.

The Chair requested that the Monitoring Officer report back to the September meeting following discussions with the Communications Team.

**RESOLVED** *that subject to the above, the Committee noted the contents of the draft Denbighshire Social Media Guide for Staff and Members together with the WLGA draft Guidance document and an updated report be brought back to Standards Committee at the next meeting in September 2018.*

## **8 ATTENDANCE AT MEETINGS**

Julia Hughes had attended at Cyffylliog Community Council the previous evening. The Website required updating. The Chair led the meeting well and was assisted by the Clerk. It was a well-run and positive meeting.

Both Ian Trigger and Julia Hughes attended the North Wales Standards Forum which had taken place on 29 June 2018.

Julia Hughes had prepared a printout summarising the discussions which had taken place.

Members were informed of the All Wales Conference which would take place on 14 September 2018 and expressions of interest were requested. The Conference was held every two years and in 2020 it was planned to be held in North Wales.

The Chair thanked Julia Hughes for her summarised presentation of the Forum and her update on Cyffylliog Community Council.

**RESOLVED** *that the attendance be noted and the attendance report updated to reflect the visit by Julia Hughes.*

## **9 STANDARDS COMMITTEE FORWARD WORK PROGRAMME**

The Standards Committee Forward Work Programme was presented for consideration.

It was confirmed that a report following the All Wales Standards Conference would be presented at the next Standards Committee meeting to be held on 21 September 2018.



***RESOLVED** that, subject to the above amendments, the Standards Committee's Forward Work Programme be agreed.*

## **10 DATE OF NEXT MEETING**

21 September 2018 to be held in the Council Chamber, Ruthin at 10.00 a.m.

***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.*

## **11 CODE OF CONDUCT - PART 3 LOCAL GOVERNMENT ACT 2000**

Councillor Gordon Hughes declared a personal and prejudicial interest as he is a member of Corwen Town Council. At this juncture he left the room and took no part in the discussions.

Councillor Paul Penlington declared a personal interest as he had been the subject of a complaint which had since been dismissed.

The Monitoring Officer presented the confidential report (previously circulated) to provide Members with an overview of complaints lodged with the Public Services Ombudsman for Wales since 1 April 2014.

Standards Committee had previously requested to be regularly informed of the level of complaints lodged with the Public Services Ombudsman for Wales.

Part 1 of the tables provided details of completed items.

Part 2 of the tables provided details of ongoing complaints.

The Monitoring Officer informed the Committee that an extra column within the tables would be added in the future to include reason why no longer investigating and also if there were any recommendations put forward e.g. recommended training this would be added to the table. Information containing the date complaint received and the date case completed would also be included in future reports.

***RESOLVED** that, the Standards Committee, subject to the above, receive and note the contents of the report.*

**The meeting concluded at 12.10 p.m.**

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<b>Report To:</b>	<b>Standards Committee</b>
<b>Date of Meeting:</b>	<b>21st September 2018</b>
<b>Lead Member / Officer:</b>	<b>Gary Williams, Monitoring Officer</b>
<b>Report Author:</b>	<b>Gary Williams, Monitoring Officer</b>
<b>Title:</b>	<b>Application for Dispensation by Members of Llanbedr Dyffryn Clwyd Community Council</b>

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## **1. What is the report about?**

- 1.1 This report is about an application for a dispensation made by members of Llanbedr Dyffryn Clwyd Council

## **2. What is the reason for making this report?**

- 2.1 To enable the Committee to consider the background to the request for a dispensation and the relevant legal provisions before making a determination whether to grant the dispensation.

## **3. What are the Recommendations?**

- 3.1 That the Committee considers the request for a dispensation and makes a determination whether to grant the dispensation and, if so, the terms upon which the dispensation is granted.

## **4. Report details**

- 4.1 The Members' Code of Conduct provides that a member of a local authority who has a prejudicial interest in any matter must withdraw from the chamber during the discussion of that matter and take no part in the consideration of that matter, unless the member has been granted a dispensation by the Standards Committee for that authority.
- 4.2 s81(4) Local Government Act 2000 gives Standards Committees power to grant dispensations in accordance with regulations made by Welsh Ministers under s81(5) of that Act prescribing the circumstances in which they may do so.
- 4.3 The relevant regulations are the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (the Regulations).
- 4.4 On 3<sup>rd</sup> April 2018 the Committee considered a request for a dispensation on behalf of members of Llanbedr DC Community Council in respect of membership of a community association relating to The Griffin Community Hub project. The Committee granted a dispensation to two members of the community council. The dispensation was granted for a period of six months which ends on 3<sup>rd</sup> October 2018. A copy of the report and supporting documentation submitted to the Committee on 3<sup>rd</sup> April is attached as Appendix 1.

- 4.5 The Monitoring Officer has now received a request for an extension of the dispensation in respect of the two councillors to whom the dispensation was granted in April, Councillors Lyn Evans and Tim Baker, together with a request for an additional Councillor to be granted a dispensation, namely Cllr Dave Ritchie. Details of this request can be seen in Appendix 2 and Appendix 3 attached.
- 4.6 If the Committee is minded to grant a dispensation it must consider whether it wishes to grant the dispensation as requested or whether to place any limitation or restriction on the operation of the dispensation, including the length of time for which the dispensation will be in force.
- 4.7 If a dispensation is granted, any member who has the benefit of it must still declare a personal interest in any business relating to the voluntary body and declare the existence and nature of the dispensation granted.
- 5. How does the decision contribute to the Corporate Priorities?**
- 5.1 The decision has no direct impact on the Corporate Priorities.
- 6. What will it cost and how will it affect other services?**
- 6.1 There no direct costs associated with this report.
- 7. What are the main conclusions of the Well-being Impact Assessment? The completed Well-being Impact Assessment report can be downloaded from the [website](#) and should be attached as an appendix to the report**
- 7.1 This report does not seek to introduce a change or a proposal that would require such an assessment.
- 8. What consultations have been carried out with Scrutiny and others?**
- 8.1 There has been no consultation with Scrutiny in respect of this matter.
- 9. Chief Finance Officer Statement**
- 9.1 There are no direct financial consequences as a result of 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 Members are not granted the dispensation the Town Council will be unable to consider requests for financial or other assistance by the voluntary body.
- 11. Power to make the Decision**
- 11.1 s81(4) Local Government Act 2000  
Standards Committees (Grant of Dispensations) (Wales) Regulations 2001

**Report To:** Standards Committee

**Date of Meeting:** 3<sup>rd</sup> April 2018

**Lead Member / Officer:** Gary Williams, Monitoring Officer

**Report Author:** Gary Williams, Monitoring Officer

**Title:** Application for Dispensation by Members of Llanbedr Dyffryn Clwyd Community Council

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**1. What is the report about?**

**1.1** This report is about an application for a dispensation made by members of Llanbedr Dyffryn Clwyd Council

**2. What is the reason for making this report?**

**2.1** To enable the Committee to consider the background to the request for a dispensation and the relevant legal provisions before making a determination whether to grant the dispensation.

**3. What are the Recommendations?**

**3.1** That the Committee considers the request for a dispensation and makes a determination whether to grant the dispensation and, if so, the terms upon which the dispensation is granted.

**4. Report details**

**4.1** The Members' Code of Conduct provides that a member of a local authority who has a prejudicial interest in any matter must withdraw from the chamber during the discussion of that matter and take no part in the consideration of that matter, unless the member has been granted a dispensation by the Standards Committee for that authority.

**4.2** s81(4) Local Government Act 2000 gives Standards Committees power to grant dispensations in accordance with regulations made by Welsh Ministers under s81(5) of that Act prescribing the circumstances in which they may do so.

**4.3** The relevant regulations are the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (the Regulations).

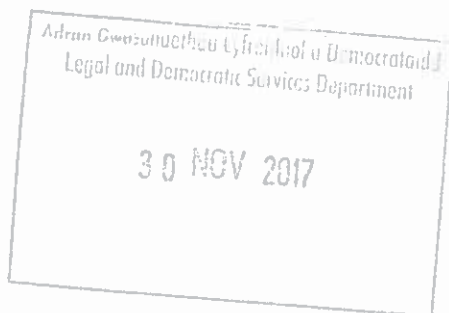
**4.4** The Monitoring Officer has received a request for a dispensation from the Clerk to Llanbedr Dyffryn Clwyd Community Council on behalf of the current members of the Community Council in respect of their membership of a voluntary body which is involved in the creation of a community hub at The Griffin Inn in the village of Llanbedr. A copy of this request is attached as Appendix 1. The request is signed by all of the current members of the Community Council.

