

To: Members of the Democratic  
Services Committee

Date: 8 March 2021

Direct Dial: 01824 712589

e-mail: democratic@denbighshire.gov.uk

Dear Councillor

You are invited to attend a meeting of the **DEMOCRATIC SERVICES COMMITTEE** to be held at **10.00 am** on **FRIDAY, 12 MARCH 2021 VIA VIDEO CONFERENCE**.

Yours sincerely

G Williams  
Head of Legal, HR and Democratic Services

## **AGENDA**

### **1 APOLOGIES**

### **2 DECLARATIONS OF INTEREST (Pages 3 - 4)**

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

### **3 URGENT ITEMS**

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 (Pages 5 - 10)**

To receive the minutes of the Democratic Services Committee meeting held on the 2 October 2020 (copy attached).

### **5 MEMBER AREA GROUP TERMS OF REFERENCE (Pages 11 - 28)**

To receive a report from the Democratic Services Manager (copy enclosed) reviewing and updating the terms of reference for the Member Area Groups.

### **6 INDEPENDENT REMUNERATION PANEL FOR WALES ANNUAL REPORT 2021 - 2022 (Pages 29 - 114)**

To receive a report by the Democratic Services Manager on the Independent Remuneration Panel for Wales' Annual Report for 2021/22 (copy enclosed).

**7 DRAFT REVISED GUIDANCE ON THE CODE OF CONDUCT** (Pages 115 - 260)

To consider a report by the Monitoring Officer (copy enclosed) informing members about a consultation being conducted by the Public Services Ombudsman for Wales, (the Ombudsman) about new draft guidance for elected members on the Code of Conduct.

**8 FORWARD WORK PROGRAMME**

To consider a verbal report by the Democratic Services Manager.

**MEMBERSHIP**

**Councillors**

Joan Butterfield  
Rachel Flynn  
Hugh Irving  
Alan James  
Gwyneth Kensler

Christine Marston  
Andrew Thomas  
Rhys Thomas  
Graham Timms  
Joe Welch

**COPIES TO:**

All Councillors for information  
Press and Libraries  
Town and Community Councils

## LOCAL GOVERNMENT ACT 2000

### Code of Conduct for Members

### DISCLOSURE AND REGISTRATION OF INTERESTS

I, *(name)*

a \*member/co-opted member of

*(\*please delete as appropriate)*

**Denbighshire County Council**

**CONFIRM** that I have declared a **\*personal / personal and prejudicial** interest not previously declared in accordance with the provisions of Part III of the Council's Code of Conduct for Members, in respect of the following:-

*(\*please delete as appropriate)*

Date of Disclosure:

Committee *(please specify)*:

Agenda Item No.

Subject Matter:

Nature of Interest:

*(See the note below)\**

Signed

Date

\*Note: Please provide sufficient detail e.g. 'I am the owner of land adjacent to the application for planning permission made by Mr Jones', or 'My husband / wife is an employee of the company which has made an application for financial assistance'.

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## DEMOCRATIC SERVICES COMMITTEE

Minutes of a meeting of the Democratic Services Committee held remotely via WebEx on Friday, 2 October 2020 at 10.00 am.

### PRESENT

Councillors Rachel Flynn, Hugh Irving, Alan James (Chair), Gwyneth Kensler, Christine Marston, Andrew Thomas, Rhys Thomas and Graham Timms.

Lead Member for Corporate Services and Strategic Direction Councillor Richard Mainon.

Observer: Councillor Peter Scott

### ALSO PRESENT

Head of Legal, HR & Democratic Services (GW), The Democratic Services Manager (SP), Scrutiny Coordinator (RE) and Committee Administrators (SAJ and SW).

The Local Democracy Reporter was also in remote attendance to observe proceedings.

### POINT OF NOTICE

Due to the current restrictions on travel and requirement for social distancing as a result of the coronavirus pandemic the meeting was held remotely by video conference and was not open to the general public. All members had been given the opportunity to attend as observers and the Local Democracy Reporter had also been invited to observe.

#### 1 APOLOGIES

Apologies were received from Councillor Joe Welch.

#### 2 DECLARATIONS OF INTEREST

The Head of Legal, HR and Democratic Services confirmed that all members present would have a personal interest in agenda item 7 – Independent Remuneration Panel for Wales Annual Report 2020 / 2021, as it determined Councillor salaries. This was not regarded as being a prejudicial interest under the Code of Conduct.

All Councillors present declared a personal interest in the Independent Remuneration Panel for Wales' Annual Report 2020/21.

#### 3 URGENT ITEMS

No urgent matters had been raised.

#### 4 MINUTES

The minutes of the Democratic Services Committee's meeting held on the 04 October 2019 were submitted.

Councillor Rachel Flynn noted that she had sent her apologies for the previous meeting but it had not been recorded. It was:

***Resolved: - that the minutes of the Democratic Services Committee meeting held on 04 October 2019 be received and approved as a true and correct record.***

## **5 COVID-19 RECOVERY PLAN FOR DEMOCRATIC SERVICES**

The Lead Member for Corporate Services and Strategic Direction introduced the report (previously circulated) and gave a brief background to the work that had taken place during the Covid-19 pandemic. It was highlighted that all involved had worked extremely hard to maintain services where possible. Clarification was provided on the decisions that had been made using the emergency powers. The Leader had the power to make a decision that would otherwise have been made at a Cabinet meeting. This delegated decision process had only been adopted twice to do this and Cabinet members had seen the reports prior to a decision being made.

The Head of Legal, HR and Democratic Services explained to date the only method for holding meetings with a simultaneous translation service was through the platform Zoom. It was confirmed work into implementing Zoom for public meetings was on going. Members were informed on the technical issues that had occurred to update the Council Chamber to enable hybrid meetings, and for those meetings to be webcast. It was confirmed that a number of meetings had resumed with the full schedule of meetings being held from September 2020.

Members thanked the Lead Member and officers for the information provided, during the discussion the following points were raised:

- Prior to the Covid -19 pandemic the law stated that hybrid meetings allowed 70% of members to attend remotely as long as 30% of members attended the meeting room and that all could be seen and heard. It was reported that the Welsh Government had always been keen for local Councils to hold remote meetings. Those regulations had been relaxed during the pandemic stating Local Authorities could hold completely remote meetings. Further regulations and guidance was expected.
- Members felt that the communication with the group leaders during the pandemic had worked well. With group leaders passing on information and comments to members at weekly group meetings, for any feedback to Cabinet.
- The questionnaire asking for feedback on remote meetings had closed, the Democratic Service's Manager (DSM) stated he would see if it was possible to re-open the questionnaire for those who had not completed it. The working group would examine the feedback from the member questionnaire.
- The Council had agreed to hold Zoom meetings for public meetings that required simultaneous translation only, once able to do so. It was witnessed that other Authorities had held Zoom meetings with few problems. The DSM confirmed the intention to publically broadcast and translate meetings to Welsh remained a priority.

- The DSM stated he would email the complete membership of the working group membership to members. Nominations had been sought from groups through the group leaders.
- Remote working would have a benefit to the carbon emissions and footprint for Denbighshire.

Members thanked officers for the detailed response to questions and concerns. It was,

**RESOLVED**, that members note the recovery plan and the democratic arrangements as set out in the report.

## **6 ANNUAL REPORT OF THE COUNCIL'S SCRUTINY COMMITTEE 2019/20**

The Chair of the Scrutiny Chairs and Vice-Chairs Group (CSCVC), Councillor Graham Timms introduced the report (previously circulated), to seek members' comments prior to its submission to Annual Council.

It was noted that previous annual reports had highlighted key areas of Scrutiny work. It was highlighted this annual report had included concise information on the work of each Scrutiny.

Members were informed of a new feature within the report. This section had focused on the work Scrutiny had done linked to the Corporate Plan. The CSCVC stated this had been received well with the group and showed the important work done by Scrutiny.

Particular reference to the late Councillor Huw Jones had been made within the report, paying tribute to his commitment to his Council work. Thanks to Councillor Hugh Irving for chairing the Performance Scrutiny Committee during the past year had also been noted.

A report on the Joint Overview and Scrutiny Committee had been included which emphasised the difficulty observed arranging these meetings. It was hoped these meetings would continue and develop over the next year. The CSCVC explained brief reports on the task and finish groups and their findings, the scrutiny of Audit Wales Reports and community engagement had been included in the overall report. Members wanted to offer thanks to the Scrutiny Co-ordinator for the time, dedication and hard work that had been put into the report and the ongoing Scrutiny arrangements.

The Scrutiny Co-ordinator (SC) emphasised the difficulty of arranging the Joint Overview Scrutiny. It was confirmed that a meeting had been scheduled for November to be held remotely. It was hoped that this delivery method may be easier for members to attend.

During discussion members were reminded that the role of Scrutiny was to assist and challenge Cabinet and the decisions Cabinet and officers made. Members felt the work of Scrutiny to be very valuable. The SC emphasised the Task and Finish Groups had influenced policies and procedures within the Council.

It was explained that the formal meetings prior to the Covid-19 pandemic had an obligation to publish agendas and papers before the meeting. Those formal meetings had to be made accessible to the public. The committee was reminded that Denbighshire's Welsh Language Standards required public meetings to facilitate bilingual contributions through the use of an interpreter. Until the council was in a position to hold public meetings again the local democracy reporter was being invited to attend Council and committee meetings.

Confirmation was provided by the SC that the Chairs and Vice Chairs group had reviewed the Forward Work Programmes of scheduled reports. Confirmation was given that no reports had been removed due to the Covid-19 pandemic.

Members were pleased to hear that as familiarity with remote meetings grew the pre-meeting briefings for Scrutiny members would recommence.

***RESOLVED***, that the Democratic Service Committee note the Annual Report of the Scrutiny Committees for 2019/20.

**At this juncture (11.15 a.m.) there was a 15 minute break.**

**The meeting reconvened at 11.30 a.m.**

## **7 INDEPENDENT REMUNERATION PANEL FOR WALES ANNUAL REPORT 2020 / 2021**

The Democratic Services Manager (DSM) introduced a report (previously circulated) in respect of the Independent Remuneration Panel for Wales' (IRPW) annual report for 2020 / 21.

The IRPW was required to produce an annual report setting out the levels at which members were paid for various duties and responsibilities for the municipal year. This report was published in February 2020. It was confirmed that the IRPW had decided to provide an increment of £350 to each councillor with no additional increases beyond that to be paid to senior salary holders in 2020.

Denbighshire County Council had a cap of 17 senior salaries that could be paid. The IRPW had requested particular attention by the Democratic Service committee be made to Determination 9 and 10 within the annual report.

The following areas were discussed in greater depth by members:

- The senior salary provided to the leader of the largest opposition group was a salary the authority has to make. Some members raised concerns that the other group leaders were not getting the same financial recognition as the Leader of the largest opposition group. Members asked for the DSM to feedback to the IRPW their concerns on the legal requirement to offer a salary to the Leader of the largest opposition group and not all group leaders. Clarification and reasoning from the IRPW was sought.

- Denbighshire County Council currently have 2 Senior Salaries available. Confirmation that the decision of who received the senior salary roles was a Full Council decision.
- Members felt caution was needed when looking at the allocation of Senior Salaries to members. The Head of HR, Legal and Democratic Services explained how the current allocation of senior salaries was distributed.
- The diversity aspect of the report was important. Confirmation that the Welsh Government had an action plan for diversity within local authority representation was provided.
- Members felt that a good broadband connection was essential. With the introduction of remote meetings, it would be crucial for a good internet connection to enable members to access meetings. The IRPW report had no additional funding available to support the addition of technology, devices and broadband connection. These would be issues to be resolved by individual local authorities.
- Members asked if the allocation of the senior salary payments could be reviewed by the new ways of working group. Any work that would be made by that working group would be presented back to the Democratic Service Committee. Councillor Timms felt that the decision to review the salaries of senior members was a decision for the next Council not present members, he was not in agreement that the working group needed to review the current arrangements.

It was;

**RESOLVED, that**

- the Democratic Services Committee notes the determinations of the Independent Remuneration Panel for Wales for 2020/21 in respect of the payment of basic, senior and civic salaries and payments to co-opted members.*
- That the Democratic Services Committee considered the level of support provided to members to carry out their duties, with regard to 'Determinations' 9 and 10 of the Annual Report.*
- That a request would be made to the new ways of working group to look at the allocation of senior salaries to report back to this committee.*

## **8 ANNUAL REVIEW OF POLITICAL BALANCE AND APPOINTMENT OF SCRUTINY CHAIRS**

The Democratic Services Manager (DSM) guided members through the report (previously circulated), presenting the membership details for each committee. He highlighted the committees that required representation from groups to complete their membership.

During the discussion members referred to recent changes in Scrutiny membership that had been required from changes to political group membership. It was noted that the changes to group membership had resulted in a change of political balance that affected certain committees and groups.

Emphasis was given to the difficulties certain political groups experienced. Particular reference was made to the difficulties faced for Planning Committee

membership due to the Welsh Government regulations in place relating to multi-member wards. Confirmation was given that the group leaders and members would discuss and agree membership for the Planning Committee where 2 members of the same ward expressed an interest in being on the committee.

The Head of Legal, HR and Democratic Services (HLHDS) suggested that the concerns of the committee be highlighted to group leaders to look at membership of committees with particular emphasis on Planning Committee membership. Members were in agreement that such concerns should be raised with group leaders.

The Chair thanked the officers for the report, he stated it was very informative and useful. It was,

***RESOLVED***, that the Democratic Service Committee note the report on the political balance position for the allocation of committee seats. It was agreed that the HLHDS would ask group leaders to review the current membership for the Planning Committee.

## **9 COMMITTEE TIMETABLE 2021**

The Democratic Service Manager (DSM) guided members through the proposed Committee timetable for the next meeting cycle (previously circulated). The DSM gave thanks to the Committee Clerk Kath Jones for producing the proposed timetable.

Members were informed that the timetable would be presented for approval at the next meeting of Full Council. Previous agreements on how the timetable was developed had been adhered to where possible. The August recess had been included as seen in previous years. The decision to change the cycle of meetings was for Full Council.

The Chair and members thanked the DSM and Committee staff for the work that had gone into preparing the report. It was,

***RESOLVED***, that the Democratic Services Committee recommend the approval of the committee timetable for 2021 to full Council.

## **10 FORWARD WORK PROGRAMME**

The Democratic Service Manager (DSM) introduced a verbal report on the Committee's forward work programme.

The members were informed that the work programme was currently unpopulated but would be populated following the timetable for 2021 meetings being approved by full Council.

***RESOLVED*** that the verbal update be noted.

**The meeting concluded at 12:45 p.m.**

<b>Report to</b>	Democratic Services Committee
<b>Date of meeting</b>	12 March 2021
<b>Lead Officer</b>	Steve Price, Democratic Services Manager
<b>Report author</b>	Democratic Services Manager
<b>Title</b>	Member Area Group Terms of Reference

## 1. What is the report about?

1.1. This report is about reviewing and updating the terms of reference for the Member Area Groups.

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

2.1. The Democratic Services Committee's views on the re-drafting of the terms of reference will assist in the process of updating the terms of reference and addressing any issues that the Committee considers requiring attention.

## 3. What are the Recommendations?

3.1. That the Democratic Services Committee considers the draft Member Area Group terms of reference (appendix 1) and, subject to comments, endorses the draft for further consultation.

## 4. Report details

4.1. The existing terms of reference for the Member Area Groups (MAGs) date from 2012 and need to be updated to reflect the many changes that have occurred over the years. This document is attached as appendix 2.

4.2. The existing terms of reference are relatively basic in their scope and are silent on many of the procedural questions that regularly arise and are difficult to

resolve without an agreed position. This lack of clarity can be responsible for disagreements in respect of the 'rules' and remits.

- 4.3. The draft terms of references seeks to provide updated, clear and acceptable positions on a range of procedural issues, and to improve clarity on the roles and remits of the MAGs that will assist members and officers as they participate in MAG meetings.
- 4.4. Appendix 3 shows the guidelines used for the MAG Chairs, Senior Leadership Team representatives and Committee Officers to support effective and efficient member area arrangements.

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

- 5.1. There is no direct contribution to the corporate priorities.

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

- 6.1. There are no new costs or impacts on services from the draft terms of references.

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

- 7.1. The terms of reference are not a new initiative; this is a clarification exercise to support the existing Member Area Groups in an effective and efficient manner. A Well-being impact assessment is not required for this report.

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

- 8.1. The Democratic Services Committee is the appropriate committee to consider matters applicable to all 6 of the Member Area Groups. Further consultation will be undertaken with members and the Senior Leadership Team.

## **9. Chief Finance Officer Statement**

- 9.1. A Chief Finance Officer Statement is not required for this report.

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

10.1. The adoption of the draft terms of reference should not pose any risk to the operation of the Member Area Groups as it seeks to clarify and update terms and proceedings to reflect the current circumstances.

## **11. Power to make the decision**

11.1. This report is part of a consultation exercise and does not seek a formal decision.

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# Member Area Groups

## Terms of Reference

4<sup>th</sup> March 2021

# Terms of Reference

## Role and Purpose

There shall be six advisory Member Area Groups (MAGs) covering between them the whole area of the County. These MAGs will be as shown below and as illustrated on the attached plans.

- Dee Valley
- Denbigh
- Elwy
- Prestatyn and Meliden
- Rhyl
- Ruthin

The MAGs are not decision-making bodies but they do have important advisory and consultative functions regarding the Council's service provision, engagement and development within their areas. The MAGs may also facilitate consultation and engagement with other organisations in relation to activities in the MAG area.

Consultations with the MAGs on local service provision, proposals and decisions are likely to lie within a MAG's remit. For example, services of the Council may consult and seek to obtain the agreement or recommendations of the MAGs on their activities within the MAG areas.

## What is not within a MAG's Remit?

Issues that do not affect a MAG area or its inhabitants to a greater extent than other areas or regions may be unsuitable for a MAG meeting. The Council has a Scrutiny function that is able to scrutinise wider strategic or county-wide issues and such matters can be referred to Scrutiny for consideration using the Council's Scrutiny Proposal Form process.

Each MAG's Senior Leadership Team adviser will offer advice to the MAG on the suitability and options for issues being proposed for a MAG's forward work programme.

## **Membership**

All councillors who represent a ward, or part of a ward, within the area covered by a MAG will be entitled to attend and participate fully in the MAG's proceedings. For the purposes of the agendas and attendance statistics, councillors whose wards are wholly or largely within the MAG area will be shown as 'members' of the MAG on agenda sheets and their attendance or non-attendance will contribute to their attendance statistics on the Council's intranet site. A councillor whose ward is primarily located in another MAG area will be shown as 'also invited' on agenda sheets and their absence from a MAG meeting will not be reflected in their attendance statistics.

The 'also invited' members will have the same rights to participate and vote at MAG meetings as those whose wards are entirely within the MAG area and they may undertake any roles as agreed by the MAG, for example as chair or vice chair of the MAG or as a representative of the MAG on another body.

## **Chair and Vice Chair**

A Chair and Vice Chair for each MAG will be appointed at the first meeting following the Council's Annual Meeting, or whenever a vacancy occurs.

## **Voting**

MAGs do not have delegated decision-making powers but will be required to determine their work programmes, agree responses to requests for representatives to be appointed and agree responses to consultations or recommending actions within their terms of reference.

Any matter will be decided by a simple majority of those members voting and present in the meeting at the time the question was put. If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

For the avoidance of doubt, all councillors representing a ward or part of a ward within a MAG's area will be entitled to take part in any votes at a MAG's meetings.

## **Quorum**

The quorum for a MAG meeting is two voting members. If there are no more than two voting members present at a MAG meeting, the chair presiding will not have a second or casting vote.

## **Forward Work Programmes**

Each MAG will maintain a forward work programme for items to be considered at future meetings. The MAG will clarify the details of any items agreed for the forward work programme i.e. ensuring they are adequately described and have such information on the appropriate service, officers or lead members as is available at the meeting.

## **Attendance and Observers at MAG meetings**

Councillors who do not represent a ward wholly or partially within a MAG area will not be permitted to attend that MAG's meetings, unless they are invited to do so by the MAG itself.

The press and public will not be permitted to attend except at the specific invitation of the MAG.

The attendance by appropriate lead members and officers for agenda items at a MAG meeting is expected insofar as:

- reasonable notice has been given;
- the item(s) requested are within the MAG's remit to consider; and
- a reasonable explanation of the issues the MAG wishes to consider have been appropriately communicated.

The MAGs may request information or participation from external organisations, individuals and sources. These may include external public service providers; representatives of the voluntary and private sectors; city, town and community councils within their area; expert witnesses or advisers.

## **Support for the MAGs**

A member of the Council's Senior Leadership Team (SLT) will be appointed to support and provide advice to each MAG. Committee Officers from the Democratic Services team will provide committee support for MAG meetings.

## **Document Distribution and Access**

The agenda and meeting documents for each of the MAGs will be available to all members of the Council.

Documents will be automatically stamped with '*not for publication*' and '*restricted*' watermarks to reflect that the agendas and documents for MAG meetings are not published. However, '*restricted*' does not necessarily mean '*confidential*'. The onus is on the MAG or any member who wishes to circulate MAG information externally to the Council to ensure that the information in question is not confidential or sensitive. The MAG's SLT Advisor or the Democratic Services Manager will be able to provide guidance and advice.

## **Filming and Use of Social Media during Meetings**

Filming and use of social media is not permitted during MAG meetings without the consent of the majority of members present at the meeting. As private meetings, the MAG will take into consideration any requirements for confidentiality for the business being transacted before agreeing to filming or the use of social media.

## **Disturbance at Meetings**

If a member or participant at a MAG meeting persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may issue a warning on their conduct. If the misbehaviour continues the Chair may rule that the member or participant will not be heard further.

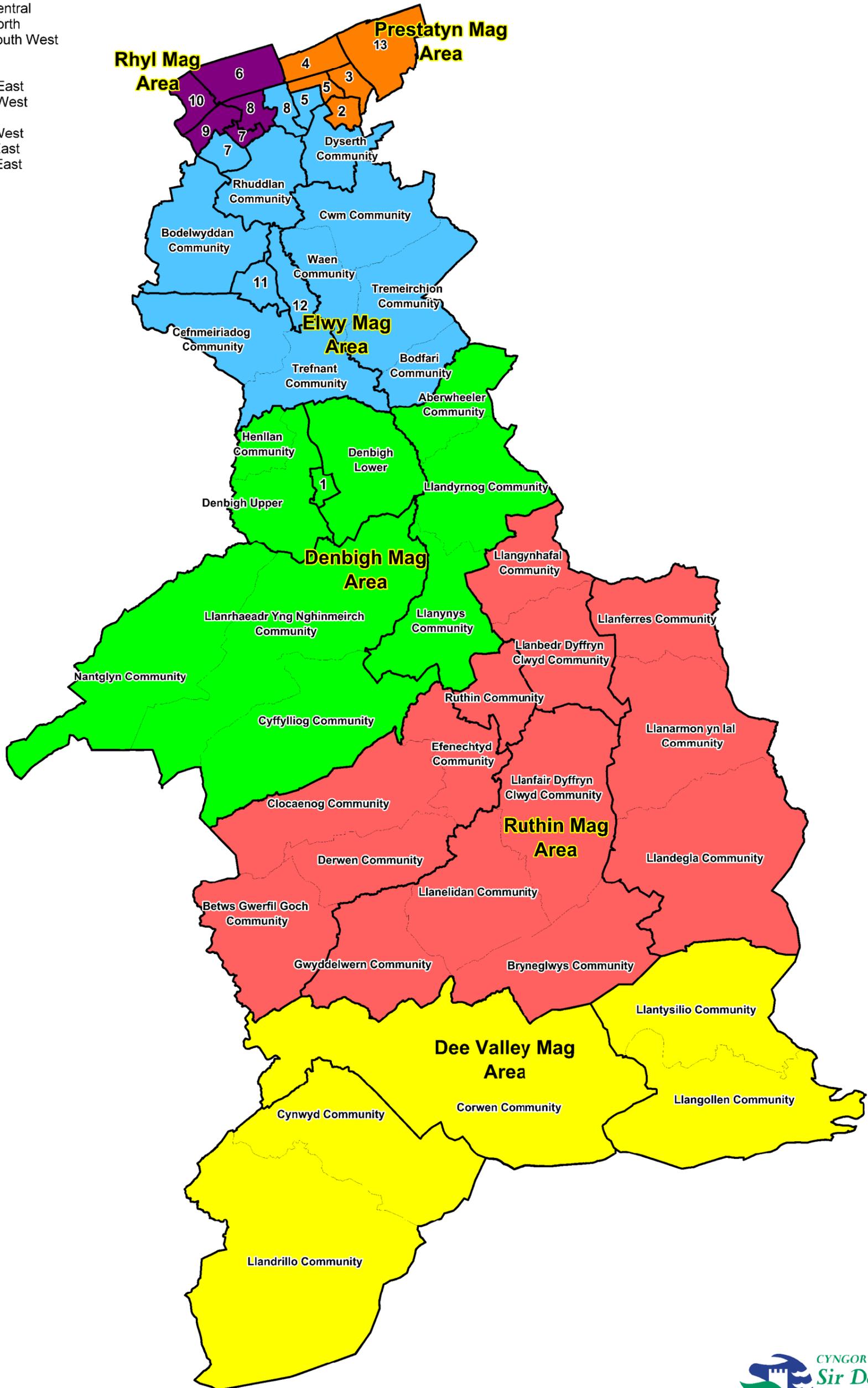
Where the behaviour is making orderly business impossible the Chair may request the consent of the MAG for the removal of the member or participant from the meeting. A member removed from the meeting will be entitled to attend future MAG meeting.

In exceptional circumstances of a general disturbance the Chair may adjourn the MAG meeting for as long as the Chair thinks necessary.

*Note: the Council's standing orders (Council Procedure Rules) do not apply to the MAGs but, subject to the above arrangements, may be followed at the discretion of the Chair presiding at a MAG meeting.*

**Electoral Divisions**

1. Denbigh Central
2. Prestatyn Meliden
3. Prestatyn Central
4. Prestatyn North
5. Prestatyn South West
6. Rhyl East
7. Rhyl South
8. Rhyl South East
9. Rhyl South West
10. Rhyl West
11. St Asaph West
12. St Asaph East
13. Prestatyn East





# **Members Area Group**

## **Terms of Reference**

### **Nov 2012**

**1.** Member Area Groups (MAGs) will exist for the following areas:

- Rhyl
- Prestatyn
- Elwy
- Denbigh
- Ruthin
- Dee Valley

**2.** MAGs are closed County Council meetings. They will be chaired by a County Councillor and agenda items will be determined by the County Councillors in each MAG.

**3.** The purpose of MAGs is to:

- review service provision in the area;
- use local data to plan improvements within the community;
- agree community capital funding priorities and where appropriate agree its distribution;
- agree road improvement priorities;
- monitor the implementation of the Town Plans and their links to the wider area;
- when appropriate, consider how assets can be used within an area to best effect
- receive or refer items for discussion, review or comment;
- monitor the effect of the corporate priorities at local level;
- influence the corporate, financial and business planning processes of the Council;
- inform the development of the 'Big Plan' and monitor its Action Plan;
- act as a consultative group and where appropriate nominate representatives;

Any decisions or recommendations relating to the above will be made by County Councillors only.

