

Public Document Pack



CYNGOR SIR
YNYS MÔN
ISLE OF ANGLESEY
COUNTY COUNCIL

Dr Gwynne Jones
Prif Weithredwr – Chief Executive

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RHYBUDD O GYFARFOD	NOTICE OF MEETING	
PWYLLGOR SAFONAU	STANDARDS COMMITTEE	
DYDD MERCHER, 16 MEDI, 2015 am 2.00 o'r gloch y.p.	WEDNESDAY, 16 SEPTEMBER 2015 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 (**Is-Gadeirydd/Vice-Chair**)
Mr. Leslie Lord
Mrs. Dilys Shaw
Mr. Michael Wilson (**Cadeirydd/Chair**)

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

Councillor Raymond Evans
Councillor John Roberts

A G E N D A

1 DECLARATION OF INTEREST

To receive any declaration of interest by any Member or Officer in respect of any item of business.

2 MINUTES OF MEETING (Pages 1 - 10)

- To confirm the minutes of the meeting of the Standards Committee held on 11th March, 2015.
- To confirm the minutes of the Dispensation Panel held on 1 April, 2015.

3 REVIEW OF THE PLANNING PROCEDURE RULES - PART 4.6 OF THE CONSTITUTION (Pages 11 - 62)

To receive a report from the Head of Service (Planning and Public Protection) and the Legal Services Manager/Deputy Monitoring Officer.
(Enclosure B)

4 REVISED GUIDANCE ON THE CODE OF CONDUCT FOR COUNTY COUNCILLORS AND COMMUNITY COUNCILLORS (Pages 63 - 184)

To receive a report from the Monitoring Officer.
(Enclosure C)

5 THE LOCAL GOVERNMENT (DEMOCRACY) (WALES) ACT 2013 AND THE LOCAL GOVERNMENT (DEMOCRACY) (WALES) ACT 2013 (COMMENCEMENT NUMBER 2) ORDER 2015 (Pages 185 - 200)

To receive a report from the Monitoring Officer.
(Enclosure CH)

6 FACTSHEETS PUBLISHED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES - INVESTIGATIONS AND INTERVIEWS - MEMBERS' CODE OF CONDUCT (Pages 201 - 212)

To receive a report from the Monitoring Officer.
(Enclosure D)

7 DRAFT LOCAL GUIDANCE ON THE OFFICERS' CODE OF CONDUCT (Pages 213 - 232)

To receive a report from the Monitoring Officer.
(Enclosure DD)

8 CONDUCT COMPLAINTS TO THE PUBLIC SERVICES OMBUDSMAN FOR WALES (Pages 233 - 236)

To receive a report from the Monitoring Officer.
(Enclosure E)

9 REVIEW OF THE THREE REGISTERS OF MEMBERS' INTEREST (Pages 237 - 258)

To receive a report from the Monitoring Officer.
(Enclosure F)

10 **TRAINING FOR TOWN COUNCILLORS** (Pages 259 - 292)

To receive a report from the Monitoring Officer.
(Enclosure FF)

11 **NORTH WALES STANDARDS COMMITTEE FORUM** (Pages 293 - 302)

To receive a Report from the Chairman of the Standards Committee.
(Enclosure G)

12 **NATIONAL STANDARDS COMMITTEE CONFERENCE** (Pages 303 - 310)

To receive a report from the Monitoring Officer.
(Enclosure NG)

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STANDARDS COMMITTEE

Minutes of the meeting held on 11 March 2015

PRESENT: **Independent Members**

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

Mrs. Denise Harris Edwards
Mr. Leslie Lord
Mrs. Dilys Shaw

Representing the County Council

Councillor Dafydd Rhys Thomas

Representing Town and Community Councils

Councillors William Raymond Evans and John Roberts

IN ATTENDANCE: Head of Function (Council Business)/Monitoring Officer
Solicitor (Corporate Governance) (AW)
Committee Officer (SC)

APOLOGIES: Councillor Trefor Lloyd Hughes

The Chair, on behalf of the Committee expressed his best wishes to Councillor Trefor Lloyd Hughes for a speedy recovery following his recent illness.

1 DECLARATION OF INTEREST

No declaration of interest was received.

2 MINUTES OF MEETING

The minutes of the meeting held on 19th December, 2014 were confirmed as correct.

Arising thereon:-

Item 4 -The Vice-Chair referred to the Standards Committee's role at the hearing, and whether or not the Committee should impose a sanction. Prior to agreeing on a decision, the Committee sought representations from Councillor Rogers and Ms Ginwalla.

The Vice-Chair wished that it be noted that the Ombudsman had not recommended a sanction at the hearing.

The Vice-Chair referred to the hearing, and stated that this Committee, after deliberating, only imposed a sanction of one month, as opposed to two months (the sanction the Committee wished to impose) after mitigating circumstances had been taken into account.

The Chair suggested that the minutes be amended to include:-

"Councillor Rogers was suspended as a County Councillor for a period of two months, and this term was reduced to one month, owing to mitigating circumstances."

3 STANDARDS COMMITTEE FORUM

3A Submitted and confirmed - the minutes of the Standards Committee Forum held on 26th November, 2015.

RESOLVED to note the minutes for information.

3B Submitted - a summary of the meeting from the Solicitor (Corporate Governance).

