

**Report to:** Standards Committee  
**Date of Meeting:** 22<sup>nd</sup> February 2013  
**Report Author:** Monitoring Officer  
**Title:** Local Government Ethical Framework

## **1. PURPOSE OF REPORT**

1.1 To inform Members of the content of a letter from the Minister for Local Government and Communities regarding changes to the ethical framework and to seek Members' views regarding some of the proposals.

## **2 BACKGROUND**

2.1 The Minister for Local Government and Communities has written to all local authorities regarding changes to aspects of the ethical framework for local government in Wales. The letter is attached as Appendix 1 to this report.

2.2 In his letter the Minister refers to the following matters;

- a) local resolution of low level complaints about members' conduct,
- b) voluntary cap on indemnities provided to members
- c) removal of paragraph 10(2)(b) of the Code of Conduct
- d) the impact of the Calver judgement
- e) vexatious, malicious or frivolous complaints under the Code of Conduct
- f) the use of social media by members
- g) online publication of members' interests

### **2.3 Local Resolution**

The Ombudsman has made clear his wish to see local resolution procedures set up throughout Wales in order to speed up the process for dealing with low level complaints made by members about other members. The concern is that requiring all complaints to be dealt with by the Ombudsman's office will lead to delays which will have the effect of exacerbating the situation between members when a simple speedy resolution can be provided locally. Further, the investigation of more serious matters will be severely delayed if all complaints have to be referred to the Ombudsman.

2.4 A number of authorities in Wales have concerns that local resolution is inappropriate and that public and member confidence in the process of dealing with complaints will be undermined if it is felt that complaints are dealt with internally and not subject to external, independent scrutiny. A further complication is that the Code requires members to report breaches to the Ombudsman, indeed failure to report is itself a breach of the Code. The Minister intends to remove this obligation from the Code, although in practice the Ombudsman has already indicated that he would not consider failure to report as a breach, if a concern had been referred to a local resolution process.

2.5 This Council has adopted a method of local resolution of complaints which are made by members against other members in respect of matters which are at a fairly low level, or what is described as a sub threshold level, that is, complaints which are unlikely to engage the Ombudsman in an investigation.

2.6 Voluntary Cap on indemnities

Under the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 local authorities may, but do not have to, provide an indemnity for members in respect of legal costs incurred in defending any proceedings brought against them, arising out of the discharge of their duties or functions as a member. This includes the power to provide members with an indemnity in respect of the costs of defending themselves against allegations of a breach of the code of conduct. The Order further provides that where a member is found to have, or admits to having breached the Code of Conduct and has a disciplinary sanction imposed as a result then the costs of the defence of that proceeding must be reimbursed by the member.

2.7 There has been some concern in respect of the level of indemnities that some members have received in respect of proceedings before Standards Committees and Adjudication Panels. The Ombudsman has expressed the view that he would be prepared to agree to a voluntary cap on legal costs in such matters. He would agree to spend no more on legal costs in any individual case than the agreed cap. The Ombudsman initially suggested £10,000. Following further consultations with the WLGA and others a figure of £20,000 has been suggested.

2.8 This proposal does not place any requirement on an authority to provide an indemnity, it merely confirms that where such an indemnity is provided, it will be limited to £20,000.

2.9 The current method by which a member may seek an indemnity in Denbighshire is by way of an application to the Corporate Governance Committee which has the delegated authority to consider whether or not to provide an indemnity at all, and if

it does, the extent of the indemnity. Members are asked to consider whether this should be further limited to impose a cap of £20,000 on any indemnity.

#### 2.10 Paragraph 10(2)(b) Code of Conduct

This paragraph of the Code provides that a member must consider themselves to have a personal interest in any matter where a member of the public might reasonably perceive a conflict between their role in taking a decision, upon that business, on behalf of the authority as a whole, and their role in representing the interests of constituents in their ward or electoral division. This has been a part of the Code which has been the subject of much debate. Concern has consistently been expressed by Monitoring Officers that a literal interpretation of the paragraph would have unintended consequences. A member sitting in full Council voting on a matter concerning the authority as a whole but conflicting with the interests of their constituents would have to declare an interest which in some circumstances would be considered prejudicial and exclude them from the meeting. This would seem to be at odds with the member's role in representing the interests of their constituents.

2.11 Officials of the Welsh Government have previously indicated that this paragraph was intended to deal with situations where individual members were taking delegated decisions on their own, however the language has never been amended to clearly reflect that position. The Minister is now proposing to remove the paragraph completely on the basis that the Code still requires members to take decisions objectively.

#### 2.12 The Calver judgement

The Committee has recently received a report on the findings of the High Court in this case. The Minister has asked officials to consider whether or not the Code needs to be amended in light of this judgement.

#### 2.13 Vexatious, malicious or frivolous complaints

The Ombudsman has recently expressed concern that he is receiving a large number of such complaints and that these clog up the process of dealing with more meritorious complaints. The Minister has asked that this is given some prominence in future training on the Code. This is a subject that is covered in training given to both County and Community Council members in Denbighshire.

## 2.14 Social Media

The use of social media by elected members has increased rapidly in the past few years. There have been a number of cases where members have breached the Code in their use of social media. The Ombudsman in his most recent guidance is keen to point out the potential pitfalls in the use of social media. Reference is made to social media in several parts of the guidance. This is a theme that is emphasised in training given in Denbighshire.

## 2.15 Register of Interests

The Local Government Act 2000 provides at section 81 that a local authority must maintain a register of members' interests and must make that register available for inspection by members of the public during reasonable hours. The Minister is keen to make this information even easier for the public to access by making the details of members' interests available online via Council websites. The Minister has asked for views in respect of this before he decides whether to amend the Local Government (Democracy) (Wales) Bill currently being considered by the Welsh Assembly.

## **3 RECOMMENDATIONS**

- 3.1 That Members note the contents of the report
- 3.2 That Members consider the Committee's response to the Minister's letter.