- 4.** Meetings will take place 6 times per annum on a bimonthly basis.
- 5.** Meetings will be supported by a 'Coordinating' officer with appropriate administrative support who will convene meetings, arrange the agendas, supporting documentation, attendance, minutes and follow up work, securing proper linkages to other structures within the Council or partner organisations.
- 6.** Meetings will also be supported by an identified officer at SLT level.
- 7.** Data from area profiles and the Welsh Index of Multiple Deprivation, together with service and partners' intelligence on the area, will be used to focus the debates on key issues affecting the area. The action plans relating to Town Plans will also feature prominently in MAG considerations.
- 8.** MAGs will be able to refer matters to the 3 Scrutiny Committees (predominantly Communities Scrutiny, but this will be dependent on the issue referred). The Scrutiny Co-ordinating Group will be tasked with coordinating the items referred from MAGs to Scrutiny. It will be the responsibility of the relevant Scrutiny Committee to decide whether or not items considered should be referred to Cabinet.
- 9.** In addition to the regular County Liaison and Cluster meetings with T&CC, each MAG has an important role in underpinning the Charter and promoting our relationship with T&CC. At the discretion of each MAG they may wish to invite relevant Town and Community Council representatives to meet the area MAG on an occasional basis.
- 10.** Each MAG will be open to County Councillors in that area only, however partners such as T&CC, Local Health Board, police etc may be invited to discuss specific agenda items.
- 11.** MAGs will be encouraged to meet in various facilities within the area in order to develop a better understanding of all the assets within the area.

## Facilitation of Member Area Group Meetings, Forward Work Programme and Activities

	<i>Responsibilities</i>
Chair of Member Area Group	To chair the MAG meetings: introduce items and contributors; manage the debate; summarise conclusions and confirm resolutions, actions or requests; time management of the agenda.
	To lead on clarifying items agreed for the forward work programme i.e. ensuring they are adequately described and have such information on the appropriate service, officers or lead members as is available at the meeting.
	To lead on clarifying amendments, deletions or re-scheduling of items on the forward work programme that are agreed at a MAG meeting.
	To liaise with the supporting Head of Service to accept or decline items raised outside of a MAG meeting onto the forward work programme <sup>1</sup> and to inform the Committee Administrator of new items or changes to the forward work programme.
	<i>Responsibilities</i>
Head of Service (for the MAG)	To assist the Chair and members to clarify information on items being added to the forward work programme (the issues or information being sought, responsible service, officers or lead members, appropriate timescales for bringing items to a MAG meeting).
	To inform the Chair and members about issues relevant to the MAG meeting agenda or forward work programme.
	To advise the Chair and members on Council procedures and activities as appropriate.
	To advise the Chair of the MAG on proposed items raised outside of a MAG meeting for the forward work programme and to inform the Committee Administrator of new items or changes to the forward work programme.

<sup>1</sup> The Member Area Groups determine their own forward work programmes and agendas with advice from the supporting Head of Service

	To identify the responsible service, officers or lead members for actions or information requested by the MAG. <sup>2</sup>
	To advise the MAG on whether information supplied to the MAG is of a confidential or sensitive nature, or whether it can be shared more widely or publically.
	<i>Responsibilities</i>
<i>Committee Officer</i>	To organise meeting dates, times, venues, refreshments and equipment.
	To maintain the MAG forward work programme.
	To liaise with reporting officers, issue invitations, provide information on the reports or issues requested by the MAG and on the proceedings and arrangements for the MAG meeting.
	To liaise with the Chair of the MAG on the timings to be included on the agenda.
	To produce, distribute and store on the mgintranet agenda packs for each MAG meeting.
	To attend and minute MAG meetings.
	To advise on protocols and arrangements for MAG meetings.
	To assist reporting officers or lead members in the provision of equipment required for their reports or presentations at MAG meetings.
	To note in the minutes and circulate actions or information requested by the MAG to the responsible service, officer or lead member.
	To remind the Chair, Head of Service and members to adequately identify and describe information for items being added to the forward work programme.

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<sup>2</sup> The Committee Officer role will not usually extend to undertaking activities on behalf of the MAG such as research, collection or collating of data or information etc. The Head of Service to identify the appropriate service, officer or lead member for these activities.



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<b>Report to</b>	Democratic Services Committee
<b>Date of meeting</b>	12 March 2021
<b>Lead Member / Officer</b>	Councillor Richard Mainon / Steve Price
<b>Report author</b>	Democratic Services Manager
<b>Title</b>	Independent Remuneration Panel for Wales Annual Report 2021 - 2022

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

- 1.1. The report is about the Independent Remuneration Panel for Wales' (the 'Panel') annual report for 2021- 2022.

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

- 2.1. To advise of the Panel's determinations for 2021 - 2022 in respect of payments to elected and co-opted members.

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

- 3.1. That the Committee notes the determinations of the Independent Remuneration Panel for Wales for 2021 – 2022 in respect of the payment salaries and payments to co-opted members.
- 3.2 That the Committee considers the level of support provided to members to carry out their duties, with regard to 'Determinations' 9, 10 and 40 of the Annual Report.

## **4. Report details**

- 4.1. The Independent Remuneration Panel for Wales was established in 2008. The Panel's remit and functions were extended in the Local Government (Wales) Measure 2011. The Panel's remit includes councillors, other members of national park authorities, Welsh fire and rescue authorities and community and town councils in addition to county and county borough councils. The Panel is able to stipulate the

actual amount of payment an authority may make to a member and the duties and responsibilities which may qualify councillors to receive payments.

- 4.2. The Panel is required to produce an annual report setting out the levels at which members are to be paid for various duties and responsibilities for the coming municipal year. The Local Government (Wales) Measure 2011 requires local authorities to implement the recommendations of the Panel. The 2021 - 2022 annual report is attached as appendix 2.
- 4.3. The Panel's report sets out three bands of Council and the maximum number of senior salaries that each council may pay. These groupings are set out in Table 2 of the annual report. Table 3 sets out the basic salary and senior salaries that shall be payable to members of councils in each group.
- 4.4. This year the Panel has decided to provide an increment of £150 to £14,368 a year to the basic salary for each councillor. Senior salaries will be increased by 1.06% to the figures shown in table 3 of the Annual Report.
- 4.5. The Panel has noted that councils have strongly expressed their wish for the Panel to set the payments for civic salaries (for the Chair and Vice Chair of Council). The Panel has determined that the Chair of Council will be paid at £23,161 and the Vice Chair at £18,108 – both inclusive of the basic salary. These equate to Band 3 and Band 5 rates respectively.
- 4.6. The Panel remains firmly of the view that maintaining the democratic values of local government is not cost free. Publicly funded remuneration is made available to encourage a diversity of willing and able local people to undertake local government, through their elected, appointed or co-opted roles.
- 4.7. Senior Salary Band 1 and 2 – The Panel has determined five bands of Senior Salary. Band 1 includes the Leader and Deputy Leader and Band 2 includes other Cabinet Members. In the Panel's discussions with elected Members across Wales in 2013 and 2017 there was a consistent view expressed that leadership with executive roles carried the greatest accountability. The Panel retains its view that the size of population remains a factor in influencing levels of responsibility and has therefore retained the 3 population groups (A, B and C) as set out in Tables 2 and 3 of the annual report for the purposes of setting the number of senior salaries available and the level of the Senior Salaries in Bands 1 and 2. It should be noted that in order to

reduce costs Denbighshire appoints 8 Cabinet posts from the maximum of 10 posts it could appoint, which results in a greater range of portfolio responsibilities for each Cabinet member.

- 4.8. Denbighshire has set the number of its senior salary payments (the number of Cabinet and committee chair allowances being paid) at 2 below the maximum allowed by the Panel for an authority of Denbighshire's size.
- 4.9 Band 3 – For the coming year, committee chairs (if remunerated) will be paid £23,161 (inclusive of the basic salary). In Denbighshire's case there are fewer scrutiny committees than in most other authorities and the importance of the chairing roles for the other committees such as the Planning and Licensing Committees should be noted.
- 4.10 Band 4 and 5 – The Panel has taken the view that the payment of the leader of the largest opposition group is important for local democracy. The Panel have therefore continued their previous determination that this Senior Salary (band 4) must be paid. The payment corresponds to the level of payment for committee chairs. The Panel has previously noted that very few leaders of other political groups have been allocated a salary in Welsh authorities. The Panel has determined that where such salaries are paid the level should be at £18,108.
- 4.11 Co-opted Members with Voting Rights – Table 6 of the Panel's report has the fees for co-opted members with voting rights which are based on an attendance allowance and time commitment of up to 4 hours (a half day fee) or 4 hours or more (a daily fee). The Panel allows co-opted voting members to include travelling time and reasonable time for pre-meeting preparation and has increased the daily payment rate for ordinary co-opted members by £12 to £210.
- 4.12 Mileage Rates – Authorities can only reimburse travel costs for their members undertaking official business. There is to no change to the mileage rates.
- 4.13 Presiding Member - The Local Government Democracy Act 2013 allows local authorities to appoint a presiding member who would chair the business meetings of the Council in addition to a civic leader. A Council may also appoint a deputy presiding member. Where appointed, a presiding member would be paid at the Band 3 level (committee chair salary) and the post would contribute towards the cap on the

number of senior salaries that can be paid. The post of deputy presiding members would not receive a payment.

- 4.14 Joint Scrutiny Committees – Two or more authorities can establish joint scrutiny committees as Denbighshire and Conwy have done with the establishment of the Joint Scrutiny Committee for the Public Services Board. The Panel has determined that the salary level for a Chair of a Joint Overview and Scrutiny Committee would be £8,793 and £4,396 for a Vice Chair. Payments to chairs of Joint Overview and Scrutiny Committees or Sub Committees would be additional to the maximum number of senior salaries permitted, but would be counted in respect of the total number of senior salaries not exceeding 50% of a council's membership.
- 4.15 Town, Community and City Councils – for town, city or community councils (all referred to here now as 'community councils') the Panel in 2018 grouped community councils into 3 groups (A, B and C) based on their income or expenditure in the previous financial year, whichever is the highest. Those below £30,000 are in Group C, between £30,000 and £199,999 are in Group B and those with £200,000 and above are in Group A (see table 8 of the Panel's report).
- 4.16 Community councils in all 3 groups must now make available a payment to each of their members of £150 per year for the costs incurred on council business e.g. telephone usage and IT costs. Receipts are not required for these payments.
- 4.17 Group A community councils must make available an annual payment of £500 each to at least 1 of their members and up to a maximum of 5 members in recognition of specific responsibilities. This is in addition to the payment of £150 for costs and expenses. Group B and C councils are able to decide whether they make a payment of £500 to up to 5 members in recognition of specific responsibilities (in addition to the £150 payments for costs and expenses).
- 4.18 County councillors on Cabinet cannot receive any payment from any community council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance. However, this does not preclude them from taking on a senior role without payment.

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

5.1. This report outlines the decisions taken by the Panel and does not in itself contribute to the corporate Priorities.

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

6.1. The Panel's annual report largely continues the current payment levels. The increase in the basic, senior and civic salaries equates to £16,502 a year for all members with a slight increase in costs from the voting co-opted members which will be dependent on the amount of official business they are asked to undertake.

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

7.1. This report is made in accordance with statutory obligations and the determinations of the Independent Remuneration Panel for Wales. An impact assessment is not required for this report.

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

8.1. The Panel consults nationally on the draft contents of each annual report.

## **9. Chief Finance Officer Statement**

9.1. Not required for this report.

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

10.1 The majority of the payments (basic salaries, leader of the largest opposition group, co-opted members with voting rights) set out in the annual report have to be made available and a budget has been allocated to cover the payments.

## **11. Power to make the decision**

11.1 Section 111 Local Government Act 1972 / Local Government (Wales) Measure 2011

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<b>SENIOR SALARIES</b>	<b>ANNUAL AMOUNT (includes basic salary)</b>
<b>ROLE</b>	
Leader of the Council	£44,921
Deputy Leader of the Council	£31,783
Executive Member (Cabinet member)	£27,741
Committee Chairs	£23,161
Leader Of The Largest Opposition Group	£23,161
<b>CIVIC SALARIES</b>	<b>ANNUAL AMOUNT (includes basic salary)</b>
<b>ROLE</b>	
Civic Head (Chair)	£23,161
Deputy Civic Head (Vice Chair)	£18,108

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# Independent Remuneration Panel for Wales

## Annual Report

February 2021

# **ANNUAL REPORT 2021/2022**

## **FOREWORD**

As with very many organisations the coronavirus pandemic has impacted on the work of the Panel. However, we have continued to meet regularly to carry out our statutory function via Microsoft Teams.

We completely understand the implications that the pandemic has had and continues to have on all local authorities in Wales, so the proposals contained in the draft Annual Report published on the 28 September 2020 limited the extent of the changes to our Remuneration Framework 2021/2022. We consider that it is important that the payments to elected members of principal councils should not fall further behind average earnings so the modest increases in basic and senior salaries (with appropriate adjustments for members of other organisations) set out in the draft Report have not changed.

We received 39 responses to the consultation on the draft Report and are grateful to those organisations and individuals who provided comments. The majority of the responses indicated that the proposals were not inappropriate in the prevailing circumstances. Some suggested that the increases were insufficient and conversely others took the view that there should be no increases. We have acknowledged each of the responses and answered all of the queries that were raised.

The term of office of Greg Owens ended on 31 December 2020. Greg had been a long standing member and the vice chair since 2016. We wish to record our appreciation of the considerable contribution that Greg made to the work of the Panel during his membership.

John Bader  
Chair

Panel Membership  
John Bader, Chair  
Saz Willey, Vice Chair  
Claire Sharp  
Joe Stockley

Detailed information about the members can be found on the website: [Panel website](#)

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## Introduction

**This is the thirteenth Annual Report of the Independent Remuneration Panel for Wales (the Panel), and the tenth published under the requirements of the Local Government (Wales) Measure 2011 (as amended).**

1. Although this Report is in respect of the Panel's determinations for 2021/2022 our consideration has inevitably been influenced by the impact of the coronavirus pandemic. The ongoing issues affect the operation of all local authorities and will continue to do so for the foreseeable future.
2. As with all the Panel's Annual Reports the determinations on member remuneration are underpinned by the principles set out in Section 1. In May 2020 we published a [Supplementary Report](#) that set out specific principles relating to the provision of financial support for care needs. These are incorporated in Section 10 and will be included in future Annual Reports.
3. The Panel has consistently expressed its view that maintaining the democratic values of local governance cannot be cost free. Members of local authorities (including co-opted and appointed members) are there to represent the interests of local people, undertake the governance of local communities, and secure appropriate value for money public services for local tax-payers through effective scrutiny for which they are accountable to their community. These are significant and important tasks for members of the relevant authorities within the Panel's remit. Payments to members are made available to encourage a diversity of willing and able people to undertake local governance through their elected, appointed or co-opted roles.
4. In determining the level of payments to members of local authorities, the Panel seeks to meet the principle of 'acceptability' by ensuring that these are not 'so great as to require a significant diversion of resources from key council priorities'. But Section 142(8) of the Measure is more explicit on 'affordability' when it states that "when setting an amount<sup>1</sup>, the Panel must take into account what it considers will be the likely financial impact of doing so on relevant authorities". The Panel acknowledges that the issue of affordability – in relation both to relevant authorities' service budgets and to the electorate's disposable incomes – is likely to impact on the public perception of any increases to members' payments. It is therefore a matter of balancing issues of affordability and public perception with fairness to members for their time, worth and responsibility.
5. The Panel originally set the basic salary of elected members of principal councils at three-fifths of the All Wales Median Salary and senior salaries were set at multiples of this annual median salary. In setting these salaries the Panel recognised that there was an unpaid public service contribution.
6. The financial constraints on the public sector and particularly on local authorities over many years have meant that the link with average Welsh earnings has not been maintained. The Panel considers that this has undervalued the worth of elected members. To minimise further erosion in relation to average earnings the Panel proposes to increase the basic annual salary by £150. Other payments that are based on the basic salary will be adjusted accordingly.

7. Payments for members of National Park Authorities and Fire and Rescue Authorities will increase as a result of the uplift proposed for principal councils. One other change proposed for these authorities is to remove the limitation on the number of senior salaries that can be paid.
8. The payment information provided by relevant authorities show that still very few members are utilising the provision in the framework for financial support in respect of care. We reiterate the importance that Democratic Services Committees should encourage and facilitate greater use of this element of our framework so that members concerned are not financially disadvantaged. We are proposing significant changes regarding the costs of care which are set out in Section 10.
9. The Panel has continued to contribute wherever possible to enhancing diversity in local government in Wales through its determinations. The Panel produces leaflets for prospective candidates on the remuneration of members of councils. We are pleased that several councils include this leaflet on their websites. In addition we have produced a short film [Ever thought about being a Welsh councillor?](#) This can be viewed on our website. The Welsh Government has an initiative to increase diversity in democracy and the Panel is engaged in supporting this wherever possible within its remit.
10. We continue to engage with community and town councils and have met with numerous representative groups. Unfortunately the extent of engagement has been curtailed as a consequence of COVID 19. For 2021/2022 we are not proposing any specific changes to payments in respect of community and town councils. However, we intend to undertake a major review of our current framework for this sector during 2021 in readiness for implementation following the elections in 2022. We intend to consult and work with the sector in the process of the review.
11. The Panel's Regulations have been updated to reflect changes to the remit (see Annex 2).
12. One issue that has arisen again, particularly in the context of the pandemic lockdown, is the action of the Council in respect of the Reports of the Panel which it receives. When the Panel's Annual Report is issued, principal councils must comply with the statutory requirements and apply all the relevant determinations. The proper officer of the council must put in place mechanisms for all eligible council members to receive payments as determined by the Panel. There are currently no options relating to levels of remuneration by principal councils that require a decision by full council. Levels of payments to which members are entitled cannot be varied by a vote of a principal council.
13. Only an individual member may communicate in writing to the proper officer if, as *an individual*, they wish to decline all or part of the payment to which they are entitled.

14. How the Panel's Annual Report is formally received or noted by full council is not a matter that is within the Panel's statutory remit. Individual constitutions or standing orders of councils may vary as to matters that may be submitted to full council for consideration. It is for each council to decide how they wish to manage receipt of the Panel's statutory Annual Report and if appropriate seek the advice of their legal officers. However, all council members and officers should take care that no misleading statements are made or reported in media, in particular, an indication that a council has taken a decision to reduce or vary levels of payments. There are no powers that permit a principal council to take such action.

<sup>1</sup> [Local Government \(Wales\) Measure 2011](#)

# **1. The Panel's Framework: Principles of Members' Remuneration**

## **Upholding trust and confidence**

- 1.1 Citizens rightly expect that all those who choose to serve in local authorities uphold the public trust by embracing the values and ethics implicit in such public service. These principles underpin the contribution that the work of the Panel and its Framework make towards upholding public trust and confidence.

## **Simplicity**

- 1.2 The Framework is clear and understandable. This is essential for the Panel to be able to communicate its determinations effectively to all those who are affected by, or who have an interest in its work.

## **Remuneration**

- 1.3 The Framework provides for payment to members of authorities who carry a responsibility for serving their communities. The level of payment should not act as a barrier to taking up or continuing in post. There should be no requirement that resources necessary to enable the discharge of duties are funded from the payment. The Framework provides additional payments for those who are given greater levels of responsibility.

## **Diversity**

- 1.4 Democracy is strengthened when the membership of authorities adequately reflects the demographic and cultural make-up of the communities such authorities serve. The Panel will always take in to account the contribution its Framework can make in encouraging the participation of those who are significantly under-represented at local authority level.

## **Accountability**

- 1.5 Taxpayers and citizens have the right to receive value for money from public funds committed to the remuneration of those who are elected, appointed or co-opted to serve in the public interest. The Panel expects all authorities to make information readily and appropriately available about the activities and remuneration of their members.

## **Fairness**

- 1.6 The Framework will be capable of being applied consistently to members of all authorities within the Panel's remit as a means of ensuring that levels of remuneration are fair, affordable and generally acceptable.

## **Quality**

- 1.7 The Panel recognises that the complex mix of governance, scrutiny and regulatory duties incumbent upon members requires them to engage with a process of continuous quality improvement. The Panel expects members to undertake such training and personal development opportunities as required to properly discharge the duties for which they are remunerated.

## **Transparency**

- 1.8 Transparency of members' remuneration is in the public interest. Some members receive additional levels of remuneration by virtue of being elected or appointed to more than one public body. The Framework serves to ensure that knowledge of all members' remuneration is made easily available to the public.

## **Remuneration of Heads of Paid Service**

- 1.9 The Panel applies these principles of fairness, accountability and transparency in all its determinations in relation to remuneration of members of all the authorities that fall within its remit. The same principles also apply when the Panel is required to make recommendations in relation to the remuneration of the heads of paid service of these authorities.

## 2. Annual Report Summary Page

Type of Payment	Type of Authority			
	Principal Councils	National Park Authorities	Fire and Rescue Authorities	Community and Town Councils
Basic Salary	page 11	page 25	page 28	N/A <sup>2</sup>
Senior Roles	page 14	page 25	page 28	page 42
Committee Chairs	page 13	page 26	page 28	N/A
Opposition Groups	page 14	N/A	N/A	N/A
Civic Heads and Deputies	page 15	N/A	N/A	page 44
Presiding Members	page 16	N/A	N/A	N/A
Mileage	page 38	page 38	page 38	page 43
Other Travel Costs	page 38	page 38	page 38	page 43
Subsistence Costs	page 39	page 39	page 39	page 43
Contribution towards Costs of Care and Personal Assistance	page 32	page 32	page 32	page 32
Family Absence	page 23	N/A	N/A	N/A
Sickness Absence	page 36	page 36	page 36	N/A
Joint Overview and Scrutiny Committees	page 21	N/A	N/A	N/A
Pension	page 22	N/A	N/A	N/A
Co-optees	page 30	page 30	page 30	N/A
Specific or Additional Allowances	page 18	N/A	N/A	N/A
Payments to Community and Town Councillors	N/A	N/A	N/A	page 40
Compensation for Financial Loss	N/A	N/A	N/A	page 43
Statement of Payments	page 73	page 73	page 73	page 73
Schedule of Remuneration	Page 71	Page 71	Page 71	N/A
Salaries of Head of Paid Services	Page 49	N/A	Page 49	N/A

<sup>2</sup> Not Applicable

### **3. Payments to Elected Members of Principal Councils: Basic, Senior and Civic Salaries**

#### **Basic salary for elected members of principal councils**

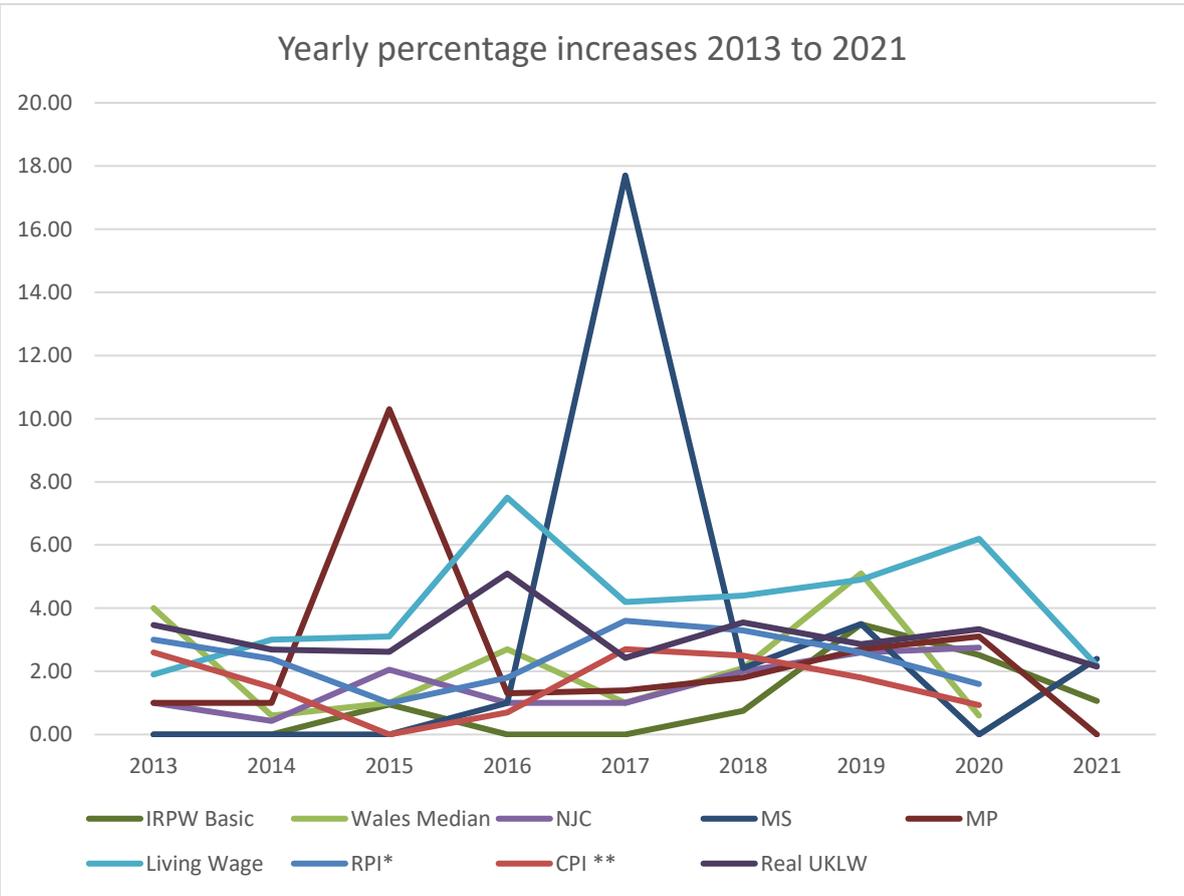
- 3.1 In 2009 the Panel set the maximum basic salary at £13,868, representing three fifths of the then median gross earnings of all full-time employees resident in Wales as reported in the Annual Survey of Hourly Earnings (ASHE) published by the Office of National Statistics. The Panel assessed it appropriate to use a figure comparable with constituents' pay, adjusted for the part-time nature of the work of a member with no senior responsibilities. Ten years on, this identical figure of £13,868 was determined as the basic salary in the Panel's 2019 annual report. A detailed explanatory paper setting out the historical context and analysis is available on the Panel's website at this [link](#). The key issues are outlined below.
- 3.1.1 Over this last decade, taking account of affordability and acceptability, the Panel has determined figures for the basic salary which have varied but have not kept pace with measures of inflation or other possible comparators. These include: Retail Prices Index, Consumer Prices Index, Wales Median Salary (ASHE), NJC (public sector employees), National Living Wage, the Real UK Living Wage, Members of Senedd Cymru, and MPs. Table 1, illustrated by Graph 1, shows the percentage increases to the basic salary and these alternatives from 2013 to 2021.
- 3.1.2 To set this in the context of other Welsh elected members, from 2013 to 2020 the basic salary increased by 7.9% (£13,175 to £14,218) whilst a Senedd Cymru member's salary increased by 25.6% (£53,852 to £67,649) and an MP's salary increased by 23.4% (£66,396 to £81,932).
- 3.1.3 Thus, backbench members' salaries have fallen significantly behind by any reasonable measure of inflation.

