

Appendix 1

NORTH WALES STANDARDS COMMITTEE FORUM 17 OCTOBER 2016 QUESTIONS FOR THE OMBUDSMAN

Arising from the presentation topic:

NWFRS:

- 1. Local resolution protocol. Is it toothless because it is not compulsory and because it cannot apply sanctions?**

The Ombudsman said that the widespread adoption of local resolution procedures was a welcome development.

These provide an important mechanism for resolving issues before relationships get worse and protect the reputation of the organisation by keeping matters such as these in house. He felt it important that these procedures should not focus on sanction.

- 2. What is the future for local resolution protocols for town and community councils? Will it be limited to those who have powers of competency/additional duties under the Future Generations and Wellbeing Act 2015?**

The Ombudsman said that he didn't know what impact changes to local government would have and that he was interested to see what future plans may be for local government generally. He was pleased that One Voice Wales had put together a draft model process and, although he understood that not all local councils were members of One Voice Wales, he hoped that they could all use the draft model if they wished to.

- 3. Conflict of interests for Monitoring Officers and Standards Committees arising from Local Resolution Protocols and then dealing with any subsequent referrals from the Ombudsman.**

The question of whether a conflict of interest arises is a professional judgement to be made by the individual officer. The 2016 Regulations allow for the creation of Joint Standards Committees or for the referral of cases to another authority if the circumstances are such that a Standards Committee feels unable to hear a particular case.

Parc Cenedlaethol Eryri:

- 4. There appears to be a reduction in the number of cases before the Adjudication Panel for Wales. Is this a direct result of local resolution? Or does the Ombudsman consider that the introduction of the public interest threshold test has affected the number of cases?**

The Ombudsman didn't think that the public interest test has affected the number of cases referred to the Adjudication Panel. This has always been a small number as it is reserved for more serious cases. He expects that if anything the public interest test may cause an increase in the number of cases referred to the Panel as his office will be concentrating on the most serious cases.

- 5. Is the Ombudsman considering offering or arranging mediation training for Monitoring Officers and the members of the various Standards Committee in light of the requirement for more to be done by way of local resolution? What is the role of the Standards Committee in relation to the Ombudsman's comment in the amended guidance, published July 2016, that "I am supportive of this (local resolution process) extending to cover community councils" (page 8)?**

The Ombudsman has no resources to offer to support training in this area and had nothing to add to his previous comments.

- 6. If the Ombudsman is considering that a local resolution process should be extended to include community councils too, will the Ombudsman provide a standard Local Resolution Protocol or template so as to ensure all members are treated fairly and consistently?**

The Ombudsman considered that a model protocol is important as it provides a fair and consistent process. He understands that One Voice Wales have produced a model and doesn't consider that there is a need for him to produce another one.

Other general questions:

Anglesey:

- 7. How do you see role of community councils when some have significant responsibilities yet the variance in clerks' time varies from full time staff to 10 hours a month and skill level varies considerably and some don't even want a computer.**

The Ombudsman said that this wasn't a question for him. He had however been a member of the Williams Commission which had considered issues relating to the future of Town City and Community Councils. There is a huge variation in the size of these councils with the largest, Barry, having a population of circa 60,000 which was not much less than a small unitary authority, down to some very small populations in rural areas. He would wait and see what the Government's plans are.

- 8. Why do cases take so long from the complaint being reported to conclusion?**

The Ombudsman believed that the speed of investigations will depend on the number and nature of allegations. He is aware that "slow justice can be no justice" He is also aware of the burden placed on those who are under investigation.

The proportion of investigations now completed within 9 months improved last year to 84% compared with 76% in the previous year.

The Ombudsman's office now has a more active case management system. They would like to see this figure rise to 100% and do discuss internally how to improve this performance. It is frustrating for all involved, including the Ombudsman. A quarter of all complaints received by his office are generated by 5 or 6 public bodies. All of these bodies have improvement officers and it is to be hoped that the same mistakes are not being made and generating further complaints that his office has to investigate. His office has specialist officers in areas such as planning, health etc. and the Code of Conduct. The specialist officer in respect of Code of Conduct complaints is Annie Ginwalla.

9. Is the Ombudsman considering preparing a Sanction Guidance specifically tailored to the needs and powers of Standards Committees?

The Ombudsman has no plans to do this. The issue of sanction is an issue for Standards Committees. He is aware of guidance on sanction issued by the Adjudication Panel for Wales which committees may find useful.

Gwynedd:

10. Clarity around the new SI. I.e. suspension only within current term of office. Doesn't this make it pointless when a member can commit a serious breach of the Code, and if the timing is right, there will be no consequences? Would the expectation of the Ombudsman be that Standards Committees or Case Tribunals would still proceed and issue a censure only, making it clear that a suspension or disqualification would have followed had it been available? Is it really wasting costs to investigate, prosecute and adjudicate on something like this and isn't it unfair to elected members that some will be facing suspension because of a breach that takes place early on in their term of office and others will "get away with it"?

The Ombudsman accepted that this was a theoretical possibility. He pointed out that any system could be subject to some level of gaming.

He added that the issue related only to a very small number of matters that were referred to Committees or the Adjudication Panel.

The Ombudsman supported the amendment as it brought the issue into line with rules that already existed for the Adjudication Panel.

11. Are we going down the route of the England model? Would it be better for the Ombudsman to just focus on public service delivery, rather than the conduct of elected members, given scarce resources?

The Ombudsman was clear that we were not going down the English model. If that was the case, he would have lost the powers that he has and his office would not be doing the work that it is.