The Chair referred to the Ombudsman's second visit to Anglesey County Council in August, 2014 to attend a meeting of the North Wales Standards Committee Forum. He was presented with a list of questions from Members. Following this meeting, the Chair met with Council Leaders and discussed the Ombudsman's replies.

The Chair reported that the Ombudsman was moving towards local resolution rather than hearings, where appropriate.

The Solicitor (Corporate Governance) reported on the Ombudsman's attendance at the Forum, and the main responses to his questions were as follows:-

- Less time needed to be spent investigating petty complaints by Councillors against each other;
- The Ombudsman needed to concentrate more on the Health Service as a priority, as he had life or death cases on his hands;
- The Ombudsman's budget was tight, therefore big changes would have to be made in the way the Ombudsman worked. This would be discussed in another paper.

The Solicitor stated that the Forum meeting was a success, and that the Ombudsman proposed to bring in regulations to allow (discretion not mandate) Regional Standards Committees this year.

The Chair asked that the Committee's response to the White Paper be passed to the Forum so that this Committee's views could be discussed.

RESOLVED to note the report.

4 CONDUCT COMPLAINTS TO THE PUBLIC SERVICES OMBUDSMAN FOR WALES

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

RESOLVED to note the report for information.

Action: Solicitor (Corporate Governance) to report back on date of appeal.

5 TRAINING FOR TOWN AND COMMUNITY COUNCILS ON THE CODE OF CONDUCT

5A Submitted – a report from the Solicitor (Corporate Governance) on the training session held for Clerks of Town and Community Councils on the Code of Conduct.

The Solicitor reported that training sessions for Clerks of Town and Community Councils were held by the Monitoring Officer in October last year, and were very successful. Of the 40 Town and Community Councils, 29 clerks attended. Following the training session, letters were sent out to obtain feedback. In response, all but one, were happy with the training provided.

The Monitoring Officer reported that since attending training sessions, more clerks of Town and Community Councils are maintaining contact with her in connection with the Code of Conduct.

RESOLVED to note the report.

Action: Standards Committee to agree future delivery of training for Members of Town Councils.

6 REVIEW OF REGISTERS

Submitted – a report by the Solicitor (Corporate Governance) on the findings of the review of registers and action plan. She reported on the following :-

The Standing Register -

- Members not declaring school governor status as personal interests;
- Members not clearly detailing land interests in 1.6 of the form;
- Not enough detail about business activities where declared;
- Anomalies regarding membership of outside bodies as recorded by the Council and declared on forms, with some Members not regularly updating their records.

The Register of Declarations of Interest in meetings -

- Members ticking boxes, but no detail on interest being provided;
- Not enough detail on personal and /or prejudicial interests, and confusion about what it means;
- Membership and monitoring attendance of outside bodies at meetings;
- Inconsistencies with publishing declarations on the Council website;

The Register of Gifts and Hospitality –

- Few disclosures being made;
- Value of gifts should be indicated;
- No link on website to gifts and hospitality of co-opted members.

Members of this Committee raised the following ICT issues:-

- Declarations of interest not published on website;
- Inconsistencies with Welsh and English versions of declarations on Council website;
- There is a need to create a link from Standing Register to the Annual Report for each individual Councillor.

The Monitoring Officer suggested that the Legal Section, with the agreement of this Committee, writes to all Members stating that a review has been completed and enclosing the generic findings. The letter would also state that members of the Standards Committee would be contacting each Member to discuss issues on their forms.

RESOLVED to move forward and send the general findings of the review to all Members once clarity over the ICT issues.

Action: That an update report be submitted to the Standards Committee in due course.

7 CONSULTATION ON WHITE PAPER

Submitted – a report by the Solicitor (Corporate Governance) on the White Paper and the review by WAG's Finance Committee on the Ombudsman's powers, for the purpose of seeking the Committee's views prior to responding to the consultations.

The Solicitor (Corporate Governance) reported that The Local Government (Democracy) Wales Act 2013, which is in force, is being implemented in stages. There will be a range of changes coming in shortly, which includes electronic publication of registers of interests; powers to enable the transfer of misconduct reports and member dispensation requests between Standards Committees, and powers for regional Standards Committee collaborations, which will be brought into effect later this year. Also, this year, legislation will be brought forward to modify the model Code of Conduct for Local Authority Members to facilitate the operation of local resolution policies and to clarify the

position of Local Members (10.2.(B) of the Code of Conduct) with constituency interests. Local Authorities will be exempt from publishing misconduct reports during ongoing proceedings.

At this stage the Standards Committee was asked to provide a response to the following:

Whether or not there should be a new power for Standards Committees to consider cases where there are serious concerns that elected members are failing to fulfil their duties satisfactorily. This seems to be a new role for performance management rather than Code of Conduct cases. The Welsh Government would provide sanctions which could be imposed. There would need to be safeguards against vexatious complaints.

The Monitoring Officer referred to the White Paper and raised the issue of whether the Standards Committee wish to have a role in performance managing Members and whether there needs to be a trigger for that intervention? She suggested that a complaint would be necessary and a threshold, otherwise the Standards Committee runs the risk of being called politically partial. A written complaint is something to act on, but guidance is required about the expectations on Members.

