

Public Document Pack



CYNGOR SIR
YNYS MÔN
ISLE OF ANGLESEY
COUNTY COUNCIL

Mr Richard Parry Jones, BA, MA.
Prif Weithredwr – Chief Executive

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RHYBUDD O GYFARFOD	NOTICE OF MEETING	
PWYLLGOR SAFONAU	STANDARDS COMMITTEE	
DYDD IAU, 11 MEDI, 2014 am 2.00 o'r gloch	THURSDAY, 11 SEPTEMBER 2014 at 2.00 pm	
YSTAFELL BWYLLGOR 1, SWYDDFEYDD Y CYNGOR, LLANGFNI	COMMITTEE ROOM 1, COUNCIL OFFICES, LLANGFNI	
Swyddog Pwyllgor	Mrs. Mairwen Hughes (01248) 752516	Committee Officer

Aelodau Annibynnol / Independent Members

Mrs. Denise Harris Edwards
Mr. Islwyn Jones
Mr. Leslie Lord
Mrs. Dilys Shaw
Mr. Michael Wilson

Yn cynrychioli'r Cyngor Sir / Representing the County Council

Councillor Trefor Lloyd Hughes
Councillor Dafydd Rhys Thomas

Yn cynrychioli'r Cynghorau Tref/Cymuned / Representing the Town/Community Councils

William Raymond Evans
John Roberts

A G E N D A

1 **DECLARATION OF INTEREST**

To receive any declaration of interest by any Member or Officer regarding any items on the Agenda.

2 **MINUTES OF MEETING** (Pages 1 - 6)

To submit for confirmation the Minutes of the meeting held on 11th June, 2014.
(ENCLOSURE 'A')

3 **EXCLUSION OF THE PRESS AND PUBLIC** (Pages 7 - 10)

To consider adoption of the following :-

“Under Section 100(A) of the Local Government Act 1972, to exclude the press and public from the meeting during discussion on the following item on the grounds that it may involve the disclosure of exempt information as defined in Schedule 12A of the said Act and in the attached Public Interest Test.”
(ENCLOSURE 'B')

4 **INTERIM HEARING** (Pages 11 - 414)

The Standards Committee to receive a report from the Public Service Ombudsman for Wales (PSOW) in relation to alleged breaches of the Members' Code of Conduct, and to hold an interim hearing in order to decide whether the matter should be referred for a full hearing and, if so, to authorise Officers to fix such a hearing and to issue directions for the conduct of such hearing.
(ENCLOSURE 'C')

5 **REGISTER OF GIFTS AND HOSPITALITY AND BRIEFING NOTES** (Pages 415 - 434)

To receive an update on work that has been done in relation to the Gifts and Hospitality Register since the Standards Committee's Review of the Registers and subsequent advice to Members.
(ENCLOSURE 'CH')

6 **CONDUCT COMPLAINTS TO THE PUBLIC SERVICE OMBUDSMAN FOR WALES**
(Pages 435 - 438)

6A A report by the Solicitor (Corporate Governance) in the form of an up-dated matrix for County Councillors. For information and any questions.
(ENCLOSURE 'D')

6B A report by the Solicitor (Corporate Governance) in the form of an up-dated matrix for Town and Community Councils. For information and any questions.
(ENCLOSURE 'DD')

ATODIAD / ENCLOSURE
A

STANDARDS COMMITTEE

Minutes of the meeting held on 11 June 2014

PRESENT: **Independent Members**

Mr Michael Wilson (Chair)
Mr Islwyn Jones (Vice-Chair)

Mrs Denise Harris Edwards
Mr Leslie Lord
Mrs Dilys Shaw

Representing Town and Community Councils

Councillors William Raymond Evans and John Roberts

IN ATTENDANCE: Head of Function (Council Business)/Monitoring Officer
Solicitor (Corporate Governance) (AP)
Corporate Web Manager (PA) (Item 4)
Audit Manager (JF) (Item 5)
Senior HR Development Officer (MW) (Item 6)
Committee Officer (MEH)

APOLOGIES: Councillor Trefor Lloyd Hughes and Councillor Dafydd Rhys
Thomas

Members expressed their deepest sympathy with Councillor Raymond Evans in the loss of his daughter recently.

1 DECLARATION OF INTEREST

No declaration of interest received.

2 MINUTES

The minutes of the meeting held on 12 March, 2014 were confirmed.

ARISING THEREON

2. (11) – The Solicitor (Corporate Governance) noted that the Clerk of the Holyhead Town Council has now responded that he will attend one of the training sessions afforded by the County Council.

3 STANDARDS COMMITTEE FORUM

Submitted and noted - the minutes of the Standards' Committee Forum held on 29 April, 2014.

The Chair gave a report on the issues raised at the Forum. It was noted that attendance at training sessions by Town and Community Councils seem to be a problem for each authority. The Members considered that Town and Community Councils should be encouraged to attend training sessions especially in relation to the Code of Conduct. Clerks of Town and Community Councils also seemed to be uneasy in taking the responsibility for advising their Members on the Code of Conduct.

The Head of Function (Council Business)/Monitoring Officer stated that she would approach One Voice Wales to ascertain if all Clerks of Town and Community Council have a job description. She also stated that the Clerks should be made aware that the County Council is available to give guidance on any issue relating to the Code and that responsibility for abiding by the Code sits with the councillors.

RESOLVED to note the report.

ACTION : To obtain standard job descriptions for Clerks and submit copy to the Chair.

4 DECLARATIONS OF INTEREST IN MEETINGS AND REGISTER OF GIFTS AND HOSPITALITY

Submitted – a report by the Corporate Web Manager in relation to the online publishing of Statutory Registers.