- 4.5 The request explains that the Community Council may need to consider requests from this organisation for financial and other assistance and it is for this reason that the members of the Community Council seek a dispensation.
- 4.7 The Regulations set out the grounds upon which a Standards Committee may grant a dispensation. A copy of Regulation 2 of the Regulations is set out as Appendix 2 to this report and lists the circumstances in which a dispensation may be granted. It is suggested that the most relevant circumstances to this application are those set out in Regulation 2(a), (d), and (h)
- 4.8 If the Committee is minded to grant a dispensation it must consider whether it wishes to grant the dispensation as requested or whether to place any limitation or restriction on the operation of the dispensation, including the length of time for which the dispensation will be in force.
- 4.9 If a dispensation is granted, any member who has the benefit of it must still declare a personal interest in any business relating to the voluntary body and declare the existence and nature of the dispensation granted.
- 5. How does the decision contribute to the Corporate Priorities?**
- 5.1 The decision has no direct impact on the Corporate Priorities.
- 6. What will it cost and how will it affect other services?**
- 6.1 There no direct costs associated with this report.
- 7. What are the main conclusions of the Well-being Impact Assessment? The completed Well-being Impact Assessment report can be downloaded from the [website](#) and should be attached as an appendix to the report**
- 7.1 This report does not seek to introduce a change or a proposal that would require such an assessment.
- 8. What consultations have been carried out with Scrutiny and others?**
- 8.1 There has been no consultation with Scrutiny in respect of this matter.
- 9. Chief Finance Officer Statement**
- 9.1 There are no direct financial consequences as a result of 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 Members are not granted the dispensation the Town Council will be unable to consider requests for financial or other assistance by the voluntary body.
- 11. Power to make the Decision**
- 11.1 s81(4) Local Government Act 2000 Standards Committees (Grant of Dispensations) (Wales) Regulations 2001

# Cyngor Cymuned LLANBEDR D.C. Community Council

**IFAN GWYN DAVIES**  
Clerc y Cyngor/Clerk to the Council

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**Ein Cyf./Our Ref.**

**Eich Cyf./Your Ref.**

**Dyddiad/Date**

Mr G Williams  
The Monitoring Officer  
Denbighshire County Council  
PO Box 62,  
Ruthin LL15 9AZ

24<sup>th</sup> November 2017.

Dear Mr Williams,

## **Re: Llanbedr Dyffryn Clwyd Community Council Dispensation Request under Regulation 2**

I attach details of how the Community Hub for Llanbedr Dyffryn Clwyd Project evolved, culminating in the purchase of the Griffin Inn by a local resident, who wishes to work with the Council in order to implement the recommendations in the Cadwyn Clwyd Consultant's Report.

The Council's chairman and vice chairman have been invited to help set up the Management Group, which will be responsible for creating the Community Hub and will appoint tenants to run the retail activities recommended by the Consultants.

The Outline Business Plan recommended by the Cadwyn Clwyd Consultant works on the premise that a Community Benefit Society (CBS) will be formed as a legal entity. It is likely that some or even all Community Councillors will wish to join the CBS.

The Council wishes to be pro-active in working the new owner, with the support and guidance of Cadwyn Clwyd. There will be a need to obtain grants to refurbish the Griffin Inn and the Council will need to obtain membership of organisations who can assist this project such as Pub is The Hub, The Plunkett Foundation and the Wales Co-operative Centre. Membership fees range from £50 for the Wales Co-operative Centre to £75 for Supporter membership of the Plunkett Foundation.

It is likely that volunteer groups will need to be established to support key elements of the Hub and Councillors will wish to join one or more these groups.

At the May Local Government Elections, eight people were nominated for the nine seats on Llanbedr DC Community Council. Two Councillors have since resigned so we currently have only six Councillors.

The Consultant's Report (see Appendix 3) includes: *initial management costs will be raised through a mix of a Community Share Offer, a possible Community Council loan and grant aid.* We anticipate that the Management

Group and the volunteer groups may need to request further financial support from the Council. The Council is also considering an increase in its precept to cover the need to support this project.

As our quorum is three members, the Council feels the need to request a Grant of Dispensation from the Standards Committee under the 2001 regulations. We anticipate that the dispensation will be needed for a period of no longer than 12 months.

We feel that the circumstances in which dispensations may be granted are covered in:

2 (d), (e), (f), (i) and (j) – see Appendix 2.2 for our justification.

We would appreciate it if this request can be considered at the next Standards Committee Meeting on 8th December 2017.

I attach a copy of the formal letter which each of my current Councillors has signed requesting this Grant of Dispensation from the Standards Committee. I would appreciate your guidance of the procedure future Councillors would have to follow to obtain a Grant of Dispensation.

The attached Appendices include *A Brief Time Line of the Activities that led to the Community Hub Concept* – see Appendix 2.1

I can also provide copies of our minutes, Community Newsletters, the Consultant's survey of the Community and the results. 350 surveys were put out to villagers and 155 were returned, representing a 42% return.

I did not want to overload you and again would be happy to be guided by you what other supporting documentation you would require.

Yours Sincerely



Gwyn Davies,  
Clerk to the Council



# Cyngor Cymuned LLANBEDR D.C. Community Council

**IFAN GWYN DAVIES**

Clerc y Cyngor/Clerk to the Council  
Mr G Williams  
The Monitoring Officer

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Ein Cyf./Our Ref.

**Re: Llanbedr Dyffryn Clwyd Community Council Dispensation Request under Regulations 2**

Eich Cyf./Your Ref.

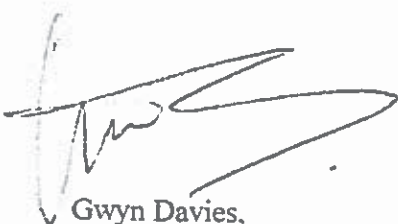
Dear Mr Williams

Dyddiad/Date 24/11/17

The undersigned members of Llanbedr Dyffryn Clwyd Community Council request a Grant of Dispensation from the Standards Committee under the 2001 regulations. We anticipate that the dispensation will be needed for a period of no longer than 12 months.

I attach below details of the Community Hub for Llanbedr Dyffryn Clwyd Project for which this Grant of Dispensation is being made.

Yours Sincerely



Gwyn Davies,  
Clerk to the Council

Cllr Lyn Evans Chair of Llanbedr Dyffryn Clwyd  
Community Council

*Lyn Evans*

Cllr Tim Baker Vice Chair of Llanbedr Dyffryn  
Clwyd Community Council

*Tim Baker*

Cllr Rhian Jones Chairman of Leisure & Environmental  
Areas Advisory Committee (LEAAC)

*Rhian Jones*

Cllr Linda Roberts Llanbedr Dyffryn Clwyd Community  
Councillor

*Linda Roberts*

Cllr Kenneth Tams Llanbedr Dyffryn Clwyd Community  
Councillor

*K. Tams*

Cllr Bob Barton Llanbedr Dyffryn Clwyd Community  
Councillor

*Bob Barton*

## **Appendix 2**

Status:  Law In Force

### **Standards Committees (Grant of Dispensations) (Wales) Regulations 2001/2279**

This version in force from: **April 1, 2016 to present**

(version 2 of 2)

#### **2. Circumstances in which dispensations may be granted**

The standards committee of a relevant authority may grant dispensations under [section 81\(4\)](#) of the Act where–

(a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;

(b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;

(c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;

(d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;

(e) the interest is common to the member and a significant proportion of the general public;

(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;

(g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;

(h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; [...] <sup>1</sup>

(i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed [; or] <sup>2</sup>

[(j) "it appears to the committee to be otherwise appropriate to grant a dispensation.

] <sup>3</sup>

## Notes

- <sup>1</sup> . Word revoked by Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016/85 [reg.4\(3\)\(a\)](#) (April 1, 2016)
- <sup>2</sup> . Word substituted by Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016/85 [reg.4\(3\)\(b\)](#) (April 1, 2016)
- <sup>3</sup> . Added by Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016/85 [reg.4\(3\)\(c\)](#) (April 1, 2016)

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**Subject:** Local government



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The Monitoring Officer

Denbighshire County Council

PO Box 62,

Ruthin LL15 9AZ

Dear Mr Williams,

**Re: Llanbedr Dyffryn Clwyd Community Council Dispensation Request under Regulations 2(h)**

The Council, at its meeting on 3rd September 2018, agreed to ask the Standards Committee to:

1. Extend the dispensation given to Cllr Lyn Evans and Cllr Tim Baker on 3rd April 2018;
2. Grant a dispensation to Cllr Dave Ritchie, whose appointment to the Griffin Community Hub Project's Management Committee was supported by the Council;
3. Grant an additional dispensation to each Community Councillor who wishes to purchase shares of The Griffin Community Benefit Society.

I attach a copy of the Griffin Community Hub Project July 2018 News Update. It shows the progress made on a wide range of fronts since the initial dispensation was given to Cllr Lyn Evans and Cllr Tim Baker.

The launch of the Prospectus for Shareholding for community ownership of "Our Griffin Ltd / Griffin Ni Cyfyngedig" Community Benefit Society has been delayed until the end of this month. This delay has been caused by a combination of the time taken to form the CBS, reg no 7819, which in turn has affected the time taken to create the share offer document. The Prospectus is currently awaiting validation approval from the Welsh Co-Op Shares Unit, which is expected to be given this week. The provisional timetable is:

- 21st September Open Day as prelude to the launch of the Share Offer Prospectus;
- 5th October Hard launch of the Share Offer Prospectus;
- 4th November Community Afternoon Tea to promote the Share Offer Prospectus;
- 17th November Share Offer closes.