How should appeals be dealt with? Prior to 2001, all decisions of the Standards Committee could be appealed to the full Council. Is this a possibility for "performance" complaints? Members of the Committee preferred the Adjudication Panel as the better option.

Members raised the following issues:

- Firm guidelines were needed for the Standards Committee;
- Non-attendance at meetings should first be raised with Group Leaders;
- Sanctions - on performance/attendance at meetings;
- Recall of Members should be a sanction in extreme cases;

The Solicitor (Corporate Governance) reported that the Ombudsman wanted to bring in a new power ensuring that diversity was respected by Council Leaders, Group Leaders and Chief Executives within Local Authorities. Monitoring Officers and Standards Committees would have enforcement roles. The Standards Committee had no objection to this in principle.

RESOLVED to note the report.

Action: That the Standards Committee provide a consultation response to the White Paper and Ombudsman's Report; with wording to be approved by the Chairman.

8 LATEST BRIEFING NOTES

Submitted – a Report by the Solicitor (Corporate Governance) on the latest briefing notes prepared by the Legal Section.

Following the last meeting in September, 2014, two further briefing notes have been drafted:-

1. Local Guidance on the Officers' Code of Conduct
2. Briefing Note on Dispensations

The Local Guidance on the Officers' Code of Conduct has been prepared to assist officers who are unfamiliar with the Code, and is an extension of the Code of Conduct.

Two new forms have been drafted on Declarations of Interest for officers ie notification of personal interest and notification of personal interest in a meeting. The third form is for gifts and hospitality, which is already in use.

RESOLVED:

- **To amend and approve the draft documents at Appendices 1 & 2 as requested by the Committee.**
- **To authorise publication to Officers and Members.**

9 EXTENDING THE TERM OF THE STANDARDS COMMITTEE

The Monitoring Officer reported that the full Council had approved the Executive recommendation to reappoint the independent Members of the Standards Committee for a further term of 4 years as from 17th December, 2015.

The Chair reported that Councillor Raymond Evans would be finishing his term as a Member of this Committee in December. Un Llais Môn may be approached to fill the 2 seats to be held by Town and Community Councils. All the present Members of the Standards Committee, with the exception of Mr Evans, confirmed that they were happy to continue as Members of the Standards Committee for another term.

The Committee acknowledged the authority given to the Monitoring Officer of the Council to make all consequential amendments to the Council's Constitution, and the Standards Committee's Constitution, to extend all future appointments to an automatic two term for all independent Members of the Standards Committee.

RESOLVED to accept the report.

10 ANY OTHER BUSINESS

No other business reported.

The meeting concluded at 4.40 pm

**MR MICHAEL WILSON
CHAIR**

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DISPENSATION PANEL OF THE STANDARDS COMMITTEE

Minutes of the meeting held on 1 April 2015

PRESENT: Independent Members

Mr. Michael Wilson (Chair)

Mrs. Denise Harris Edwards

Mr. Leslie Lord

IN ATTENDANCE: Head of Function (Council Business)/Monitoring Officer,
Head of Profession – Human Resources,
Solicitor (Corporate Governance) (AW),
Human Resources Strategy Manager (MD),
Committee Officer (MEH).

ALSO PRESENT: None

APOLOGIES: None

1 DECLARATION OF INTEREST

No declaration of interest received.

2 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED to adopt the following :-

“Under Section 100(A)(4) 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.”

3 APPLICATION FOR DISPENSATION

Submitted – a collective application for dispensation by Members of the Isle of Anglesey County Council in respect of the Single Status collective Agreement to be discussed at the full County Council on 7th April, 2015.

The Head of Function (Council Business)/Monitoring Officer outlined the categories of personal and prejudicial interests which are listed in paragraph 10 and 12 of the Code of Conduct. She explained that dispensations may only be granted in specified circumstances which were listed in Section 2 of the documents afforded to the Panel. It was noted that 13 Elected Members may declare prejudicial interests in the matter.

The Head of Profession – Human Resources outlined the background of the Single Status Agreement to the Panel and the decision that will be required by the full Council at its meeting to be held on 7th April, 2014.

A question and answer session took place and the Panel retired to private session to discuss the matter.

Following return of the Panel, the Chair announced that the Panel had **RESOLVED to grant dispensations to all Members of the County Council who may need to declare prejudicial**

interests, in connection with single status, by virtue of their having close personal associates among Council staff and whom they know to be affected by the Council's decision/s.

The dispensation is granted pursuant to paragraph 2(d) and is limited to speaking, but not voting.

**MR. MICHAEL WILSON
CHAIR**

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to:	STANDARDS COMMITTEE
Date:	16 SEPTMBER 2015
Title of Report:	REVIEW OF THE PLANNING PROCEDURE RULES – PART 4.6 OF THE CONSTITUTION
Purpose of Report:	AT THE REQUEST OF THE CHAIR OF THE STANDARDS COMMITTEE TO REVIEW THE PLANNING PROCEDURE RULES
Report Author:	HEAD OF SERVICE (PLANNING AND PUBLIC PROTECTION) AND LEGAL SERVICES MANAGER/ DEPUTY MONITORING OFFICER
Action:	TO RESOLVE TO ACCEPT THE RECOMMENDATION THAT THERE BE NO CHANGE IN THE RULES FOR THE REASONS GIVEN IN THE REPORT

1 INTRODUCTION

1.1 The Planning Procedure Rules (the Rules) are set out at part 4.6 of the Council's Constitution. **A copy is attached at enclosure 1.**

1.2 The aim of the Rules is to provide a high standard of objectivity and transparency in dealing with planning matters. Planning can often be a subject which is of significant public interest and certain planning matters can be controversial.