The Corporate Web Manager reported that no Gifts and Hospitality declaration has been completed by Members since the last meeting. She further reported on the additional software that is required to allow Members to input their own declarations of interest in meetings. The development of this software would cost £7,500 +vat to the authority. A period of testing and training would be required and it was anticipated that this new functionality would take up to three months to develop and implement.

RESOLVED to accept the report and support the initiative.

ACTION : The Corporate Web Manager will draft a report, with the support of the Standards Committee, to request funding for the software for Members to be able to electronically input their own declarations of interests at meetings.

5 COMPLAINTS MANAGEMENT PROJECT - AUDIT REVIEW

Submitted – a report from the Audit Manager in respect of an audit of the Corporate Complaints Procedure which was undertaken as part of the approved Internal Audit Periodic Plan for 2014/15 following a request from the Standards Committee.

The Audit Manager noted that 62 complaints had been processed through to completion between April 2013 to March 2014. These complaints exclude Social Services and Schools which are recorded separately. He stated that the review found that there were adequate procedures in place to ensure compliance. However, two weaknesses identified related to the training of staff in relation to the

Concerns and Complaints Policy and the production of an Annual Report to provide an analysis of complaint patterns and lessons to be learnt from previous years.

The Head of Function (Council Business)/Monitoring Officer reported that she has met with the Corporate Complaints Officer and it has been agreed that she would meet with the Service Complaints Officers to produce the outstanding Report and then devise training.

RESOLVED to accept the report.

ACTION : That Members of the Standards Committee be afforded the report of the Corporate Complaints Officer in respect of the above, together with the training plan.

6 PERFORMANCE REVIEW

Submitted – a verbal report by the Senior HR Development Officer on the current Performance Development Review process for Elected Members and referred to the proforma documents.

The Officer referred to the Performance Development Reviews that the Members of the Standards Committee will need to complete. It was suggested that the Chair/Vice-Chair would perform the role of reviewer. The purpose of such reviews will identify the skills and training needs required to support the role of a Member of the Standards Committee. It was stressed that these reviews should be completed by October. All jds now signed off.

RESOLVED to note the report.

ACTION : The Senior HR Development Officer and the Solicitor (Corporate Governance) to make arrangement for Performance Development Reviews to be undertaken for the Members of the Standards Committee to ensure paperwork completed and any development identified.

7 CONDUCT COMPLAINTS TO THE PUBLIC SERVICES OMBUDSMAN FOR WALES

7A Submitted – a report by the Solicitor (Corporate Governance) in the form of an up-dated matrix for County Councillors.

RESOLVED to note the contents of the report for information.

ACTION : An update report on any further developments from the Solicitor (Corporate Governance) at the next Standards Committee.

7B Submitted – a report by the Solicitor (Corporate Governance) in the form of an up-dated matrix for Town and Community Councils.

RESOLVED to note the contents of the report for information.

ACTION : An update report on any further developments from the Solicitor (Corporate Governance) at the next Standards Committee.

8 ADJUDICATION PANEL DECISIONS

- 8A** Submitted – a summary of decisions presented by the Solicitor (Corporate Governance) which were made by the Adjudication Panel between 12 March, 2014 and 10 June, 2014.

The Solicitor (Corporate Governance) gave a brief background report on a decision made in respect of a case in Llandrindod Wells Town Council.

RESOLVED to note the report for information.

ACTION : An update or any further developments from the Solicitor (Corporate Governance) at the next Standards Committee, and notify Members including Community Councils where appropriate.

- 8B** Submitted – a summary of the Adjudication Panel for Wales' Annual Report from the Solicitor (Corporate Governance).

RESOLVED to note the report for information.

ACTION : An update or any further developments from the Solicitor (Corporate Governance) at the next Standards Committee, and notify Members including Community Councils where appropriate.

9 TRAINING FOR COMMITTEE MEMBERS AND TOWN AND COMMUNITY COUNCILS

- 9A** Submitted – a report by Solicitor (Corporate Governance) on the responses received to the letters sent on attendance at training sessions presented by One Voice Wales.

The Officer stated that Clerks to Town and Community Councils need to be encouraged to ask for guidance from the County Council. It was noted that the Head of Function (Council Business)/Monitoring Officer and the Solicitor (Corporate Governance) are willing to try to build a closer working relationship with the Clerks in respect of issues pertaining to the Code of Conduct.

RESOLVED to accept the report.

ACTION : That the Solicitor (Corporate Governance) to approach the Clerks of Town and Community Councils to encourage them to attend the training sessions and to make them aware that the she and the Head of Function (Council Business)/Monitoring Officer are available to give guidance when required.

- 9B** Submitted – a report by the Solicitor (Corporate Governance) on the training which is to be presented by Mr. Peter Keith Lucas on the 1st July, 2014.

The Officer requested that if any Member of the Standards Committee wishes to raise any additional topics at the training session they should forward their requests to her in due course.

RESOLVED to note the report.

ACTION : The Solicitor (Corporate Governance) to report back to the next Standards Committee on the training given.

10 CHAIRMAN'S ANNUAL REPORT AND WORK PROGRAMME

The Chair stated that he had presented his Annual Report and Work Programme to the full Council on 8th May, 2014. He noted that he had reiterated that the main focus of Standards Committee to maintain standards within the Council and to afford the Clerks Town and Community Councils training opportunities on the Code of Conduct.

RESOLVED to note the report.