**Table 1 – Yearly percentage increases to basic salary, benchmarks and alternative measures 2013 to 2021**

Annual Report Year	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>IRPW Basic</b>	<b>0.00</b>	<b>0.00</b>	<b>0.95</b>	<b>0.00</b>	<b>0.00</b>	<b>0.75</b>	<b>3.49</b>	<b>2.52</b>	<b>1.06</b>
<b>Wales Median</b>	4.00	0.60	1.00	2.70	1.00	2.10	5.10	<b>0.60</b>	<b>Oct-21</b>
<b>NJC</b>	1.00	0.43	2.05	1.00	1.00	2.00	2.60	<b>2.75</b>	
<b>MS</b>	0.00	0.00	0.00	1.00	17.70	2.10	3.50	<b>0.00</b>	<b>2.40</b>
<b>MP</b>	1.00	1.00	10.30	1.30	1.40	1.80	2.70	<b>3.10</b>	<b>0.00</b>
<b>RPI*</b>	3.00	2.40	1.00	1.80	3.60	3.30	2.60	<b>1.60</b>	
<b>CPI March**</b>	2.60	1.50	0.00	0.70	2.70	2.50	1.80	<b>0.93</b>	
<b>Living Wage</b>	1.90	3.00	3.10	7.50	4.20	4.40	4.90	<b>6.20</b>	<b>2.18</b>
<b>Real UKLW</b>	3.47	2.68	2.61	5.10	2.42	3.55	2.86	<b>3.33</b>	<b>2.15</b>

\* 2020 figure is the average of 8 months to December; \*\*2020 figure is the average of 8 months to December

**Graph 1 – Yearly percentage increases 2013 to 2021**



- 3.2 The Panel remains aware that the key activities required of an elected member of a principal council vary. Duties undertaken should enable all members to discharge their core non-executive responsibilities in the governance of their council and in representing those living in their ward. As an elected role, such posts are not readily treated in the same manner as employment with precisely quantified hours. The work that arises in representing ward residents is particularly varied because it is influenced by the very diverse socio-economic conditions, demographics, levels of urbanisation and different ratios of residents to councillors. These variations occur within individual authorities as well as in comparisons of local authorities throughout Wales. Elected positions carry an expectation of a level of personal commitment to the community that goes beyond defined remunerated hours. Many elected members report that their time spent is well in excess of the notional three days (extra time worked and previously defined by the Panel as a 'public service discount').
- 3.3 Despite the pandemic, Panel members continue meeting with the Chairs of Democratic Services Committees, their officers and councillors. The Panel has also, through varied correspondence with councils and individual council members and others, maintained its ongoing dialogue. The position generally expressed by councillors and officers remains that the basic workload discharged by all elected members is substantial and exceeds 3 days per week.
- 3.4 When making financial determinations for this Annual Report, the Panel considered the progression of the variety of benchmark figures outlined above for the period from 2013 to 2020. Any adjustments in recent years have been in keeping with the Panel's principle that its determinations should be affordable and acceptable. This principle is maintained in the increase for 2021/2022 in the basic salary of elected members of £150.
- 3.5 This salary shall be paid by each principal authority in Wales from 1 April 2021 to each of its elected members unless any individual member opts personally and in writing to receive a lower amount.

**Determination 1: The Basic Salary in 2021/22 for elected members of principal councils shall be £14,368 with effect from 1 April 2021.**

### **Senior Salaries**

Payments to members of the executive, chairs of committees and the leader of the opposition.

- 3.6 In 2021 senior salaries will be increased at the same rate (1.06%) as basic salaries.

**Graph 2: Senior salaries 2012 to 2021**



3.7 The limit on the number of senior salaries payable ('the cap') will remain in place. In 2021/22 the maximum number of senior salaries payable within each council will not be altered and will be as set out in Table 2 below.

**Table 2:** Maximum numbers of council membership eligible for payment of a senior salary

<b>Council</b>	<b>Number of councillors</b>	<b>Number of senior salaries</b>
<b>Group A (populations over 200,000)</b>		
Cardiff	75	19
Rhondda Cynon Taf	75	19
Swansea	72	19
<b>Group B (populations of 100,000 to 200,000)</b>		
Bridgend	54	18
Caerphilly	73	18
Carmarthenshire	74	18
Conwy	59	18
Flintshire	70	18
Gwynedd	75	18
Neath Port Talbot	64	18
Newport	50	18
Pembrokeshire	60	18
Powys	73	18
Vale of Glamorgan	47	18
Wrexham	52	18
<b>Group C (populations of up to 100,000)</b>		
Blaenau Gwent	42	17
Ceredigion	42	17
Denbighshire	47	17
Isle of Anglesey	30	16
Merthyr Tydfil	33	16
Monmouthshire	43	17
Torfaen	44	17

### **The Executive**

- 3.8 The Panel continues to take the view that Executive members should be considered as working the equivalent of full time (around 40 hours per week) but not necessarily nine to five. Continued discussions with members and officers in recent years have reinforced this conclusion.
- 3.9 Senior salaries are set out in Determination 2.

### **Chairs of Committees**

- 3.10 There is a significant difference in the responsibilities and functions of chairing different committees. Councils are reminded that they do not have to pay chairs of committees. It is a matter for each council to decide which, if any, chairs of committees are remunerated. This allows councils to take account of differing levels of responsibility.
- 3.11 Where chairs of committees are paid, the remuneration is: £23,161.

## The Senior Salary Bands

**Determination 2: Senior salary levels in 2021/22 for members of principal councils shall be as set out in Table 3 with effect from 1 April 2021.**

**Table 3:** Basic salary and senior salaries payable to members of principal councils

<b>Basic salary (payable to all elected members) £14,368</b>			
	<b>Group A</b> Cardiff, Rhondda Cynon Taf, Swansea	<b>Group B</b> Bridgend, Caerphilly, Carmarthenshire, Conwy, Flintshire, Gwynedd, Newport, Neath Port Talbot, Pembrokeshire, Powys, Vale of Glamorgan, Wrexham	<b>Group C</b> Blaenau Gwent, Ceredigion, Denbighshire, Merthyr Tydfil, Monmouthshire, Torfaen, Isle of Anglesey
<b>Senior salaries (inclusive of basic salary)</b>			
<b>Band 1</b> Leader	£55,027	£49,974	£44,921
Deputy leader	£38,858	£35,320	£31,783
<b>Band 2</b> Executive members	£33,805	£30,773	£27,741
<b>Band 3</b> Committee chairs (if remunerated):		£23,161	
<b>Band 4</b> Leader of largest opposition group <sup>3</sup>		£23,161	
<b>Band 5</b> Leader of other political groups		£18,108	

<sup>3</sup> Leader of largest opposition group. See IRPW Regulations, Annex 2, Part 1(2) for a definition of “largest opposition group” and “other political group”.

### Table 3 notes:

- a. The Panel considers that leadership and executive roles (Band 1 and 2 salaries respectively) carry the greatest individual accountability and that 'size of population' remains a major factor in influencing levels of responsibility and the use of the three population groups (A, B and C) has therefore been retained. For information: Group A Population 200,000 and above; Group B Population 100,001 to 199,999; Group C Population up to 100,000.
- b. Committee chairs will be paid at Band 3. It is a matter for each council to decide which, if any, chairs of committees are remunerated. This allows councils to take account of differing levels of responsibility.
- c. The stipulation that an opposition group leader or any other group leader must represent at least 10% of the council membership before qualifying for a senior salary remains unchanged.
- d. The Panel has determined that a council must make a senior salary available to the leader of the largest opposition group.
- e. The Panel has determined that, if remunerated, a Band 5 senior salary must be paid to leaders of other political groups.

### Payments to Civic Heads and Deputies (Civic Salaries)

- 3.12 The Panel had previously allowed councils to vary salaries of civic heads and deputy civic heads to reflect the specific responsibilities attached to the roles. However, councils strongly expressed to the Panel that elected members do not wish to make decisions that require Councils themselves such choices and options were removed in 2019. In the case of civic salaries, if paid, the payment for Band 3 is set at £23,161 for a civic head and at the Band 5 salary of £18,108 for a deputy civic head (Determination 3). A council may decide not to apply any civic salary to the posts of civic head and or deputy civic head.
- 3.13 The posts of civic head and deputy civic head are not included in the cap (with the exception of Isle of Anglesey and Merthyr Tydfil Councils).

**Determination 3: Where paid, a Civic Head must be paid a Band 3 salary of £23,161 and, where paid, a Deputy Civic Head must be paid a Band 5 salary of £18,108 with effect from 1 April 2021.**

- 3.14 Civic heads are senior posts within councils which are distinct from political or executive leadership. In addition to chairing major meetings the civic head is the authorities' 'first citizen' and 'ambassador' representing the council to a wide variety of institutions and organisations. The Panel's requirement that members should not have to pay for the cost of the support (see **determination 10**) needed to carry out their duties applies also in respect of deputy civic heads.
- 3.15 In many instances civic heads receive secretarial support and are provided with transport for official duties and can access a separate hospitality budget which is managed and controlled by council officers.
- 3.16 The Panel recognises the wide range of provision made for civic heads in respect of transport, secretarial support, charitable giving and clothing. Funding decisions in relation to levels of such additional support are not matters of personal remuneration, but of the funding required to carry out the tasks and duties. These matters remain entirely a decision for individual councils. Councils remain free to invest in support at whatever levels they deem appropriate for the levels of civic leadership they have in place.
- 3.17 The Local Government (Democracy) (Wales) Act 2013 allows councils to appoint a presiding member whose role is to chair meetings of the whole council. Where appointed, there would be a consequential reduction in the responsibilities of the respective civic head.

### **Payments to Presiding Members**

- 3.18 Councils are reminded that, if a presiding member is appointed, they do not have to be remunerated. If they are remunerated the post will count towards the cap and be paid at a Band 3 senior salary of £23,161.

**Determination 4: Where appointed and if remunerated, a Presiding Member must be paid a Band 3 senior salary of £23,161.**

**Determination 5: The post of Deputy Presiding Member will not be remunerated.**

### **Key factors underpinning the Panel's determinations:**

- 3.19 The basic salary, paid to all elected members, is remuneration for the responsibility of community representation and participation in the scrutiny, regulatory and related functions of local governance for the time equivalent of three days a week. Any time commitment beyond three days is an unpaid public service contribution.
- 3.20 The prescribed salary and expenses must be paid in full to each member unless an individual has independently and voluntarily opted in writing to the authority's proper officer to forego all or any element of the payment. It is

fundamental there is transparency in this process so any possible suggestion that members are put under pressure to forego some of the salaries is avoided.

The following must be applied:

**Determination 6:**

- a) **An elected member must not be remunerated for more than one senior post within their authority.**
- b) **An elected member must not be paid a senior salary and a civic salary.**
- c) **All senior and civic salaries are paid inclusive of basic salary.**
- d) **If a council chooses to have more than one remunerated deputy leader, the difference between the senior salary for the deputy leader and other executive members should be divided by the number of deputy leaders and added to the senior salary for other executive members in order to calculate the senior salary payable to each deputy leader.**

**Determination 7: Members in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA or FRA to which they have been appointed. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the NPA or FRA.**

**Determination 8: Members in receipt of a Band 1 or Band 2 salary cannot receive any payment from a Community or Town Council of which they are a member. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the Community or Town Council. Where this situation applies, it is the responsibility of the individual member to comply.**

### **Supporting the work of local authority elected members**

- 3.21 The Panel expects the support provided should take account of the specific needs of individual members. The functions of Democratic Services Committees include a requirement to review periodically the level of support provided to members to carry out their duties and the Panel would expect these committees to carry this out and bring forward proposals to the full council as to what is considered to be reasonable. Any proposals should be made with due regard to Determinations 9 and 10 below. For example, the Panel does not consider it appropriate that elected members should be required to pay for any telephone usage to enable them to discharge their council duties as a ward member, committee member or cabinet member.
- 3.22 The Panel considers it is necessary for each elected member to have ready use

of e-mail services, and electronic access to appropriate information via an internet connection. The Panel does not consider it appropriate that elected members should be required to pay for internet related services to enable them to discharge their council duties as a ward member, committee member or cabinet member. This comprises the necessary provision for a member to be in proper contact with council services and to maintain contact with those they represent. Councils are committed to 'paperless working' and without electronic access members would be significantly limited in their ability to discharge their duties. It is not appropriate for facilities required by members to be available only within council offices within office hours.

- 3.23 The responsibility of each council, through its Democratic Services Committee, to provide support should be based on an assessment of the needs of its members. When members' additional needs or matters of disability apply, or there are specific training requirements indicated, each authority will need to assess any particular requirements of individual members.
- 3.24 As a result of their legitimate actions as a councillor an elected member's personal security may become significantly, adversely affected. In keeping with their existing responsibilities, it is the duty of Democratic Services Committees to fund or provide support necessary to enable a councillor to discharge their role reasonably and safely. This may require the funding of appropriate security measures to protect councillors from personal risk or significant threat. Risk assessment and liaison with relevant bodies such as the police and security services would normally inform the selection of required provision.
- 3.25 For co-opted members the support requirements are set out in section 9 and determination 40.

**Determination 9: Each authority, through its Democratic Services Committee, must ensure that all its elected members are given as much support as is necessary to enable them to fulfil their duties effectively. All elected members should be provided with adequate telephone, email and internet facilities giving electronic access to appropriate information.**

**Determination 10: Such support should be without cost to the individual member. Deductions must not be made from members' salaries by the respective authority as a contribution towards the cost of support which the authority has decided necessary for the effectiveness and or efficiency of members.**

### **Specific or additional senior salaries**

- 3.26 The Panel has allowed for greater flexibility through the provision for authorities to apply for specific or additional senior salaries that do not fall within the current remuneration framework, or which could not be accommodated within the maximum number of senior salaries relating to the authority. If the proposed addition is approved and results in the council exceeding its cap, this

will be included in the approval (with exception of Merthyr Tydfil and the Isle of Anglesey Councils – see footnote 4). Some councils have raised the possibility of operating some senior salary posts on a “job share” arrangement. The Panel is supportive of this principle and the process is set out in Paragraph 3.28.

**Determination 11: Principal Councils can apply for specific or additional senior salaries that do not fall within the current Remuneration Framework.**

- 3.27 Guidance to local authorities on the application process was issued in April 2014 and incorporated the following principles:
- a. The total number of senior salaries cannot exceed fifty percent<sup>4</sup> of the membership.
  - b. Applications will have to be approved by the authority as a whole (unless this has been delegated within Standing Orders) prior to submission to the Panel.
  - c. There must be clear evidence that the post or posts have additional responsibility demonstrated by a description of the role, function and duration.
  - d. Each application will have to indicate the timing for a formal review of the role to be considered by the authority as a whole.

<sup>4</sup>Local Government (Wales) Measure 2011 Section 142 (5) The proportion fixed by the Panel in accordance with subsection (4) may not exceed fifty percent unless the consent of the Welsh Minister has been obtained.

### **3.28 Job Sharing Arrangements**

For members of an executive: Each “sharer” will be paid an appropriate proportion of the salary group as set out in Table 3.

The statutory maximum for cabinets cannot be exceeded so each job sharer will count toward the maximum.

Under the Measure, it is the number of persons in receipt of a senior salary, not the number of senior salary posts that count towards the cap. Therefore, for all job share arrangements the senior salary cap will be increased subject to the statutory maximum of 50% of the council’s membership.

The Panel must be informed of the details of any job share arrangements.

## **4. Joint Overview and Scrutiny Committees (JOSC)**

- 4.1 Little use has been made of the arrangements for JOSCs. Therefore, the Panel has decided to delete the payment from the framework. If, in future, a JOSC is formed by an individual council and it wishes to remunerate, it can apply using the arrangements contained in paragraphs 3.26 and 3.27. The current JOSCs in operation will continue without need for further confirmation. The applicable salaries are set out in the following determinations.

**Determination 12: The salary level for a Chair of a Joint Overview and Scrutiny Committee shall be £8,793.**

**Determination 13: The salary level for a Vice Chair of a Joint Overview and Scrutiny Committee shall be £4,396.**

## **5. Pension Provision for Elected Members of Principal Councils**

- 5.1 The Local Government (Wales) Measure 2011 provides a power to the Panel to make determinations on pension entitlement for elected members of principal councils.

**Determination 14: The entitlement to join the Local Government Pension Scheme (LGPS) shall apply to all eligible elected members of principal councils.**

## 6. Entitlement to Family Absence

This section applies to elected members of principal authorities.

- 6.1 The Regulations relating to Family Absence for elected members of principal councils were approved by the National Assembly for Wales in November 2013<sup>5</sup> and cover maternity, new born, adoption and parental absences from official business.
- 6.2 The Panel considered the implications for the remuneration of such members who are given absence under the terms of the Welsh Government Regulations and the Panel's determinations are set out below.

**Determination 15: An elected member is entitled to retain a basic salary when taking family absence under the original regulations or any amendment to the regulations irrespective of the attendance record immediately preceding the commencement of the family absence.**

**Determination 16: When a senior salary holder is eligible for family absence, they will continue to receive the salary for the duration of the absence.**

**Determination 17: It is a matter for the authority to decide whether or not to make a substitute appointment. The elected member substituting for a senior salary holder taking family absence will be eligible to be paid a senior salary, if the authority so decides.**

**Determination 18: If the paid substitution results in the authority exceeding the maximum number of senior salaries which relates to it, as set out in the Panel's Annual Report, an addition to the maximum will be allowed for the duration of the substitution. However, this will not apply to the Isle of Anglesey or Merthyr Tydfil Councils if it would result in the number of senior salaries exceeding fifty percent of the Council membership. Specific approval of Welsh Ministers is required in such circumstances.**

**Determination 19: When a Council agrees a paid substitution for family absence the Panel must be informed within 14 days of the date of the decision, of the details including the particular post and the duration of the substitution.**

**Determination 20: The Council's schedule of remuneration must be amended to reflect the implication of the family absence.**

<sup>5</sup>[The Family Absence for Members of Local Authorities \(Wales\) Regulations 2013](#)

## 7. Payments to Members of National Park Authorities (NPAs)

### Structure of National Park Authorities

7.1 The three National Parks in Wales - Brecon Beacons, Pembrokeshire Coast and Snowdonia were formed to protect spectacular landscapes and provide recreation opportunities for the public. The Environment Act 1995 led to the creation of the three corresponding National Park Authorities (NPAs). These have two main statutory purposes, to:

- protect and improve the natural beauty, wildlife and cultural heritage;
- promote opportunities for the public to understand and enjoy the National Park's special features.

In addition to fulfilling the National Park's purposes, it is the duty of the National Park Authority to foster the economic and social wellbeing of local communities within the Park.

7.2 National Park Authorities comprise Members who are either elected members nominated by the Principal Councils within the National Park area or are members appointed by the Welsh Government through the Public Appointments process. Welsh Government appointed and council nominated members are treated equally in relation to remuneration.

7.3 The structure of the Members' Committee at each of the three national parks is set out in Table 4.

**Table 4: Membership of Welsh National Park Authorities**

National Park Authority	Total Membership	Principal Council Members	Welsh Government appointed Members
<b>Brecon Beacons</b>	18	12: Blaenau Gwent County Borough Council – 1 Carmarthenshire County Council – 1 Merthyr Tydfil County Borough Council – 1 Monmouthshire County Council – 1 Powys County Council – 6 Rhondda Cynon Taf County Borough Council - 1 Torfaen County Borough Council – 1	6
<b>Pembrokeshire Coast</b>	18	12: Pembrokeshire County Council – 12	6
<b>Snowdonia</b>	18	12: Conwy County Borough Council – 3 Gwynedd Council – 9	6

- 7.4 In addition, Standards Committees of NPAs have independent co-opted members whose remuneration is included in the Framework as set out in Section 9.
- 7.5 In considering remuneration of members of NPAs, the Panel has based its determinations on the following key points:
- NPAs manage their work via formal authority meetings, committees and task and finish groups. Each has a Development, Management and or Planning Committee, and other committees include Performance and Resources and Audit and Scrutiny. Ordinary NPA members are members of at least one committee as well as being involved in site visits and inspection Panels.
  - There is an expectation that members will participate in training and development.
  - The Chair of an NPA has a leadership and influencing role in the authority, a representational role similar in some respects to that of a civic head and a high level of accountability. The chair is not only the leader of the authority but is also the public face of the particular national park and is the link with the Minister and MSs with whom they have regular meetings. The role requires a high level of commitment and time.

### **Basic and senior salaries**

- 7.6 In the time commitment on which the remuneration of members is based is 44 days. The salary for members of NPAs will increase to £4,053.
- 7.7 The Panel has determined that the remuneration of a NPA Chair should be aligned to that part of a Band 3 senior salary received by a committee chair of a principal council. This salary will increase to £12,845.
- 7.8 The Panel has previously determined that up to two other committee Chairs can be remunerated. If the NPA considered this was restrictive, there was an option to apply for additional Senior Salary. It is proposed that this restriction is removed and that NPAs determine the number of Senior posts it requires as appropriate to its governance arrangements. The determination relating to the application for additional senior salaries is removed.
- 7.9 The Panel has made the following determinations:

**Determination 21: The basic salary for NPA ordinary members shall be £4,053 with effect from 1 April 2021.**

**Determination 22: The senior salary of the Chair of a NPA shall be £12,845 with effect from 1 April 2021.**

**Determination 23: A NPA senior salary of £7,792 must be paid to a Deputy Chair where appointed.**

**Determination 24: Committee chairs or other senior posts can be paid. This shall be paid at £7,792.**

**Determination 25: Members must not receive more than one NPA senior salary.**

**Determination 26: A NPA senior salary is paid inclusive of the NPA basic salary.**

**Determination 27: Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA to which they have been appointed. Where this situation applies, it is the responsibility of the individual member to comply.**

Note: Family absence does not apply to Welsh Government appointed members and local authority nominees are covered by their principal council so NPAs are not required to make any arrangements in this respect.

## 8. Payments to Members of Welsh Fire and Rescue Authorities (FRAs)

### Structure of Fire and Rescue Authorities

- 8.1 The three Fire and Rescue Services (FRAs) in Wales: Mid and West Wales, North Wales and South Wales were formed as part of Local Government re-organisation in 1996.
- 8.2 FRAs comprise elected members who are nominated by the Principal Councils within each Fire and Rescue Service area.
- 8.3 The structure of the each of the three FRAs is set out in Table 5.

**Table 5: Membership of Fire and Rescue Authorities**

Name of Fire and Rescue Authority	Number of Local Authority Members
Mid and West Wales	25: Carmarthenshire County Council – 5 Ceredigion County Council – 2 Neath Port Talbot County Borough Council – 4 Pembrokeshire County Council – 3 Powys County Council – 4 Swansea City and County Council – 7
North Wales	28: Conwy County Borough Council – 5 Denbighshire County Council – 4 Flintshire County Council – 6 Gwynedd Council – 5 Isle of Anglesey County Council – 3 Wrexham County Borough Council – 5
South Wales	24: Bridgend County Borough Council – 2 Blaenau Gwent County Borough Council – 1 Caerphilly County Borough Council – 3 Cardiff City Council – 5 Merthyr Tydfil County Borough Council – 1 Monmouthshire County Council – 2 Newport City Council - 2 Rhondda Cynon Taf County Borough Council - 4 Torfaen County Borough Council – 2 Vale of Glamorgan Council -2

- 8.4 In addition, Standards Committees of FRAs have independent co-opted members whose remuneration is included in the Framework as set out in Section 9.

8.5 In considering remuneration of members of FRAs, the Panel has based its determinations on the following key points:

- The Chair has a leadership and influencing role in the authority, and a high level of accountability especially when controversial issues relating to the emergency service arise. In addition to fire authority meetings, all FRAs have committees that include in different combinations: audit, performance management, scrutiny, human resources, resource management as well as task and finish groups and disciplinary Panels. As well as attending formal meetings of the authority and committees, members are encouraged to take on a community engagement role, including visiting fire stations.
- There is a strong training ethos in FRAs. Members are expected to participate in training and development. Induction programmes are available as well as specialist training for appeals and disciplinary hearings.
- Training sessions often follow on from authority meetings to make the training accessible.

### **Basic and Senior Salaries**

8.6 The time commitment on which the remuneration is based is 22 days. The salary for members of FRAs will increase to £2,026.

8.7 The Panel determined that the remuneration of a FRA Chair should be aligned to that part of a Band 3 senior salary received by a committee chair of a principal council. This salary will increase to £10,818.

8.8 The Panel determined that the remuneration of a FRA Deputy Chair will be aligned with the Band 5 senior salary for principal councils. This will increase to £5,765 and must be paid if the authority appoints a deputy chair.

8.9 The Panel has previously determined that up to two other committee Chairs can be remunerated. If the FRA considered this was restrictive, there was an option to apply for additional Senior Salary. It is proposed that this restriction is removed and that FRAs determine the number of Senior posts it requires as appropriate to its governance arrangements. The determination relating to the application for additional senior salaries is removed. Committee Chairs and any other senior post if remunerated will be aligned with Band 5. This will increase to £5,765.

### **Local Pension Boards**

8.10 The Panel has considered requests from FRAs to allow them to pay salaries to Chairs of local pension boards established under the Firefighters' Pension Scheme (Wales) Regulations 2015. Those Regulations already give FRAs the power to decide how local pension boards are to work and to pay the Chair and members if they wish. Therefore, it is not appropriate for the Panel to make a determination empowering FRAs to pay salaries to local pension

board Chairs. The senior salaries in Determination 28 or 29 cannot be used exclusively for this role.

8.11 The Panel has made the following determinations:

**Determination 28: The basic salary for FRA ordinary members shall be £2,026 with effect from 1 April 2021.**

**Determination 29: The senior salary of the Chair of an FRA shall be £10,818 with effect from 1 April 2021.**

**Determination 30: A FRA senior salary of £5,765 must be paid to the Deputy Chair where appointed.**

**Determination 31: Chairs of committees or other senior posts can be paid. This shall be paid at £5,765.**

**Determination 32: Members must not receive more than one FRA senior salary.**

**Determination 33: A FRA senior salary is paid inclusive of the FRA basic salary and must reflect significant and sustained responsibility.**

**Determination 34: Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any FRA to which they have been nominated. Where this situation applies, it is the responsibility of the individual member to comply,**

## 9. Payments to Co-opted Members of Principal Councils, National Park Authorities and Fire & Rescue Authorities<sup>6</sup>

- 9.1 The Panel has determined that a daily or half daily fee is appropriate remuneration for the important role undertaken by co-opted members of authorities with voting rights.
- 9.2 The number of days in any one year for which co-opted members may be paid varies and reflects the specific work discharged by the relevant committee. This context for payment therefore differs from that for elected members of principal councils which provides a monthly payment. Many elected members of principal councils report that they rely on this as part of a core income without which they would be unable to continue in the role.
- 9.3 In dialogue with the Panel, co-opted members acknowledge the importance of fees they receive but do not identify these payments as an income for living upon which they depend. Panel determinations in relation to co-opted member fees occur in this context and any uplifts are therefore not comparable with the changes to salaries of elected members.
- 9.4 The Panel proposes an increase of £12 to £210 daily rate for ordinary co-opted members and for those with additional responsibility.
- 9.5 Recognising the important role that co-opted members discharge, payment must be made for travel and preparation time; committee and other types of meetings as well as other activities, including training, as set out in Determinations 36 to 39.
- 9.6 The determinations are set out below and principal councils, NPAs and FRAs must tell co-opted members the name of the appropriate officer who will provide them with the information required for their claims; and make the appropriate officer aware of the range of payments that should be made.

**Determination 35: Principal councils, NPAs and FRAs must pay the following fees to co-opted members who have voting rights (Table 6).**

**Table 6:** Fees for co-opted members (with voting rights)

Chairs of standards, and audit committees	£268 (4 hours and over) £134 (up to 4 hours)
Ordinary members of standards committees who also chair standards committees for community and town councils	£238 daily fee (4 hours and over) £119 (up to 4 hours)
Ordinary members of standards committees; education scrutiny committee; crime and disorder scrutiny committee and audit committee	£210 (4 hours and over) £105 (up to 4 hours)

Community and town councillors sitting on principal council standards committees	£210 (4 hours and over) £105 (up to 4 hours)
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**Determination 36: Reasonable time for pre-meeting preparation is to be included in claims made by co-opted members the extent of which can be determined by the appropriate officer in advance of the meeting.**

**Determination 37: Travelling time to and from the place of the meeting is to be included in the claims for payments made by co-opted members (up to the maximum of the daily rate).**

**Determination 38: The appropriate officer within the authority must determine in advance whether a meeting is programmed for a full day and the fee will be paid on the basis of this determination even if the meeting finishes before four hours has elapsed.**

**Determination 39: Fees must be paid for meetings and other activities including other committees and working groups (including task and finish groups), pre-meetings with officers, training and attendance at conferences or any other formal meeting to which co-opted members are requested to attend.**

### Support for co-opted members

**Determination 40: Each authority, through its Democratic Services Committee or other appropriate committee, must ensure that all voting co-opted members are given as much support as is necessary to enable them to fulfil their duties effectively. Such support should be without cost to the individual member.**

<sup>6</sup>This section does not apply to co-opted members to community and town councils.