1.3 The Rules seek to achieve their aim by:

- Setting out requirements of and guidance for both elected members (both as members generally and as members of the Planning Committee) and officers when dealing with planning applications;
- Setting out rules on how certain types of applications should be dealt with. These are applications which, by their nature, may need to be seen to be treated fairly – such as applications where the Council is the applicant.

2 Previous Changes

2.1 The Rules have been periodically reviewed and amended over the years since their initial adoption in 2001. The Rules were last reviewed and amended in 2013. Those changes were to:

- Close a potential loophole in the Rules whereby certain planning ‘departure’ applications would still be referred to Committee automatically for a decision because the applicant was (or was closely-related to) a relevant officer;
- To reflect a more liberal approach taken by government in section 25 of the Localism Act 2011 – i.e. to allow members a more enhanced role without risking a challenge for bias or predetermination.

The changes were made by full Council following a recommendation by the Executive and consultation with this Committee at its meeting on 12 September 2013. **A copy of the report to this Committee is attached at enclosure 2.**

3 Current Situation

3.1 Officers are not aware of there being any current issues relating to how the Rules operate or are being interpreted. There does not appear to be any significant or inherent problems with the Rules in their current form. In general they appear to work well and there is no particular issue which is known or regarded as causing significant difficulties. Both members and officers do, from time to time, seek advice on particular parts of the Rules as they apply to specific planning issues, but not in the sense that the Rules are over-burdensome, too restrictive or, alternatively, too lax.

4 Planning (Wales) Act 2015

4.1 The Planning (Wales) Act 2015 (the Act) received Royal Assent in July 2015 and will be brought into force in a piecemeal fashion. Amongst the key objectives of the Act is modernising the framework for the delivery of planning services.

4.2 For present purposes, the powers granted to the Welsh Ministers by the Act include those to limit the number of members on a planning committee and to regulate and standardise the proceedings of such committees. The latter will be achieved by the adoption of national protocols thereby ensuring both consistency of the procedures at different planning committees and similar treatment for similar applications across Wales.

4.3 A national protocol is, therefore, likely to replace any existing, local rules for procedures at planning committees – such as the Rules which operate here. It is possible that many of the provisions in the current Rules will also appear in a national protocol.

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4.4 As it is likely that the national protocol will come into force in the next few months then it is reasonable not to suggest changes to the Rules now. The Rules are likely to be overtaken by the provisions of the national protocol when it comes into force. Making changes to the Rules now when further procedural changes will be mandatory soon may merely create confusion amongst those who have to implement those procedures and participate in the planning system locally. It would be more sensible to devote available resources to implementing, embedding and training locally for the new national protocol when that becomes operational.

5 Recommendation

5.1 That members note the position and proposed changes envisaged by the Act and endorse that resources be deployed to implement and train on the new national protocol when and just before it comes into force.

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4.5.17.3 Following any investigation or review, the Committee/Subcommittee/Panel shall prepare a report, for submission to the Executive and/or Council as appropriate and shall make its report and findings public.

4.5.18 Matters within the remit of more than one Scrutiny Committee

Where a Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Scrutiny Committee, before submitting its findings to the Executive and/or Council for consideration, the report of the reviewing Scrutiny Committee shall be considered by the other Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration.

4.5.19 The Partnership and Regeneration Scrutiny Committee exercising powers in relation to Crime and Disorder Functions Paragraphs 4.5.10, 4.5.11 and 4.5.12 above do not apply in this situation.

This Committee may review and scrutinise decisions made or other actions taken in connection with the discharge of crime and disorder functions by Responsible Authorities under Sections 5 and 6 of the Crime and Disorder Act 1998. The Committee may make reports or recommendations to full Council or the Executive with respect to the discharge of crime and disorder functions, in which case it must provide a copy to each of the Responsible Authorities and those Co-operating Persons and Bodies referred to in the Act.

In addition, the Committee must consider any local crime and disorder matter (as defined by Section 19 of the Police and Justice Act 2006) included on the agenda for the meeting where the matter has been referred to the Committee by a member of the Council. It must consider whether to make a report or recommendations to full Council and/or the Executive with respect to that local crime and disorder matter, having regard to any representations made by the member concerned. If the Committee decides not to make a report or recommendations it must notify the member concerned of its decision and the reasons for it. If the Committee does make a report or recommendations to full Council and/or the Executive then it must provide a copy of the report or recommendations to the member concerned and to such of the Responsible Authorities and Co-operating Persons or Bodies, as it thinks appropriate. Whenever the Committee provides a copy of a report or recommendations to a Responsible Authority or a Co-operating Person or Body, it must remind that authority/body of its statutory duty to have regard to the report or recommendations in exercising its functions, to consider the report or recommendations and to respond to the Committee indicating what (if any) actions that person or body proposes to take.

4.6 Planning Procedure Rules

Contents

4.6.1 Introduction

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- 4.6.20 Role of the Committee Chairperson
- 4.6.21 Public Speaking

4.6.1 Introduction

4.6.1.1 Determining planning applications is an important duty undertaken by the County Council. These rules set out how the Council as local planning authority will deal with planning applications. The rules apply to councillors and officers as the context requires.