The funds raised from these shares are crucial to the success of the Griffin Community Hub Project and this is one of the main reasons why our Councillors need the dispensation.

The bullet points in the July 2018 News Update shows key areas for which our Community Councillor members need dispensation, which includes:

- i. Overseeing the Planning Application 16/2018/0646, submitted on 11th July 2018 - which automatically comes to the Council for comment;
- ii. Overseeing the tendering and completion of the building work;
- iii. Overseeing the negotiations of the head lease and the sub-lease to the tenant.

The Griffin Community Hub Project's Management Committee has been advised to allow at least seven months for all of this to be done.

It is also highly likely that almost all of our Community Councillors will wish to purchase shares of “Our Griffin Ltd / Griffin Ni Cyfyngedig” Community Benefit Society and this could mean we would be unable to be quorate for key agenda items. However, as this will not be known until shortly after the next Standards Committee meeting, we would appreciate your guidance on how we should proceed once details of Councillor Shareholdings are known.

Please advise me if you need any further information.

Yours Sincerely

Gwyn Davies,

Clerk to the Council

### **Community Hub Report 2 July 2018**

1. Fleurets were commissioned, on the advice of “Pub is the Hub”, to report on the viability of the Griffin given location and current market conditions. The report is tabled at this Council meeting. We were pleased that Fleurets expressed an opinion that the pub is viable and could be both a successful and profitable concern. The figures quoted are challenging, but are linked to the expectation of the appointment of a tenant with wide experience in both wet and dry sales. The management group adopted the report. There would be a differential in the rent paid to the owner, essentially for the building in its present state, and the rent charged to a tenant post refurbishment, and that differential would form the basis of gradual returns to the community following a successful share offer.

2. Our Community Benefit Society application has been received by Wales Co-op and is being processed.

3. Negotiations have begun over a “Heads of Terms” agreement between Sian, the owner, and the management group.

4. We hope to launch our share offer within the next month or so. Our target for the refurb is yet to be finally decided but we are looking at £150,000 - £200,000.

5. We were very pleased that following an application to the Plunket Foundation, we were pronounced eligible for “fully-funded action planning support”. This is funded by the Esmée Fairbairn Foundation and we have met with our adviser, Kate Harrison, and had an extremely successful meeting (Kate is very experienced in exactly what we are trying to achieve) in which Kate began the process of guiding us through the share offer legalities and formalities. Work is beginning on drafting our share offer prospectus and we will meet again with Kate shortly.

6. Our current account stands at approximately £900, and our Cadwyn Clwyd account is just over £2,000, meaning that we have approx. £3,000 in hand. Out of this will have to come website launch and design and solicitor's fees for lease negotiations.

7. The Griffin is opening for Route 76 on the 14th of July and this is a venture mounted by Sian, who has promised to make a contribution, if successful, to the Community Hub funds.

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Dear Mr Williams,

I can now furnish you with the official reply to your email below dated 12 September 2018 as follows:-

1. The information included within my communication can be minuted/made public by the Standards Committee on the website etc.
2. A Community Council representative will be in attendance at the Standards Committee meeting.
3. The dispensation covers the three Councillors Lyn Evans, Tim Baker and Dave Ritchie only for the extension period sought.
4. The Community Council has agreed to consider applications from the "Our Griffin" for match funding grant projects, on the basis they are financially sound and for the benefit of the whole Llanbedr Community.

Yours sincerely,

Gwyn Davies,  
Clerk to Llanbedr Dyffryn Clwyd Community Council.

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**Report To:** Standards Committee

**Date of Meeting:** 21<sup>st</sup> September 2018

**Lead Member / Officer:** Gary Williams, Monitoring Officer

**Report Author:** Gary Williams, Monitoring Officer

**Title:** Public Services Ombudsman for Wales – Code of Conduct Casebook

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**1. What is the report about?**

The report is about the Code of Conduct Casebook produced by the Public Services Ombudsman for Wales (the Ombudsman).

**2. What is the reason for making this report?**

To inform the Committee of the most recent edition of the Ombudsman's Code of Conduct Casebook.

**3. What are the Recommendations?**

That members of the Committee note the information contained within the Code of Conduct Casebook.

**4. Report details.**

4.1 The Ombudsman has since 2013 produced a Code of Conduct Casebook (the Casebook). The Ombudsman had for some time previously produced a casebook relating to the complaints he investigated in respect of alleged maladministration by public bodies. Following calls for a similar approach to be taken with regard to code of conduct complaints, the Ombudsman began publishing the Casebook in 2013.

4.2 The Casebook was originally published twice a year, however the Ombudsman decided to produce the casebook on a quarterly basis from April 2015. The Casebook contains summaries of all of the cases in respect of which the Ombudsman has completed an investigation during the relevant period.

4.3 The production of a Casebook is intended to help Members and others in considering whether circumstances that they may be experiencing amount to a breach of the Code. This is an extension of the publication of real life examples in the Ombudsman's Guidance on the Code.

4.4 The casebook also assists local authority Standards Committees by giving them access to information about the way in which other Standards Committees in Wales are imposing sanctions and disposing of cases and help to explain why in some cases the Ombudsman may decline to investigate

alleged breaches on the basis that previous similar allegations have not resulted in a sanction.

- 4.5 Appendix 1 to this report contains Issue 17 of the Casebook published in July 2018 covering the period April 2018 to June 2018. Members will note that there are three case summaries in this edition of the casebook, one of which resulted in a finding that there was no evidence of a breach of the Code and two which resulted in a finding that no action was necessary. None of the cases relate to Councillors in Denbighshire.
- 4.6 The case in which there was a finding that there was no evidence of a breach involved a comment by a Councillor in which he had referred to some members of staff as being “dead men walking”. It was alleged by the complainant in this case that this comment put him in fear for his job. The Ombudsman investigated the complaint but found that there was no evidence to support the complaint that the comment was specifically directed at the complainant or that it was intended as a direct threat to anybody’s job.
- 4.7 Of the two cases that resulted in a finding that no further action was necessary, one related to the disclosure and registration of interests. In this case a member of Chepstow Town Council spoke on a matter in respect of which he had declared a prejudicial interest. The Ombudsman’s investigation found that it was likely that the member had spoken at the meeting in contravention of paragraph 14 of the Code, however, no further action was considered necessary since the Councillor had not sought any personal gain, had left the room for the vote, the Chair had indicated that he may speak and his preferred option was not in any event agreed by the Council. The member was however reminded by the Ombudsman of his responsibilities under the Code.
- 4.8 The second case resulting in no further action related to a breach of paragraph 7 of the Code which states that members must not, in their official capacity or otherwise, use or attempt to use their position improperly to create a disadvantage for another person. In this case a Councillor of Trellech United Community Council had written to an adjudicator of a competition, giving the impression that he was writing on behalf of the Council in an attempt to negatively influence the chance of a specific entry winning the competition. The Ombudsman considered this to be a breach of the Code, however, the entry subsequently won the competition so the Councillor’s intervention didn’t cause any disadvantage and in the Ombudsman’s view it was not in the public interest to refer the matter to a Standards Committee for a hearing.
- 4.9 There were no cases referred to either a Standards Committee or the Adjudication Panel for Wales.

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

The report has no direct impact on the corporate priorities.

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

There are no costs directly associated with the report.

**7. What are the main conclusions of the Well-Being Impact Assessment?**

This report does not require an impact assessment.

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

This matter has not been reported or consulted upon elsewhere.

**9. Chief Finance Officer Statement**

There are no direct financial consequences as a result of this report.

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

There are no risks directly associated with this report

**11. Power to make the Decision**

There is no decision required.

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# The Code of Conduct Casebook

Issue 17 July 2018

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## Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what

penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers April to June 2018.



## Case summaries

### No evidence of breach

Merthyr Tydfil County Borough Council – Promotion of equality and respect

Case Number: 201704719 – Report issued in April 2018

An employee (“the Complainant”) of Merthyr Tydfil County Borough Council (“the Council”) complained that, at a staff meeting, an elected member of the Council (“the Councillor”) had made reference to some members of staff being “dead men walking”. The Complainant said that the Councillor made further comments which led some members of staff to conclude that this phrase referred to him. The Complainant said that this put him in fear for his job.

The Ombudsman investigated the complaint on the basis that the Councillor may have breached the paragraphs 4(b), 4(c), 6(1)(a) and 7(a) of the Code of Conduct for Members (“the Code”), relating to showing respect, bullying behaviour, disrepute and creating a disadvantage for others.

In the absence of any formal record of the meeting, the Ombudsman interviewed a selection of those present, as well as the Councillor, the Complainant and his manager. The Ombudsman considered what the Councillor said, his explanation of what he had meant and how his comments had been received.

The Ombudsman found that although the Councillor had used the phrase “dead men walking” there was no evidence to support the complaint that the comment was specifically directed at the Complainant or that it was intended to be seen as a threat to anybody’s job. The Ombudsman concluded that there was no evidence that the Councillor had breached the Code.