ACTION : None

The meeting concluded at 4:00 pm

**MR MICHAEL WILSON
CHAIR**

ATODIAD / ENCLOSURE
B

PRAWF BUDD Y CYHOEDD

PUBLIC INTEREST TEST

Ystyried cwyn yn erbyn Aelod yn dilyn ymchwiliad gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru

To consider a complaint against a Member following investigation by the Public Services Ombudsman for Wales

<p>Paragraff(au) <i>Paragraph(s)</i></p>	<p>Atodlen 12A Deddf Llywodraeth Leol 1972 <i>Schedule 12A Local Government Act 1972</i></p>
<p>18A</p> <p>Mae yna fudd y cyhoedd wrth ddatgelu oherwydd / <i>There is a public interest in disclosure as:-</i></p> <p>Gwrandawriad rhagarweiniol yw hwn i ganfyddiad gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru y gall Aelod fod wedi torri'r Côd Ymddygiad.</p> <p>Pwrpas y Côt yw annog safonau ymddygiad mewn bywyd cyhoeddus, fel y cânt eu disgrifio yn Côt, a'u gorfodi pan fo raid. Mae hwn yn fater o diddordeb cyhoeddus oherwydd mae cydymffurfio gyda'r Côt â rôl sicrwydd bwysig o ran yr hyn y mae Cynghorwyr yn ei wneud pan yn cynrychioli ddiddordeb cyhoeddus. Yn gryno, mae'r ffaith fod y Côt yn bodoli o gwbl er budd y cyhoedd i raddau helaeth.</p> <p><i>This is a preliminary hearing into a finding by the Public Services Ombudsman for Wales (PSOW) that a Member may have breached the Code of Conduct.</i></p> <p><i>The purpose of the Code is to encourage the standards of conduct in public life, as described in the Code, and, when necessary, to enforce them. This is a public interest issue as compliance with the Code plays an important assurance role for the actions of Members when representing the public interest. In short, the fact that the Code exists at all is largely for the benefit of the public</i></p>	<p>Y budd i'r cyhoedd with beidio datgelu yw / <i>The public interest in not disclosing is:-</i></p> <p>Mae paragraff 18A o atodlen 12A yn cyfeirio at "information which is subject to any obligations of confidentiality".</p> <p>Mae Ombwdsmon Gwasanaethau Cyhoeddus Cymru wedi rhoi'r cyfarwyddyd isod i'r Cyngor:-</p> <p>"Prior to any hearing the Ombudsman asks the recipient of the Report to treat it as confidential in advance of the hearing".</p> <p>O'r herwydd, mae OGCC wedi mynnu bod ei Adroddiad yn cael ei gadw'n gyfrinachol sy'n creu disgwyliad y bydd y Cyngor yn parchu cyfrinachedd.</p> <p>Byddai datgelu'r Adroddiad, a thrafod ei gynnwys mewn cyfarfod, bellach yn torri disgwyliadau pendant OGCC o ran cyfrinachedd a gallai olygu bod y Cyngor yn agored i her gyfreithiol neu gŵyn i'r Comisiynydd Gwybodaeth. Er gwaethaf teilyngdod her o'r fath, gallai ddwyn y Cyngor i mewn i anghydfodau dianghenraid sy'n gwastraffu adnoddau cyhoeddus.</p> <p>Wedi mynnu ar ymrwymiad o ran cyfrinachedd "cyffredinol", dylai fod yn fater i OGCC gyfiawnhau ei safiad pe ceid her oherwydd y penderfyniad i beidio datgelu oherwydd nid yw'r Cyngor yn gwybod beth yw ei resymau neu ei gyfiawnhad.</p> <p>Ymhellach, mae adroddiad yr Ombwdsmon yn datgelu hunaniaeth unigolyn ac fe allai hyn achosi poendod neu niwed i'r unigolyn. Ni</p>

	<p>fuasai yn helpu i ddileu enw'r unigolyn gan y byddai'n parhau i fod yn bosibl i adnabod yr unigolyn o weddill y wybodaeth sydd o fewn yr adroddiad.</p> <p><i>Paragraph 18A of Schedule 12A relates to "information which is subject to any obligations of confidentiality".</i></p> <p><i>The PSOW has instructed the Council that:-</i></p> <p><i>"Prior to any hearing the Ombudsman asks the recipient of the Report to treat it as confidential in advance of the hearing".</i></p> <p><i>Accordingly, the PSOW has imposed a confidentiality obligation on the Report, creating an expectation of confidentiality on the part of the Council.</i></p> <p><i>Disclosure of the Report, including discussion of its content in a public meeting, would now breach the PSOW's explicit expectation of confidentiality and might leave the Council open to legal challenge or complaint to the Information Commissioner. Regardless of the merits of such challenge this has the potential to involve the Council in needless disputes that waste public resources.</i></p> <p><i>Having imposed a "blanket" confidentiality obligation it should be for the PSOW to justify its position in the event of challenge to non-disclosure, as the Council is not privy to its reasoning or justification.</i></p> <p><i>Further, the Ombudsman's report discloses the identity of a third party and this disclosure could cause distress or detriment to that individual. To redact the name of the individual would not assist as it would still be possible to identify the individual from other information contained within the report.</i></p>
<p>Argymhelliad - Wedi pwyso a mesur, mae'r budd i'r cyhoedd o ran cadw'r eithriad, yn fwy na fyddai'r budd i'r cyhoedd petai'r wybodaeth yn cael ei datgelu, yn arbennig felly gan mai gwrandawriad rhagarweiniol yn unig yw hwn.</p> <p>Recommendation - <i>On balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, particularly as this is a preliminary hearing only.</i></p>	

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ATODIAD / ENCLOSURE
CH

ISLE OF ANGLESEY COUNTY COUNCIL

MEETING:	Standards Committee
DATE:	11 th September 2014
TITLE:	Briefing Note for County Council Members on Gifts and Hospitality
REPORT BY:	Awena Walkden, Solicitor (Corporate Governance)
PURPOSE OF REPORT:	To obtain Standards Committee agreement on draft training document
CONTACT OFFICER:	Awena Walkden Solicitor (Corporate Governance) Ext 2563

Background

Following the Local Government Elections in May 2013, our new and returning Members underwent a substantial programme of training and development. In February 2014 the Council achieved the WLGA's Member Development Charter status and adopted its Annual Development Programme for Members for 2014/15.