4.6.1.2 Most applications will be determined by planning officers acting on behalf of the local planning authority and the Planning and Orders Committee (the Committee) will determine all other applications. The rules as to whether officers or the Committee will determine applications are contained in Part 3 of this Constitution. Of those instances where the decision may be made by the Committee, the potentially most significant is where the local councillor (that is any one of the councillors in whose ward the proposed development site is located) may require that the application (which would otherwise be decided by officers) should be submitted to the Committee for determination. In these cases, the local councillor must 'call-in' such application in writing addressed to the Chief Planning Officer within 21 days of the date of the letter notifying him / her of the application. In the case of those applications classified as 'fast-track' economic ones, the period within which to refer it to the Committee will be only 14 days. The local councillor(s) who called-in the application may withdraw their call-in at any time before the Committee Agenda is published by notifying to the case officer and confirming the withdrawal in writing.

4.6.1.3 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also highly contentious because the decisions affect the lives of everyone and the private interests of individuals, landowners and developers. This is heightened by the openness of the system (it actively invites public opinion before taking a decision) and the legal nature of development plans and decision notices. It is important, therefore, that the process is characterised by open and transparent decision making.

4.6.1.4 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, the financial value of landholdings and the quality of the environment. It is important, therefore, that local planning authorities should make planning decisions affecting these interests, openly, impartially, with sound judgement and for justifiable reasons. The process should leave no justifiable grounds for suggesting that a decision has been partial, biased or not well-founded.

4.6.2 Decision Making on Planning Applications

4.6.2.1 Decisions on planning applications are sometimes referred to as regulatory or quasi-judicial decisions and this means that those making such decisions must

4.6.2.1.1 take into account all relevant planning considerations

4.6.2.1.2 ignore irrelevant or non planning considerations

4.6.2.1.3 act impartially, fairly and not take into account any political considerations

4.6.2.2 Planning law requires local planning authorities to determine planning applications in accordance with the Statutory Development Plan unless material planning considerations indicate otherwise. The emphasis in determining applications is upon a 'plan-led' system.

4.6.2.3 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved.

4.6.2.4 Those persons determining planning applications have a duty to take into account representations made to the local planning authority as a result of consultation with interested bodies or as a result of public notice or neighbour notification. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. This conclusion should not be reached by the Committee until all the facts have been presented in the officer's report to the Committee.

4.6.2.5 Councillors must not give a commitment in relation to any planning matter prior to its consideration at Committee. It is recognised, however, that councillors will from time to time be approached individually by applicants, agents and objectors in

relation to planning proposals. These rules are intended to assist councillors in dealing with these approaches and is designed to ensure that the integrity of the decision making process is preserved.

4.6.2.6 Failure to follow these rules without good reason could be taken into account in investigations into possible maladministration and any investigation regarding the conduct of councillors and / or officers.

4.6.3 Pre-determination Discussions by Officers with Applicants

4.6.3.1 In any discussions on planning issues, it will always be made clear at the outset, that such discussion:

- will not bind the local planning authority to make a particular decision, and
- that any views expressed are based on the officers' provisional professional judgement but do not commit the local planning authority to any particular decision.

4.6.3.2 Any advice given will:

- be consistent and based upon the Development Plan and other material considerations,
- be impartial and the best that the officer can give in the circumstances, and
- try to highlight any apparent problems.

4.6.3.3 No Councillor – whether they serve on the Committee or not - shall take part in the officers' discussions with applicants at any stage prior to determination of the application.

4.6.4 Lobbying of and by Councillors

4.6.4.1 Councillors who are Members of the Committee

4.6.4.1.1 Councillors who are members of the Committee are likely to be approached by applicants, objectors and others interested in the outcome of planning applications. Because of the quasi-judicial or regulatory nature of planning decisions, councillors on the Committee should not allow themselves to be lobbied by anyone - whether for or against an application. If approached they should inform the person seeking to lobby them that if they discuss the application with that person, this may disqualify them from taking part in the decision on the application. Instead potential lobbyists should be advised to contact either their local councillor (see 4.6.4.3 below) or an appropriate officer within the Planning Department.

4.6.4.1.2 Councillors who are on the Committee should not organise local support or opposition to a planning proposal if they later wish to take part in the discussion on the application.

4.6.4.1.3 In taking into account the need to make decisions impartially, councillors on the Committee should not favour or appear to favour any person, company, group or locality and should not declare which way they intend to vote in advance of the

meeting. To do so without all relevant information and views would be unfair and prejudicial. If the councillor feels that the public would believe he/she had come to a conclusive view on the planning matter or application before the meeting, or that he/she has been lobbied by an interested person then he/she should not take part in the debate, nor vote on the issue - this is without prejudice to his/her right to address the committee as provided for in section 4.6.5.2 of these rules.

4.6.4.1.4 Where the Monitoring Officer or his/her representative believes that a councillor has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer or his/her representative will advise the councillor that it would be inappropriate for him/her to take part in the debate, or vote on the application. The final decision, however, rests with the councillor - subject to any external scrutiny.