## 10. Contribution towards Costs of Care and Personal Assistance (CPA)

- 10.1 This section applies to all members of principal councils, National Park Authorities, Fire and Rescue Authorities and to Co-opted members of these authorities. The same provision applies to Community and Town Councils.
- 10.2 The purpose of this section is to enable people who have personal support needs and or caring responsibilities to carry out their duties effectively as a member of an authority. The Panel believes that additional costs of care required to carry out approved duties should not deter any individual from becoming and remaining a member of an authority or limit their ability to carry out the role. The Panel has adopted specific principles related to support for the costs of care which were the subject of a [Supplementary Report](#) published in February 2020. These principles are set out in table 7.
- 10.3 The Panel reviewed the arrangements for this financial support and has made the following changes:
- a) As payments are taxable under the current HMRC rules, full reimbursement is not possible so for clarity this is retitled to “contribution towards the costs of care and personal assistance”. It will still require receipts to accompany claims.
  - b) Claims can be made in respect of a dependant under 16 years of age, or a minor or adult who normally lives with the member as part of their family and who cannot be left unsupervised.
  - c) Clarification in respect of a member’s own care or support needs: Reimbursement may be claimed where the support and or cost of any additional needs are not available or are not met directly by the authority such as Access to Work, Personal Payments, Insurance. These could arise when the needs are recent and or temporary.
- 10.4 Members, including co-opted members are entitled to claim towards the costs of care and personal assistance, for activities that the individual council has designated official business or an approved duty which might include appropriate and reasonable preparation and travelling time. It is a matter for individual authorities to determine specific arrangements to implement this; each authority must ensure that any payments made are appropriately linked to official business or approved duty.
- 10.5 The Panel reviewed the maximum monthly payment in recognition that this has not changed for several years. Information indicates that monthly costs and claims vary considerably. These can depend on the number of dependants, their ages and other factors. Therefore the monthly cap will be replaced with the following arrangements:
- Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.

- Informal (unregistered) care costs to be paid up to a maximum rate equivalent to the Real UK Living Wage at the time the costs are incurred.

For clarification, care costs cannot be paid to someone who is a part of a member's household

10.6 The Panel continues to recognise the issues relating to the publication of this legitimate expense and has retained the requirements for publication set out in Annex 4. To support current members and to encourage diversity the Panel urges authorities to promote and encourage greater take-up of the contribution towards costs of care and personal assistance.

**Table 7**

**The Panel's principles relating to care and personal assistance (CPA)**

<b>The Minimum Authorities should do</b>		<b>How this could be done</b>
Be clear who it is for	<p>Members with primary caring responsibilities for a child or adult and or personal support needs where these are not covered by statutory or other provision.</p> <p>For personal support. This might also include a short term or recent condition not covered by the Equality Act 2010, access to work, Personal Payments, insurance or other provision.</p>	A Confidential review of the needs of individual members annually and when circumstances change
Raise Awareness	Ensure potential candidates, candidates and current members are aware that financial support is available to them should their current or future circumstances require.	Ensure clear and easily found information is available on website and in election and appointment materials, at Shadowing and at induction and in the members' "handbook". Remind serving members via e-mail and or training. Signpost to Panel's <a href="#">Payments to Councillors</a> leaflets.
Promote a Positive Culture	Ensure all members understand the reason for CPA and support and encourage others to claim where needed.	Encouragement within and across all parties of Relevant Authorities to support members to claim.

The Minimum Authorities should do		How this could be done
		Agree not to advertise or make public individual decisions not to claim.
Set out the approved duties for which CPA can be claimed	<p><b>Meetings</b> – formal (those called by the Authority) and those necessary to members’ work (to deal with constituency but not party issues) and personal development (training, and appraisals.)</p> <p><b>Travel</b> – in connection with meetings.</p> <p><b>Preparation</b> – reading and administration are part of a member’s role. Some meetings and committees require large amounts of reading, analysis or drafting before or after a meeting.</p> <p>Senior salary holders with additional duties may have higher costs.</p>	<p>Approved duties are usually a matter of fact. Interpretation of the Panel’s Regulations are set out in the Annual Report.</p> <p>“Any other duty approved by the authority, or any duty of class so approved, undertaken for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees.”</p>
Be as enabling as possible about the types of care that can be claimed	<p>Members should not be “out of pocket” subject to the limit set in the Annual Report.</p> <p>Models of care and needs vary. Members may use a combination of several care options.</p> <p>Patterns of care may alter over the civic and academic year.</p> <p>Not all care is based on hourly (or part hourly) rates.</p> <p>Where a whole session must be paid for, this must be reimbursed even where the care need is only for part of a session.</p> <p>Members may need to:</p> <ul style="list-style-type: none"> <li>• book and pay for sessions in advance</li> <li>• commit to a block contract: week, month or term</li> <li>• pay for sessions cancelled at short notice</li> </ul> <p>Where care need straddles two sessions both should be reimbursed.</p>	

The Minimum Authorities should do		How this could be done
Have a simple and effective claim process	Members should know how to claim. The claim process should be clear, proportionate and auditable.	Check members understand how to claim and that it is easy to do so.  Flexibility to accept paperless invoices Online form Same or similar form to travel costs claim
Comply with Panel's Publication rules	The Panel's Framework states:  "In respect of the publication of the reimbursement of the costs of care, the Panel has decided that relevant authorities should only publish the total amount reimbursed during the year. It is a matter for each authority to determine its response to any Freedom of Information requests it receives. However, it is not intended that details of individual claims should be disclosed."	

**Determination 41: All relevant authorities must provide a payment towards necessary costs for the care of dependent children and adults (provided by informal or formal carers) and for personal assistance needs as follows:**

- **Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.**
- **Informal (unregistered) care costs to be paid up to a maximum rate equivalent to the Real UK Living Wage at the time the costs are incurred.**

**This must be for the additional costs incurred by members to enable them to carry out official business or approved duties. Each authority must ensure that any payments made are appropriately linked to official business or approved duty. Payment shall only be made on production of receipts from the care provider.**

## 11. Sickness Absence for Senior Salary Holders

- 11.1 The Family Absence Regulations (approved by the National Assembly in 2014) are very specific relating to entitlement and only available for elected members of principal councils. Absence for reasons of ill-health is not included.
- 11.2 Instances have been raised with the Panel of senior salary holders on long term sickness and the perceived unfairness in comparison with the arrangements for family absence. In consequence, councils are faced with the dilemma of:
- Operating without the individual member but still paying them the senior salary.
  - Replacing the member who therefore loses the senior salary (but retains the basic salary).
- 11.3 The Panel's Framework provides specific arrangements for long term sickness as set out below:
- a) Long term sickness is defined as certified absences in excess of 4 weeks.
  - b) The maximum length of sickness absence within these proposals is 26 weeks or until the individual's term of office ends, whichever is sooner (but if reappointed any remaining balance of the 26 weeks will be included).
  - c) Within these parameters a senior salary holder on long term sickness can, if the authority decides, continue to receive remuneration for the post held.
  - d) It is a decision of the authority whether to make a substitute appointment, but the substitute will be eligible to be paid the senior salary appropriate to the post.
  - e) If the paid substitution results in the authority exceeding the maximum number of senior salaries payable for that authority, as set out in the Annual Report, an addition will be allowed for the duration of the substitution. (However, this would not apply to Merthyr Tydfil or the Isle of Anglesey councils if it would result in more than 50% of the membership receiving a senior salary. It would also not apply in respect of a council executive member if it would result in the cabinet exceeding 10 posts - the statutory maximum).
  - f) When an authority agrees a paid substitution, the Panel must be informed within 14 days of the decision of the details including the specific post and the estimated length of the substitution. The authorities' Schedule of Remuneration must be amended accordingly.
  - g) It does not apply to elected members of principal councils who are not

senior post holders as they continue to receive basic salary for at least six months irrespective of attendance and any extension beyond this timescale is a matter for the authority.

- 11.4 This arrangement applies to members of principal councils, National Park Authorities and Fire and Rescue Authorities who are senior salary holders, including Welsh Government appointed members, but does not apply to co-opted members.

Note:

The Family Absence Regulations apply to elected members in cases of maternity, new born, adoption and parental absences from official business. They do not apply to Welsh Government appointed members of National Park Authorities.

## 12. Reimbursement of Travel and Subsistence Costs when on Official Business

- 12.1 This section applies to members of principal councils, National Park Authorities, Fire and Rescue Authorities and to co-opted members of these authorities. (Similar provision for Community and Town Councils is contained in section 13 as there is a different approach to such members, principally that the provision is permissive.)
- 12.2 Members may claim reimbursement for travel and subsistence (meals and accommodation) costs where these have arisen as a result of undertaking official business or approved duties.
- 12.3 Expenses reimbursed to members of principal councils, by their principal council are exempt from Income Tax and employee NICs. Members of National Park Authorities and Fire and Rescue Authorities may be subject to other arrangements as determined by HMRC.
- 12.4 The Panel is aware that in some instances members with disabilities have been reluctant to claim legitimate travel expenses because of an adverse response following the publication of their travel costs. As an alternative, travel arrangements could be made directly by the authority in such circumstances.
- 12.5 The Panel has determined there will be no change to mileage rates which members are entitled to claim. All authorities may only reimburse travel costs for their members undertaking official business within and or outside the authority's boundaries at the current HM Revenue and Customs (HMRC) rates which are:

### Reimbursement of mileage costs

45p per mile	Up to 10,000 miles in a year by car
25p per mile	Over 10,000 miles in a year by car
5p per mile	Per passenger carried on authority business
24p per mile	Motor cycles
20p per mile	Bicycles

- 12.6 Where a member who is on official business or an approved duty is driven by a third party (not a member or officer of that authority), the member can claim mileage at the prescribed rates plus any parking or toll fees provided the authority is satisfied that the member has incurred these costs.

### Reimbursement of other travel costs

- 12.7 All other claims for travel, including travel by taxi if this is the only, or most

appropriate, method of transport, must only be reimbursed on production of receipts showing the actual cost and will be subject to any requirement or further limitation that an authority may determine. Members should always be mindful of choosing the most cost-effective method of travel.

### **Reimbursement of subsistence costs**

£28 per day	Day allowance for meals, including breakfast, where not provided in the overnight charge
£200 per night	London
£95 per night	Elsewhere
£30 per night	Staying with friends and or family

- 12.8 These rates are in line with Welsh Government rates. Recommended practice is that overnight accommodation should usually be reserved and paid for on behalf of members by the relevant authority, in which case an authority may set its own reasonable limits and the limits which apply when an individual member claims in arrears for overnight accommodation costs do not then apply.
- 12.9 All authorities must continue to reimburse subsistence expenses for their members up to the maximum rates set out above on the basis of receipted claims except for occasions when members stay with friends and or family.
- 12.10 There may be instances where an authority has determined that travel costs within its boundaries are payable and require a journey to be repeated on consecutive days. Where it is reasonable and cost effective to reimburse overnight accommodation costs, instead of repeated daily mileage costs, then it is permissible to do so.
- 12.11 It is not necessary to allocate the maximum daily rate (£28 per day) between different meals as the maximum daily rate reimbursable covers a 24-hour period and can be claimed for any meal if relevant, provided such a claim is accompanied by receipts.

### **Car Parking for Members**

Several councils have specific arrangements for their members in respect of car parking. The Panel considers that it is a matter for individual councils to determine arrangements including payments to and from members providing that it is a decision made formally by the council.

## 13. Payments to Members of Community and Town Councils

- 13.1 The Panel recognises a wide variation in geography, scope and scale across the 735 community and town councils in Wales, from small community councils with relatively minimal expenditure and few meetings to large town councils with significant assets and responsibilities.
- 13.2 The COVID pandemic limited the Panel's opportunities for face to face engagement in 2020/2021. However, the Panel attended RCT's Community Council liaison online meeting in November and a number of other constructive digital engagements throughout this period. The year before, the Panel met with over 304 Councillors and Clerks representing 302 community and town councils in 17 meetings it held across Wales. The discussions re-confirmed the widely held view that the roles individual councils undertake varied significantly and in accordance with this wide variation, the responsibilities and accountabilities of councillors must also vary. Councillors managing income or expenditure of £1million and those delivering significant services, including some that might have been delegated from principal councils, are operating in a much more complex environment than a council with an annual budget of less than £30,000.
- 13.3 In the 2018 Annual Report the Panel formed 3 groups of community and town councils to reflect these differences based on the level of income *or* expenditure, whichever is the highest, in the previous financial year. These remain unchanged as set out in Table 8.

**Table 8: Community and Town Council Groupings**

<b>Community and Town Council Group</b>	<b>Income <i>or</i> Expenditure in 2020-2021 of:</b>
A	£200,000 and above
B	£30,000 - £199,999
C	Below £30,000

- 13.4 In order to act and carry out duties as a member of a community or town council all persons are required to make a formal declaration of acceptance of office. Following this declaration, members of community or town councils are then holders of elected office and occupy a role that is part of the Welsh local government structure. It is important to note that a person who follows this path is in a different position to those in other forms of activity, for example such as volunteering or charitable work, typically governed by the Charity Commission for England and Wales.
- 13.5 Under the Local Government (Wales) Measure 2011, community and town councils are relevant authorities for the purpose of remuneration.
- 13.6 Consequently, individuals who have accepted office as a member of a

community or town council are entitled to receive payments as determined by the Independent Remuneration Panel for Wales. It is the duty of the proper officer of a council (usually the Council Clerk) to arrange for correct payments to be made to all individuals entitled to receive them.

- 13.7 Members should receive monies to which they are properly entitled as a matter of course. There must be no requirement for individuals to 'opt in' to receive payments.
- 13.8 An individual may decline to receive part, or all, of the payments if they so wish. This must be done in writing and is an individual matter. A community or town council member wishing to decline payments must themselves write to their proper officer to do so.
- 13.9 The Panel considers that any member who has personal support needs or caring responsibilities should be enabled to fulfil their role. Therefore, the Panel is mandating contribution towards costs of care and personal allowance for all members of community and town councils as set out in Determination 41.
- 13.10 Each community and town council must ensure that it does not create a climate which prevents persons accessing any monies to which they are entitled that may support them to participate in local democracy. Payments should be made efficiently and promptly.
- 13.11 Members in receipt of a Band 1 or Band 2 senior salary from a principal council cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance. However, this does not preclude them from holding a senior role (Leader, Deputy Leader) without payment.
- 13.12 Table 9 sets out the actions that community and town councils must take annually in respect of each determination that follows.

### **Payments towards costs and expenses**

- 13.13 The Panel continues to mandate a payment of £150 as a contribution to costs and expenses for members of all community and town councils.
- 13.14 For the avoidance of doubt this determination now includes all councils. Receipts are not required for these payments.

**Determination 42: All community and town councils must make available a payment to each of their members of £150 per year as a contribution to costs and expenses.**

## Senior roles

- 13.15 The Panel recognises that specific member roles especially within the larger community and town councils, for example a committee chair, will involve greater responsibility. It is also likely that larger councils will have a greater number of committees, reflecting its level of activity. The Panel has therefore determined that councils in Group A must make available a payment for a minimum of one senior role and a maximum of five senior roles of £500 each. Councils in Groups B and C can pay up to five responsibility payments (of up to £500) for specified roles.
- 13.16 In all cases, a Councillor can only have one payment of £500 regardless of how many senior roles they hold within their Council.

**Determination 43: Community and town councils in Group A must make available an annual payment of £500 each to a minimum of 1 and a maximum of 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.**

**Determination 44: Community and town councils in Groups B or C can make an annual payment of up to £500 each to up to 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.**

- 13.17 Where a person is a member of more than one community or town council, they are eligible to receive the £150 and, if appropriate, £500 from each council of which they are a member.

## Contribution towards costs of care and personal assistance

- 13.18 The purpose of this is to enable people who have personal support needs and or caring responsibilities to carry out their duties effectively as a member of an authority. The Panel's determinations in section 10 apply to Community and Town Councils.

## Reimbursement of travel costs and subsistence costs

- 13.19 The Panel recognises there can be significant travel and subsistence costs associated with the work of community and town council members, especially where the council area is geographically large and/or when engaging in duties outside this area. Each council has an option to pay travel and subsistence costs including travel by taxi if this is the only, or most appropriate, method of transport. Where a council does opt to pay travel and subsistence costs, the following determinations apply.

**Determination 45: Community and town councils can make payments to each of their members in respect of travel costs for attending approved duties.<sup>7</sup> Such payments must be the actual costs of travel by public transport or the HMRC mileage allowances as below:**

- 45p per mile up to 10,000 miles in the year.
- 25p per mile over 10,000 miles.
- 5p per mile per passenger carried on authority business.
- 24p per mile for private motor cycles.
- 20p per mile for bicycles.

**Determination 46: If a community or town council resolves that a particular duty requires an overnight stay, it can authorise reimbursement of subsistence expenses to its members at the maximum rates set out below on the basis of receipted claims:**

- £28 per 24-hour period allowance for meals, including breakfast where not provided.
- £200 – London overnight.
- £95 – elsewhere overnight.
- £30 – staying with friends and/or family overnight.

### **Compensation for financial loss**

13.20 The Panel has retained the facility which councils may pay as compensation to their members where they suffer financial loss when attending approved duties. Members must be able to demonstrate that the financial loss has been incurred. Each council has an option to pay compensation for financial loss and where it does the following determination applies.

**Determination 47: Community and town councils can pay financial loss compensation to each of their members, where such loss has occurred, for attending approved duties as follows:**

- Up to £55.50 for each period not exceeding 4 hours
- Up to £110.00 for each period exceeding 4 hours but not exceeding 24 hours

<sup>7</sup> Where a member who is on official business or an approved duty is driven by a third party (not a member or officer of that authority), the member can claim mileage at the prescribed rates plus any parking or toll fees provided the authority is satisfied that the member has incurred these costs.

## **Civic Head and Deputy Civic Head**

- 13.21 Civic heads are senior posts within community and town councils. In addition to chairing major meetings the civic head is the ‘ambassador’ representing the council to a variety of institutions and organisations. The Panel requires that members should not have to pay themselves for any cost associated with carrying out these duties. This requirement also applies in respect of deputy civic heads.
- 13.22 The Panel recognises the wide range of provision made for civic heads in respect of transport, secretarial support, charitable giving and clothing – we consider these to be the council’s civic budgets.
- 13.23 Funding decisions in relation to these civic budgets are not matters of personal remuneration for the post holder but relate to the funding required for the tasks and duties to be carried out. Councils remain free to set civic budgets at whatever levels they deem appropriate for the levels of civic leadership they have in place.
- 13.24 For the avoidance of doubt, costs in respect of, for example, transport (physical transport or mileage costs), secretarial support, charitable giving (purchasing tickets, making donations or buying raffle tickets) and clothing are not matters of personal remuneration for the individual holding the senior post. These should be covered by the civic budget.
- 13.25 Recognising that some mayors and chairs of community and town councils and their deputies are very active during their year of office, the Panel has determined that community and town councils can make a payment to the individuals holding these roles.
- 13.26 This is a personal payment to the individual and is entirely separate from covering the costs set out above.
- 13.27 The Panel has determined that the maximum payment to a chair or mayor of a community or town council is £1,500. The maximum payment to a deputy mayor or chair is £500.

**Determination 48: Community and town councils can provide a payment to the mayor or chair of the council up to a maximum of £1,500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.**

**Determination 49: Community and town councils can provide a payment to the deputy mayor or deputy chair of the council up to a maximum of £500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.**

## Making Payments to members

- 13.28 Table 9 sets out each of the above determinations and if a decision is required by the council in respect of each one.
- 13.29 In respect of the mandated payments where no decision is required by a council, members should receive monies to which they are properly entitled as a matter of course.
- 13.30 Where a decision is required by the council, this should be done at the first meeting following receipt of the Annual Report.
- 13.31 A council can adopt any, or all, of the non-mandated determinations but if it does make such a decision, it must apply to all its members.
- 13.32 When payments take effect from is set out in paragraphs 13.36 to 13.38 below.
- 13.33 On receipt of the draft Annual Report the previous autumn, councils should consider the determinations for the next financial year and use this to inform budget plans.

**Table 9**

<b>Determination Number</b>	<b>Is a decision required by council?</b>
<b>42</b> All community and town councils must make available a payment to each of their members of £150 per year as a contribution to costs and expenses.	No - the payment of £150 is mandated for every member unless they advise the appropriate officer that they do not want to take it in writing.
<b>43</b> Community and town councils in Group A must make available an annual payment of £500 each to a minimum of 1 and a maximum of 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.	Yes – a council must decide how many payments of £500 it will make – to between 1 and 5 members.
<b>44</b> Community and town councils in Groups B or C can make an annual payment of up to £500 each to up to 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.	Yes – it is optional to pay it for up to 5 members and, if it is paid, the amount (up to £500) must be decided.
<b>45</b> Community and town councils can make payments to each of their members in respect of travel costs for attending approved duties.	Yes – the payment of travel costs is optional.

<b>Determination Number</b>	<b>Is a decision required by council?</b>
<b>46</b> If a community or town council resolves that a particular duty requires an overnight stay, it can authorise reimbursement of subsistence expenses to its members.	Yes – the payment of overnight subsistence expenses is optional.
<b>47</b> Community and town councils can pay financial loss compensation to each of their members, where such loss has actually occurred, for attending approved duties.	Yes – the payment of financial loss allowance is optional.
<b>48</b> Community and town councils can provide a payment to the mayor or chair of the council up to a maximum of £1,500.	Yes – the payment to a Civic Head is optional.
<b>49</b> Community and town councils can provide a payment to the deputy mayor or deputy chair of the council up to a maximum amount of £500.	Yes – the payment to a Deputy Civic Head is optional.
<b>50</b> Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is Leader, Deputy Leader or Executive Member) cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance.	No - Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is Leader, Deputy Leader or Executive Member) can only receive travel and subsistence expenses and contribution towards costs of care and personal assistance; if they are eligible to claim, and wish to do so.

13.34 All members are eligible to be paid the £150 as set out in Determination 42 from the start of the financial year; unless they are elected later in the financial year, in which case they are eligible for a proportionate payment from that date.

13.35 Other amounts payable to members in recognition of specific responsibilities or as a civic head or deputy civic head as set out in Determinations 43,44, 48 and 49 are payable from the date when the member takes up the role during the financial year.

13.36 It is a matter for each council to make, and record, a policy decision in respect of:

- when the payment is actually made to the member;
- how many payments the total amount payable is broken down into;
- and whether and how to recover any payments made to a member who leaves or changes their role during the financial year.

13.37 Payments in respect of Determinations 43, 44, 45 and 46 are payable when the activity they relate to has taken place.

13.38 As stated in paragraph 13.8 any individual member may make a personal decision to elect to forgo part or all of the entitlement to any of these payments by giving notice in writing to the proper officer of the council.

**Determination 50: Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is Leader, Deputy Leader or Executive Member) cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance.**

### **Publicity requirements**

13.39 There is a requirement on community and town councils to publish details of all payments made to individual members in an annual Statement of Payments for each financial year. This information must be published on council noticeboards and or websites (with easy access) and provided to the Panel by email or by post no later than 30 September following the end of the previous financial year. The Panel draws attention to the requirements stipulated at Annex 4. The Panel is concerned that a significant number of councils are still in breach of this requirement.

## 14. Compliance with Panel Requirements

### The Panel's remit under the Measure

- 14.1 Section 153 of the Measure empowers the Panel to require a relevant authority<sup>8</sup> to comply with the requirements imposed on it by an Annual Report of the Panel and further enables the Panel to monitor the compliance of relevant authorities with the Panel's determinations.
- 14.2 A relevant authority must implement the Panel's determinations in this report from the date of its annual meeting or a date specified within the Annual Report.

### Monitoring compliance

- 14.3 The Panel will monitor the compliance with the determinations in this Annual Report by relevant authorities against the following requirements:
- (i) A relevant authority must maintain an annual **Schedule of Member Remuneration** (IRPW Regulations 4 and 5). Guidance at Annex 3 sets out the content which must be included in the Schedule.
  - (ii) A relevant authority must make arrangements for the Schedule's publication within the authority area (IRPW Regulation 46) and send the Schedule to the Panel as soon as practicable and not later than 31 July in the year to which it applies. Annex 4 provides further details of the publicity requirements.
  - (iii) Any amendments to the Schedule made during the year must be notified to the Panel as soon as possible after the amendment is made.

**Note: The above requirements do not apply to Community and Town Councils at this time.**

**The following applies to all authorities including Community and Town Councils.**

- (iv) A relevant authority must make arrangements for publication within the authority area of the total sum paid by it in the previous financial year to each member and co-opted member in respect of salary (basic, senior and civic), allowances, fees and reimbursements in a Statement of Payments (in accordance with Annex 4 that sets out the content that must be included in the Publicity Requirements). This must be published as soon as practicable and no later than 30 September following the end of the previous financial year- **and must also be submitted to the Panel no later than that date.**

<sup>8</sup> Interpretation of "Relevant Authority" provided in the Independent Remuneration Panel for Wales (IRPW) Regulations, Part 1, 'Interpretation'.

## **15. Salaries of Heads of Paid Service of Principal Councils and Fire and Rescue Authorities and Chief Officers of Principal Councils**

- 15.1 Section 63 of the Local Government (Democracy) (Wales) Act 2013 amended the Local Government (Wales) Measure 2011 by inserting section 143A. This enables the Panel to take a view on anything in the Pay Policy Statements of these authorities that relates to the salary of the head of paid service (normally the Head of Paid Service or chief fire officer). Section 39 of the Local Government (Wales) Act 2015 further amended the Measure extending this function to include Chief Officers of Principal Councils. However, this function ceased on 31 March 2020.
- 15.2 The Welsh Government issued amended guidance to the Panel which can be found at [Amended Guidance to the Independent Remuneration Panel for Wales under Section 143A of the Local Government \(Wales\) Measure 2011 and Section 39 of the Local Government \(Wales\) Act 2015](#). This sets the basis on which the Panel will carry out the function contained in the legislation.
- 15.3 The functions of the Panel and the requirements on authorities established by the legislation and the subsequent guidance are:
- a) If a principal council intends to change the salary of the head of paid service, or if a fire and rescue authority intends to change the salary of its head of paid service it must consult the Panel unless the change is in keeping with changes applied to other officers of that authority (whether the change is an increase or decrease). 'Salary' includes payments under a contract for services as well as payments of salary under an employment contract.
  - b) The authority must have regard to the recommendation(s) of the Panel when reaching its decision.
  - c) The Panel may seek any information that it considers necessary to reach a conclusion and produce a recommendation. The authority is obliged to provide the information sought by the Panel.
  - d) The Panel may publish any recommendation that it makes. It is the intention that, in the interests of transparency, it will normally do so.
  - e) The Panel's recommendation(s) could indicate:
    - approval of the authority's proposal
    - express concerns about the proposal
    - recommend variations to the proposal

As long as these comply with any guidance issued by the Welsh Government.