The majority of work done by his office is related to public service delivery. He feels that their work in respect of the Code of Conduct is important as it gives the public some assurance that serious issues will be dealt with. There will be a new Act

regarding the Ombudsman and some academics have suggested during the consultation that the office should not deal with conduct issues, however, nobody else has brought the issue up. The former Minister who began the consultation supported the existence of code related powers for the Ombudsman. Ultimately it will be for the Assembly to determine the content of the new Act.

Conwy:

12. The role of the Standards Committee and local Monitoring Officers in relation to town and community councils, particularly in light of the new draft Guidance. Is there an expectation that Monitoring Officers lodge complaints and / or is there an expectation that Standards Committees and Monitoring Officers now undertake local resolution at Town and Community Council level?

The Ombudsman confirmed that it would be an option for a breach to be referred to the monitoring officer. He was aware that the One Voice Wales model provided for the Clerk to play a vital role in the local resolution of complaints.

13. Is there, or is there intended to be, an archive library of standards decisions, for consistency, rather than just the APW Case Tribunals?

The Ombudsman referred to the introduction of his Code of Conduct Casebook which provides information on cases that have been considered. His office is working on a database of historic decisions which pre date the introduction of the Casebook.

Wrexham:

14. It is a statutory requirement for Town and Community Councils to have websites and for their registers of interests to be published on them. What steps will the Ombudsman take if Town and Community Councils fail to conform to this requirement?

The Ombudsman said that this was not an issue to be considered under the Code but that it may amount to maladministration. The Ombudsman does not yet have proactive powers and would need a complaint from a member of the public before he could investigate a complaint about this. It was pointed out to the Ombudsman that a member of the public would not necessarily be aware that they had a cause for complaint. The Ombudsman's response was that awareness was on the increase. He added that in a maladministration complaint there had to be demonstrated an element of injustice.

15. What is the impact on the Ombudsman's office timescales now that it is receiving / investigating fewer cases?

In overall terms the Ombudsman had a 10% increase in complaints this year. He referred again to the 84% of Code complaints which were completed within 9 months. He said that he hoped that they could continue this improvement in turnaround times.

He said that in maladministration cases the role of improvement officers was to learn lessons from cases and reduce the repetition of mistakes. He wanted front line staff to be empowered to resolve complaints informally and for there to be clear escalation processes. This may not lead to a decrease in the number of complaints but may reduce the number that are upheld. In public bodies that have improvement officers the number of upheld complaints has reduced even when the total number of complaints received has gone up.

- 16. The legislation in relation to the new ground for dispensation [paragraph 4 (3) of The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016] details that a dispensation may be granted if “it appears to the committee to be otherwise appropriate to grant a dispensation”. However, the amended guidance published by the Ombudsman’s office details that dispensation can be granted “if appropriate in all circumstances, where it was not otherwise possible, to make reasonable adjustments to accommodate a person’s disability”. Please confirm this is the “disability” created by the prejudicial interest; the legislation seems to be going further than what is included in the guidance?**

This was an issue arising out of a consultation exercise and arose out of a particular situation. The language used was to try and find a practical solution in respect of a particular member who had difficulty in leaving the chamber when a matter was under discussion.

Flintshire:

- 17. Given the comments in guidance published by your office suggesting that local resolution procedures might help to reduce the number of complaints received from town and community councillors how had you envisaged that being resourced?**

[The paragraph from the guidance is as follows -

“Most 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 effective at resolving many of these kinds of complaints. I am supportive of this extending to cover community councils.”

This is not something that the Ombudsman can help resource. He said that the One Voice Wales model and guidance may be useful. It was put to the Ombudsman that successful introduction of local resolution at this level may reduce the number of complaints and thereby reduce the demand on his resources in the future. The Ombudsman repeated that he had no resource to offer but was supportive of resources being used by others for this sort of training.

18. Whilst the annual report is welcome would it be possible to include greater analysis of the trends and any lessons that might come from the statistics, e.g. is there a rise in cases of disrespect or has there been a fall in allegations of failure to declare interests, in order to help reveal any future work that might be needed by Standards Committees or to demonstrate the success of work that has already been undertaken

The Ombudsman said that he was happy to do this. The office is currently looking at the Annual Report and new ways of presenting data. They are happy to consider new and different ways of doing this. He has shared feedback he has received with the officers who prepare the report.

Denbighshire:

19. There is a concern that the public may lose confidence in the enforcement of the Code of Conduct if they feel that legitimate complaints have been considered not worthy of investigation. Would the Ombudsman consider referring cases that he has determined not to investigate for local investigation?

The Ombudsman said that he had offered this in the past but that the take up had not been high. He acknowledged that there had been a concern among some Monitoring Officers about the level of demand on their resource to do this.

He felt that most people would take comfort from the focus on the public interest. He acknowledged that some people may feel ignored but the public interest is encapsulated in the Nolan Principles and it is evidence around that which drives him forward.

One of the factors to be taken into account is evidence of similar complaints being made previously. When asked how long complaints are kept on file he referred to a lot of retained knowledge within his office and that moving forward he would ensure that they kept a good feel for what was happening.

20. Does the Ombudsman consider that the setting of minimum standards and mandatory training for Clerks to Town, City and Community Councils would assist in the maintenance of high standards of conduct and the operation of Local Resolution Procedures in those Councils?

The Ombudsman said that he feels that this would be highly beneficial. Training was not something he could resource but he would support by attending conferences and promoting the issues.