Not all issues, though, lend themselves to specific developmental sessions and so the Council has introduced the concept of publishing occasional briefing notes to Members on discrete subject areas, especially those on which Members frequently seek advice.

Thus far, 4 briefing notes have been issued on the following topics:-

1. Section 25 Localism Act 2011
2. Public Procurement
3. Local Council Housing Allocations
4. Political Freedom of Speech v Code of Conduct

Copies are attached at Appendix 1. They are also available on the Council's web site at <http://monitor.anglesey.gov.uk/corporate-resource/corporate-governance/briefing-notes-to-members/>

Gifts and Hospitality Register

Earlier this year the Standards Committee completed its annual review of the three public registers of Members' interests ("the Review").

Attached at Appendix 2 to this Report is an extract of the email that went out to all Members on the 17th April 2014 setting out the findings of the Review. This letter reminds Members of the requirement under their Code of Conduct that they must register all gifts and hospitality received, within 28 days of receipt, and where the gift or hospitality exceeds the £20 threshold. This reminder was specifically included because the Standards Committee was concerned that so few declarations had been made. Of course, the Committee could not tell whether there was any failure to declare gifts and hospitality or whether there were no gifts or hospitality that required declaration.

Frequently Asked Questions on Gifts and Hospitality

Given the Standards Committee's findings in the Review, and the fact that the Council already has a current and comprehensive Protocol to advise Members on the principles which underpin the registration of gifts and hospitality (at section 5.9 of the Constitution) we have devised a draft document entitled "Frequently Asked Questions on Gifts and Hospitality" which tries to address some of the obvious issues arising from this aspect of the Code and the Protocol, and which it is proposed be circulated to Members as a briefing note in accordance with the system that has already been adopted. A copy of the draft is attached at Appendix 3.

Recommendation

For the Standards Committee to :-

- (i) approve / amend the draft document at Appendix 3;
- (ii) authorise its publication as a briefing note to Members;
- (iii) suggest any other subject areas which may form useful briefing notes.

ATODIAD / APPENDIX 1

Section 25 Localism Act 2011 – A Quick Guide for Councillors

Many electors expect their views on local matters to be voiced by their Councillors. Councillors are often expected to lead public opinion in their locality and to speak out publicly on matters which are controversial, significant or important. Frequently Councillors may be asked to make public statements on matters when only some of the relevant facts are known.

Very often Councillors are able to voice public opinions on many matters without concern. However, difficulties may arise where those Councillors are also the decision makers on the very issues where they are expected to voice public opinions.

Decision makers in local authorities should act as custodians of the public interest. Decisions must be made according to the relevant considerations, and irrelevant matters disregarded. Decisions must be approached with an open mind. Speaking out prematurely in strident and absolute terms may give the impression that minds are closed and have already been made up. This poses a danger to the decision maker, both the Council itself and the Councillor concerned.

Those giving the impression that they have already made up their mind on an issue before the decision is actually taken may be open to allegations that they are biased on the matter or that they have predetermined the issue. Such a decision may be the subject of a legal challenge against the decision and the Councillor may be the subject of a complaint.

The Localism Act 2011 tries to correct this perceived imbalance between representing local views on a matter and making a decision on the same matter.

Section 25 of the Act says that a decision maker is not to be taken as having closed their mind to a matter, or be guilty of bias or predetermination, merely because they have previously expressed their view on that matter.

It is unclear whether this piece of legislation will fundamentally change the law in this area but the current position is that Councillors can express a view on matters before decisions are taken on those matters, **provided a degree of caution is exercised**.

When making public comments on matters where they will, in future, also be the decision makers, Councillors should not express their views on the merits in unequivocal terms. They can state their view but Councillors should always make it clear that, as a decision maker, they will have to consider the matter afresh before the decision is taken. This means reviewing all of the relevant information in front of them before taking the decision.

By approaching matters in this way, Councillors can express a preliminary view on a matter (technically known as a predisposition) but without placing themselves and the Council at risk of a finding of bias or predetermination.

Whilst this issue can cause danger, a careful and balanced approach can allow Councillors to express preliminary views on matters and retain the right to make the decision on those same matters. In addition to being able to make public comments, this means that Councillors who are also members of Town and Community Councils, can

speak and vote on matters which they will later consider in their role as County Councillors.

It is likely that, over time, the courts will decide disputes relating to Section 25 of the Localism Act 2011, which could affect the legal position. If there is any significant or fundamental change that would affect the advice in this note, then we will notify Members.

In the meantime, if you are in any doubt about a particular situation or set of circumstances then please contact us for legal advice on 01248 752586 lbxcs@anglesey.gov.uk, 01248 752134 rwjcs@anglesey.gov.uk or 01248 752563 apxce@anglesey.gov.uk.

Public Procurement - A quick Guide for Councillors

Introduction

You may occasionally be asked to provide advice to the public on Council contracts and public procurement. In particular, the local business sector may ask for your advice about winning work from the Council.

As the Council is a public body it is classed as a “Best Value” authority which is under a statutory duty to achieve best value for money on all of the contracts that it enters into with suppliers of goods and/or services. This statutory obligation means that it cannot always provide contracts to local businesses as they may not be able to offer the Council the best value for money when compared to their competitors. There are also restrictions which prevent the Council from breaking up contracts into smaller parcels of work. The Council does however want to encourage local businesses to tender for work, and to help them to understand the contract process so as to provide them with the best chance of being successful in winning work from the Council.