## No action necessary

### Chepstow Town Council – Disclosure and registration of interests

Case Number: 201703539 – Report issued in May 2018

A complaint was received that a member of Chepstow Town Council (“Councillor A”) had participated in discussions about the future ownership and management arrangements for a local public facility at a meeting of the Town Council, despite having declared a prejudicial interest in the matter.

The Ombudsman’s investigation found that it was likely that Councillor A had spoken at the meeting, despite having a prejudicial interest in the item, contrary to the requirements of paragraphs 14(1)(a), (c) and (e) of the Code of Conduct.

The Ombudsman decided that despite the fact the evidence suggested that there had been a breach of the Code, no further action should be taken. This was because Councillor A did not stand to gain personally from any decision made, the evidence suggested that he had withdrawn from the room for the vote, his preferred option was not agreed by the Council, and the Chair of the Council had indicated that he could speak. The Ombudsman did, however, remind Councillor A of his responsibilities in relation to prejudicial interests.

### Trellech United Community Council – Objectivity and propriety

Case number 201700946 – Report issued in April 2018

The Ombudsman received a complaint that a Councillor (“the Councillor”) of Trellech United Community Council (“the Council”) had breached the Code of Conduct for members. It was alleged that the Councillor had breached the Code when he wrote to an adjudicator of a competition, giving the impression that he was acting as a representative of the Council, in an attempt to negatively influence the chance of a specific entry winning the competition and thereby creating disadvantage for a member of the public who would benefit if that entry was successful.

The Ombudsman investigated whether the Councillor’s actions amounted to a breach of paragraph 7(a) of the Code of Conduct which states that members must not, in their official capacity or otherwise, use or attempt to use their position improperly to create a disadvantage for another person.

The Ombudsman found that the Councillor, by writing to the adjudicator with information intended to lessen the likelihood of that specific entry winning the competition and by signing off that correspondence as a Councillor, may have breached paragraph 7(a).

The Ombudsman noted, however, that the entry subsequently won the competition, so the Councillor’s intervention did not actually cause a disadvantage to the person in question. The Ombudsman concluded that, on balance, it was not in the public interest to refer the matter to a Standards Committee or Adjudication Panel for Wales and, therefore, no further action should be taken.

## Referred to Standards Committee

There are no summaries in relation to this finding

## Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

## More information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to [Matthew.Aplin@ombudsman-wales.org.uk](mailto:Matthew.Aplin@ombudsman-wales.org.uk) or sent to the following address:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
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CF35 5LJ

Tel: 0300 790 0203  
Fax: 01656 641199

e-mail: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk) (general enquiries)

Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

Further information about the service offered by the Public Services Ombudsman for Wales can also be found at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

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<b>Report To:</b>	Standards Committee
<b>Date of Meeting:</b>	21 <sup>st</sup> September 2018
<b>Lead Member / Officer:</b>	Gary Williams, Monitoring Officer
<b>Report Author:</b>	Gary Williams, Monitoring Officer
<b>Title:</b>	<b>Granting of Dispensations</b>

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## 1. What is the report about?

The report is about the granting of dispensations by this Committee and the Guidance that it is proposed to give to Town, City and Community Councils as well as elected members of the County Council in respect of the process by which they may apply for a dispensation.

## 2. What is the reason for making this report?

The reason for making this report is to ask the Committee to approve an application form and guidance document for members of Town, City and community Councils as well as County Councillors in respect of applications for dispensations.

## 3. What are the Recommendations?

- 3.1 That the Committee considers the draft guidance and application form attached to this report as Appendices 1 and 2 respectively, and approves both documents subject to any amendments suggested by the Committee.

## 4. Report details

- 4.1 The Code of Conduct provides at paragraph 14(1) that a member who has a prejudicial interest in any matter must declare that interest and leave the chamber or room in which a meeting considering that matter is being held. The member must not seek to influence any decision about that matter and must not make any oral or written representations in respect of it.
- 4.2 Paragraph 14(3) allows a member with a prejudicial interest to take part in any meeting in respect of which they might have a prejudicial interest provided that they have a dispensation granted by the Standards Committee. Applications for a dispensation may be considered and granted by the Standards Committee if it is satisfied that there are one or more grounds contained within the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001.
- 4.3 The Committee has dealt with a number of applications for a dispensation in recent years, however, it may well be that there are members of Town, City and Community Councils in particular who may not be making use of this facility.

- 4.4 The process by which applications have hitherto been granted has been the submission of a letter from the Clerk to the relevant Council containing the background information relating to the application. Advice and assistance has been given by the Monitoring Officer or the Deputy Monitoring Officer to applicants on an ad hoc basis.
- 4.5 Given the relatively low number of dispensation applications it is suggested that all Clerks to City, Town and Community Councils are reminded of the circumstances in which such applications may be made. It is also suggested that a guidance document and a standardised application process would assist Clerks in dealing with applications on their members' behalf.
- 4.6 The draft guidance document attached as Appendix 1 to this report seeks to explain the circumstances in which a dispensation may be granted and the process by which it would be considered. An extract from the relevant Regulations is appended to the guidance document.
- 4.7 A draft application form is attached as Appendix 2 for the Committee's consideration.

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

The report has no direct impact on the corporate priorities.

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

There are no direct costs associated with this report.

**7. What are the main conclusions of the Well-being Impact Assessment?**

This report does not require a well-being impact assessment.

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

This report seeks the views of the Committee on the guidance document and the application form. There have been no other consultations.

**9. Chief Finance Officer Statement**

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

There is a risk that, without further guidance, there may be members of Councils who are unaware of their ability to apply for a dispensation, or take part in the consideration of matters in which they have an undeclared interest without the benefit of a dispensation.

**11. Power to make the Decision**

Section 8 County Council Constitution



## **Applications for the Grant of Dispensations by Standards Committee**

### **Guidance to Town, City and Community Councillors**

#### **Background**

The Model Code of Conduct provides at paragraph 14(1) that a member who has a prejudicial interest in any matter must declare that interest and leave the chamber or room in which a meeting considering that matter is being held. The member must not seek to influence any decision about that matter and must not make any oral or written representations in respect of it.

Paragraph 14(3) allows a member with a prejudicial interest to take part in any meeting in respect of which they might have a prejudicial interest provided that they have a dispensation granted by the Standards Committee.

#### **Grounds upon which an application may be based**

Applications for a dispensation may be considered and granted by the Standards Committee if it is satisfied that there are one or more grounds contained within the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001(the Regulations).

Under the Regulations, a Standards Committee may grant a dispensation where:

- (a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;
- (b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;
- (c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;
- (d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;
- (e) the interest is common to the member and a significant proportion of the general public;
- (f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;
- (g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;

- (h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business;
- (i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed
- (j) it appears to the committee to be otherwise appropriate to grant a dispensation.

It is important to note that the Standards Committee has a discretion in respect of the grant of dispensations. Even if one of the grounds is made out, the Standards Committee does not have to grant the dispensation. The Standards Committee will have to be satisfied that it is in all the circumstances appropriate to grant the dispensation.

The Standards Committee may apply conditions to the grant of a dispensation and may determine the period of time during which the dispensation will remain in force, for example, a dispensation may be granted for a single meeting or for a period of time. No dispensation will be granted for a period of time beyond the date of the next scheduled local government election.

### **Procedure**

An application must be submitted on the application form, a copy of which is appended as Appendix 1 to this document.

Additional information may be submitted with the application form. Where more than one member seeks a dispensation in respect of the same interest they should each sign the application form or submit individual applications.

It will usually be expected that the Applicant or one of the applicants attend the relevant meeting of the Standards Committee at which the application is to be considered.

At such a meeting, the Applicant will explain the reason for the application and answer any questions that the Standards Committee may have with regard to the application.

The Standards Committee may ask the Applicant to withdraw in order that the Committee may deliberate.

The Applicant will be provided with written confirmation within 7 days of the Standards Committee's decision in respect of the application together with details of any conditions attached to any dispensation that may have been granted.