4.6.4.2

Councillors who are members of the Committee should not be lobbied or allow themselves to be lobbied, whether by applicants, objectors or anyone else interested in the outcome of a planning application. Councillors – whether or not they are on the Committee – should not lobby councillors who are on the Committee.

4.6.4.3 Local Councillors

4.6.4.3.1 There are differences to the rules set out in 4.6.4.1.1 and 4.6.4.2 in relation to the 'local councillor' i.e. the councillor in whose ward the proposed development is located.

4.6.4.3.2 If the local councillor is not a member of the Committee then he/she can legitimately be lobbied by an applicant, objector or anyone else interested in the outcome of a planning application. If such councillor is lobbied then, provided that he/she does not have an interest to declare in accordance with the Council's Code of Conduct for Councillors, he/she will be entitled to make representations to and address the Committee. However he/she must not themselves lobby, whether directly or indirectly, councillors who are on the Committee.

4.6.4.3.3 If a local councillor is a member of the Committee then, the provision of rule

4.6.4.3.2 above will also apply to them but he/she may should they so wish, refer the person seeking to lobby them to another councillor who is not on the Committee and, for the purpose of these rules, such a councillor will be regarded as a local councillor.

4.6.4.3.4 Local councillors may not become involved in making any representations at meetings of the Committee or participating in decision making on planning applications if they have an interest to declare in accordance with the Council's Code of Conduct for Councillors. This is so regardless as to whether or not they are on the Committee. If a local councillor is in this position he / she should refer any potential lobbyists to a councillor who is not on the Committee and, for the purpose of these rules, such a councillor will be regarded as a local councillor.

4.6.4.4 Where letters of 'neighbour notification' of a planning application are sent to properties not in the same ward as the application site, then the councillors who represents those properties may also speak as local councillors at the Committee. This rule only gives the right to speak at the Committee and confers no other rights on that councillor as a local councillor.

4.6.5 Seating and Speaking Arrangements at Meetings of the Committees

4.6.5.1.1 When attending meetings of the Committee, councillors who are not members of the Committee should sit quite separately from councillors who are on the Committee - whether or not they intend addressing the Committee. They should not communicate with those councillors who are on the Committee and who will be making decisions. The objective of this rule is to emphasise the quasi-judicial nature of the Committee's proceedings when considering planning applications.

4.6.5.2 The right to address the Committee shall apply to any member of the Planning and Orders Committee (including a local councillor) who:

- has been lobbied, or
- who may have already expressed a conclusive view on an application, or
- who has spoken on the application at Town or Community Council level, or
- is a councillor who represents another ward as referred to in 4.6.4.3.3.

However if this right is exercised, the councillor on the Committee should comply with paragraph 4.6.5.1 above when consideration is given to the particular matter and may not participate in the decision making and should declare at the meeting why he/she is not participating in the decision.

4.6.5.3 The Committee Chairperson will conduct business at the meeting in accordance with the attached Appendix.

4.6.6 Public Meetings Relating to Development Proposals

4.6.6.1 Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals or submitted planning applications, unless those meetings have been arranged by or with the express agreement of the Authority. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position of attending meetings arranged by, or with the consent of, the Authority, or by accident, then officers should take great care to maintain impartiality, concentrate on providing factual information, listen to comments and avoid giving views on the merits or otherwise of the proposal.

4.6.6.2 Similarly, councillors involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings those councillors should be cautious in

expressing their views on the merits of proposals. They may express a predisposition but should not express what can be interpreted as either predetermination or bias towards or against the proposal. Councillors who wish to comment are advised to clearly state that their view is provisional, based on their knowledge as at that date, and that they will be called upon to consider the matter anew and in the light of all relevant matters when making a decision on the proposal. Where a councillor who is a member of the Committee indicates that they have a closed mind on a particular proposal (i.e. they are predetermined) or that they are biased on the proposal then the law prohibits them from participating in the decision-making process.

4.6.7 Councillors who are Members of the Committee and who are also Town or Community Councillors

4.6.7.1 In law there is nothing in principle to prohibit a councillor who has participated in a planning matter at a Town or Community Council meeting from then participating on that matter as a member of the Planning Committee provided that the councillor is not predetermined on or biased as regards that application.

4.6.7.2 Councillors are entitled to demonstrate a predisposition on a matter but they must ensure that they are not predetermined (i.e. that they have closed their mind on the merits of the proposal) on that matter. In other words, a councillor who sits on the Planning Committee may publically give an indication of their view on any application before they are called to make a decision on it but their view must be couched in reasonable terms and they must acknowledge that they have not closed their minds to making a decision on the merits of the matter at a future date.

4.6.7.3 Any councillor who sits on the Planning Committee and who feels the need to make a public statement on an application before it comes to that Committee is strongly advised to specifically indicate that their view is provisional; based on what they know at that point in time; and that they will need to consider the matter anew in the light of all the relevant matters relating to that application when it comes to making a decision on the application (see also 4.6.6.2 above).

4.6.8 Correspondence Received by Councillors

Should councillors receive directly any correspondence from persons interested in the outcome of a planning application they shall ensure that a copy is forwarded to the Development Control Section. The Section will then:

4.6.8.1 if time permits, send a copy to the applicant or his/her agent so as to allow him/her an opportunity to respond,

4.6.8.2 place a copy of all representations on the Planning file,

4.6.8.3 if time permits ensure that the report to Committee refers to the correspondence received.