Contract Limits

The table below sets out the steps that the Council is legally obliged to take before it awards a contract for the purchase of goods or services:-

Value of Contract	Steps the Council has to take
£0 – £3,000.00	Informal enquiries.
£3,000.00 - £30,000.00	At least three formal quotations must be obtained.
£30,000.00 +	Must abide by the Council’s full Tendering Procedure in accordance with the Council’s Contract Procedure Rules (“CPR”) and put the contract out to tender.

The CPR can be found by following this link- <http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-4-rules-of-procedure/constitution-49-contract-procedure-rules/>

EU Procurement Rules

As the Council is within the European Union it must also comply with complex EU Regulations on public procurement if the contract value falls within the EU financial thresholds which are currently as follows:-

Contract for works (i.e. construction type contracts)	Contracts for Supplies and Services
£4,332,012.00	£172,514.00

These EU financial thresholds are reviewed every two years and up to date figures can always be found by following this link:- <http://www.ojec.com/Thresholds.aspx>. When the EU Regulations apply there is an obligation on the Council to advertise the contract in the Official Journal of the European Union. There may also be an obligation to advertise contracts below EU value when the contract is likely to be of interest to a contractor in another EU state (cross-border interest).

What is the Council doing to help local businesses tender for work?

The following assistance is currently being provided by the Council and its colleagues to encourage local businesses to tender for contracts with the Council:-

1. Access is provided to "*Menter a Busnes*" which helps SMEs understand the Council's contractual requirements;
2. Registration on www.sell2wales.gov.uk. If a local business wants to register its interest in becoming a prospective supplier to IACC, it can register its details on this website and receive updates when an advert is placed by the IACC;
3. A Procurement Strategy is currently being drafted by the Procurement Manager and will set out the steps which need to be followed by suppliers, including local suppliers, wishing to tender for work. Members will all have an opportunity to provide input into this strategy before it becomes effective.

In a special report on Housing Allocations and Homelessness, the Public Services Ombudsman for Wales concluded that a significant number of county and county borough councils in Wales have yet to adopt housing allocations policies which fully complied with legal requirements and took appropriate account of the statutory guidance.

In compliance with the legal requirements, our Constitution delegates authority to the Head of Service (Housing) to “manage, maintain, issue, develop, approve, administer, determine and implement...” the allocation of tenancies; the allocation of temporary housing, including emergency accommodation (for up to 2 years); and services relating to homelessness. This delegation is supported by Section 18 of the Anglesey Housing Allocations Policy, which confirms that the operation of the allocations scheme is delegated to the Head of Service (Housing) and her staff.

However, there is still a role for elected Members:-

What Members Can Do

- Local Members are responsible for approving, adopting and monitoring the implementation of allocations policies that comply with the Housing Act 1996 (as amended by the Homelessness Act 2002), the Welsh Assembly Government's 'Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness' 2003 and Equal Opportunities Legislation. Further, Members are collectively involved in any future reviews of the Lettings Policy to ensure that it is achieving its aims, and to ensure the operation of open and accountable systems that are compliant with policy objectives.
- Local Members enquiring about the status of a property will be advised whether it is currently void or has been allocated. However, to comply with the **Data Protection Act 1998**, personal information in relation to the new tenant cannot be disclosed. Additionally, Members can contact the Allocations Departments (contact details email/phone) to make enquiries about the whereabouts or availability of vacant properties at any given time.
- Local Members may make **written enquiries** on behalf of applicants within **their wards only** in relation to the status of their housing register application provided that the **written consent of the applicant** is held on file by the Council. Also, Members may attend pre-arranged office appointments with applicants should the applicants wish to make further enquiries about their application, to discuss their individual circumstances, or to ensure that all the facts of the applicant's case are taken into account when assessing the application.
- Local Members can help applicants by ensuring that they understand the importance of completing the form accurately and that all supporting documentation is included with the application form. Further, it is important that Members are familiar with the points allocation system, so they can answer questions from the public and provide general advice on the allocations process.

What Members Cannot Do

- **Decide who is allocated a Council property or be involved in the allocation decision.** Allocations are made according to the Council's Lettings Policy. All applications are assessed and awarded points based on the applicant's present housing circumstances.

NB: June 2013, due to the pending impact of the new welfare housing reforms the Council will need to implement the wholesale review of the Allocations Policy, so as to address the compatibility of the policy with the housing benefit under occupancy penalty amendments etc.,.

Briefing Note to Members

Political Freedom of Speech v Code of Conduct

1. Members' Code of Conduct ("the Code")

Among other things, the Code requires all Members:-

- To treat others with respect and consideration;
- Not to bully or harass others;
- Not to behave in a way which could reasonably be regarded as bringing the role of Member, or the Council, into disrepute.

2. Political Speech

Cases decided by the Courts, over the years and still evolving, have established the following definition of what amounts to political speech:-

“Information on matters relevant to the organisation of the economic, social and political life of the country ...”

But what does this actually mean in practice? Examples of comments which fall within the definition of political speech are broadly defined, and may include those relating to the way in which meetings are conducted, the administration and management of organisations and comments relating to the performance of others in their public duties.

The High Court, and the Ombudsman, have specifically stated that politicians (and Senior Officers) are expected to have “thicker skins” than others; presumably because they have chosen to operate within a political environment.

This expectation of resilience applies particularly to political debate, which the Ombudsman has frequently described as “the cut and thrust”. It is clear that comments about other politicians, which are mocking, sarcastic or satirical, meet the definition of political speech. However, if those comments may reasonably be interpreted as malicious, racist, homophobic etc, or so extreme as to be inappropriate, then such comments lose the extra legal protection which other political speech attracts.

Comments defined as “political” are not just confined to those made within formal Council meetings and can include Members’ comments to the media, including social media. It includes written material as well as verbal.