**APPLICATION FOR DISPENSATION TO THE  
STANDARDS COMMITTEE**

**Appendix 2**

<b>Name of Councillor</b>	
<b>Address</b>	
<b>Ward</b>	
<b>Nature of Dispensation sought</b>	
<b>Level of Dispensation sought (i.e. to speak only or to speak and vote)</b>	
<b>Relevant Paragraph under which Dispensation is requested (see overleaf)</b>	
<b>Details of the Prejudicial Interest</b>	
<b>Details of any position of responsibility/control held on Council (e.g. Chairman/Vice-Chairman)</b>	

<b>Signed:</b>	<b>Date:</b>
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## **Circumstances when a Standards Committee may grant Dispensations**

The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 specifies that the Council's Standards Committee may grant dispensations under Section 81(4) of the Local Government Act 2000 where:

- (a) no fewer than half of the Members of the Council or of a committee of the Council (as the case may be) by which the business is to be considered has an interest which relates to that business;
- (b) no fewer than half of the Members of the Executive of the Council (i.e. Leader and Cabinet) by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;
- (c) Members' inability to participate would upset the political balance of the Council, or any of its committees by which the business is to be considered, to such an extent that the outcome would be likely to be affected;
- (d) the nature of the Member's interest is such that the Member's participation in the business to which the interest relates would not damage public confidence in the conduct of the Council's business;
- (e) the interest is common to the Member and a significant proportion of the general public;
- (f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise;
- (g) the registerable interest relates to business, which is to be considered by an Overview and Scrutiny Committee of the Council, and the Member's interest is not a pecuniary/financial interest;
- (h) the business relates to the finances or property of a voluntary organisation of whose management committee or board the Member is a member otherwise than as a representative of the Council and the Member has no other interest in that business, provided that any dispensation shall not extend to participation in any vote with respect to that business; or
- (i) it appears to the Standards Committee to be in the interests of the inhabitants of the area of the Council that the disability should be removed, provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within 7 days. Such a notification should specify the Member to whom the dispensation would apply and the Standards Committee's reasons why the disability should be removed.
- (j) it appears to the committee to be otherwise appropriate to grant a dispensation.

<b>Report To:</b>	Standards Committee
<b>Date of Meeting:</b>	21 <sup>st</sup> September 2018
<b>Lead Member / Officer:</b>	Gary Williams, Monitoring Officer
<b>Report Author:</b>	Gary Williams, Monitoring Officer
<b>Title:</b>	<b>Adjudication Panel for Wales – Sanctions Guidance</b>

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## 1. What is the report about?

The report is about the sanctions guidance (the Guidance) issued by the Adjudication Panel for Wales (APW) for use when a Councillor has been found to have breached the Members' Code of Conduct (the Code) by a Case Tribunal or an Appeal Tribunal. A copy of the Guidance is attached as Appendix 1 to this report.

## 2. What is the reason for making this report?

The reason for making this report is to bring the Guidance to the attention of the Committee.

## 3. What are the Recommendations?

3.1 That the Committee notes the content of the Guidance.

## 4. Report details

4.1 The APW has issued the Guidance primarily for the purpose of assisting the APW's Case Tribunals and Appeal Tribunals when considering the appropriate sanction to impose where a Councillor has been found to have breached the Code. The Guidance also seeks to fulfil a wider role of supporting all those, including local standards committees in making appropriate decisions as to sanction.

4.2 The Guidance has been issued by the APW pursuant to its powers under s75 (10) Local Government Act 2000 and came into effect on 1<sup>st</sup> September 2018.

4.3 The Guidance describes

- the role of the ethical framework and Code in promoting high public standards amongst members of relevant authorities in Wales,
- the role of the APW and the purpose of the sanctions regime
- the approach to be taken by Case and Appeal Tribunals of the APW in determining sanction once a finding of a breach has been made

4.4 The Committee is familiar with the ethical framework and the role of the APW. This report will refer to the types of tribunal convened by the APW, the purpose and range of sanctions open to them and their approach to sanction as set out in the Guidance.

- 4.5 The APW can establish three types of tribunal, a Case Tribunal, an Interim Tribunal and an Appeal Tribunal.
- 4.6 A Case Tribunal is an independent tribunal appointed by the President of the APW to consider an alleged breach of the Code where a full investigation has been conducted by the Ombudsman's office and the investigation report has been referred directly to the APW. If the Case Tribunal finds that the Code has been breached, the sanctions available to it are:
- Take no action
  - Suspend or partially suspend for up to 12 months
  - Disqualify for up to 5 years
- 4.6 An Interim Case Tribunal is an independent tribunal appointed by the President of the APW when an investigation is underway by the Ombudsman's office but the case is referred to the APW to consider whether the member under investigation should be suspended or partially suspended pending the completion of the investigation. The maximum period of suspension available in such cases is 6 months, or until the end of the investigation whichever is the lesser. In such cases the decision to suspend is a neutral act.
- 4.7 An Appeal Tribunal is an independent tribunal appointed by the President of the APW to consider appeals from members against decisions of local standards committees. Appeal Tribunals are responsible for reviewing the decision that a member has breached the Code and any sanction imposed. The Appeal Tribunal may overturn a finding that a member has breached the Code. If the Appeal Tribunal is satisfied that there has been a breach of the Code, it may uphold and endorse any sanction imposed by a standards committee or refer the matter back to the standards committee with a recommendation as to a different sanction. The Appeal Tribunal cannot recommend a sanction that was not available to the standards committee.
- 4.8 In determining the appropriate sanction the Guidance states that the APW must always have in mind the underlying principles of fairness, the public interest, proportionality, consistency, equality and impartiality. The appointed Tribunal must also act in accordance with Article 6 of the European Convention on Human Rights (ECHR) (the right to a fair hearing)
- 4.9 In addition, in some cases, the Tribunal will have to consider whether, in either considering whether a councillor has breached the Code, or in imposing a sanction, such a decision would be an infringement of that councillor's enhanced rights to freedom of speech under Article 10 of the ECHR.
- 4.10 The Guidance sets out a five stage process for a Tribunal to follow in determining sanction:
- Assess the seriousness of the breach and the consequences for individuals and/or the Council
  - Identify the broad type of sanction most likely to be appropriate to the breach
  - Consider any aggravating or mitigating factors
  - Consider any further adjustments necessary

- Confirm the decision on sanction and include an explanation of the sanction imposed

4.11 Paragraphs 34 to 66 of the guidance provide further detailed explanation of how these five stages should be approached, including advice on how to assess the seriousness of a breach. Consideration should be given to the nature and extent of the breach, the councillor's intentions, any previous breaches and the consequences of the breach for the Council or any individuals affected by the breach.

4.12 In considering a sanction Tribunals should start by considering the appropriateness of sanctions which will have the least impact. Paragraphs 36 to 38 give examples of behaviour that are likely to lead to harsher sanctions.

4.13 The Guidance is to be welcomed in that it gives a structure to the consideration of sanctions and is likely to assist not just the members of the APW but also members of local standards committee who deal infrequently with such matters.

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

There is no decision required.

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

There are no direct costs associated with this report.

**7. What are the main conclusions of the Well-being Impact Assessment?**

This report does not require a well-being impact assessment.

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

This report seeks the views of the Committee on the Guidance. There have been no other consultations.

**9. Chief Finance Officer Statement**

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

There is a risk that, without the Guidance there would be a lack of consistency across Wales in the determination of sanctions in such cases.

**11. Power to make the Decision**

Section 8 County Council Constitution

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## Sanctions Guidance

Issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000.

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### Foreword by the President

I am pleased to introduce our new *Sanctions Guidance* which sets out the approach to be taken by case, appeal and interim case tribunals of the Adjudication Panel for Wales in order to reach fair, proportionate and consistent decisions on the sanctions that should be applied in relation to an individual's breach of the local Code of Conduct.

The Guidance has been developed by members of the Adjudication Panel for Wales in consultation with the Public Services Ombudsman for Wales, Monitoring Officers and other interested parties. I would like to thank everyone for their contributions. In publishing this Guidance, I hope it will help all those with whom we share an interest in the Code - most importantly members of county and community councils, fire and rescue authorities, and national park authorities in Wales. I hope it reflects the importance we attach to the role of local members, the value of local democracy and the Adjudication Panel's commitment to promoting the highest standards in public life in Wales.

**Claire Sharp**  
President, Adjudication Panel for Wales

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## Introduction

1. This Guidance is issued by the President of the Adjudication Panel for Wales (APW) using powers available to her under the Local Government Act 2000<sup>1</sup>. Its primary purpose is to assist the APW's case, appeal and interim case tribunals when considering the appropriate sanction to impose on a member, or former member, who is found to have breached their authority's Code of Conduct.
2. This Guidance describes:
  - i. the role of the ethical framework and Code of Conduct in promoting high public standards amongst members of councils, fire and rescue authorities, and national park authorities in Wales;
  - ii. the role of the Adjudication Panel for Wales (APW) and the purpose of the sanctions regime;
  - iii. the approach to be taken by its tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of sanctions and this Guidance are built on the values that underpin the Code of Conduct, in particular the fundamental importance of promoting the highest standards in local public life. The Guidance aims to assist tribunals in determining sanctions that are, in all cases, fair, proportionate and consistent.
4. The Guidance is not prescriptive and recognises that the sanction decided by an individual tribunal will depend on the particular facts and circumstances of the case. Any examples should be considered to be by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider in addition to this Guidance other factors that they consider necessary and appropriate. Nor does the Guidance affect the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of relevant sections of this Guidance.
5. In setting out the factors to be considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparent approach for the benefit of all parties involved tribunal proceedings. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal is likely to arrive at its decision on sanction.
6. The Guidance seeks to fulfil a wider role and support all those with an interest in maintaining, promoting and adjudicating on the Code of Conduct. It aims to complement the statutory Guidance published by the Public Services Ombudsman for Wales<sup>2</sup>, confirming the expectations on local members in

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<sup>1</sup> Section 75(10) of the Local Government Act 2000 ("the 2000 Act") provides a power for the President of the Adjudication Panel for Wales to issue guidance on how its tribunals are to reach decisions

<sup>2</sup> The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils:

terms of their conduct and emphasising the central importance of public confidence in local democracy. It should be of value to individual members, Monitoring Officers and Standards Committees of county and county borough councils, fire and rescue authorities, and national park authorities in Wales, and the Public Services Ombudsman for Wales.