4.6.9 Registration and Declaration of Interests

The Law and the Council's Code of Conduct for both councillors and officers in relation to these matters is of particular relevance to those dealing with planning applications and must be followed at all times.

4.6.10 Development Proposals Submitted by Councillors and Officers

4.6.10.1 Proposals by serving councillors (whether or not they are councillors on the Committee), certain categories of officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism. In these rules "relatives" encompass spouse or partner, parent, grandparent, child, grandchild, brother or sister.

4.6.10.2 Planning applications falling within the following categories will be reported to the Committee for consideration and not dealt with by officers under 'delegated powers':

- those where the applicant is a serving councillor or the relative of a serving councillor,
- those where a serving councillor acts as agent or has prepared any part of the application or plans,
- those where the applicant is a relevant officer or their relative. In this rule "relevant officer" means the Chief Executive, Deputy Chief Executive, all Directors, all Heads of Service, all officers working in the Planning Department and all other officers whose work is directly linked to the development control process (such as officers in Highways and Environmental Health who are consultees or lawyers who advise and represent the Planning Department in development control matters),
- those where the applicant is a close friend of a serving councillor or relevant officer.

In this rule "planning application" shall mean all applications required by statute to be made and which (apart from this rule) would fall to be determined under the Council's Constitution by the Head of Planning Service. These would include applications for outline consent, reserved matters approval, listed building consent, conservation area consent, consent under Tree Preservation Orders and so forth.

4.6.10.3 Planning officers shall endeavour to identify and highlight such applications and shall accordingly inform the Head of the Planning Service and the Authority's Monitoring Officer. Serving councillors who make applications, who act as agents or who prepare plans or whose relatives make applications, should play no part in the decision-making process for that proposal.

4.6.10.4. The Monitoring Officer should confirm in the Committee report that such application has been processed normally and must, therefore, be given the opportunity to review the file.

4.6.10.5 Officers involved in the development control process must not prepare plans or act as agent for any person or body (including their relatives) pursuing a planning matter with the Council. If they submit a proposal on their own behalf, they should take no part in the processing of that application.

4.6.11 Officers' Report to the Committee

4.6.11.1 All planning applications reported to the Committee will have a full written report including a reasoned assessment of the proposal and a justified recommendation.

4.6.11.2 Any new matters which have arisen between the preparation of the report and the date of the Committee will be reported orally and references to this will be included in the minutes.

4.6.11.3 Every planning application file will contain an accurate account of events throughout its life, particularly the outcome of meetings or significant telephone conversations.

4.6.11.4 The same principles of good record keeping will also be observed in relation to enforcement matters. Monitoring of record keeping will be undertaken on a continuous basis by managers within the Development Control Section.

4.6.12 Decisions Contrary to Officer Recommendation

4.6.12.1 Where the Committee are mindful to either approve or refuse a proposed development contrary to an Officer recommendation, the item shall be deferred until the following meeting so as to allow the officers to report further on the matter. The Committee must set out the reasons for wishing to decide against the officer recommendation. Committee members should adhere to these Rules when making planning decisions and take policy guidance from planning officers into due regard and only vote against their recommendations where genuine and material planning reasons can be identified. A detailed minute of the Committee's reason(s) shall be made and a copy placed on the application file. Where deciding the matter contrary to the recommendation may risk costs on appeal the Committee will take a recorded vote when deciding the application irrespective of the requirements of paragraph 4.1.18.5 of the Constitution.

4.6.12.2 The officer's further report shall detail the reasons put forward by the members, indicate whether such reasons are, in their view, genuine and material planning reasons and discuss the land use planning issues raised.

4.6.12.3 In the case where councillors wish to add or amend conditions which are recommended by officers, the officers should be invited to draft such a condition and bring this back for approval at the subsequent meeting unless the drafting is straightforward and can be agreed at the initial meeting.

4.6.12.4 Where planning officers are unable to defend such decisions on appeal (due to requirements of the professional conduct rules of the Royal Town Planning Institute - RTPI) they shall make this point known to the Committee before the final vote is taken. In such cases the Committee shall nominate (at least) two of its members who voted contrary to the recommendation to appear at any appeal and explain the Committee's decisions and the reasons for them. These should, normally, be the proposer and seconder of the proposal which was contrary to the officer's recommendation.

4.6.13 Appeals Against Council Decisions

4.6.13.1 Officers will organize and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances it may be necessary to appoint consultants to appear for the Council.

4.6.13.2 In giving evidence, officers will present the best possible case on behalf of the Council whilst complying with the RTPI Code of Professional Conduct.

4.6.13.3 Where a decision contrary to officer recommendation is subject to an appeal and officers have previously made known to the Committee that they are unable to defend such decisions, officers shall report the appeal to the next Committee meeting. Councillors will then be responsible for presenting the Council's case at the appeal.

4.6.14 Conduct of Officers

4.6.14.1 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute Code of Professional Conduct. All officers whether members of the Institute or not shall abide by the same principles namely they -

4.6.14.1.1 Shall act with competence, honesty and integrity;

4.6.14.1.2 Shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;

4.6.14.1.3 Shall discharge their duty to their employers, clients, colleagues and others with due care and diligence in accordance with the provisions of this Code;

4.6.14.1.4 Shall not bring the profession or the Royal Town Planning Institute into disrepute;

4.6.14.1.5 Officers shall not disclose or use to the advantage of themselves or the Authority information acquired in confidence in the course of their work;

4.6.14.1.6 Officers shall decline any discounts, gifts or commissions offered by any third parties in connection with their work as professional planners.