Only those comments reasonably (i.e. objectively) considered as highly offensive, outrageous, racist, malicious, or entirely inappropriate in the language used, are likely to meet the Ombudsman’s threshold test for investigation in cases where the subject matter is political.

Similarly, when Members raise “political issues” with Senior Officers the Ombudsman may also decline to investigate if he/she takes the view that the Member was entitled to question the Officer about legitimate issues of concern. Clearly, context is everything and the seniority of the Officer, the role of the Member and the manner in which the Member pursues the issue would all be relevant features.

3. Conflict with the Code

There is a potential for conflict between the provisions of the Code, as described in paragraph 1 above, and the right of Members to criticise other politicians.

In paragraph 4 below are some examples of decided cases which give a flavour of the Courts' current thinking in this area:-

4. Example A – R (on the application of Calver) v Adjudication Panel for Wales [2012] EWHC 1172

In this case the Adjudication Panel (effectively the national Standards Committee) acting as an appeal jurisdiction upheld a finding of the Standards Committee that a Member had failed to show respect and consideration to others by posting online comments about fellow Members and about the way in which the Council was run.

The Member was censured by the Standards Committee and, having failed in his appeal to the Adjudication Panel, sought a judicial review of the case in the High Court. The Court was satisfied that the comments posted, which were many and often, were sarcastic and mocking but, as the majority of the content related to the way in which the Council was being run, the competence of its Members, and its Clerk (this was a Community Council) the Court concluded that the comments fell within the definition of political speech. As such it attracted additional legal protection under Article 10 of the European Convention on Human Rights. So, the finding of the Standards Committee, upheld by the Adjudication Panel, were found by the Court to be a disproportionate interference with the Member's right to political freedom of expression. The original decision to censure the Member was therefore set aside by the Court

Example B - Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin); [2006]

Members will doubtless recall this case, when the (then) Mayor of London spoke to a journalist, likening him to a concentration camp guard. The High Court concluded that this comment did not constitute political free speech because the words were not used in an official capacity, nor in the performance of Mr Livingstone's function as Mayor. As such, the Code of Conduct did not apply and, clearly, if it did not apply then it could not be breached.

However, the Court did conclude that if the Code had applied, the Mayor would not have been entitled to enhanced protection for political expression as he was not expressing a political view but, rather, "indulging in offensive abuse".

For our purposes it should be noted that if the facts of this case occurred now, under the Wales Code, the Mayor would have been in breach of the Code as our Code specifically states that the duty not to bring the role of Member into disrepute applies when acting in any capacity (including personal). The Code in Wales was changed as a result of the decision in the Livingstone case.

In any event the comments of the Court regarding interpretation of "political expression" is valid and is regularly relied upon in Court proceedings.

Example C - Cllr Heesom - APW/005/2010-011/CT

In this case there were numerous allegations, and findings, on each issue. As a consequence of the net impact the Member was disqualified. However, in assessing some of the allegations, the Court specifically concluded that the Member's claims that a service/department of the Council was "shambolic" and "a shambles", were held to be "political expression", because they were about the way in which the Council was run. The comments therefore fell within the Article 10 protection of the ECHR resulting in the conclusion that these comments were not a breach of the Code.

Example D - Cllr Jones - APW/004/2012-013/AT

In this case it was decided by the Court that Councillor Jones' comments were not directed at a fellow Member but at an Officer who, as a paid employee, should be entitled to protection from disrespectful and harassing behaviour (i.e. an employment law obligation) and therefore the conduct did not fall within the protection of "political expression". You will appreciate that this case, decided after 4A above, suggests a watering down of the enhanced protection for Members insofar as their comments relate to Officers.

5. Conclusion

So, if any comment made by a politician constitutes "political expression" (and this is broadly defined) it will attract enhanced protection, and is unlikely to be investigated by the Ombudsman in the event of a complaint being lodged.

However, political comments which are highly offensive or degrading in some way, particularly if they are motivated by malice, form part of a targeted campaign, or are racist, homophobic etc, will not get enhanced protection. The test is an objective one. That is, the intention and effect are not relevant to the issue of whether or not the Code has been breached; although they may be relevant to sanction.

Comments made during the heat of a debate, or which are "one offs", rather than a pattern of behaviour, are also less likely to attract the interest of the Ombudsman.

Lynn Ball
Head of Function (Council Business)/Monitoring Officer

ATODIAD / APPENDIX 2

Extract of email sent to all Members 17 April 2014

Register of Gifts and Hospitality

9. The Committee would like to remind Members of their duty to register any relevant gift or hospitality in excess of £20. Very few declarations have been made but the Committee acknowledges that that could be perfectly legitimate, but reminds Members to review the Gifts and Hospitality Protocol which is in section 5.9 of the Constitution. Any gifts and hospitality which need to be registered must be registered online within 28 days and, of course, this is an ongoing requirement.

Islwyn Jones

Is-Gadeirydd y Pwyllgor Safonau / Vice-Chair of the Standards Committee

Cyngor Sir Ynys Môn / The Isle of Anglesey County Council

Document: CC-017471-AP/208602

ATODIAD / APPENDIX 3

REGISTER OF GIFTS AND HOSPITALITY - MEMBERS

The Standards Committee carries out an annual review of the 3 public registers of Members' interests.

One of the requirements under the Code of Conduct is that Members register all gifts and hospitality received, known or estimated to have a value of £20.00 or more, in the register of gifts and hospitality within 28 days of receipt.

The register is available for Members to complete on-line at <http://www.anglesey.gov.uk/Journals/2012/01/10/constitution-5-gifts-form.pdf>

At section 5.9 of the Constitution, there is a Protocol on Gifts and Hospitality, devised by the Standards Committee, to assist Members in deciding when registration, particularly the registration of hospitality, is appropriate.