7. This Guidance comes into effect on 1 September 2018. It is a living document that will be updated and revised as the need arises, following consultation.

## Standards in Public Life

### The Code of Conduct

8. The Local Government Act 2000 introduced an ethical framework to promote high standards of conduct in public life in Wales. The framework's central mechanism is the Code of Conduct. All local authorities, community councils, fire and rescue authorities and national park authorities in Wales must have in place a Code of Conduct. All elected members and co-opted members (with voting rights) must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their term of office.
9. The Welsh Government has issued a model Code of Conduct<sup>3</sup> in order to ensure consistency across Wales and to give certainty to members and the public as to the minimum standards expected. The model Code is consistent with ten core principles of conduct<sup>4</sup> prescribed by the National Assembly for Wales in 2001, which are themselves derived from the Nolan Committee's Principles for Public Life<sup>5</sup>:
  - i. Selflessness
  - ii. Honesty
  - iii. Integrity and Propriety
  - iv. Duty to Uphold the Law
  - v. Stewardship
  - vi. Objectivity in Decision-making
  - vii. Equality and Respect
  - viii. Openness
  - ix. Accountability
  - x. Leadership

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Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

<sup>3</sup> The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008, as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

[www.legislation.gov.uk/wsi/2016/84/pdfs/wsi\\_20160084\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf) and  
[www.legislation.gov.uk/wsi/2016/85/pdfs/wsi\\_20160085\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf)

<sup>4</sup> The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

[http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi\\_20012276\\_mi.pdf](http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf)

<sup>5</sup> Nolan Report "Standards of Conduct in Local Government in England, Scotland and Wales"

Local codes must incorporate any mandatory provisions of the model Code and may incorporate any optional provisions of the model Code. At this time, all provisions of the model Code are mandatory.

### **Expectations on local members**

10. Members of county councils, county borough councils, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
  - whenever they are acting or present at a meeting of their authority, claiming to act or giving the impression of acting in an official capacity in the role of member to which they were elected or appointed or as a representative of their authority;
  - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute, or if using or attempting to use their position to gain an advantage or avoid a disadvantage for anyone or if they misuse the authority's resources.
11. Members are expected to engage in any training and access ongoing advice, as the need arises, from their local Monitoring Officer and Standards Committee. Members are also expected to be familiar with and have regard to the Public Services Ombudsman's statutory guidance on the Code<sup>6</sup>. It addresses each of the Code's requirements in order to help members understand their obligations in practical terms. It offers advice on the fundamental ethical principles that many members need to consider on a regular basis – for example, declarations of interest, confidentiality and whether their actions constitute bullying or harassment– in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the Code and the Principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

### **Allegations of breach**

13. There are non-statutory local protocols in place for low-level member-on-member complaints which do not result in case or appeal tribunals. Allegations that a member's conduct is in breach of the Code can be made to the Ombudsman, who will decide whether to investigate a complaint. If, following an investigation, the Ombudsman finds that there is evidence of a breach of the Code, he can refer his report to the relevant local Standards Committee or to the President of the Adjudication Panel for Wales. The Ombudsman may also refer reports from an ongoing investigation to the President for consideration by an interim case tribunal.

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<sup>6</sup> The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

## **The Adjudication Panel for Wales**

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales<sup>7</sup> as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Code. The Panel's operation is subject to regulation by the Welsh Government.

### ***Case tribunals***

15. Case tribunals are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction (if any).

### ***Appeal tribunals***

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may uphold and endorse any sanction imposed or refer the matter back to the Standards Committee with a recommendation as to a different sanction or overturn the determination of the Committee that there has been a breach of the Code. An appeal tribunal cannot recommend a sanction which was not available to the Standards Committee.

### ***Interim case tribunals***

17. Interim case tribunals are appointed by the President to consider a report, and any recommendation to suspend a member, from the Ombudsman during an ongoing investigation into alleged misconduct. The tribunal is responsible for determining the need to suspend, or partially suspend, the member or co-opted member from the authority or a role within the authority. The maximum duration of the suspension or partial suspension is 6 months. Unlike case and appeal tribunals, suspension by an interim case tribunal is a neutral act, given the ongoing nature of the Ombudsman's investigation.

## **The sanctions regime**

18. The Committee on Standards in Public Life<sup>8</sup> had a key role in developing the ethical framework and identified the need for mechanisms to enforce and punish public office holders who breached the standards expected of them, if the ethical framework was to command public credibility. The purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

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<sup>7</sup> Part III, Local Government Act 2000

<sup>8</sup> Reference to the report on enforcement

- provide a disciplinary response to an individual member's breach of the Code;
- place the misconduct and appropriate sanction on public record;
- deter future misconduct on the part of the individual and others;
- promote a culture of compliance across the relevant authorities;
- foster public confidence in local democracy.

19. The sanctions available to a case tribunal that has found a breach of the Code are<sup>9</sup>:

- a. to take no action in respect of the breach;
- b. to suspend or partially suspend the member from the authority concerned for up to 12 months;
- c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

The sanctions available to an appeal tribunal that has found a breach of the Code are:

- d. censure;
- e. to suspend or partially suspend the member from the authority concerned for up to 6 months.

20. The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.

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<sup>9</sup> Section 79, Local Government Act 2000

## **The Tribunal approach – underlying principles**

21. Tribunals must always have in mind that every case is different and requires deciding on its own particular facts and circumstances. Following a finding that the Code of Conduct has been breached, tribunals must exercise their own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors. They must also ensure that the sanctions take account of the following underlying principles in order to ensure that their decisions support the overall ambitions of the ethical framework, fulfilling the purpose of the sanctions, and are in line with the tribunal's wider judicial obligations.

### **Fairness**

22. The tribunal should take account and seek to find an appropriate balance between the various interests of the Respondent/Appellant, the Complainant, other interested parties to a case, the Ombudsman, the authority, the electorate and the wider public.

### **Public interest**

23. Whilst seeking to ensure that the sanction imposed is appropriate, fair and proportionate to the circumstances of the case, the tribunal should consider the reputation of and public confidence in local democracy as more important than the interests of any one individual.

### **Proportionate**

24. Tribunals will take account of the good practice identified in the Ombudsman's Guidance and Code of Conduct Casebook<sup>10</sup> in order to assist their sense of proportionality when determining the sanction appropriate to the scale and/or nature of the breach.

### **Consistent**

25. Tribunals will aim to achieve consistency in their sanctions in order to maintain the credibility of the ethical framework. They will take account of the good practice identified by the Ombudsman (para.24) in addition to this Guidance and its own previous decisions. Where a tribunal panel has reason to depart from the Guidance, it should clearly explain why it has done so.

### **Equality and impartiality**

26. Fair treatment is a fundamental principle for the Adjudication Panel for Wales and is embedded within individual members' judicial oath. Tribunals must ensure that their processes and practices safeguard their capacity for objective, independent and impartial decision-making, free from prejudice and partiality, in order to uphold their judicial responsibilities.

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<sup>10</sup> <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>



## Human Rights (Articles 6 and 10)

27. Tribunals must ensure that their processes and practices respect human rights. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Articles 6 and 10 of the European Convention on Human Rights in their deliberations. These articles enshrine the right to a fair hearing and freedom of expression.

28. Article 10 is a key provision when considering possible breaches of the Code. It provides that:

*“10(1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...”*

*10(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

29. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable. This protection does not extend to gratuitous or offensive personal comment, nor to ‘*hate speech*’ directed at denigrating colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

30. In their consideration of Article 10, tribunals should apply the three-stage approach established by Mr Justice Wilkie<sup>11</sup> in the case of *Sanders v Kingston (No1)* and which applies to both decision about breach and sanction, as follows:

- i. Can the Panel as a matter of fact conclude that the Respondent’s conduct amounted to a relevant breach of the Code of Conduct?
- ii. If so, was the finding of a breach and imposition of a sanction *prima facie* a breach of Article 10?
- iii. If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

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<sup>11</sup> Wilkie J in the case of *Sanders v Kingston No (1)* [2005] EWHC 1145

## **Case and Appeal Tribunals – determining sanction**

31. A tribunal will decide whether or not a sanction is appropriate after considering the facts of a case and finding that an individual has breached the Code of Conduct. In determining any appropriate sanction, the tribunal's approach should be sufficiently broad so as to accommodate its consideration of the various interests of those involved in the case, any specific circumstances of the individual respondent/appellant, the intended purpose of the sanctions available (in particular, the wider public interest) and the tribunal's wider judicial responsibilities.
32. Case tribunals will decide on the appropriate sanction to impose, if any, and the duration of any such sanction; appeal tribunals will consider the appropriateness of the sanction imposed by the Standards Committee.

