

Report To: Standards Committee

Date of Meeting: 21st September 2018

Lead Member / Officer: Gary Williams, Monitoring Officer

Report Author: Gary Williams, Monitoring Officer

Title: **Adjudication Panel for Wales – Sanctions Guidance**

1. What is the report about?

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

2. What is the reason for making this report?

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

3. What are the Recommendations?

3.1 That the Committee notes the content of the Guidance.

4. Report details

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

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

4.3 The Guidance describes

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

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

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

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

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

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

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

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

There is no decision required.

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

There are no direct costs associated with this report.

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

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

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

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

9. Chief Finance Officer Statement

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

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

11. Power to make the Decision

Section 8 County Council Constitution