Members will appreciate that the purpose of the register is to ensure that any actions/decisions taken by Members, in their role as Councillors, are not influenced by favouritism, or perceived favouritism, and not just that arising from personal interests, but also any gift/hospitality received from interested parties.

At the request of the Standards Committee, and to further assist Members in ensuring compliance with the registration of gifts and hospitality, included here is a list of typical questions asked by Members on this subject, together with our advice.

If you require advice on a specific issue, now or at any time, then please do not hesitate to contact the following Officers in the Legal Section:

- Lynn Ball tel 01248 752586, E-mail: lbxcs@anglesey.gov.uk
- Robyn Wyn Jones, tel 01248 752134, E-mail: rwjcs@anglesey.gov.uk
- Awena Walkden, tel 01248 752563, E-mail awxce@anglesey.gov.uk.

Similarly, if there is a general question arising from the register, or the protocol, then please let us know and we will amend this document to include any other related issues you would like to see addressed here.

FREQUENTLY ASKED QUESTIONS ON THE REGISTER OF GIFTS AND HOSPITALITY:

1. **What counts as hospitality?** – this will usually involve food or drink provided to you free of charge, or at a discounted rate, but may also include the provision of free or discounted entertainment, travel or accommodation. Please note that if you are invited to attend events which have a commercial value, even if you do not receive a physical ticket, this still constitutes hospitality.
2. **What constitutes a gift?** – this can be a tangible item or an experience e.g. theatre tickets, concert tickets, invitation to a sporting event etc, received free of

charge or provided at a discounted rate. Tickets provided free of charge, or discounted, should be registered as gifts.

3. **When am I legally required to register a gift or hospitality?** – the requirement only applies to gifts or hospitality which you receive in your capacity as a Member of the County Council (Community Councils' are not required to keep an equivalent register for their Members) and where you know, or reasonably estimate, that the gift or hospitality is worth £20 or more.

The £20.00 threshold for registration is set by the full Council, and you may be asked, from time to time, to review and revise that threshold.

4. **What if the hospitality is provided by the Council?** – you are not required to register hospitality provided by the Council if it is ancillary to the conduct of business. So, for example, travel and accommodation to training events, or a meeting, conference or civic reception do not require registration.
5. **What if the hospitality is provided by another public body?** – Other public bodies are still “third parties” and therefore any hospitality you receive in excess of the threshold should be declared in the register. This includes hospitality provided to you by outside bodies to which you have been appointed by the County Council..
6. **What if the hospitality is provided by a potential developer/investor?** – As a Member you must always act in the public interest, and not be swayed, or seem to be swayed, in the discharge of your duties by an offer, prospect of an offer, inducement, reward etc by a developer/investor. You need to take particular care when being offered hospitality from such sources and especially so when you know that you have a particular role, that could influence the outcome e.g. that you will be a Member of a committee making a decision that affects the developer/investor's interests.

If the hospitality exceeds the threshold but is nevertheless ancillary and proportionate to the conduct of business, and is in the Council's best interests, then it is reasonable to accept hospitality; always ensuring that it is declared in the register. The purpose of the Code is not to prevent the legitimate conduct of business, but to ensure that it is done transparently. So, for example, if a developer wishes to provide a reception for Members, setting out their development proposals and answering questions, and hospitality is provided as part of that process, then such hospitality is acceptable, even if it exceeds the threshold, provided it is declared in the register. Clearly, lavish hospitality, or hospitality which is disproportionate to the business to be transacted, would not be appropriate even if registered.

Members also need to be aware that they have an obligation to be as well informed as possible about potential developments/investments particularly in circumstances where their wards are affected or where they are participating in decisions.

Say something here about Planning Procedure Rules?

7. **What if the hospitality is provided by a potential contractor/supplier? –** Please see the response to questions 6, which also applies here.

Members are reminded that at all times they are required to act in the overall public interest, rather than acting in the interests of a particular organisation or individual and that it would be a breach of the Code of Conduct to improperly confer an advantage or disadvantage on any contractor/supplier. Accepting hospitality from a potential contractor/supplier could be misunderstood by the public unless it was clear that the circumstances surrounding the hospitality were for the benefit of the Council. A particular sensitive event, for example, would be where the Council was going through a competitive procurement process with a contractor/supplier. In those circumstances Members are advised not to meet with contractors or suppliers without first obtaining the advice of the Officers leading on the procurement process.

8. **How do I work out the value of the gift or hospitality? –** A reasonable objective standard should be applied in assessing the value of a gift. So, for example, if there is a series of small gifts provided from the same source, over a short period of time and the overall value exceeds £20.00 then the gifts, in their entirety, should be registered.

As far as assessing the value of hospitality is concerned you should estimate how much a person would be expected to pay for the equivalent provision on a commercial basis. If you are in any doubt about the value then the better course of action would be to register the hospitality but always bearing in mind that hospitality provided by the Council, if ancillary to the conduct of business, even in excess of the threshold, does not require registration. See paragraph 4.

9. **What if I am offered a gift or hospitality, but I do not accept it? –** if you do not accept the gift or hospitality then you do not have to register it provided any gifts are refused and returned to the donor. If however you receive a gift and pass it on to another person to use then it still needs to be registered as technically it has been accepted by you.
10. **What about free tickets provided to me? –** Again, this gift or hospitality should be registered if it is provided by someone other than the Council, is over the threshold, even if ancillary to the business conducted.

Any Member receiving tickets to events during the course of their duties should register tickets as gifts.