- 15.4 The Panel also has a general power to review the Pay Policy Statements of

authorities so far as they relate to the heads of paid service.

15.5 It is important to note the Panel will not decide the amount an individual head of paid service will receive.

15.6 The Panel is very aware that this function is significantly different from its statutory responsibilities in relation to members' remuneration. However, it undertakes this role with clarity and openness, taking into account all the relevant factors in respect of specific individual cases. Authorities are encouraged to consult the Panel at an early stage in their decision making on such matters. This will enable the Panel to respond in a timely manner.

### **Pay Policy Statements**

Paragraph 3.7 of the guidance to the Panel from the Welsh Government states that "The legislation does not restrict the Panel to a reactive role". It allows the Panel to use its power to make recommendations relating to provisions within local authorities Pay Policy Statements.

### **Changes to the salaries of chief officers of principal councils – Panel decisions 2020**

Letters issued to the Local Authorities notifying them of the Panel decision can be found on the [Panel website](#).

<b>Name of Local Authority</b>	<b>Proposal</b>	<b>Panel decision</b>
Neath Port Talbot Council	Head of Children and Young People's Services	Referred for further information

## Annex 1: The Panel's Determinations for 2021/22

Principal Councils	
1.	Basic salary in 2021/22 for elected members of principal councils shall be £14,368 with effect from 1 April 2021.
2.	Senior salary levels in 2021/22 for members of principal councils shall be as set out in Table 3 with effect from 1 April 2021.
3.	Where paid, a civic head must be paid a Band 3 salary of £23,161 and, where paid, a deputy civic head must be paid a Band 5 salary of £18,108 with effect from 1 April 2021.
4.	Where appointed and if remunerated, a presiding member must be paid a Band 3 senior salary of £23,161.
5.	The post of deputy presiding member will not be remunerated.
6.	<p>a) An elected member must not be remunerated for more than one senior post within their authority.</p> <p>b) An elected member must not be paid a senior salary and a civic salary.</p> <p>c) All senior and civic salaries are paid inclusive of basic salary.</p> <p>d) If a council chooses to have more than one remunerated deputy leader, the difference between the senior salary for the deputy leader and other executive members should be divided by the number of deputy leaders and added to the senior salary for other executive members in order to calculate the senior salary payable to each deputy leader.</p>
7.	Members in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA or FRA to which they have been appointed. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the NPA or FRA.
8.	Members in receipt of a Band 1 or Band 2 salary cannot receive any payment from a Community or Town Council of which they are a member. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the Community or Town Council. Where this situation applies, it is the responsibility of the individual member to comply.
9.	Each authority, through its Democratic Services Committee, must ensure that all its elected members are given as much support as is necessary to enable them to fulfil their duties effectively. All elected members should be provided with adequate telephone, email and internet facilities giving electronic access to appropriate information.

10.	Such support should be without cost to the individual member. Deductions must not be made from members' salaries by the respective authority as a contribution towards the cost of support which the authority has decided necessary for the effectiveness and or efficiency of members.
<b>Specific or Additional Senior Salaries</b>	
11.	Principal Councils can apply for specific or additional senior salaries that do not fall within the current Remuneration Framework.
<b>Joint Overview and Scrutiny Committees (JOSC)</b>	
12.	The salary level for a Chair of a Joint Overview and Scrutiny Committee shall be £8,793.
13.	The salary level for a Vice Chair of a Joint Overview and Scrutiny Committee shall be £4,396.
<b>Local Government Pension Scheme</b>	
14.	The entitlement to join the Local Government Pension Scheme (LGPS) shall apply to all eligible elected members of principal councils.
<b>Family Absence</b>	
15.	An elected member is entitled to retain a basic salary when taking family absence under the original regulations or any amendment to the regulations irrespective of the attendance record immediately preceding the commencement of the family absence.
16.	When a senior salary holder is eligible for family absence, they will continue to receive the salary for the duration of the absence.
17.	It is a matter for the authority to decide whether or not to make a substitute appointment. The elected member substituting for a senior salary holder taking family absence will be eligible to be paid a senior salary, if the authority so decides.
18.	If the paid substitution results in the authority exceeding the maximum number of senior salaries which relates to it, as set out in the Panel's Annual Report, an addition to the maximum will be allowed for the duration of the substitution. However, this will not apply to the Isle of Anglesey or Merthyr Tydfil Councils if it would result in the number of senior salaries exceeding fifty percent of the Council membership. Specific approval of Welsh Ministers is required in such circumstances.
19.	When a Council agrees a paid substitution for family absence the Panel must be informed within 14 days of the date of the decision, of the details including the particular post and the duration of the substitution.
20.	The Council's schedule of remuneration must be amended to reflect the implication of the family absence.

<b>National Park Authorities</b>	
21.	The basic salary for NPA ordinary members shall be £4,053 with effect from 1 April 2021.
22.	The senior salary of the Chair of a NPA shall be £12,845 with effect from 1 April 2021.
23.	A NPA senior salary of £7,792 must be paid to a Deputy Chair where appointed.
24.	Committee chairs or other senior posts can be paid. This shall be paid at £7,792.
25.	Members must not receive more than one NPA senior salary.
26.	A NPA senior salary is paid inclusive of the NPA basic salary.
27.	Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA to which they have been appointed. Where this situation applies, it is the responsibility of the individual member to comply.
<b>Fire and Rescue Authorities</b>	
28.	The basic salary for FRA ordinary members shall be £2,026 with effect from 1 April 2021.
29.	The senior salary of the chair of a FRA shall be £10,818 with effect from 1 April 2021.
30.	A FRA senior salary of £5,765 must be paid to the Deputy Chair where appointed.
31.	Chairs of Committees or other senior posts can be paid. This shall be paid at £5,765.
32.	Members must not receive more than one FRA senior salary.
33.	A FRA senior salary is paid inclusive of the FRA basic salary and must reflect significant and sustained responsibility.
34.	Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any FRA to which they have been nominated. Where this situation applies, it is the responsibility of the individual member to comply.
<b>Co-opted Members</b>	
35.	Principal councils, NPAs and FRAs must pay the fees to co-opted members (who have voting rights) as set out in Table 6.
36.	Reasonable time for pre meeting preparation is to be included in claims made by co-opted members the extent of which can be determined by the appropriate officer in advance of the meeting.

37.	Travelling time to and from the place of the meeting is to be included in the claims for payments made by co-opted members (up to the maximum of the daily rate).
38.	The appropriate officer within the authority must determine in advance whether a meeting is programmed for a full day and the fee will be paid on the basis of this determination even if the meeting finishes before four hours has elapsed.
39.	Fees must be paid for meetings and other activities including other committees and working groups (including task and finish groups), pre-meetings with officers, training and attendance at conferences or any other formal meeting to which co-opted members are requested to attend.
40.	Each authority, through its Democratic Services Committee or other appropriate committee, must ensure that all voting co-opted members are given as much support as is necessary to enable them to fulfil their duties effectively. Such support should be without cost to the individual member.
<b>Contribution towards costs of care and personal assistance</b>	
41.	<p>All relevant authorities must provide a payment towards necessary costs for the care of dependent children and adults (provided by informal or formal carers) and for personal assistance needs as follows:</p> <ul style="list-style-type: none"> <li>• Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.</li> <li>• Informal (unregistered) care costs to be paid up to a maximum rate equivalent to the Real UK Living Wage at the time the costs are incurred.</li> </ul> <p>This must be for the additional costs incurred by members to enable them to carry out official business or approved duties. Each authority must ensure that any payments made are appropriately linked to official business or approved duty. Payment shall only be made on production of receipts from the care provider.</p>
<b>Community and Town Councils</b>	
42.	All Community and Town councils must make available a payment to each of their members of £150 per year as a contribution to costs and expenses.
43.	Community and Town councils in Group A must make available an annual payment of £500 each to a minimum of 1 and a maximum of 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.
44.	Community and Town councils in Groups B or C can make an annual payment of £500 each to up to 5 members in recognition of specific responsibilities. This is in addition to the £150 payment for costs and expenses.

45.	<p>Community and Town councils can make payments to each of their members in respect of travel costs for attending approved duties. <sup>9</sup> Such payments must be the actual costs of travel by public transport or the HMRC mileage allowances as below:</p> <ul style="list-style-type: none"> <li>• 45p per mile up to 10,000 miles in the year.</li> <li>• 25p per mile over 10,000 miles.</li> <li>• 5p per mile per passenger carried on authority business.</li> <li>• 24p per mile for private motor cycles.</li> <li>• 20p per mile for bicycles.</li> </ul>
46.	<p>If a Community or Town council resolves that a particular duty requires an overnight stay, it can authorise reimbursement of subsistence expenses to its members at the maximum rates set out below on the basis of receipted claims:</p> <ul style="list-style-type: none"> <li>• £28 per 24-hour period allowance for meals, including breakfast where not provided.</li> <li>• £200 – London overnight.</li> <li>• £95 – elsewhere overnight.</li> <li>• £30 – staying with friends and or family overnight.</li> </ul>
47.	<p>Community and Town councils can pay financial loss compensation to each of their members, where such loss has occurred, for attending approved duties as follows:</p> <ul style="list-style-type: none"> <li>• Up to £55.50 for each period not exceeding 4 hours.</li> <li>• Up to £110.00 for each period exceeding 4 hours but not exceeding 24 hours.</li> </ul>
48.	<p>Community and Town councils can provide a payment to the mayor or chair of the council up to a maximum of £1,500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.</p>
49.	<p>Community and Town councils can provide a payment to the deputy mayor or deputy chair of the council up to a maximum of £500. This is in addition to the £150 payment for costs and expenses and the £500 senior salary if these are claimed.</p>
50.	<p>Members in receipt of a Band 1 or Band 2 senior salary from a principal council (that is Leader, Deputy Leader or Executive Member) cannot receive any payment from any community or town council, other than travel and subsistence expenses and contribution towards costs of care and personal assistance.</p>

<sup>9</sup> Where a member who is on official business or an approved duty is driven by a third party (not a member or officer of that authority), the member can claim mileage at the prescribed rates plus any parking or toll fees provided the authority is satisfied that the member has incurred these costs.

## **Annex 2: Independent Remuneration Panel for Wales (IRPW) Regulations:**

- a) For the remuneration of members and co-opted members of relevant authorities**
- b) For functions relating to the salaries of Heads of Paid Service of Principal Councils and Fire and Rescue Authorities**

### **Introduction**

Part 8 (sections 141 to 160) and schedules 2 and 3 of the Local Government (Wales) Measure 2011 (*the Measure*) set out the arrangements for the payments and pensions for members of relevant authorities and the functions and responsibilities of the Independent Remuneration Panel for Wales (the Panel).

Sections 62 to 67 of the Local Government (Democracy) (Wales) Act 2013 amends sections 142, 143, 144, 147, 148 and 151 of the Measure and confers additional powers on the Panel.

The powers contained in part 8 and schedules 2 and 3 of the Measure (as amended) have replaced the following Statutory Instruments:

- The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002 (No. 1895 (W.196)).
- The Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004 (No. 2555 (W.227)).
- The Local Authorities (Allowances for Members) (Wales) Regulations 2007 (No.1086 (W.115)).

The Measure also has replaced the sections of the Local Government Act 1972, the Local Government and Housing Act 1989 and the Local Government Act 2000 relating to payments to councillors in Wales.

Payments for members of community and town councils are set out in Part 5 of these Regulations. The Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003 (No. 895(W.115)) were revoked from 1 April 2013.

### **Part 1**

#### **General**

1. a. The short title of these Regulations is: "IRPW Regulations".  
b. These IRPW Regulations came into force on 1 April 2021 and replace

those in force from 1 April 2012. The implementation date for each of the relevant authorities is set out in the Annual Report or Supplementary Report of the Panel.

- c. Authorities are required to produce a schedule of payments to members and co-opted members no later than the 31 July each year, for submission to the Panel and publication (see paragraph 46).

## Interpretation

### 2. In the IRPW Regulations:

- “The 1972 Act” means the Local Government Act 1972.
- “The 2000 Act” means the Local Government Act 2000.
- “The 2013 Act” means the Local Government (Democracy) (Wales) Act 2013.
- “Payment” means the actual or maximum amount which may be paid to members and co-opted members of a relevant authority for expenses necessarily incurred when carrying out the official business of the relevant authority.
- “Annual Report” means a report produced by the Panel in accordance with section 145 of the Measure.
- “Approved duty” in relation to community and town councils has the meaning as set out in Part 5 of these Regulations.
- “Authority” means a relevant authority in Wales as defined in Section 144(2) of the Measure and includes a principal council (county or county borough council), a national park authority and a Welsh fire and rescue authority, a community or town council.
- “Basic Salary” has the same meaning as set out in paragraph 6 of these Regulations, and may be qualified as “LA Basic Salary” to refer to the basic salary of a member of a principal council; “NPA Basic Salary” to refer to the basic salary of a member of a national park authority; and “FRA Basic Salary” to refer to the basic salary of a member of a Welsh fire and rescue authority.
- “Chief Officer” of a principal council has the meaning as defined in the Localism Act 2011.
- “Civic Head” is the person elected by the council to carry out the functions of the chair of that council and is designated as mayor or chair.
- “Committee” includes a sub-committee.
- “Community or town council” means in relation to Part 8 of the Measure, a community council as defined in section 33 of the Local Government Act 1972 or a town council in accord with section 245B of the same Act.

- “Consultation draft” means the draft of an Annual or Supplementary report under Section 146 (7) or 147(8) of the Measure. The Panel must take account of these representations.
- “Constituent authority” – for national park authorities this is a principal council falling within the area of a national park authority; for Welsh fire and rescue authorities it is a principal council falling within the area of a fire and rescue authority.
- “Contribution to Costs of Care and Personal Assistance” has the same meaning as set out in paragraph 21 of these Regulations.
- “Controlling group” means a political group in a principal council where any of its members form part of the executive.
- “Co-opted Member” has the meaning contained in section 144 (5) of the Measure, that is those with the right to vote on matters within the remit of the committee on which they serve.
- “Co-opted Member payment” has the same meaning as set out in paragraph 19 of these Regulations.
- “Democratic Services Committee” means the principal council committee established under section 11 of the Measure.
- “Deputy Civic Head” is a person elected by the council to deputise for the mayor or chair of that council.
- “Executive” means the executive of an authority in a form as specified in sections 11(2) to (5) of the 2000 Act, as amended by section 34 of the Measure.
- “Executive arrangements” has the meaning given by section 10(1) of the 2000 Act.
- “Family absence” as defined in Section 142 (2) (b) of the Measure has the meaning given to it by Part 2 of the Measure, and the related Regulations
- “Financial Loss Allowance in relation to community or town councils has the meaning as set out in Part 5 of the Regulations.
- “Fire and rescue authority” means an authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
- “Head of paid service” means as designated under section 4(1) of the Local Government and Housing Act 1989.
- Joint Overview and Scrutiny Committee means a committee or subcommittee set up by two or more principal councils under the Local Authority (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013.
- “Largest opposition group” means a political group other than a controlling group which has a greater number of members than any other political group in the authority.

- “Member” means a person who serves on an authority.
  - For a principal council or a community or town council a “Member” may be:
  - An “Elected Member” which means a person who has been elected to serve as a councillor for that authority. It is possible for a person to hold an elected office if, further to the completion of an election, no candidate has presented and a person holds that office subject to proper process.
  - A ‘Co-opted Member’ which means a person who has been placed into membership of a council committee or to discharge a function subject to proper process.
  - For a national park authority, a “Member” means a person appointed by a constituent authority and a person appointed by Welsh Ministers.
  - For Welsh fire and rescue authorities a “Member” means a person appointed by a constituent authority.
  
- “National Park Authority” means a national park authority established under section 63 of the Environment Act 1995.
  
- “Official business” has the meaning contained in Section 142 (10) of the Measure in relation to the reimbursement of care, travel and subsistence costs necessarily incurred by members and co-opted members of a relevant authority (excluding community and town councils) when:
  - a. Attending a meeting of the authority or any committee of the authority or any other body to which the authority makes appointments or nominations or of any committee of such a body.
  - b. Attending a meeting of any association of authorities of which the authority is a member.
  - c. Attending a meeting the holding of which is authorised by the authority or by a committee of the authority or by a joint committee of the authority and one or more other authorities.
  - d. Attending any training or development event approved by the authority or its executive.
  - e. A duty undertaken for the purpose of or in connection with the discharge of the functions of an executive within the meaning of Part 2 of the 2000 Act, as amended.
  - f. A duty undertaken in pursuance of a standing order which requires a member or members to be present when tender documents are opened.
  - g. A duty undertaken in connection with the discharge of any function of the authority to inspect or authorise the inspection of premises.
  - h. A duty undertaken by members of principal councils in connection with constituency or ward responsibilities which arise from the discharge of principal council functions.

- i. Any other duty approved by the authority, or any duty of class so approved, undertaken for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees.
- “Other political group” means a political group other than a controlling group or the largest opposition group (if any) which comprises not less than ten per cent of the members of that authority.
- “Overview and Scrutiny Committee” means a committee of the authority which has the powers set out in sections 21(2) and (3) of the 2000 Act, as amended by Part 6 of the Measure.
- “Panel” means the Independent Remuneration Panel for Wales as set out in section 141(1) and schedule 2 of the Measure.
- “Pay policy statement” means a statement produced by a relevant authority under section 38 of the Localism Act 2011.
- ‘Political group’ may be formed from members of a recognised political party or be a group of independent members unaffiliated to any recognised political party. “Presiding Member” means a member of a principal council who has been designated by that council to carry out functions in relation to the chairing of its meetings and proceedings.
- “Principal Council” is as defined by the 1972 Act and means a county or county borough council.
- “Proper officer” has the same meaning as in section 270(3) of the 1972 Act In community and town councils, the ‘Proper Officer’ may be the clerk or other official appointed for that purpose. “Public body” means a body as defined in section 67(b) of the 2013 Act.
- “Qualifying provision” means a provision that makes a variation to a previous decision of the Panel. (Section 65 (c) of the 2013 Act).
- “Qualifying relevant authority” is an authority within the meaning of section 63 of the 2013 Act, required to produce a pay policy statement.
- “Relevant authority” is set out in Section 144(2) of the Measure (as amended) and in section 64 of the 2013 Act and, for the purposes of these Regulations, includes a principal council, a community or town council, a national park authority and a Welsh fire and rescue authority.
- “Relevant matters” are as defined in Section 142(2) of the Measure.
- “Schedule” means a list setting out the authority’s decisions in respect of payments to be made during the year (as relating to that authority) to all members and co-opted members of that authority.
- “Senior Salary” has the same meaning as set out in paragraph 11 of these Regulations and may be qualified as “Principal council Senior Salary” to refer to the senior salary of a member of a principal council; “National Park Senior Salary” to refer to the senior salary of a member of a national park authority; or “Fire and Rescue authority Senior Salary” to refer to the senior salary of a member of a Fire and Rescue authority.
- “Sickness absence” means the arrangements as set out in the Annual Report.

- “Supplementary report” has the meaning contained in section 146(4 to 8) of the Measure.
- “Travelling and subsistence payment” has the same meaning as set out in paragraph 25 of these Regulations.
- “Year” has the following meanings:
  - “financial year” – the period of twelve months ending 31 March;
  - “calendar year” – the period of twelve months ending 31 December;
  - “municipal year” – the year commencing on the date of the annual meeting of the authority and ending the day before the annual meeting of the following year; for national park authorities and Welsh fire and rescue authorities it is the period of up to twelve months following the annual meeting of the authority.

## **Part 2: Schedule of member or co-opted member payments**

### **Commencement of term of office**

3. The term of office of:
  - An elected member of a principal council or community or town council begins 4 days following the election subject to making the declaration of acceptance of that office under section 83(1) of the 1972 Act.
  - A councillor member of a national park authority begins on the date on which that member is appointed as such by a constituent authority and the term of office of a Welsh Government appointed member begins on the date of that appointment. The term of office of the chair and deputy chair of the national park authority begins on their acceptance of that office further to being either elected or appointed as a chair or deputy chair of a national park authority.
  - A councillor member of a Welsh fire and rescue authority begins on the date on which that member is appointed as such by a constituent authority and the term of office of the chair and deputy chair of the fire and rescue authority begins on the date of election by that authority to that office.
  - A co-opted member of a relevant authority begins on the date of appointment by the relevant authority.

### **Schedule of payments to members (the Schedule) (does not apply to community or town councils – see Part 5)**

4. An authority must produce annually, a schedule of payments it intends to make to its members and co-opted members. The amount of those payments must accord with the Panel’s determinations made for that year in its Annual or Supplementary Reports. The Schedule must be produced no later than four weeks following the annual meeting of the authority.

## **Amendment to the Schedule**

5. An authority may amend the Schedule at any time during the year (as relating to the authority) provided that such amendments accord with the Panel's determinations for that year.

## **Basic salary**

6. An authority must provide for the payment of a basic salary, as determined by the Panel in its Annual or Supplementary Reports, to each of its members. The amount of the salary must be the same for each member. For principal councils only, this salary remains payable during a period of family absence.
7. A member may not receive more than one basic salary from a relevant authority, but a member of one relevant authority may receive a further basic salary by being appointed as a member of another relevant authority (except in the case as indicated in paragraph 16).
8. The amount of the basic salary will be set in accordance with Section 142(3) of the Measure and will be one of the following:
  - The amount the authority must pay to a member of the authority.
  - The maximum amount that the authority may pay to a member of the authority.
9. Where the term of office of a member begins or ends other than at the beginning or end of the year (as relating to the authority), the entitlement of that member is to such proportion of the basic salary as the number of days during which the member's term of office subsists during that year bears to the number of days in that year.
10. Where a member is suspended or partially suspended from being a member of an authority (Part 3 of the 2000 Act refers) the part of the basic salary payable to that member in respect of the responsibilities or duties from which that member is suspended or partially suspended must be withheld by the authority. Payment must also be withheld if directed by the Welsh Ministers (Section 155(1) of the Measure).

## **Senior salary**

11. Subject to paragraphs 12 to 18 an authority can make payments of a senior salary to members that it has given specific responsibilities. Such payments must accord with the Panel's determination for the year (as relating to the authority) that the payments are made and must be set out in the Schedule of that authority. For principal councils only, a senior salary will remain payable during the family absence of the office holder.
12. The Panel will prescribe in its Annual or Supplementary Reports the following:
  - The categories of members eligible for the payment of a senior salary

which may not be the same for all authorities or categories of authorities.

- The discretion available to authorities in relation to the payment of senior salaries which may not be the same for all authorities or categories of authorities.
13. The amount of the senior salaries payable will be in accordance with section 142(3) of the Measure and specify:
    - The amount that a relevant authority must pay to a member of the authority.
    - The maximum amount that a relevant authority may pay to a member of the authority.
  14. The Senior Salary will comprise an amalgam of the basic salary and an additional amount for the relevant specific responsibility determined by the Panel in its Annual or Supplementary Reports. This may not be the same for all authorities or categories of authorities.
  15. The Panel in its Annual or Supplementary Reports will determine either the maximum proportion of its membership or the total number of members that an authority can pay as senior salaries. The percentage may not exceed fifty percent without the express approval of Welsh Ministers (Section 142(5) of the Measure). For principal councils only, the maximum proportion or number may be exceeded to include payment of a senior salary to an additional member who is appointed to provide temporary cover for the family absence of a senior salary office holder (subject to the 50% limit).
  - 15(a). For, Fire and Rescue Authorities and National Park Authorities the maximum proportion or number may be exceeded to include the payment of a senior salary to an additional member who is appointed to provide temporary cover for the sickness absence of a senior salary holder as determined in the Annual Report or a Supplementary Report.
  - 15(b). Payments to chairs of Joint Overview and Scrutiny Committees or Sub Committees are additional to the maximum proportion of its membership that an authority can pay as senior salaries subject to the overall maximum of fifty percent as contained in Section 142(5) of the Measure. The Panel will determine the amounts of such payments in an Annual or Supplementary Report.
  16. An authority must not pay more than one senior salary to any member. A principal council member in receipt of a senior salary as leader or executive member of an authority (determined as full-time by the Panel) may not receive a second salary as a member appointed to serve on a national park authority or a Welsh fire and rescue authority.
  - 16(a). Paragraph 16 does not apply to payments made to a chair of a Joint Overview and Scrutiny Committee or Sub Committee who is in receipt of a senior salary for a role that is not classified as full time equivalent. It continues to apply to leaders or members of the executive.

17. Where a member does not have, throughout the year specific responsibilities that allow entitlement to a senior salary, that member's payment is to be such proportion of the salary as the number of days during which that member has such special responsibility bears to the number of days in that year.
18. Where a member is suspended or partially suspended from being a member of the authority (Part 3 of the 2000 Act refers) the authority must not make payments of the member's senior salary for the duration of the suspension (Section 155(1) of the Measure). If the partial suspension relates only to the specific responsibility element of the payment, the member may retain the basic salary. Payment must also be withheld if directed by the Welsh Ministers.

### **Co-opted member payment**

19. A relevant authority must provide for payments to a co-opted member as determined by the Panel in its Annual or Supplementary Reports. In relation to this regulation 'co-opted member' means a member as determined in Section 144(5) of the Measure and set out in paragraph 2 of these Regulations.
20. Where a co-opted member is suspended or partially suspended from an authority (Part 3 of the 2000 Act refers) the authority must not make payment of a co-opted member fee for the duration of the suspension (Section 155(1) of the Measure).

### **Payments Contribution to Costs of Care and Personal Assistance**

21. Authorities must provide for the payment to members and co-opted members of an authority the reimbursement in respect of such expenses of arranging the care of children or dependants or for the individual member as are necessarily incurred in carrying out official business as a member or co-opted member of that authority. Payments under this paragraph must not be made:
  - In respect of any child over the age of fifteen years or dependant unless the member or co-opted member satisfies the authority that the child or dependant required supervision which has caused the member to incur expenses that were necessary in respect of the care of that child or dependant in the carrying out of the duties of a member or co-opted member.
  - To more than one member or co-opted member of the authority in relation to the care of the same child or dependant for the same episode of care.
  - Of more than one reimbursement for care to a member or co-opted member of the authority who is unable to demonstrate to the satisfaction of the authority that the member or co-opted member has to make separate arrangements for the care of different children or dependants.

22. The arrangements in respect of the contribution to cost of care and personal assistance payable by an authority is to be determined by the Panel in its Annual or Supplementary Reports.
23. Where a member or co-opted member is suspended or partially suspended from being a member or co-opted member of the authority (Part 3 of the 2000 Act refers) the part of the contribution to the cost of care and personal assistance payable to that member or co-opted member in receipt of the responsibilities or duties from which that member or co-opted member is suspended or partially suspended must be withheld by the authority. Payment must also be withheld if directed by the Welsh Ministers for reasons other than suspension (Section 155(1) of the Measure).
24. An authority's Schedule must stipulate the arrangements regarding the contribution towards costs of care and personal assistance payable and its arrangements for making claims, taking full account of the Panel's determinations in this respect.

#### **Travel and subsistence payments**

25. Subject to paragraphs 26 and 27 below a member or co-opted member is entitled to receive payments from the authority by way of travelling and subsistence payments at rates determined by the Panel in its Annual or Supplementary Reports. Such payments are in respect of expenditure incurred by a member or co-opted member in the performance of the official business within or outside the boundary of the authority.