## **The five-stage process**

33. Case and appeal tribunals will follow a five step process in determining sanction:
- 33.1 assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)
  - 33.2 identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)
  - 33.3 consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)
  - 33.4 consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions; (para.43)
  - 33.5 confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)

## **Assessing the seriousness of the breach**

34. The relative seriousness of the breach will have a direct bearing on the tribunal's decision as to the need for a sanction and, if so, whether a suspension or partial suspension (of up to 12 months) or disqualification (up to 5 years) is likely to be most appropriate. It is important to bear in mind though that appeal tribunals can only recommend a suspension (partial or full) for up to 6 months and cannot recommend disqualification due to the constraints upon its powers.
35. The tribunal will assess seriousness with particular reference to:
- the nature and extent of the breach, and number of breaches;

- the member’s culpability, their intentions in breaching the Code, and any previous breaches of the Code;
- the actual and potential consequences of the breach – for any individual(s), the wider public and/or the council as a whole;
- the extent to which the member’s actions have, or are likely to have the potential to, bring his/her office or the relevant authority into disrepute.

36. Examples of the way in which tribunals might weight seriousness include:

- a breach involving deliberate deception for personal gain or discrimination is likely to be regarded as more serious than that involving the careless use of a council email address on a personal social media profile;
- a breach involving the systematic harassment or bullying of a junior officer is likely to be regarded as more serious than instances of disrespectful language in the course of a council debate;
- a breach of confidentiality that results in the disclosure of the address of a looked after child is likely to be regarded as more serious than the disclosure of a planning officer’s confidential advice;
- a breach resulting in significant negative reputational damage to the office or authority is likely to be regarded as more serious than an inappropriately worded email to a member of the public.

37. Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority’s monitoring officer), the deliberate abuse of confidential, privileged or sensitive information for personal gain or that of a close personal associate, and sexual misconduct, criminal, discriminatory, predatory, bullying and/or harassing behaviour are all likely to be regarded as very serious breaches.

38. A member who is subject to a term of imprisonment for three months or more without the option of paying a fine in the previous five years before their election or since their election is automatically subject to disqualification<sup>12</sup>.

### Choosing the potential sanction

39. Having assessed the relative seriousness of the member’s breach of the Code, the tribunal will consider which of the courses of action available to it is most appropriate<sup>13</sup>. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact.

### No action

39.1 The tribunal may decide that, despite the member having failed to follow the Code of Conduct, there is no need to take any further action in terms of sanction. Circumstances in which a tribunal may decide that no action is required may include:

<sup>12</sup> Section 80(1)(d), Local Government Act 1972

<sup>13</sup> Section 79, Local Government Act 2000

- an inadvertent failure to follow the Code;
  - an isolated incident with extremely limited potential for consequential harm;
  - an acceptance that a further failure to comply with the Code on the part of the member is unlikely, nor are there any wider reasons for a deterrent sanction;
  - specific personal circumstances, including resignation or ill health, which render a sanction unnecessary and/or disproportionate.
- 39.2 A tribunal that finds a breach of the Code but decides that no action is necessary in terms of sanction, should consider whether there is a need to warn the member as to their conduct and/or seek assurances as to future behaviour. This provides an effective means of placing the member's behaviour on record, reflected in the tribunal's written decision, so that the warning and/or reassurance may be taken into account in the event of the same member being found to have breached the Code in the future. A failure to comply with any assurances given to the tribunal may be brought to the attention of the tribunal in any future hearings.

### ***Suspension for up to 12 months***

- 39.3 A case tribunal may suspend the member for up to 12 months from the authority(ies) whose Code/s has/have been breached.
- 39.4 Suspension is appropriate where the seriousness of the breach is such that a time-limited form of disciplinary response is appropriate in order to deter such future action, temporarily remove the member from the authority/a role within the authority, safeguard the standards set by the Code and to reassure the public that standards are being upheld.
- 39.5 A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions. Tribunals are also reminded that the highest sanction available to local Standards Committees is 6 months' suspension. They should bear this in mind when considering an Ombudsman's referral to the Adjudication Panel, in preference to the local Standards Committee, and when considering an appeal against a local Standards Committee sanction. It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee.
- 39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:
- the member's action has brought the member's office or authority into disrepute but they have not been found in breach of any other paragraph of the Code (though the most appropriate sanction will depend on the specific facts of each case);

- the breach merits a disciplinary response but, in view of the circumstances of the case, it is highly unlikely that there will be a further breach of the Code;
- the member has recognised their culpability, shown insight into their misconduct, and apologised to those involved.

### ***Partial Suspension for up to 12 months***

- 39.7 The tribunal may impose a partial suspension, preventing the member from exercising a particular function or role (such as being a member of a particular committee or subcommittee or the holder of a particular office) for up to 12 months.
- 39.8 Partial suspension is appropriate where the seriousness of the breach merits a suspension (see above) but the circumstances of the case are such that the member is permitted to continue in public office except for the role/function/activity specifically limited by the suspension.
- 39.9 In the case of a partial suspension, the tribunal will need to decide from what role/function/activity the member is to be suspended and, in the case of membership of more than one authority, the impact of the partial suspension in each relevant authority.
- 39.10 Circumstances in which a partial suspension may be appropriate include:
- the member is capable of complying with the Code in general but has difficulty understanding or accepting the restrictions placed by the Code on their behaviour in a specific area of council/authority activity;
  - the misconduct is directly relevant to and inconsistent with a specific function or area of responsibility held;
  - the member should be temporarily removed or prevented from exercising executive functions for the body to which the Code applies.

### ***Disqualification for a maximum of 5 years***

- 39.11 A case tribunal may disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.
- 39.12 Disqualification is the most severe of the sanctions available to a tribunal. It is likely to be appropriate where the seriousness of the breach is such that a significant disciplinary response is appropriate in order to deter repetition, make clear the unacceptable nature of such conduct in public office, underscore the importance of the Code and to safeguard the public's confidence in local democracy. A disqualification of less than 12 months is unlikely to be meaningful (except in circumstances when the term of office of the member is due to expire during that period or is no longer a member).

39.13 Circumstances in which a tribunal may decide that a disqualification is appropriate may include:

- deliberately seeking personal gain (for her/himself, a family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking to disadvantage another by exploiting membership of the authority and/or the authority's resources;
- deliberately disregarding or failing to comply with the provisions of the Code and continuing to assert the right so to do;
- repeatedly failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a second or subsequent breach, despite a warning and/or having given an assurance as to future conduct in a previous case before an Adjudication Panel for Wales tribunal;
- conduct that calls into question the Respondent's fitness for public office;
- bringing the relevant authority into serious disrepute.

#### **Mitigating and aggravating circumstances**

40. The tribunal will go on to consider how any particular circumstances of the member may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the member's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. This process is likely to have significant bearing on the duration of the sanction, varying the term down or up in line with the mitigating or aggravating factors. Such factors may at times be sufficient to persuade a tribunal that a suspension (if any) may be more appropriate than a disqualification, and vice versa.

41. Tribunals are encouraged to work through the examples set out below but are reminded that these are not exhaustive. Where any mitigating/aggravating factor relates directly to the nature or seriousness of the breach and the tribunal has already considered that factor in its choice of appropriate sanction, care should be taken as to the extent to which that factor is included in mitigation/aggravation. For example:

- if the sanction under consideration is a suspension because the conduct is regarded as a 'one off', this factor should not also be regarded as mitigating unless the 'one off' nature of the breach is so exceptional that it should have a direct bearing on the length of the suspension;

- if the breach is regarded as serious because it includes ‘bringing the authority into disrepute’, this factor should not also be regarded as aggravating unless the disrepute is so exceptional as to have a direct bearing on the length of the disqualification.

42. Tribunals should also take care to respect a member’s legitimate right to appeal and to distinguish protestations or assertions made in the course of exercising that right from those actions that might be regarded as aggravating factors designed to obstruct the processes of the Ombudsman or Adjudication Panel.

### *Mitigating circumstances*

- i. substantiated evidence that the misconduct was affected by personal circumstances, including health and stress;
- ii. a short length of service or inexperience in a particular role;
- iii. a previous record of good service (especially if over a long period of time);
- iv. the misconduct was a one-off or isolated incident;
- v. that the member was acting in good faith, albeit in breach of the Code;
- vi. the misconduct arose from provocation or manipulation on the part of others;
- vii. the breach arose from an honestly held, albeit mistaken, view that the conduct involved did not constitute a failure to follow the Code, especially having taken appropriate advice;
- viii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- ix. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see paragraphs 27-30 above and Aggravating factor xii below);
- x. self-reporting the breach;
- xi. recognition and regret as to the misconduct and any consequences;
- xii. an apology, especially an early apology, to any affected persons;
- xiii. co-operation in efforts to rectify the impact of the failure;
- xiv. co-operation with the investigation officer and the standards committee/APW;
- xv. acceptance of the need to modify behaviour in the future;
- xvi. preparedness to attend further training;
- xvii. commitment to seeking appropriate advice on the Code in the future;
- xviii. compliance with the Code since the events giving rise to the adjudication.