11. **I have been provided with a ticket to an event by a Council Officer but the Council is not the organiser of the event. Should I register this ticket as a gift from the Council? –** Tickets which have been provided to the Council to distribute to Members would still need to be registered as a ticket as it is still a gift from the end donor to Members. The involvement of Officers in the process is an administrative step and would not affect the obligation to register the gift if it exceeds of the threshold.

The original donor, or event organiser, should be listed on the form as the donor of the gift or hospitality as opposed to the Council Service or the individual Officer who passed the gift on.

12. What should I do in terms of accepting a gift or hospitality if I have a reasonable basis to suspect that the donor may expect some kind of favouritism in return? – You should be aware of the Prevention of Corruption Act 1889. This legislation remains in force and provides that if any gift, reward or advantage received by you is provided as an inducement for doing something, or not doing something in respect of a particular matter or transaction then it could constitute a criminal offence. If you have reason to suspect that the offer of a gift or hospitality is in some way conditional or comes with “strings attached” then you should refuse the offer and report the matter to the Monitoring Officer.

13. What if other Members have been provided with free tickets for an event which I also want to attend. May I ask for a free ticket for myself? – Whilst the Code of Conduct does not specifically deal with this issue, seeking to secure a free ticket for yourself may constitute a breach of paragraph 6.a of the Code which states that you must not use, or attempt to use, your position as a Member to secure for yourself or any other person an advantage or disadvantage.

You should therefore never solicit or invite an offer of a gift or hospitality in your position as a Member and should also take care to avoid giving an indication to anyone that you might be open to such offers.

14. What is the relationship between the gifts and hospitality register and the register of personal/prejudicial interests?

These are two separate registers and both need to be completed where the conditions for registration of both apply, as set out in the Code of Conduct. So, for example, if you attend an event with a developer for the purpose of obtaining information and asking questions regarding a proposed development, and you receive hospitality at that event which exceeds the threshold, then it needs to be registered. If you are subsequently required to make a decision in relation to the development, then you should also declare that hospitality as a personal interest at the meeting where the issue is to be discussed/decided. In these circumstances it would be a personal interest only; it would not be a prejudicial interest, so you would be allowed to fully participate. You will appreciate that the reasoning behind this is that the decision making is fully transparent but acceptance of appropriate and proportionate hospitality in the context of Council business should not preclude you from taking decisions and fully participating in the process.

We hope you find this general advice useful.

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ATODIAD / ENCLOSURE
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**CWYNION A GYFLWYNWYD I'R OMBWDSMON AC YMCHWILIADAU A WNAED GANDDO – "O" –YNGHYLCH CYNGHORWYR CYNGOR
SIR YNYS MÔN - DIWEDDARIAD**

**UP TO DATE COMPLAINTS TO AND INVESTIGATIONS BY THE OMBUDSMAN – "O" -REGARDING ISLE OF ANGLESEY COUNTY
COUNCILLORS – UPDATED**

PWYLLGOR SAFONAU – 12.09.2014 – STANDARDS COMMITTEE

Enw'r Cynghorydd Name of Councillor	Enw'r Achwynydd Name of Complainant	Cyfeirnod y Ffeil File Reference (i) Un ni/Ours (ii) "O"	Dyddiad y Gŵyn - "O" Complaint date - "O"	Canlyniad Ymholiad "O" a'r dyddiad neu'r sefyllfa gyfredol Result of "O" Investigation and date or the current situation
1. Cynghorydd Sir / County Councillor	Prif Weithredwr / Chief Executive	(i) 017339 (ii) 201304118	29.10.13	24.07.14 – A Report has been referred to the Standards' Committee for consideration./ Mae adroddiad wedi ei gyfeirio i'r Pwyllgor Safonau i'w ystyried.
2. Cynghorydd Sir / County Councillor	Cynghorydd Cymuned / Community Councillor	(i) 017368 (ii) 201304372	13.11.13	10.04.2014 – Mae'r Ombwdsmon yn parhau i ymchwilio /Ombudsman is still investigating.
3. Cynghorydd Sir / County Councillor	Member of public/aelod o'r cyhoedd.	17724	08.04.2014	10.04.2014 – Mae'r Ombwdsmon yn ymchwilio/Ombudsman is investigating.
4. Cynghorydd Sir / County Councillor	Member of public/aelod o'r cyhoedd.	17726	08.04.2014	10.04.2014 – – Mae'r Ombwdsmon yn ymchwilio/Ombudsman is investigating.
5. Cynghorydd Sir/County Councillor	Cynghorydd Sir/County Councillor		05.06.2014	09.06.2014 – Bydd yr Ombwdsmon yn penderfynu a fydd yn ymchwilio/the Ombudsman is deciding whether to investigate.

ATODIAD / ENCLOSURE
DD

**CWYNIION I AC YMHOLIADAU GAN YR OMBWDSMON – “O” -YNGŴYN Â CHYNGHORWYR CYMUNEDOL A THREF
COMPLAINTS TO AND INVESTIGATIONS BY THE OMBUDSMAN – “O” -REGARDING TOWN AND COMMUNITY COUNCILLORS
Diweddariad - Update**

Pwyllgor Safonau- 11 Medi 2014/ Standards Committee 11 September 2014

Enw'r Cynghorydd Name of Councillor	Enw'r Achwynydd Name of Complainant	Cyfeirnod y Ffeil File Reference (i) Un ni/Ours (ii) "O"	Dyddiad y Gŵyn - "O" Complaint date - "O"	Canlyniad Ymholiad "O" a'r dyddiad neu'r sefyllfa gyfredol Result of "O" Investigation and date or the current situation
Cynghorydd Cymunedol / Community Councillor	Cynghorydd Cymunedol / Community Councillor	(i) 17398 (ii) 201305202	20.11.2013	12.08.2014 – Mae'r Ombwdsmon ddim yn ymchwilio/ "O" is not investigating.