#### **(Paragraphs 26 & 27 apply only to principal councils)**

26. Payment of a subsistence payment to a principal council member for the performance of official business within the boundaries of a county or county borough where they are a member should only be made when the authority is satisfied that it can be justified on economic grounds. This does not apply in respect of co-opted members of a council who live outside that authority.
27. A principal council may make provision, subject to any limitations it thinks fit, for members to claim mileage expenses for official business in connection with constituency or ward responsibilities where they arise out of the discharge of the functions of the county or county borough.
28. Where a member or co-opted member is suspended or partially suspended from being a member or co-opted member of the authority (Part 3 of the 2000 Act refers), travelling and subsistence payments payable to that member or co-opted member in respect of the responsibilities or duties from which that member is suspended or partially suspended must be withheld by the authority. Payment must also be withheld if directed by the Welsh Ministers for reasons other than suspension (Section 155(1) of the Measure).

## **Part 3: Further provisions**

### **Pensions**

29. Under Section 143 of the Measure, the Panel may make determinations in respect of pension arrangements for principal council members in its Annual or Supplementary Reports. Such determinations may:
- Define which members for whom the principal council will be required to pay a pension.
  - Describe the relevant matters in respect of which a local authority will be required to pay a pension.
  - Make different decisions for different principal councils.

### **Payments to support the function of an authority member**

30. An authority must provide for the requirements of a member to undertake their role and responsibilities more effectively. The way in which this support should be provided is determined by the Panel in its Annual or Supplementary Reports.

### **Arrangements in relation to family absence**

31. Part 2 of the Measure sets out the rights of principal council members in relation to family absence. The Panel will set out its determinations and the administrative arrangements in relation to these payments in its Annual or Supplementary Reports.

### **Sickness Absence**

32. Arrangements for long-term sickness absence of senior salary holders of principal councils, Fire and Rescue Authorities and National Park Authorities will be as set out in the Panel's Annual Report or Supplementary Report.

## **Part 4: Payments**

### **Repayment of payments**

33. An authority can require that such part of a payment be repaid where payment has already been made in respect of any period during which the member or co-opted member concerned:
- a. is suspended or partially suspended from that member's or co-opted member's duties or responsibilities in accordance with Part 3 of the 2000 Act or Regulations made under that Act.
  - b. ceases to be a member or co-opted member of the authority.

- c. or in any way is not entitled to receive a salary, allowance or fee in respect of that period.

### **Forgoing payments**

- 34. Under Section 154 of the Measure, any member or co-opted member may by notice in writing to the proper officer of the authority elect to forgo any part of their entitlement to a payment under the determination of the Panel for that particular year (as relating to the authority).

## **Part 5: Specific provisions relating to community and town councils (“the council”)**

### **Interpretation**

- 35. For the purposes of this Part the term member means both an elected member and a co-opted member.

### **Payments**

- 36. Payments
  - a) The Annual Report or a Supplementary Report determines the arrangements and amount of an annual payment to members in respect of costs incurred in carrying out the role of a member and if appropriate take account of the variation in size or financial circumstances of different councils.
  - b) The council may make payments to members in respect of costs of travel for attending approved duties within or outside the area of the council. The amounts claimable will be set out in the Annual or Supplementary Report of the Panel.
  - c) The council may reimburse subsistence costs to its members when attending approved duties within or outside the area of the council. The arrangements for reimbursement will be set out in the Annual or Supplementary Report of the Panel.
  - d) The council may pay compensation for Financial Loss to its members where such loss has occurred for attending approved duties within or outside the area of the council. The payments will be set out in the Annual or Supplementary Report of the Panel.
  - e) The council may make a payment to the chair or mayor and deputy chair or mayor of the council for the purposes of undertaking the role of that office. The payment will be set out in the Annual or Supplementary Report of the Panel.
  - f) The Annual Report or a Supplementary Report determines the arrangements for payments to members of a council who undertake senior roles and if appropriate take account of the variation in size or financial circumstances of different councils.

- g) The council must reimburse the contribution to costs of care and personal assistance to a member if claimed, as determined in the Annual Report of the Panel.
37. A member may elect to forgo any part of an entitlement to payment under these Regulations by giving notice in writing to the proper officer of the council.
38. A member making a claim for compensation for Financial Loss must sign a statement that the member has not made and will not make any other claim in respect of the matter to which the claim relates.
39. “Approved Duty” under this Part means
- i. Attendance at a meeting of the council or of any committee or sub-committee of the council or of any other body to which the council makes appointments or nominations or of any committee or sub-committee of such a body.
  - ii. Attendance at any other meeting the holding of which is authorised by the council or a committee or sub-committee of the council, or a joint committee of the council and one or more councils, or a sub-committee of such a joint committee provided that at least two members of the council have been invited and where the council is divided into political groupings at least two such groups have been invited.
  - iii. Attendance at a meeting of any association of councils of which the council is a member.
  - iv. Attendance at any training or development event approved by the council.
  - v. Any other duty approved by the council or duty of a class approved by the council for the discharge of its functions or any of its committees or sub-committees.

## **Part 6: Miscellaneous**

### **Arrangements for payments**

40. The Schedule of an authority must set out the arrangements for payment to all members and co-opted members of that authority. Such payments may be made at such times and at such intervals as determined by the authority.

### **Claims**

41. An authority must specify a time limit from the date on which an entitlement to travelling or subsistence payments arise during which a claim for must be made by the person to whom they are payable. However, this does not prevent an authority from making a payment where the allowance is not claimed within the period specified.

42. Any claim for payment of travelling, subsistence or care costs in accordance with these Regulations (excluding claims for travel by private vehicle or bicycle) shall be accompanied by appropriate receipts proving actual cost.

### **Avoidance of duplication**

43. A claim for a payment of travelling, subsistence or care costs must include, or be accompanied by, a statement signed by the member or co-opted member that the member or co-opted member has not made and will not make any other claim in respect of the matter to which the claim relates.

### **Records of payments**

44. An authority must keep a record of the payments made in accordance with these Regulations as set out in an Annual or Supplementary Report.

### **Publicity requirements**

(The required content of publicity requirements is contained in an annex to the Annual Report)

45. An authority must, as soon as practicable after determining its Schedule of Remuneration for the year under these Regulations and any Report of the Panel and not later than 31 July of the year to which the Schedule refers, arrange for the Schedule's publication within the authority's area and to notify the Panel. **(This section does not apply to community and town councils).**
46. As soon as practicable and no later than 30 September following the end of the financial year **all relevant authorities** must publicise within the authority's area and notify the Panel:
- the total sum paid by it to each member or co-opted member in respect of basic salary, senior salary, co-opted member fee, travel and subsistence payments.
  - the total expenditure on contribution towards costs of care and personal assistance.
47. In the same timescale and in the same manner, an authority must publicise any further remuneration received by a member nominated or appointed to another relevant authority. **(This section applies only to principal councils).**

## **Publicising the reports of the Panel**

48. Under Section 146(7) (a) and (b) of the Measure, the Panel will send a consultation draft of its Annual Report or Supplementary Report to all relevant authorities for circulation to authority members and co-opted members, so that representations can be made by members and co-opted members to the Panel, normally in a period of eight weeks.
49. The Panel will determine in its Annual or Supplementary Reports the arrangements publicising its Reports in accordance with Section 151 and 152 of the Measure.

## **Monitoring compliance with the Panel's determinations**

50. Section 153 of the Measure determines that relevant authorities must comply with the requirements imposed by the Panel in its Annual Reports. It also empowers the Panel to monitor the payments made by relevant authorities and for it to require the provision of information that it specifies. The requirements under this section will be set out in the Annual Report of the Panel.

## **Annex 3: Schedule of Member Remuneration**

1. Principal councils, national park authorities (NPAs) and Welsh fire and rescue authorities (FRAs) (but not community and town councils) must maintain an annual Schedule of Member Remuneration (the 'Schedule') which is in accord with the Panel's determinations on member salary and co-opted member payments and which must contain the following information:

In respect of a principal council:

- a. Named members who are to receive only the basic salary and the amount to be paid.
- b. Named members who are to receive a Band 1 and Band 2 senior salary, the office and portfolio held and the amount to be paid.
- c. Named members who are to receive a Band 3, Band 4 and Band 5 senior salary, the office and portfolio held and the amount to be paid.
- d. Named members who are to receive a civic salary and the amount to be paid.
- e. Named members who are to receive the co-opted member fee and whether chair or ordinary member and the amount to be paid.
- f. Named members who are to receive a senior salary as a chair of a Joint Overview and Scrutiny Committee or Sub Committee and the amount to be paid.
- g. Named members in receipt of a specific or additional senior salary approved by the Panel and the amount to be paid.

In respect of National Park and Fire and Rescue Authorities:

- a. Named members who are to receive a basic salary and the amount to be paid.
  - b. Named member who is to receive a senior salary as a chair of the authority and the amount to be paid.
  - c. Named members who are to receive a senior salary as deputy chair of the authority or a committee chair and the amount to be paid.
  - d. Named members who are to receive the co-opted member fee and whether a chair or ordinary member and the amounts to be paid.
2. Amendments made to the Schedule during the municipal year must be communicated to the Panel as soon as it is practicable.
  3. Principal councils must confirm in their annual Schedule that the maximum limit of senior salaries set for the council has not been exceeded.

4. Principal councils, NPAs and FRAs must include a statement of allowable expenses and the duties for which they may be claimed for care, travel and subsistence in their annual Schedule which is in accord with the Panel's determinations.
5. The Schedule must set out the arrangements for the payment of salaries, allowances and fees to all members and co-opted members of the relevant authority (IRPW Regulation 35); arrangements for making claims for care and personal assistance, travel and subsistence expenses (IRPW Regulations 24 and 36-37); arrangements for the avoidance of duplication (IRPW Regulation 38) and arrangements for re-payment of salaries, allowances and fees (IRPW Regulation 33). This schedule must also include the duties for which members and co-opted members are able to claim reimbursement towards travel, subsistence and care and personal assistance costs.
6. Principal councils must declare in the Schedule whether:
  - A statement of the basic responsibility of a councillor is in place.
  - Role descriptors of senior salary office holders are in place.
  - Records are kept of councillor attendance.
7. Principal councils, NPAs and FRAs must make arrangements for the publication of the Schedule of Member Remuneration as soon as practicable after its determination and no later than 31 July of the year to which it applies. The Schedule should be published in a manner that provides ready access for members of the public.
8. The **Schedule** must also be sent to the Panel Secretariat to be received by 31 July.
9. Any changes to the schedule during the year must be promptly publicised in the above manner and all changes notified to Panel Secretariat promptly.

## **Annex 4: Publication of Remuneration – the Panel’s Requirements**

In accordance with Section 151 of the Wales (Local Government) Measure 2011 the Panel requires that:

1. Relevant authorities must publish a Statement of Payments made to its members for each financial year. This information must be published in a form and location that is easily accessible to members of the public no later than 30 September following the end of the previous financial year and in the same timescale also provided to the Panel. The following information must be provided:
  - a. The amount of basic salary, senior salary, civic salary and co-opted member fee paid to each named member or co-opted member of the relevant authority, including where the member had chosen to forego all or part of the salary, or fee for the municipal year in question. Where a senior salary has been paid, the title of the senior office held is to be provided.
  - b. The payments made by community and town councils to named members as:
    - Payments in respect of telephone usage, information technology, consumables etc.
    - Responsibility payments
    - Allowances made to a mayor or chair and deputy mayor or deputy chair
    - Compensation for Financial Loss
    - Costs incurred in respect of travel and subsistence
  - c. All travel and subsistence expenses and other payments received by each named member and co-opted member of the relevant authority, with each category identified separately.
  - d. The amount of any further payments received by any named member nominated to, or appointed by, another relevant authority or other public body as defined by Section 67 of the Local Government (Democracy) (Wales) Act 2013, namely:
    - a local health board
    - a police and crime Panel
    - a relevant authority
    - a body designated as a public body in an order made by the Welsh Ministers.
  - e. Names of members who did not receive basic or senior salary because they were suspended for all or part of the annual period to which the Schedule applies.
  - f. In respect of the publication of the contribution towards costs of care and personal assistance, relevant authorities are only required to

publish the total amount reimbursed during the year. It is a matter for each authority to determine its response to any Freedom of Information requests it receives. However, it is not intended that details of individual claims should be disclosed.

2. **Nil returns** are required to be published and provided to the Panel by 30 September.

## Annex 5: Summary of new and updated determinations contained in this report

The numbers of most of the determinations contained within this report have changed from previous reports.

To assist authorities, this table sets out the determinations in this report which are entirely new or have been updated.

<b>Summary of new and updated determinations contained in this report</b>	
<b>Principal Councils</b>	
Determination 1: This Determination has been updated	The basic salary in 2021/22 for elected members of principal councils shall be £14,368 with effect from 1 April 2021.
Determination 2: The amounts payable under this Determination have been updated	Senior salary levels in 2021/22 for members of principal councils shall be as set out in Table 3 with effect from 1 April 2021.
Determination 3: This Determination has been updated	Where paid, a civic head must be paid a Band 3 salary of £23,161 and where paid a deputy civic head must be paid a Band 5 salary of £18,108 with effect from 1 April 2021.
Determination 4: This Determination has been updated	Where appointed and if remunerated, a presiding member must be paid a Band 3 senior salary of £23,161.
Determination 8: This Determination has been updated	Members in receipt of a Band 1 or Band 2 salary cannot receive any payment from a Community or Town Council of which they are a member. They remain eligible to claim travel and subsistence expenses and contribution towards costs of care and personal assistance from the Community or Town Council. Where this situation applies, it is the responsibility of the individual member to comply.
<b>Joint Overview and Scrutiny Committees (JOSC)</b>	
Determination 12: This is a new Determination	The salary level for a Chair of a Joint Overview and Scrutiny Committee shall be £8,793.
Determination 13: This is a new Determination	The salary level for a Vice Chair of a Joint Overview and Scrutiny Committee shall be £4,396.
<b>Entitlement to Family Absence</b>	
Determination 15: This Determination has been updated	An elected member is entitled to retain a basic salary when taking family absence under the original regulations or any amendment to the regulations irrespective of the attendance record immediately preceding the commencement of the family absence.
<b>National Park Authorities</b>	
Determination 21: This Determination has been updated	The basic salary for NPA ordinary members shall be £4,053 with effect from 1 April 2021.
Determination 22: This Determination has been updated	The senior salary of the Chair of a NPA shall be £12,845 with effect from 1 April 2021.

<b>Summary of new and updated determinations contained in this report</b>	
Determination 23: This Determination has been updated	A NPA senior salary of £7,792 must be paid to a Deputy Chair where appointed.
Determination 24: This Determination has been updated	Committee Chairs or other senior posts can be paid. This shall be paid at £7,792.
Determination 27: This Determination has been updated.	Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any NPA to which they have been appointed. Where this situation applies, it is the responsibility of the individual member to comply.
<b>Fire and Rescue Authorities</b>	
Determination 28: This Determination has been updated	The basic salary for FRA ordinary members shall be £2,026 with effect from 1 April 2021.
Determination 29: This Determination has been updated	The senior salary of the Chair of a FRA shall be £10,818 with effect from 1 April 2021.
Determination 30: This Determination has been updated	A FRA senior salary of £5,765 must be paid to the Deputy Chair where appointed.
Determination 31: This Determination has been updated	Chairs of Committees or other senior posts can be paid. This shall be paid at £5,765.
Determination 34: This Determination has been updated	Members of a principal council in receipt of a Band 1 or Band 2 senior salary cannot receive a salary from any FRA to which they have been nominated. Where this situation applies, it is the responsibility of the individual member to comply,
<b>Contribution towards Costs of Care and Personal Assistance</b>	
Determination 41: This Determination has been updated.	<p>All relevant authorities must provide a payment towards necessary costs for the care of dependent children and adults (provided by informal or formal carers) and for personal assistance needs as follows:</p> <ul style="list-style-type: none"> <li>• Formal (registered with Care Inspectorate Wales) care costs to be paid as evidenced.</li> <li>• Informal (unregistered) care costs to be paid up to a maximum rate equivalent to the Real UK Living Wage at the time the costs are incurred.</li> </ul> <p>This must be for the additional costs incurred by members to enable them to carry out official business or approved duties. Each authority must ensure that any payments made are appropriately linked to official business or approved duty. Payment shall only be made on production of receipts from the care provider.</p>

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**[Independent Remuneration Panel for Wales](#)**

<b>Report to</b>	Democratic Services Committee
<b>Date of meeting</b>	12 March 2021
<b>Lead Member / Officer</b>	Gary Williams, Monitoring Officer
<b>Report author</b>	Gary Williams, Monitoring Officer
<b>Title</b>	Public Services Ombudsman for Wales Consultation - Draft Revised Guidance on the Code of Conduct for Members of County, Town, City and Community Councils.

## 1. What is the report about?

- 1.1. The report is about a consultation being conducted by the Public Services Ombudsman for Wales, (the Ombudsman) about new draft guidance for elected members on the Code of Conduct.

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

- 2.1. To seek the views of the Committee in respect of the draft revised guidance in order that they be provided to the Ombudsman's office.

## 3. What are the Recommendations?

- 3.1. That the Committee considers and comments on the draft revised guidance contained in Appendices 1 and 2 in order that a consultation response can be formulated.

## 4. Report details

- 4.1. The Ombudsman is currently consulting on draft revised guidance on the Code of Conduct for elected members. There are two documents to consider. The first attached as Appendix 1 and is guidance for members of County Councils. The second document attached as Appendix 2 is guidance for members of Town, City and Community Councils.

- 4.2. The Ombudsman's current Guidance on the Code of Conduct for Members was published in August 2016. The guidance was designed to assist members to understand their obligations under the Code of Conduct. This continues to be the stated purpose in the latest draft.
- 4.3. The guidance documents that currently exist have been useful to members as they provide a readable text which explains the obligations imposed by the Code and contain examples which are help to set the Code's provisions into context.
- 4.4. The draft revised guidance that is the subject of the consultation follows a similar format to the previous guidance. The document appears to have been amended to include slightly more explanatory text and this is supplemented by a greater number of examples, many of which members may recognise from previous issues of the Code of Conduct Casebook. The draft revised guidance feels more up to date than the current guidance and is likely to be of assistance to existing councillors and to those who are newly elected in 2022. The documents are likely to be of assistance in the provision of training following the 2022 elections.
- 4.5. The consultation does not pose specific questions in respect of which answers are sought. Instead it would be helpful if the Committee could consider both documents from the perspective of members who would look to the documents for guidance. Committee members may wish to consider whether the documents are pitched at the right level of complexity, whether there are any aspects of the guidance that could be improved upon, and whether there is anything missing from the guidance that members may find useful.
- 4.6. The consultation closes on 21<sup>st</sup> March 2021.

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

- 5.1. The report does not have any direct impact upon the corporate priorities.

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

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

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

7.1. An impact assessment is not required.

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

8.1. There have been no other consultations carried out in respect of this report.

## **9. Chief Finance Officer Statement**

9.1 There are no direct financial consequences of this report.

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

10.1. There are no risks directly associated with this report.

## **11. Power to make the decision**

11.1. There is no decision required.

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# **The Code of Conduct**

## for members of local authorities in Wales

**Guidance from the  
Public Services Ombudsman for Wales**  
for members of county borough councils,  
fire and rescue authorities,  
national park authorities and  
police and crime panels

## Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales. I have issued separate guidance for members of community and town councils.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.<sup>2</sup>

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

The guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclose and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted downloading it from your authority’s website or contacting your Monitoring Officer.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Monitoring Officer and to make a decision as to the most suitable course of action.

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<sup>1</sup> In legislation, ‘community council’ includes a ‘town council’.

<sup>2</sup> Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging. As before, it excludes guidance which only relates to community and town councillors, as this is included in the separate guidance I have issued for such councillors.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the quarterly “Code of Conduct Casebook”, which is on my website at [www.ombudsman.wales](http://www.ombudsman.wales)

I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.

As a member, you will be offered training on the Code, from a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements for dealing with ‘member versus member’ complaints, which have proved very effective as a means of resolving many of these cases.

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in

these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

We should continue to work collaboratively to drive up standards in public life and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities.

A handwritten signature in black ink, appearing to read 'Nick Bennett', enclosed within a thin black rectangular border.

Nick Bennett  
Public Services Ombudsman for Wales  
xxxxx 2021

This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed members of:

- county and county borough councils
- fire and rescue authorities
- national park authorities
- police and crime panels in Wales

## Acknowledgement

I would like to thank the legal services department of Ceredigion County Council for the use of its flowchart on interests which are appended to this guidance.

Separate guidance is available for members of community and town councils.

First published April 2010. This edition published xxxx 2021.

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## 1 Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>3</sup> which all relevant authorities were required to adopt.<sup>4</sup>

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>5</sup>

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils<sup>6</sup> are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees.

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<sup>3</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>5</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

<sup>6</sup> A county or county borough council in Wales

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

### Investigations: Assessing the Public Interest

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

#### **Public interest factors include:**

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person

- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two-stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

### Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup> In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee

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<sup>7</sup> Calver, R (on the application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).

that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician’s right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook', which summarises cases I have investigated, is available on my website at [www.ombudsman.wales](http://www.ombudsman.wales).

### Local Resolution Process

Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the Council's Monitoring Officer for consideration under this process, in the first instance.

In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

Local resolution can also play an important role within community councils where, all too often, low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

### Standards Committee

The Standards Committee established by your authority is responsible for promoting and maintaining high standards of conduct by the authority's members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or your authority's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the authority. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in

standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.

### Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an ‘interim case tribunal’, which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an ‘appeals tribunal’ is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).

Further information about the role and procedures of the Adjudication Panel and its tribunals can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Principles

The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council’s resources and equality and respect for others.

Members elected to local authorities give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your authority, and which will give your communities confidence in the way that your authority is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>8</sup> and are replicated below.

### **1. Selflessness**

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on themselves or to improperly confer an advantage or disadvantage on others.

### **2. Honesty**

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

### **3. Integrity and Propriety**

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

### **4. Duty to Uphold the Law**

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

### **5. Stewardship**

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

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<sup>8</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2002 No. 2276 (W.166)

### **6. Objectivity in Decision-making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

### **7. Equality and Respect**

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

### **8. Openness**

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

### **9. Accountability**

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

### **10. Leadership**

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Model Code of Conduct, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**.

### Deciding when the Code applies to you See paragraphs 2 and 3

Consider conduct in your  
public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your authority. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your authority, some of the provisions of the Code apply to you at all times.

When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time. Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

### When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your authority (paragraph 2(1)(a)-(c)).

- **At any time**, if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

**Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)). When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

**If you are acting as a representative of your authority on another body, for example on the board of a housing association, which does not have a code of conduct relating to its members, you must comply with your authority's own Code** unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at [www.wlga.wales](http://www.wlga.wales) or by calling 029 2046 8600.

If you are nominated by your authority as the director of a company (a stock transfer housing association for example) you are obliged to act in the best interests of the company. If it has a code of conduct for its directors, you must abide by it. If it does not, you must comply with your authority's Code, except on the rare occasions where it conflicts with any legal obligations the company may have.

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

### **Example 1 – compliance with another body's code (paragraph 3(a))**

A member was nominated by a County Borough Council to serve as a board member of a stock transfer housing association. The Chief Executive of the housing association copied all board members into a confidential email to the Chief Executive of the Council. The Councillor admitted sending the email to the local press and said that he had done so because he felt that his duty as a councillor over-rode his duty as a board member of the housing association. The Councillor was found to have breached paragraph 3(a) of the Council's Code by disclosing the e-mail in breach of the board's own code of conduct. He was also found to have brought his office and authority into disrepute by making a misleading statement that "he recently had to withdraw" from the board of the housing association when he had been removed with immediate effect for the serious breach of confidentiality.

### **Example 2 – official capacity and misuse of resources (paragraphs 2 and 7)**

An online poll about a person accused of murder which contained inappropriate language was set up using a member's council-provided laptop, internet access and his council email address. The member said he personally had not set up the poll. The Adjudication Panel found that, as the Council had provided him with the laptop, he was responsible for it and its proper use. He also made disparaging comments about housing benefit claimants on his Facebook page when responding to a request for advice in his councillor role. The Adjudication Panel rejected his assertion that the comments had been made in a personal capacity, finding that the member had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.

### **Example 3 – official capacity (paragraph 2)**

A member had sent, and encouraged an officer of the Council with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Adjudication Panel rejected arguments that the member had been acting in an entirely personal capacity. It found that the member could not divorce himself from his role as the officer's quasi-employer and that, when sending or encouraging the officer to send the messages during working hours, he was acting in his official capacity.

## 2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

### Equality

See paragraph 4(a)

**You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

### **Example 4**

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### **Example 5**

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy and the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

### Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

**When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public, colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the ECHR provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

“Political” comments are not confined to those made within the Council chamber and, for example, include comments members may generally make on their authority’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

I may also decline to investigate a complaint where the member has raised “political” issues with officers. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example Chief Executives or Heads of Services, will also be expected to have a greater degree of robustness.

Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### Example 6

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code; and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack in some form or other on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR. The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

### Example 7

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out". The member was referred to the Adjudication Panel for Wales.

The Panel found that the member had breached paragraph 4(b) in that he had failed to show respect and consideration for others. It also found that his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

### Example 8

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing, the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

**Bullying and harassment**  
See paragraph 4(c)

Consider your conduct  
from the other  
person's perspective

**You must not use any bullying behaviour or harass any person including other members, council officers or members of the public.**

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health. This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) of the Code, very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Local authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 9**

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so, as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to

use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

### Example 10

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

### Compromising the impartiality of officers of the authority See paragraph 4(d)

**You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council.** You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code. I would encourage you to adhere to any protocol developed by your authority that deals with relationships between members and officers.

### **Example 11**

The son and daughter-in-law of a member of a County Borough Council were neighbours of a family who were tenants of the Council. Complaints had been made about the family's conduct. The member contacted officers of the Council regarding the family's occupancy of the council property and its impact on his son's family on a number of occasions, sometimes outside office hours. The calls were made in his role as an elected member and he had direct access to officials because he was a member. He received a warning from the Deputy Monitoring Officer as to his conduct, which emphasised the powerful position elected members occupy when dealing with members of staff.

Despite this he continued to contact officers about the matter, including requesting an officer to visit his family "there and then" and accusing an officer of "tipping off" the family being complained about that noise monitoring equipment was being installed.

The Adjudication Panel for Wales found that the conduct of the member was a persistent course of conduct over a period of 6 months, intended to bring undue pressure upon council officers. It found that, through his actions, he had sought to compromise the impartiality of officers of the Council. It also found that the member had failed to show respect and consideration for others and that his actions amounted to harassment and he had used his position improperly to promote the interests of his own family. Given the accumulative nature of his dealings with officers and his making a false allegation that an officer had "tipped off" the family, he had also brought the office of member into disrepute.

### Example 12

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

### Disclosing confidential information

See paragraph 5(a)

**You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:**

- **you have the consent of the person authorised to give it**
- **you are required by law to do so.**

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked 'confidential'. On other occasions, this will not be the case, but you must not disclose them even if they are not marked as confidential. If you are in any doubt, always ask your Monitoring Officer.

As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. These reports have usually been assessed by the author as containing sensitive information, following expert legal advice. The sensitivity of the information may decline over time, but you are strongly urged to take proper legal advice before disclosing it. Similarly, legal advice, whether provided by external lawyers or your authority's in-house legal staff, is almost always covered by legal privilege and should not be disclosed.

I expect information provided to members during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

### **Example 13**

A member of a County Borough Council who sat on the Council's adoption panel disclosed to a third party details of a person who had applied to the panel to adopt a child and the outcome of the application. He could only have become aware of the information he disclosed by virtue of his membership of the panel. The Adjudication Panel found that the member had disclosed confidential information in breach of the Code.

### **Example 14**

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

### Preventing access to information

See paragraph 5(b)

**You must not prevent any person from accessing information which they are entitled to by law.**

This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Monitoring Officer.

Information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your authority may be required to release it in response to a request. If you do not provide the information to the relevant officer of your authority on request, you will be in breach of the Code.