### **Aggravating factors**

- i. long experience, seniority and/or position of responsibility;
- ii. seeking to unfairly blame others for the member's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or close personal associate) benefit or disadvantage for another;
- iv. deliberate exploitation of public office and/or resources for personal (for her/himself, a family member or close personal associate) or political gain;
- v. abuse or exploitation of a position of trust;
- vi. repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
- vii. dishonesty and/or deception, especially in the course of the Ombudsman's investigation;
- viii. lack of understanding or acceptance of the misconduct and any consequences;
- ix. refusal and/or failure to attend available training on the Code;
- x. deliberate or reckless conduct with little or no concern for the Code;
- xi. deliberately or recklessly ignoring advice, training and/or warnings as to conduct;
- xii. the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others (see paragraphs 27 – 30 above);
- xiii. obstructing and/or failing to co-operate with any Ombudsman's investigation, Standards Committee, and/or the Adjudication Panel for Wales's processes;
- xiv. refusal to accept the facts despite clear evidence to the contrary;
- xv. action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xvi. failure to heed previous advice and/or warnings and to adhere to any previous assurances given as to conduct relevant to the Code.
- xvii. Previous findings of failure to follow the provisions of the Code.
- xviii. Continuing to deny the facts, despite clear evidence to the contrary.

### **Fulfilling the purpose of the sanctions regime**

43. The tribunal may need to consider further adjustments to the chosen sanction or length of sanction in order to achieve an appropriate deterrent effect, for the



individual and/or the wider council membership, or to maintain public confidence. Tribunals will also need to have regard to external factors that may exacerbate or diminish the impact of the chosen sanction.

### ***Public interest***

44. The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.

### ***Eligibility for public office in other relevant authorities***

45. Disqualification will automatically apply to a Respondent's current membership of all authorities to which the Local Government Act 2000 applies, irrespective of whether the other authorities' Codes have been breached. Disqualification will also prevent the Respondent from taking up public office, through election or co-option, on any other authorities to which the Act applies until the expiration of the disqualification period.

46. A suspension will preclude the member from participating as a member of the authority whose Code s/he has been found to have breached but not necessarily any other authorities of which the Respondent/Appellant is a member. Where the facts of a case call into question the member's overall suitability to public office, a disqualification may be more suitable than a suspension.

### ***Former members***

47. In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate (this can only apply in case tribunals). This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected. For appeal tribunals, a censure remains an option.

### ***Financial impact***

48. Tribunals should take into account the financial impact on members of a sanction: during suspension and disqualification, a member will be denied payment of their salary and allowances. The financial impact varies from an annual expenses reimbursement for community councillors to a basic salary

plus expenses for county councillors to the higher salaried paid to leaders of larger councils<sup>14</sup>.

### ***Impact on the electorate***

49. The High Court has recognised that Parliament has expressly provided case tribunals with a power to interfere with the will of the electorate and that such ‘interference’ may be necessary to maintain public trust and confidence in the local democratic process. Tribunals should be confident in their right to disqualify members whose conduct has shown them to be unequal to fulfilling the responsibilities vested in them by the electorate.
50. Suspension has the effect of temporarily depriving the electorate of local representation whereas disqualification triggers a process, either by-election or co-option, to replace the disqualified member.

### ***Timing of local elections***

51. In general, the length of a disqualification should be determined in relation to the nature of the breach and circumstances of the case, and be applied irrespective of the imminence or otherwise of local elections. There may be exceptional times when the duration of a disqualification might have a particularly disproportionate effect on the member. For example: a disqualification of 18 months, imposed in December 2020, would prevent a member from standing for local government election until May 2027, as the period of disqualification would overlap the May 2022 elections by one month. Tribunals should be willing to hear submissions as to why the length of disqualification should be varied, whilst bearing in mind the overriding public interest principle.

### ***Automatic disqualifications***

52. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more (whether suspended or not). That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the case tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification.

### ***Confirming the sanction***

53. Tribunals should confirm their final determination on sanction, notifying the hearing and recording it in the decision notice. Tribunals will make sure that the reasons for their determination, including any significant mitigating and aggravating factors, are included in the full written record of proceedings in order to ensure that the parties and the public are able to understand its conclusions on sanction.

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<sup>14</sup> <http://gov.wales/irpwsb/home/?lang=en>

## Recommendations

54. Case tribunals also have the power to make recommendations<sup>15</sup> to the relevant authority whose Code it has considered about any matters relating to:

- the exercise of the authority's functions
- the authority's Code of Conduct;
- the authority's Standards Committee.

55. The authority to whom the recommendations are made is under a duty to consider them within three months and then prepare a report for the Ombudsman outlining what the action it, or its Standards Committee, has taken or proposes to take. If the Ombudsman is not satisfied with the action taken or proposed, he/she has the power to require the authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them. As such, tribunals are advised to consider their use of this power with care.

## Interim case tribunals – determining sanction

56. Interim case tribunals will decide, after considering a report (including any recommendation) from the Ombudsman on an ongoing investigation into alleged misconduct, whether to suspend or partially suspend, the member or co-opted member from the authority or a role within the authority.

57. Unlike case and appeal tribunals, interim case tribunals are not disciplinary. Interim case tribunals aim to:

- facilitate the Ombudsman's effective and expeditious investigation of the respondent's conduct;
- minimise any disruption to the business of the authority concerned during the investigation;
- maintain the reputation of the authority concerned;
- protect the authority concerned from legal challenge.

58. The powers available to an interim case tribunal<sup>16</sup> are to suspend the Respondent, wholly or partially from being a member or co-opted member of the authority concerned, for not more than six months (or, if shorter, the remainder of the member's term of office). In the case of a partial suspension, the interim case tribunal will need to decide from what activity the respondent is to be suspended.

## Purpose and process

59. Interim case tribunals recognise that no definitive finding has yet been made on the validity of the allegations about the Respondent and that any form of suspension can have a significant impact on a member's role, credibility and finances.

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<sup>15</sup> Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

<sup>16</sup> Section 78(1), Local Government Act 2000

60. Interim case tribunals will therefore seek to take the minimum action necessary to ensure the effective completion of the investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The tribunal will only decide on full suspension if its aims cannot be met otherwise.

### ***The nature of the allegation(s)***

61. Interim case tribunals will start by considering the nature of the allegations against the Respondent in order to decide whether, if the allegation were substantiated, a suspension or partial suspension would be an appropriate sanction.

### ***No action***

62. If the tribunal concludes that neither suspension nor partial suspension would follow a finding of breach, it is highly unlikely to make such an order without compelling reasons as to why the Ombudsman's investigation cannot effectively proceed without such action.

63. If the tribunal concludes that a finding on breach would result in a suspension or partial suspension, it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the Ombudsman completing his investigation and referring a final report to the Adjudication Panel for Wales.

### ***Partial Suspension***

64. Partial suspension offers the possibility of safeguarding public confidence in an authority and enabling it to function effectively without depriving the member's constituents of ward representation. Interim case tribunals may wish to draw on the principles that apply to case and appeal tribunals' approach to partial suspension.

65. Partial suspension may be appropriate in circumstances where the allegations are directly relevant to and inconsistent with a specific function or area of responsibility held or the Respondent exercises executive functions for the authority whose Code s/he is alleged to have breached or – the Respondent may be excluded from their specific or executive responsibilities in order to reassure the public whilst not undermining the authority's ability to function effectively or depriving the electorate of their division/ward representation.

### ***Suspension***

66. Suspension is likely to be appropriate if there is a legitimate concern as to any of the following:

- the Respondent may interfere with evidence or with witnesses relevant to the matter under investigation;
- the business of the authority concerned cannot carry on effectively if the Respondent were to continue in office whilst the allegation against him or her

remained unresolved – the tribunal will have particular regard to any breakdown or potential breakdown in relations between the Respondent, other members and/or key staff of the authority;

- the allegations raise issues of such gravity that they jeopardise public confidence in the authority concerned if the Respondent were to continue in office whilst the allegations remained unresolved.

## **Annex: other documents and guidance relevant to tribunals**

Adjudication Panel for Wales : Members Handbook (2017)

Public Services Ombudsman for Wales –The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016)

Equal Treatment Bench Book, Judicial College (as amended)

The Adjudications by Case Tribunals and Interim Case Tribunals (Wales Regulations 2001 No. 2288 (W.176), as amended by the Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)

The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001 No. 2281 (W171), as amended by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 No. 85 (W.39)

## STANDARDS COMMITTEE FORWARD WORK PROGRAMME

DATE OF MEETING	REPORT ITEMS / AREAS	REPORT AUTHOR
<b>30 November 2018</b>	Standing Item: Attendance at Meetings	N/A
	Standing Item: PSOW Code of Conduct Casebook	Gary Williams (Monitoring Officer)
	Standing Item: Standards Committee Forward Work Programme	Gary Williams (Monitoring Officer)
	Standing Part 2 Item: Overview of Complaints in Denbighshire	Gary Williams (Monitoring Officer)

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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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