Your authority needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to your authority's relevant officer to allow the authority to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

#### **Example 15**

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

### Disrepute See paragraph 6(1)(a)

Any conduct unbecoming of a member can constitute disrepute

**You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your authority as a whole. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer, as this may also constitute disrepute (see also paragraph 6(2)).

Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

You must also conduct yourself in an appropriate manner with others within the confines of a council's building, regardless of whether your conduct is likely to be in the public domain.

#### Example 16

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself by misrepresenting the purchase as being on behalf of the Council and his abusive behaviour towards the staff had brought the office of member into disrepute.

### Example 17

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

### Reporting criminal behaviour See paragraph 6(1)(b)

**The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your authority (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your authority's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your authority's Monitoring Officer.

### Reporting breaches of the Code See paragraph 6(1)(c)

**If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible.

Your Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your Monitoring Officer may suggest that the matter would be more appropriately dealt with through the authority's local resolution process.

In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach, I will use the two-stage test that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint, including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### **Vexatious complaints** See paragraph 6(1)(d)

**You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

You must not make complaints against other members, your authority's officers or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by

political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and, as I have explained, may also be a breach of the Code. You must report well-founded alleged breaches to your Monitoring Officer - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should therefore avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about, for example, when you may disagree with a member's approach to your authority's business or their role as member. Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

### Example 18

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

### Co-operating with investigations

See paragraph 6(2)

You must co-operate with an investigation when it is being conducted by me or by your Monitoring Officer using our statutory powers. Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and your Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, you are expected to give priority to their investigations to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be, a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

### Example 19

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales. During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### Using your position improperly See paragraph 7(a)

**You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

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<sup>9</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraphs 6(1)(a) and (b). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

### **Example 20**

A member of a County Council had requested that land in his ownership in Village A be included as suitable for development in the Council's Local Development Plan (LDP). When the Council was considering suitable settlement areas for inclusion in the LDP, officers recommended that land in the neighbouring village (Village B) be included in the draft plan instead. Despite having received very clear advice from the Council's Monitoring Officer on his prejudicial interest, the member emailed the Council's planning policy officer and outlined a number of arguments which he claimed favoured the inclusion of his land in Village A as opposed to the land in Village B. At the relevant time the draft plan had been disclosed to members of the Council on a confidential basis and had not been disclosed publicly.

The Adjudication Panel found that, by sending the email, the member had breached paragraph 7(a) of the Code by attempting to use his position improperly for his own advantage. At the hearing, he sought to apportion blame on the Council's Monitoring Officer for failing to advise and train him properly on the Code, when this clearly was not the case. His actions also brought his office and the Council into disrepute.

### **Example 21**

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this

amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

### Example 22

A member of a County Borough Council made representations to council officers on behalf of a constituent about matters relating to the purchase by the constituent of a parcel of Council-owned land through a tender process. This included the removal of a restrictive covenant which rendered the land of little value to the constituent given his intention to develop it. The member volunteered in evidence before the Council's Standards Committee that his involvement was a possible way of mitigating legal costs for his constituent. Throughout his involvement, the member failed to disclose that he had a close personal association with the constituent, who he had known for 40 years and regarded as a close personal friend who he saw almost daily. The Standards Committee found that the member had breached paragraph 7(a) (and other paragraphs) of the Code in that through his interventions he had sought to use his position improperly to confer an advantage upon and avoid a disadvantage for his friend. This would potentially create a disadvantage for any member of the public who might wish to express an interest in the land had it been on the open market (as the absence of the restriction would have required), especially the lower bidder in the original tender process.

### Using the authority's resources See sub-paragraphs 7(b)(i) – (iv)

**You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority.

Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

### Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

**You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your authority, for example, your authority's Information Security Policy.

You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.

Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

### Example 23

A member of a County Council was found in breach of the Code for making improper use of his council-issued computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local

newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council's equipment in breach of the Code and had brought the office of member into disrepute.

### Example 24

A member of a County Borough Council was found by the Adjudication Panel to have breached the Code by using his council-issued mobile phone excessively for private purposes. Whilst limited personal use was permitted under the Council's IT policy, a bill in excess of £1000 was incurred in respect of private calls which the member had made.

### Reaching decisions objectively

See paragraph 8(a)

**When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and consider the issues objectively, having regard to any relevant advice of your authority's officers.** During the decision-making process, you must act fairly and take proper account of the public interest.

In some decisions, such as those taken by planning committees or where you are participating in the consideration of a ward matter, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

**Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

Section 78 of the Local Government (Wales) Measure 2011 prohibits a member of an overview or scrutiny committee meeting from voting on a question at a meeting if, before the meeting, the member has been given a party whip relating to the question.

In order for me to investigate complaints of “whipping” of votes by political groups, there must be written evidence or other corroborative evidence available of the whip. Suppositions based upon the voting patterns of particular groups will not be sufficient evidence of a whip.

### Considering advice provided to you and giving reasons See paragraph 8(b)

#### **You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your authority.**

You must have regard to all of the advice you receive from your authority’s officers, especially advice from the Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Legal Officer, where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. This is a complex area and there are provisions within other legislation which underpin it but, in general, it goes well beyond a requirement to simply consider and reject advice if it is not welcome.

I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so.

It is worth reflecting also that this places a considerable onus on statutory officers to consider their formal advice carefully, and again, where they believe it is likely to be contentious, to keep a record of it. There may be isolated cases where advice is given to a member which, when followed, leads to a breach of the Code. In investigating such cases, if the evidence suggests that there has been a breach, I would generally regard the flawed advice as a factor in mitigation, rather than as evidence that no breach occurred.

It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice.

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected, but it is not confined to these.

As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.

In reaching decisions where the advice is not provided by the statutory officers, you should still have regard to the advice provided by officers and take it into account in reaching your decision. You may also wish to have regard to other advice you have received and, of course, to the position adopted by a political group of which you are a member. In some circumstances, such as planning decisions, you must not vote on the basis of a "whip" imposed by your group. In others, it is reasonable to do so but you should avoid having an entirely closed mind prior to a debate. Again, whatever the reasons for voting against officer advice, it is highly advisable to record them.

### **Example 25**

A member of a County Council who chaired a council meeting refused to allow the Council's Monitoring Officer to advise members during a debate about the Council's "Annual Letter" from the then Wales Audit Office. Also, when the Monitoring Officer did manage to intervene to express grave concerns about the way in which the proceedings were being conducted, the member failed to have regard to the limited advice the Monitoring Officer was allowed to offer and simply said that he "noted her comments".

The member was found to have breached paragraph 8(a)(iii) of the Code. The Adjudication Panel took into account the member's full apology and expressions of remorse for his behaviour and indicated that had the member not already accepted his wrongdoing it would have imposed a greater sanction than it did.

### Expenses

See paragraph 9(a)

**You need to follow the law and your authority's requirements in claiming expenses and allowances.** If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming, for example, for childcare.

### Example 26

A member of a County Borough Council was alleged to have used the Child/Dependent Care Allowance to pay his wife to look after their daughter. During the investigation, it transpired that he had paid his adult son (from a previous marriage) a regular weekly income to care for the child as and when required. The member was able to provide proof of the payments through receipts and cheque counterfoils. In view of this, there was no evidence of any failure on the part of the member to comply with the Code.

### Gifts and hospitality

See paragraph 9(b)

**It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your authority. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code.)

### 3 Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Monitoring Officer for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached two flowcharts at Appendix 1 and 2 which Ceredigion County Council's former Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.

Guidance on registering interests is at Section 4.

**Personal Interests**  
See paragraph 10

**Do you have a link or close connection to the item to be considered?**

**While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but there are other occasions, such as when speaking to your authority's officers about the matter concerned, when you may also need to do so.

Listed below are some questions that you should ask yourself when deciding if you have an interest:

### **Do I have a personal interest?**

You have a personal interest in any business of your authority, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area
5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
7. any land let by your authority to a firm in which you are a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your authority
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes
  - body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your authority's area
10. any land in your authority's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest; however, if in doubt, consult your Monitoring Officer.

### Matters affecting your well-being or financial position

If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward or, for members of authorities which do not have wards (for example, national parks), in your authority's area, you have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### What is “a body exercising functions of a public nature”?

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether a body meets that definition:

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function, for example, a care home with residents supported by social services?
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority, for example, a private company collecting refuse for the authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer ‘yes’ to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition are health bodies, council-owned companies exercising public functions and school governing bodies. If you need further information or specific advice on this matter, please contact your Monitoring Officer.

### What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

**Close personal associates include friends, relatives, business associates and those with whom you have been in dispute**

### Who is a close personal associate?

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Monitoring Officer.

### What if I belong to an authority without wards or electoral divisions?

If you are a member of an authority that does not have wards or electoral divisions, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you or one or more of your close personal associates, **more than** it

would affect other people in your authority's area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority's area.

### “Twin hatted” members

If you are a member of both a community council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

Obviously, if the planning application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 27

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public

perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### Example 28

A member of a County Borough Council made numerous representations to his Council's officers on behalf of a constituent who was involved in the purchase of Council-owned land that was being sold by way of a tender process. The member and constituent were long-standing close personal friends, having been acquainted for some 40 years. The constituent stood to gain financially from the member's intervention. The Adjudication Panel found that the member did not consider (as required by paragraph 10(1) of the Code) whether he had a 'personal interest' when he spoke, wrote and attended meetings about the land; and he did not disclose the existence and nature of the interest in breach of paragraph 11. The Panel found that the member's personal interest was so significant as also to be a 'prejudicial interest'. The Panel, therefore, found that the member also failed to comply with paragraph 14 of the Code, in that he should not have made oral or written representations or attended meetings to discuss the matter on behalf of his constituent.

### What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or reasonably ought to be aware of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

### What to do when you have a personal interest See paragraph 11

**Once disclosed you can stay & participate if your interest is not prejudicial**

When you have a personal interest in any business of your authority, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

If you are attending a **meeting**,<sup>10</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

**Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

If you are making a decision as part of an **executive or board**, you must make sure that the written record of that decision (for example, minutes of a cabinet meeting) includes details of your interest.

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<sup>10</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present (other than political group meetings), not just formal meetings of the authority. For example, it can include an informal meeting of a member and officer.

If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.

If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 29

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

## Prejudicial Interests

See paragraph 12

### Do I have a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest and:

- the matter does not fall within one of the exempt categories of business (see below), or
- the exempt categories do not apply because the matter relates to a licensing or regulatory matter (see paragraph 12(3)).

### What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (for example, your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or electoral division affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

### Does the matter fall within one of the exemptions? See paragraph 12(2)

You will not have a prejudicial interest if the business falls within one of a number of exemptions which are set out below.

The business relates to:

- another relevant authority (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school

- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school that child attends
- decisions about statutory sick pay, if you receive or are entitled to receive it from your
- authority
- an allowance, payment or pension for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

These exemptions will **not** apply where the business you are considering is about determining an approval, consent, license, permission or regulation (see paragraph 12(3)). I consider these descriptions to refer to a narrow category of decisions, such as granting planning consent and licensing decisions. A wider interpretation of approval, for example, would cover almost every aspect of your authority's business and was clearly not intended.

If one of the exemptions applies you are **not** regarded as having a prejudicial interest. You still must disclose your personal interest **but you are allowed to participate in the item under discussion.**

### Example 30

Two members of a County Borough Council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation, one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests. The other member had, despite receiving

advice on the declaration of interests, falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of paragraphs 11 and 14 of the Code to be serious ones.

### Example 31

A Standards Committee determined that the circumstances in which a member's membership of a local organisation had ended, resulting in an acrimonious and ongoing dispute between her and the organisation (including solicitors' letters for the recovery of a debt) constituted a close personal association. It found that the nature of this association meant that the member had a prejudicial interest and that she had failed to declare this and withdraw from numerous meetings when a financial donation to the organisation had been discussed.

### Overview and Scrutiny Committees See paragraph 13

**Please note: this section does not apply to fire and rescue authorities, and national park authorities.**

You have a prejudicial interest in any business before an overview and scrutiny committee or sub-committee meeting where both of the following requirements are met:

- that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees
- you were a member of that decision-making body at that time and you were present at the time the decision was made or action taken.

If the overview and scrutiny committee is checking a decision which you were involved in making, you may be called to attend the meeting to give evidence or answer questions on the matter, and you may do so provided it is acting under its statutory powers.

### What to do when you have a prejudicial interest See paragraph 14

You must declare your interest and withdraw from the room

If you have a prejudicial interest in any aspect of your authority's business, you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.

Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

**Key point:** If you have a prejudicial interest in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

**This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter,** by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

### Example 32

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### Do I have a statutory right to speak to the meeting?

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. However, in limited circumstances, legislation may provide you with a right to speak (for example, licensing hearings and standards hearings) which the Code recognises. If so, you will be allowed to exercise that right to speak. Your Monitoring Officer should be able to confirm whether this is relevant to your case.

### If I do not have a statutory right, will I be allowed to speak to the meeting?

The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. The Code also provides the right to submit written representations to the public meeting in these circumstances. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. You may not, however, take part in the discussion or observe the vote.

### When must I leave the place where the meeting is held?

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately when the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 33

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel

found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, you must leave the room during the debate and vote.

### What if I am summoned to attend a scrutiny committee to discuss business in which I have a prejudicial interest?

If you are asked to attend by the committee exercising its statutory powers, then you may attend and participate in the meeting.

#### Example 34

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her; the member having entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

### Executive or cabinet roles

**Please note: this section will not apply to fire and rescue authorities or national park authorities, unless in the latter case there are executive arrangements in place.**

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority may make other arrangements as set out in sections 14-16 of the Local Government Act 2000. This means that the decision can be taken by an officer, another cabinet member, the full executive, or a committee of the executive.

Although you have a prejudicial interest in a matter, you may be able to make representations, answer questions and give evidence as long as a member of the public would have the same rights, but you are barred from decision-making about that matter individually or in cabinet.

You also should not participate in any early consideration of it, or exercise any delegated powers in relation to it. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence.

## Dispensations

### If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

Standards committees have powers under regulations made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

You can apply in writing to your authority's Standards Committee for a dispensation to speak and/or vote on a matter on one or more of the following grounds:

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion)
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business is being considered by an overview or scrutiny committee and you do not have a pecuniary interest
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your authority's area

- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority. If failure to grant a dispensation will result in an authority or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

## 4 Registration of Personal Interests

See paragraph 15

### Key points

All members of relevant authorities have to provide a record of their personal interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.

You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

The categories of personal interest set out in paragraph 10(2)(a) of the Code that you must register include:

- your job(s) or business(es)
- the name of your employer or people who have appointed you to work for them

- the name of any person who has made a payment to you in respect of your election or expenses you have incurred in carrying out your duties
- the name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company
- any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register
- any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use
- any other bodies to which you were elected, appointed or nominated by the authority
- your membership or position of control or management in:
  - any bodies exercising functions of a public nature (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union
  - any private club, society or association operating within your authority's area.

### **Sensitive information** See Paragraph 16

### **Key points**

You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.

‘Sensitive information’ is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Monitoring Officer within 28 days asking them to include the information in the register.

### Gifts and hospitality See Paragraph 17

#### Key points

You must register any gifts or hospitality worth more than the amount specified by your authority that you receive in connection with your official duties as a member and the source of the gift or hospitality.

You must register the gift or hospitality and its source within 28 days of receiving it. Like other interests in your register of interests, you may have a **personal interest** in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person and then decide whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your authority’s gifts and hospitality policy.

### Is the gift or hospitality connected to my official duties as a member?

You should ask yourself, “would I have been given this if I was not a member of the authority?” If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

### What if I do not know the value of a gift or hospitality?

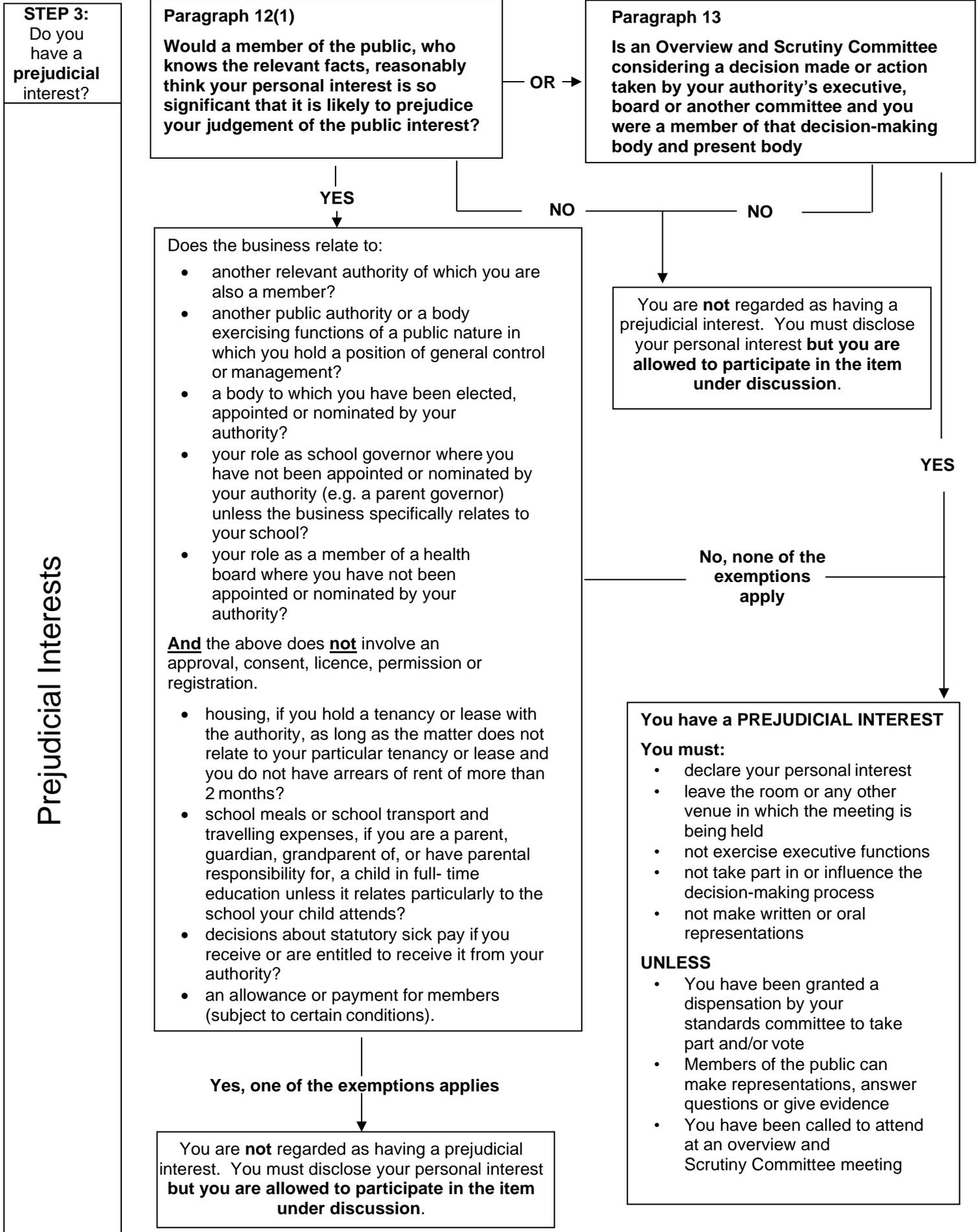
The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.

<p><b>STEP 1</b> Does the Code apply?</p>	<p><b>Are you:</b></p> <ul style="list-style-type: none"> <li>conducting the business of your authority?</li> <li>acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority?</li> <li>acting as your authority's appointee or nominee on any other body without its own code of conduct?</li> </ul>	
<p><b>STEP 2</b> Do you have a personal interest?</p>	<p>The Code <b>does</b> apply. Continue to Step 2.</p>	<p>The Code <b>does not</b> apply. No further action required.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Personal Interests</p>	<p><b>Paragraph 10(2)(a)</b> <b>Does the business relate to or is it likely to affect:</b></p> <ol style="list-style-type: none"> <li>your employment or business?</li> <li>your employer, firm or company?</li> <li>any person, other than your authority, who has paid towards your election or expenses as a member?</li> <li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li> <li>any contract that your authority makes with your company or a company in which you hold shares? (as described in 4)</li> <li>any land in which you have an interest?</li> <li>any land let by your authority to your company? (as described in 4)</li> <li>any body to which you have been elected or appointed by your authority?</li> <li>any:             <ul style="list-style-type: none"> <li>public authority or body exercising functions of a public nature?</li> <li>company, industrial and provident society, charity or body directed to charitable purposes?</li> <li>body whose main role is influencing public opinion or policy?</li> <li>trade union or professional association?</li> <li>private club, society or association operating in your authority's area in which you have membership or are in a position of general control or management? or</li> </ul> </li> <li>any land in your authority's area which you have a license to occupy for at least 28 days?</li> </ol>	<p><b>Paragraph 10(2)(c)</b> <b>Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area):</b></p> <ul style="list-style-type: none"> <li>your well-being or financial position?</li> <li>the well-being or financial position of any person who lives with you or with whom you have a close personal association?</li> <li>the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association?</li> <li>any company in which any person who lives with you or with whom you have a close personal association owns shares?</li> <li>any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.</li> </ul>
	<p><b>If YES, you have a PERSONAL INTEREST</b></p> <p><b>You must:</b></p> <ul style="list-style-type: none"> <li>declare your interest and the nature of that interest:             <ul style="list-style-type: none"> <li>at meetings</li> <li>when making written representations</li> <li>when making oral representations (and confirm it in writing within 14 days)</li> <li>consider if you have a prejudicial interest (see Appendix 2)</li> </ul> </li> </ul>	<p><b>If NO, you do not have a personal interest</b></p> <ul style="list-style-type: none"> <li>If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest</li> <li>Otherwise, <b>no further action is required</b></li> </ul>

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



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# **The Code of Conduct**

## for members of local authorities in Wales

**Guidance from the  
Public Services Ombudsman for Wales**  
for members of community and town councils

## Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.<sup>2</sup>

This version of my guidance is aimed at community and town councillors (referred to throughout this guidance as community councillors). It differs in parts from my separate guidance to county councillors and members of other relevant authorities, as it recognises and is tailored to the different nature of the role that community councillors undertake in their communities.

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

Where councillors, clerk and chair of the council work together effectively as a team, they combine energies and skills to deliver real benefits to the community they serve. Good working relationships, mutual respect and an understanding of their different roles are vital. Conflict between these key players, especially during meetings in front of the press and public can damage the council and undermine its relationship with the people served by the council.

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<sup>1</sup> In legislation, ‘community council’ includes a ‘town council’.

<sup>2</sup> Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

This guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your Council by contacting your Clerk.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Clerk and to make a decision as to the most suitable course of action. The Monitoring Officer of the principal council<sup>3</sup> for the area will also be able to provide advice if the matter is complex and your Clerk is unable to do so.

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the “Code of Conduct Casebook”, which is on my website at [www.ombudsman.wales](http://www.ombudsman.wales)

I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.

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<sup>3</sup> A county or county borough council in Wales

As a member you will be offered training on the Code whether from your Clerk, a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements that may be in place for dealing with complaints about their fellow members, which are proving an effective means of resolving many of these cases.

Despite a recent reduction in the number of complaints I have received about community councillors, I continue to be concerned about the number of low-level, tit-for-tat complaints which border on frivolity, or which are motivated by political rivalry or clashes of personality, rather than true Code of Conduct issues. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest. I take a very dim view of complaints of this nature and have, where appropriate, advised members that making a complaint which is frivolous, vexatious or malicious is itself a breach of the Code.

We should continue to work collaboratively to drive up standards and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities.

A handwritten signature in black ink, appearing to read 'Nick Bennett', enclosed in a thin black rectangular border.

Nick Bennett  
Public Services Ombudsman for Wales

xxxxx 2021

This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed members of community and town councils in Wales.

Separate guidance is available for elected, co-opted and appointed members of county councils, fire and rescue authorities, national park authorities and police and crime panels in Wales.

## **Acknowledgement**

I would like to thank the legal services department of Rhondda Cynon Taf County Borough Council for the use of its flowchart on interests.

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## 1 Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>4</sup> which all relevant authorities were required to adopt.<sup>5</sup>

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>6</sup>

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils are required to assist members and co-opted members of community and town councils in their area to observe the Code, and to arrange for advice and training to be provided. Such training may be provided by Monitoring Officers or by One Voice Wales, the representative body for community and town councils in Wales. One Voice Wales has developed bespoke training on the Code tailored to the needs of community and town council members, which has been endorsed by local authority Monitoring Officers.

**I expect all members to attend training and take advice on conduct matters where it is offered.**

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<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>5</sup> Local Authorities (Model Code of Conduct) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>6</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

Whilst community councillors do not act on decision-making bodies such as planning committees, you will be called upon to take decisions on the allocation of funding from your precept and to offer guidance, drawing on your valuable local knowledge, to the County Council about the impact of planning applications. It is imperative, therefore, that you are fully aware of the Code and its implications for your decision-making and indeed, whether you should be involved in making a decision. In light of this, I recommend training on the Code for all new councillors as early in their term of office as possible and all councillors should undertake refresher training from time-to-time.

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately, as a member, you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from your Council's Clerk or other officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

### **Investigations: Assessing the Public Interest**

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential stage is met, at the second stage I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below.

These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

### **Public interest factors include:**

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two-stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

## Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup>

In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local Standards Committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

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<sup>7</sup> Calver, R (on application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician's right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook,' which summarises cases I have investigated, is available on my website [www.ombudsman.wales](http://www.ombudsman.wales).

In this guidance I have tried, where possible, to use examples of cases which have been referred to me and which are relevant to community and town councils. Where this has not been possible, I have given examples of theoretical scenarios that indicate how the Code may be breached while you are undertaking your role.

### Local Resolution Process

Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints.

Local resolution can also play an important role within community and town councils where, all too, often low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils' to support councils in resolving minor disputes in a way which is proportionate to

the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

Typically, complaints which can be dealt with through local resolution will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am likely to refer the matter back to the Council's Clerk for consideration under the local resolution protocol, where this has been adopted by the Council. In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the Council and the Council's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Clerk to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

## Standards Committee

The Standards Committee established by the Principal Council for your area is responsible for promoting and maintaining high standards of conduct by members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or the principal council's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the principal council. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant council's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that council for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.

## Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an 'interim case tribunal', which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an 'appeals tribunal' is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).

### The Role of the Clerk

The Clerk is employed by your Council and undertakes a number of tasks including providing administrative support to the Council, advising on the development and implementation of policies and procedures and taking action to implement the Council's decisions. The Clerk has a complex role which may entail having to act as a project manager, personnel director, public relations officer and finance administrator. The Clerk acts in a supporting role for you and your fellow councillors and is the person you should turn to in the first instance if you need any advice. The best councils will have a Clerk and councillors who work as a team within a culture of mutual respect and consideration to serve their community. The Clerk is not just a secretary and is not at the beck and call of the Chair or individual members of the Council; the Clerk is answerable only to the Council as a whole. Whilst you may question the advice you are given by the Clerk, you must do so in a constructive and objective manner.

The Clerk will be able to advise councillors on relevant legislation, including matters relating to the Code and the Council's standing orders. The Clerk will work closely with the Chair of the Council to ensure that appropriate procedures are followed at meetings and that all necessary information is available to councillors so that they may make informed decisions. If necessary, Clerks may approach the relevant principal council's Monitoring Officer (see below) for advice.

The Clerk also plays an important role in facilitating the operation of the Model Local Resolution Protocol, where adopted, in conjunction with the Chair or Vice Chair of your Council.

The Clerk is an employee of the Council and is not required to abide by the Code. However, the Clerk and other Council employees are subject to a separate code of conduct set out in the 'Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001'. Under Section 82 of the Local Government Act 2000, the terms and conditions of appointment of the Council's employees are deemed to incorporate this Code. Any issues

regarding the performance of the Clerk or other employees are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of your Council's employees; this is a matter for the Council as the employer.

### The Role of the Monitoring Officer

The Monitoring Officer is employed by the Principal Council for the area. Among other things, the Monitoring Officer has an important role in ensuring the lawfulness and fairness of decision-making by the Principal Council. The Monitoring Officer also contributes to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee and members of the Council.

Monitoring Officers endeavour to provide support and guidance to community and town councils on matters of conduct, which may include the provision of training. However, this can have significant resource implications, particularly in areas with high numbers of community and town councils, and you should always ask your Clerk in the first instance for any guidance or information. The Monitoring Officer may be able to provide information if your Clerk is unavailable or you need assistance with a more complex query.

### The Principles

The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report "Standards in Public Life". Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others.

Members of community and town councils give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your Council, and which will give your communities confidence in the way that your Council is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>8</sup> and are replicated below.

### **1. Selflessness**

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on themselves or to improperly confer an advantage or disadvantage on others.

### **2. Honesty**

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

### **3. Integrity and Propriety**

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

### **4. Duty to Uphold the Law**

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

### **5. Stewardship**

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

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<sup>8</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2001 No. 2276 (W.166)

### **6. Objectivity in Decision-making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

### **7. Equality and Respect**

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

### **8. Openness**

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

### **9. Accountability**

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

### **10. Leadership**

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Model Code of Conduct, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and I encourage members to have regard to them at all times.

### Deciding when the Code applies to you See paragraphs 2 and 3

Consider conduct in your  
public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your Council. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the Code apply to you at all times.

When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time.

Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

### When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your Council (paragraph 2(1)(a)-(c)).

- **At any time**, if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your Council's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

**Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)). When you are nominated by your Council as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

**If you are acting as a representative of your Council on another body, for example on an event committee, which does not have a code of conduct relating to its members, you must comply with your Council's own Code** unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at [www.wlga.wales](http://www.wlga.wales) or by calling 029 2046 8600.

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

### **Example 1**

A complaint was received that a councillor was intoxicated and behaving inappropriately at a street party. It was established that the councillor did not have to undertake any action on behalf of the Council at the party. In my view, therefore, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way only paragraph 6(1)(a) (disrepute) of the Code applied at the time. Whilst her behaviour may have been considered inappropriate by some, it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute, so was not indicative of a breach of paragraph 6(1)(a). I did not investigate this complaint.

### **Example 2**

Whilst acting in a personal capacity, a member of a county council was convicted of criminal offences relating to a failure to maintain accurate animal records and the disposal of animal carcasses. The Standards Committee determined that, due to the seriousness of the convictions, the member had brought the authority into disrepute in breach of paragraph 6(1)(a).

## 2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

### Equality

See paragraph 4(a)

**You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your Council may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your Council's fulfilment of its positive duties under equality laws. Such conduct may cause your Council to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

### **Example 3**

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### **Example 4**

A member of a county borough council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found the failure to understand and appreciate the officer's right to privacy, the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

### Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

**When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the European Convention on Human Rights (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

“Political” comments are not confined to those made within council meetings and, for example, include comments members may generally make on their Council’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

I may also decline to investigate a complaint where the member has raised “political” issues with officers, for example, the Clerk to a council. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, such as the Chief Executive of a Principal Council, will also be expected to have a greater degree of robustness. However, I am concerned about the number of complaints I have received which allege inappropriate

behaviour by some community councillors towards their Council's Clerk. Given the very scale and nature of community and town councils, there is a distinction to be made about the role and status of a Chief Executive or other senior officer in a Principal Council and that of a Clerk. I will consider carefully any complaints of alleged inappropriate behaviour by members towards Clerks, and will investigate those complaints which are supported by appropriate evidence that a member has gone beyond what might be regarded as reasonable challenge.

Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### **Example 5**

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member, because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code, and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack, in some form or other, on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR.

The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

### Example 6

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out".

The Adjudication Panel found that the member had breached paragraph 4(b) of the Code in that he had failed to show respect and consideration for others. It also found that his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

### Example 7

The Chair of a Community Council raised a complaint at a meeting of the Council that he had not seen the text of a letter prior to it being issued (as previously agreed) in his name by the Clerk. The Chair was unhappy with the content of the letter when he eventually saw it. It was alleged that it was inappropriate for him to have raised the matter, without notice, in a public forum and in doing so he had upset and publicly humiliated the Clerk. A Standards Committee concluded that it was not inappropriate for the member to raise the issue in a public meeting so that his views could be publicly identified. The Standards Committee considered that his line of questioning and approach did not demonstrate a failure to show respect and consideration for the Clerk, but were intended to ensure that the Council's interests were protected and his concerns about the content of the letter were addressed. The Standards Committee, therefore, found no breach in relation to this aspect of the complaint.

(See paragraph 4(c) below for further examples)

## Bullying and harassment

See paragraph 4(c)

Consider your conduct  
from the other  
person's perspective

**You must not use any bullying behaviour or harass any person including other councillors, council officers (the Clerk or Proper Officer) or members of the public.**

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

### Example 8

A Community Councillor disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. The Councillor used disrespectful and abusive language and behaved in a bullying and intimidating manner towards Council Civil Enforcement Officers on four occasions. He also sought to use his position as a councillor improperly in relation to a parking offence. A Standards Committee found that the Councillor had breached paragraph 4(c) of the Code, as he had pursued a course of conduct of threatening behaviour towards the County Council employees. The Standards Committee also established that the Councillor breached paragraphs 4(b), 7(a) and 6(1)(a) of the Code.

### Example 9

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) of the Code, very senior officers within principal councils can be involved in robust discussion with members and be well placed to put their own point of view forcefully. However, the same is not necessarily true of the Clerk in the context of community and town councils and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Your Council should have an appropriate mechanism for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

The Adjudication Panel for Wales and standards committees have made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 10**

During the discussion of an unrelated matter, a member of a Community Council raised in a public meeting of the Council questions about the Clerk which were personal and focused on the Clerk's remuneration, expenses, hours worked and other occupations. This was in contravention of the Council's standing orders, which provided that any questions relating to, among other things, the appointment, conduct and remuneration of any person employed by the Council should not be considered until the Council had decided whether or not the press and public should be excluded.

A Standards Committee found that it was not appropriate for the member to have raised the matter, which should have been considered in private, in a public meeting. The Standards Committee concluded that the member had caused the Clerk embarrassment and upset and had demonstrated a lack of respect and consideration for her, in breach of paragraph 4(b) of the Code. The action by the member was not a sustained course of conduct, but a one-off event directed at an individual in a weaker position of power. As such, it could also reasonably be regarded as bullying, in breach of paragraph 4(c) of the Code.

### Example 11

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

### Example 12

I received a complaint that a member of a Town Council had acted in a disrespectful and bullying manner towards the Council's Clerk when questioning the accuracy of minutes and advice given at meetings of the Council. Witnesses were divided on whether the member's manner could be described as argumentative and obstructive, or plain talking and professional, but the general consensus was that he communicated with everyone in this way and did not appear to be doing so only to the Clerk.

It is not my role to inhibit robust political debate. Following my analysis of the evidence, I was not persuaded that there was evidence to suggest that the content of the discussions at the meetings was inappropriate. There was no evidence of behaviour which was personal, rude or abusive towards the Clerk. I was also not persuaded that the tone and content of the emails which concerned Council business, although challenging and questioning at times, would amount to disrespectful or bullying behaviour. I, therefore, concluded that no action needed to be taken.

### Compromising the impartiality of officers of the authority

See paragraph 4(d)

**You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council.** You should not approach anyone who works for, or on behalf of, the Council with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code, which may affect your ability to participate in some matters being considered by the Council (see section 3 of this guidance).

You can legitimately question officers in order to understand, for example, their reasons for proposing the Council acts in a particular way or to clarify the content of a report they have written. However, you must not try to force them to act differently, change their advice, or alter the content of a report, if doing so would prejudice their professional integrity and neutrality.

### Hypothetical Scenario

The Clerk is responsible for allocating allotments from a waiting list, the allotments are very popular and vacancies very rarely arise. The Clerk advised the Council that an allotment had become vacant and that they would consult the list and allocate the allotment to the person who had been waiting the longest in accordance with the Council's allotment allocation procedure. A Councillor's father had been waiting for an allotment for almost seven years.

The Councillor approached the Clerk after the meeting and asked to see the list. He noted that one person was ahead of his father by only one month. The Councillor asked the Clerk to give the vacant allotment to his father, he said that as so much time had elapsed since his father and the other person had applied, the other person was unlikely to question who was first and, in any event, it would not be difficult to retype the list. The Councillor suggested that in return for this favour he would encourage the Council to look favourably on the charity suggested by the

Clerk when it came time to decide where to allocate funds raised at a fun day the following month. I would regard this as indicative of a breach of paragraph 4(d) of the Code.

### Example 13

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

### Disclosing confidential information See paragraph 5(a)

**You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:**

- **you have the consent of the person authorised to give it**
- **you are required by law to do so.**

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a community councillor you may have sight of information of a confidential or sensitive nature, such as personal or commercially sensitive information. You must also be mindful that, as a councillor, you hold a position of trust and you may find that members of the public will provide you with information that should be regarded as confidential. You should always confirm (where possible obtain an agreement

in writing) that you have the person's permission to disclose such information before doing so. As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. Similarly, legal advice is almost always covered by legal privilege and should not be disclosed.

### Example 14

Community Councillor S received an email from another councillor regarding the employment of the caretaker, which was marked 'confidential'. Councillor S disclosed the email to the caretaker's wife and information in the email was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that this was indicative of a breach of paragraph 5(a) of the Code by Councillor S.

### Example 15

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

I expect information provided to a member during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

### Preventing access to information See paragraph 5(b)

**You must not prevent any person from accessing information which they are entitled to by law.** This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your Council which they have a right to access. To find out more

about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Clerk.

Any information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your Council may be required to release it in response to a request. If you do not provide the information to the Clerk or other person dealing with the information request when asked, you will be in breach of the Code.

Your Council needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to the person dealing with the information request to allow the Council to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

### Example 16

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

**Disrepute**  
See paragraph 6(1)(a)

**Any conduct  
unbecoming of a member  
can constitute disrepute**

**You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.

Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

### **Example 17**

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself, by misrepresenting the purchase as being on behalf of the Council, and his abusive behaviour towards the staff had brought the office of member into disrepute.

### **Example 18**

A member of a County Borough Council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10 year-old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published, she telephoned the Councillor who she said was abusive towards her during the call. In a subsequent email exchange, the Councillor told her that she had “[failed] to take ANY responsibility for allowing your 10yr old child out alone”, that her “ill-educated in the highway code son” was to blame and said “don’t you dare try and shift your inadequacies as a parent upon me”.

The Adjudication Panel found the member had failed to show respect and consideration to the complainant through the use of inappropriate language and by making unfounded and serious allegations based his limited knowledge of the facts, in breach of paragraph 4(b). Through its aggressive tone, threatening nature and serious allegations contained in the email, the member has also brought the office of member into disrepute, in breach of paragraph 6(1)(a).

### Example 19

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

### Reporting criminal behaviour See paragraph 6(1)(b)

**The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your Council (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your Council's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your Council's Clerk. The Principal Council's Monitoring Officer may also be able to provide advice.

### Reporting breaches of the Code See paragraph 6(1)(c)

**If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer of the principal Council.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should seek the advice of your Clerk or consult the Monitoring Officer as soon as possible.

The Clerk or Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or a technical one, or where there is no clear evidence that a breach occurred, your Clerk or Monitoring Officer may advise you of the likely threshold I will set in deciding whether an investigation is appropriate. In the most serious of cases the Clerk or Monitoring Officer may, as an exception, decide to refer matters to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

If your Council has adopted the Model Local Resolution Protocol for low-level complaints, your Clerk or the Monitoring Officer may suggest that the matter would be more appropriately dealt with through that process. The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach, I will use the two-stage test which I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

## Vexatious complaints

See paragraph 6(1)(d)

**You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

You must not make complaints against other members, your Council's officers or people working on behalf of your Council which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the Council's local resolution process, if there is one in place.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and may also be a breach of the Code. You must report well-founded alleged breaches to the Monitoring Officer of the Principal Council - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should also avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about.

### Example 20

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

This aspect of the Code has been a particular problem within community and town councils. In the past, it has been necessary for my predecessor to correspond with the Clerk of a council in relation to their mutual concerns about the number of complaints received in respect of its members. As previously stated, I too have had concerns about the number of low-level, tit-for-tat complaints that are still being received from community councillors in particular. Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and their councils and, more generally, can harm public confidence in our elected members. At the extreme, they can also have such an adverse impact on relations within the Council as whole as to render it incapable of conducting its business effectively. Where it becomes apparent that repeated member against member complaints are being made to my office, I would urge those councils to reflect on the culture which has resulted in these complaints and consider how this behaviour might be changed to avoid such complaints.

Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

I appreciate that it can be frustrating if a member of the public makes repeated complaints against you which you consider to be vexatious or frivolous in nature. They are not subject to the Code and I am required to consider each complaint on its own merit. However, it is unlikely that such complaints would pass my two-stage test and be accepted for investigation.

### Co-operating with investigations See paragraph 6(2)

**You must co-operate with an investigation when it is being conducted by me or by the Monitoring Officer of the Principal Council for the area using our statutory powers.** Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone

calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and the Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

### **Example 21**

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales.

During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and he made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### Using your position improperly See paragraph 7(a)

**You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community and town councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraphs 6(1)(a) and (b). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

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<sup>9</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

### Example 22

A Councillor was a 'joint co-ordinator' of a community group. The Councillor did not notify the Council of her position in this group. She took part in the consideration of, and voted on, the decision to negotiate a new lease in respect of a workshop used by the community group. A Standards Committee found that she had used her position on the Council improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the Council. She was found in breach of paragraph 7(a) of the Code.

### Example 23

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

### Example 24

A member of a Town Council wrote to the Welsh Government indicating that an application for a loan in respect of a 'Community Hub' project, supported by the Council, should not go ahead as the matter was subject to further discussion. The correspondence was signed by the member using the title Deputy Mayor of the Council. As a consequence, the Welsh Government made further enquiries of the Council and required it to submit a further loan application, which resulted in further work and expense for the Council.

During the course of my investigation the member claimed the correspondence was sent in a personal capacity. It was an accepted fact that the Community Hub would include facilities which would be in direct competition with the business interests of the member. In my view, the Welsh Government was unlikely to have acted upon the member's communication had it not been under the impression that the author was representing the Council.

A Standards Committee considered that the communication was designed to have an impact on the project. Whereas some of the motivation may have been to protect the public interest, the Committee considered the member had gone about it in an inappropriate manner which gave the impression that he was acting in his own business interests. The Committee concluded that the member had attempted to use his position improperly to gain an advantage in breach of paragraph 7(a) of the Code.

### Using the Council's resources See sub-paragraphs 7(b)(i) – (iv)

**You must only use or authorise the use of the resources of the Council in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** If your Council provides you with access to resources (for example telephone, computer and other IT facilities), you must only use these resources for carrying out your Council business and any other activity which your Council has authorised you to use them for.

You must be familiar with the rules made by your Council applying to the use of these resources.

Failure to comply with your Council's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your Council's resources, you must take care to ensure that this is allowed by your Council's rules.

### Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

**You must make sure you use the Council's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the Council's resources, you must have regard, if applicable, to any guidance issued by your Council, for example, your Council's Information Security Policy.

### Example 25

A member of a County Council was found in breach of the Code for making improper use of his council-owned computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council equipment in breach of the Code and had brought the office of member into disrepute.

### Reaching decisions objectively See paragraph 8(a)

**When taking part in meetings of your Council, or when arriving at decisions relating to the Council's business, you must do so with an open mind and consider the issues objectively.** During the decision-making process, you must act fairly and take proper account of the public interest.

Most decisions taken by a community or town council relate to local matters and funding of local projects. Although the amounts of money being spent are smaller than at county level, all decisions must be taken on the basis of the facts in front of you. You must not have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

**Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

### Considering advice provided to you and giving reasons

See paragraph 8(b)

**You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your Council.**

You must have regard to all of the advice you receive from your Clerk or other officers of the Council. The Clerk is usually also the 'Proper Officer'<sup>10</sup> and it is part of their role to research the policy, guidelines and legislation relevant to advice given when taking decisions.

It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the Clerk all of the information they need to take into account when giving you advice.

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

As a matter of good practice, where you disagree with the Clerk's recommendations in making a decision, you should give clear reasons for your decision. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes.

### Expenses

See paragraph 9(a)

**You need to follow the law and your Council's requirements in claiming expenses and allowances.** If you are in any doubt about your entitlements, or the proper way to claim, you should ask your Clerk for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming for.

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<sup>10</sup> The 'proper officer' is an officer appointed by the Council to exercise particular functions (ref: Section 270(3), Local Government Act 1972).

### Gifts and hospitality

See paragraph 9(b)

**It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your Council. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

### 3 Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Clerk for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached a flowchart to this guidance, based on a document prepared by Rhondda Cynon Taf County Borough Council, which is designed to take you through the questions that you should ask when deciding whether you have an interest. It is for illustration purposes only and is not definitive.

Guidance on registering interests is at Section 4.

**Personal Interests**  
See paragraph 10

**Do you have a link or close connection to the item to be considered?**

**While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but as you will read below, there are other occasions, such as when speaking to the Clerk about the matter concerned, when you may also need to do so.

Listed below are some questions that you should ask yourself when deciding if you have an interest:

### **Do I have a personal interest?**

You have a personal interest in any business of your Council, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your Council's area
5. any contract that your Council makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your Council's area (this is especially important in all planning matters including strategic plans)
7. any land let by your Council to a firm in which you're a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your Council
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes

- body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your Council's area
10. any land in your Council's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest; however, if in doubt, consult your Clerk or the Monitoring Officer of the Principal Council for area.

### Matters affecting your well-being or financial position

If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward, or the Council's area if it does not have multiple wards, you have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### What is “a body exercising functions of a public nature”?

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

When conducting community or town council business, it is likely that you will be acting on a body which is exercising functions of a public nature. You may also be doing this if you have been appointed to act on behalf of the Council on a community project or interest group.

### What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

**Close personal associates include friends, relatives, business associates and those with whom you have been in dispute**

### Who is a close personal associate?

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Clerk or the Monitoring Officer of the Principal Council.

### “Twin hatted” members

If you are a member of both a community or town council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community or Town Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community or Town Council meeting that you would be looking at the matter afresh when you consider it at the Planning Committee meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community or Town Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

Obviously, if the planning application was one submitted by the Community or Town Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 26

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk’s remuneration package. The member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member’s relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members’ ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

### What to do when you have a personal interest See paragraph 11

Once disclosed you can stay & participate if your interest is not prejudicial

When you have a personal interest in any business of your Council, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

If you are attending a **meeting**,<sup>11</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your Council's Clerk. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you are making **written representations** (including by email, text etc) to a member or officer of your Council regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

**Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

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<sup>11</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present, not just formal meetings of the council. For example, it can include an informal meeting of a member and officer.

If the Monitoring Officer of the principal council for the area has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.

If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 27

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

### Prejudicial Interests See paragraph 12

#### Do I have a prejudicial interest?

**Do not be swayed by what you think - consider what a member of the public would reasonably think**

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public

interest. There are exemptions to this which are contained in paragraph 12(2) of the Code, although many of them are unlikely to apply to business undertaken by a community or town council.

### What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in the consideration and decision on whether to support a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of your ward or Council area (if your Council does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

**Community councillors do not have a prejudicial interest in decisions made by their Council in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value does not exceed £500.** Furthermore, community councillors who have been appointed to the community group or voluntary organisation concerned by their Community Council, for example, to the board of a community hall, will not have a prejudicial interest in decisions made by their Council in respect of any grants, loans or other financial assistance in relation to that body. If, on the other hand, you are on such a board in another capacity and have not been appointed by your Council, then you will have a prejudicial interest.

### What to do when you have a prejudicial interest See paragraph 14

If you have a prejudicial interest in any aspect your Council's business you must not take part in the consideration of that business, or make representations about it, except in the circumstances described below.

Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

**Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

**This is unless you have obtained a dispensation from the relevant standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter,** by statutory right or otherwise. If that the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your Council for this purpose. However, where you attend a meeting you must immediately leave the

room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must also not write or make any oral representations about the matter, except in the circumstances above relating to representations by the public.

### Example 28

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### Do I have a statutory right to speak to the meeting?

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your Council's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. The Code also provides the right to submit written representations to the public meeting in these circumstances. You may not, however, take part in the discussion or observe the vote.

### When must I leave the place where the meeting is held?

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately after the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Clerk before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 29

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### Example 30

A Standards Committee found that a member of a Town Council with a personal and prejudicial interest sought to influence a decision about a project being considered by the Council, when he participated in a discussion at a Council meeting, in breach of paragraphs 14(1)(a) and (c) of the Code. It also found that the member's participation in the discussion constituted oral representations in breach of paragraph 14(1)(d); and he had made written representations to the Clerk and the Welsh Government in an attempt to derail the project, in breach of paragraph 14(1)(e).

### What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your Council is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your Council. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

### Example 31

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her. The member had entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

### Dispensations

#### **If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?**

Standards committees have powers under regulations<sup>12</sup> made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

You can apply in writing to the Principal Council's Standards Committee for a dispensation on one or more of the following grounds:

- at least 50 per cent of the Council or Committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- the nature of your interest is such that your participation would not harm public

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<sup>12</sup> Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001 No. 2279 (W.169)

- confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your Council's area
- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the Council. If failure to grant a dispensation will result in a council or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

## 4 Registration of Personal Interests

See paragraph 15

### Key points

Community and town councils are required to maintain and publish electronically a record of its members' interests in a public register of interests. It must also be available for public inspection at reasonable hours. This record is maintained by the 'Proper Officer', usually your Clerk.

Unlike members of principal councils and other relevant authorities, as a community councillor you do not need to register pecuniary and other interests set out in paragraph 10(2)(a) of the Code upon taking up office. However, you may find that your Council has adopted this requirement as a matter of good practice.

You must, however, register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your Council's Clerk. As indicated in the guidance on paragraph 11 of the Code, your Clerk will have arrangements in place for this. **Even when you have registered a personal interest, you must still disclose the existence and nature of the interest each and every time before you participate in any business to which it relates.**

Where you become aware of a change to a registered personal interest, you must register that change by providing written notice to your Clerk within 28 days.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

## Sensitive information

See Paragraph 16

### Key points

You may be exempt from having to disclose and register certain information in your Council's register of interests if the Monitoring Officer of the Principal Council for the area agrees that it is 'sensitive information'.

'Sensitive information' is information the disclose of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

You should provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Council's Clerk within 28 days asking them to include the information in the register.

## Gifts and hospitality

See Paragraph 17

### Key points

You must notify your Clerk of any gifts or hospitality worth more than the amount specified by your Council that you receive in connection with your official duties as a member, and the source of the gift or hospitality, within 28 days.

Like other interests in your register of interests, you may have a personal interest in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person, and then decide

whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your Council's gifts and hospitality policy.

### **Is the gift or hospitality connected to my official duties as a member?**

You should ask yourself, "would I have been given this if I was not on the Council?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Clerk.

You do not need to notify your Clerk of gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your Council). However, you should always notify your Clerk of any gift or hospitality if it could be perceived as something given to you because of your position or if your Council requires you to do so.

### **What if I do not know the value of a gift or hospitality?**

The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

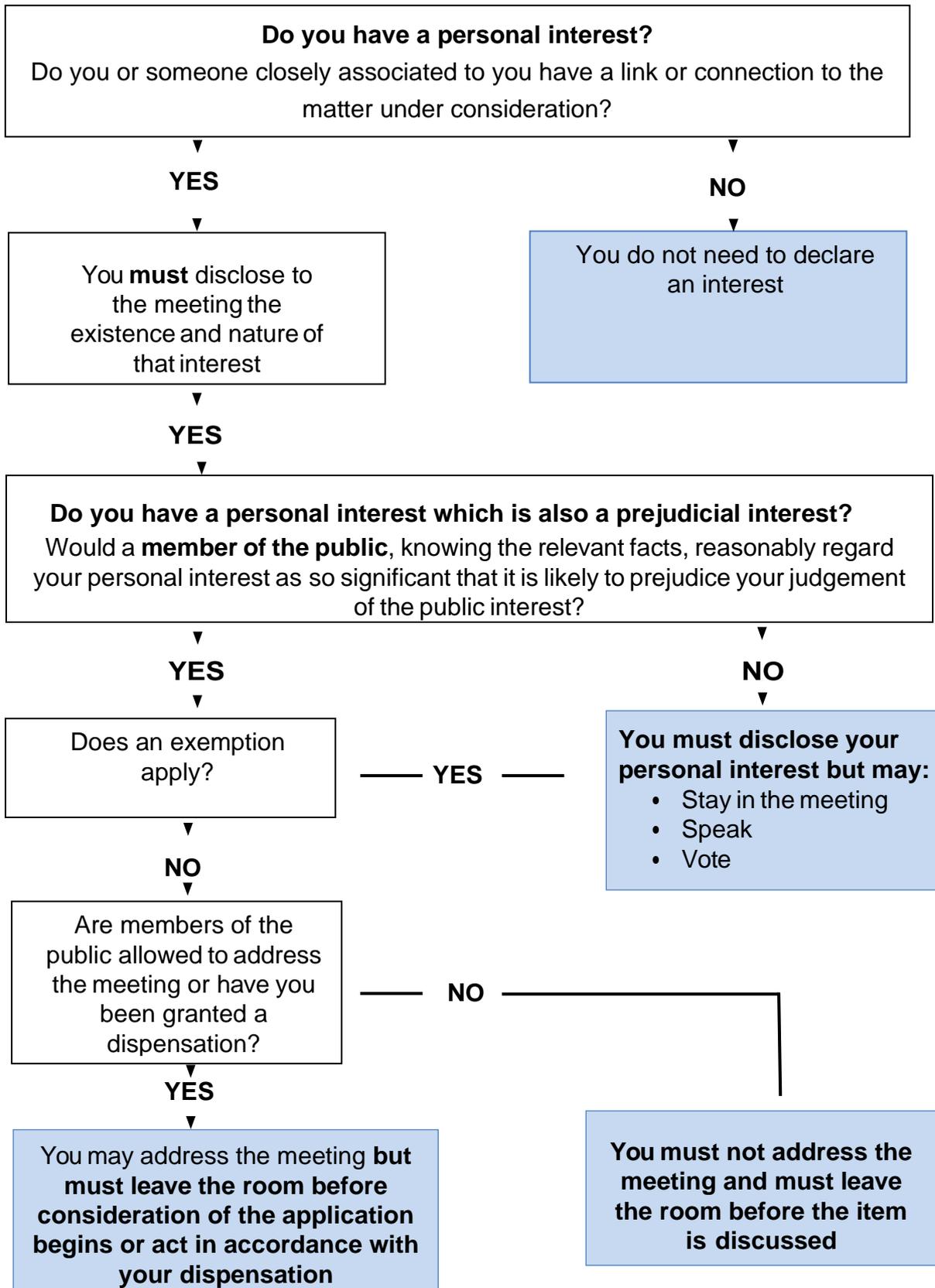
You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your Council or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Appendix

Declaration of personal and prejudicial interests

Questions to ask yourself. If in doubt you should ask your Clerk or your Monitoring Officer.



## Contact us

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Public Services Ombudsman for Wales can also be found at  
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