4.6.15 Councillor / Officer relationship

4.6.15.1 In order to engender a committed professional relationship between both officers and councillors, each shall have respect and regard for the roles both play within the decision making process.

4.6.15.2 Councillors shall respect the advice given by officers at Committee or when dealing with delegated applications and shall not place pressure on officers for a particular recommendation or decision. Any officer who considers that this has happened should deal with the matter as set-out under section 5.3.4 of this Constitution (Bullying, Intimidation and Harassment).

4.6.16 Site Visits by the Planning and Orders Committee

4.6.16.1 The protocol on site visits is attached as an Appendix to these Rules.

4.6.17 Gifts and Hospitality

4.6.17.1 Advice to councillors on registration of gifts and hospitality is contained within the Council's Code of Conduct for Members and shall be accordingly observed.

4.6.17.2 Officers during the course of carrying out their duties may be offered hospitality from people with an interest in a planning proposal. Officers should refuse offers of hospitality of any kind. If the receipt of hospitality is unavoidable officers must ensure that the absolute minimum level is accepted and declare its receipt as soon as possible to the Monitoring Officer.

4.6.18 Training

4.6.18.1 No member may sit on the Planning and Orders Committee unless and until they have attended Induction Training. The contents of the Induction Training shall from time to time be determined by the Head of Service (Planning and Public Protection). Updating training thereafter will be provided at least twice a year to include changes in legislation or procedure.

4.6.18.2 Councillors shall ensure that they attend a minimum 3 training events over a two year period in order to keep abreast of planning matters and thus provide a positive input into the decision making process. Attendance records will be monitored and reported to the Council. Any member of the Planning and Orders Committee who fails to attend the stated minimum number of training sessions shall be removed or suspended from the Committee by vote of the full Council at such time as when the

attendance records are reported.

Appendix

4.6.19 Protocol Regarding Site Visits by the Planning and Orders Committee

4.6.19.1 Criteria for Site Visits

4.6.19.1.1 It is important that criteria should be set out for deciding when a site visit is justified and consider the procedure for such visits. In this respect account should be taken of the following points:-

(i) site visits can:

- cause delay to the decision making process,
- possibly lead to an appeal to The Planning Inspectorate on the basis of 'non-determination',
- affect the Service's performance in respect of its 8 week target, and
- lead to additional costs both to the Service and possibly to the applicant(s).

(ii) there needs to be consistency both in the way that it is decided that a site visit should take place and in the conduct of such visits. Otherwise it may leave the Authority open to the accusation that site visits are arbitrary or possibly a lobbying device.

(iii) site visits should be carefully organised and well-attended to ensure that the purpose, format and conduct are clearly established at the beginning and subsequently adhered to.

(iv) site visits should be used only where the expected benefits are substantial. The 'substantial benefit' test should apply in every case. Site visits should only be necessary if the impact of the proposed development is difficult to visualise and comprehend, i.e. where lack of clarity with the application makes visual assessment necessary

(v) site visits may be appropriate to consider large, more complex applications. Recommendation of site visits by officers shall be referred to within the report to Committee.

4.6.19.1.2 Site visits should not apply in the following cases:

- (i) to solely consider boundary or neighbour disputes,
- (ii) to consider objections issued on competition grounds,
- (iii) to consider objections raised on the ground of loss of property values,
- (iv) to consider any other issues which are not material planning considerations,
- (v) where councillors have already visited the site within the last 12 months, except in exceptional circumstances

4.6.19.2 Requests for Site Visits

In order to adopt a structured approach to site visits the following format should be adhered to:-

4.6.19.2.1 All requests for site visits must be made in writing to the Chief Planning Officer/ Planning Control Manager by 1.00pm on the final working day prior to the Committee meeting. Any verbal request received prior to the Committee meeting must be followed up in writing before the Planning Committee commences. The reason for the 'site visit' shall be clearly stated and accordingly reported to the Planning Committee.

4.6.19.2.2 If a request is made for a 'site visit' during the Planning and Orders Committee Meeting once again the reasons for the visit shall be recorded in the minutes.

4.6.19.3 Procedures at the Site Visit

4.6.19.3.1 The applicant shall be informed that a site visit will take place but will not be allowed to be present during the visit to make any representations.

4.6.19.3.2 The primary purpose of the site visit will be for the planning officers to explain the planning issues relating to the case and for councillors to view the site.

4.6.19.3.3 There shall be no discussions at the site visit as regards the merits of the application. The site visit shall not be used as a forum for debate.

4.6.19.3.4 The Chairperson or Vice-Chairperson shall conduct and lead the site visit. If either the Chairperson or the Vice-Chairperson is absent, councillors shall vote for one of their number to act as Chairperson.

4.6.19.3.5 The Chairperson shall formally open the meeting and set out the reasons for the visit.

4.6.19.3.6 The planning officer shall be requested to outline the proposal and the main issues.

4.6.19.3.7 The councillors shall view the site, relevant buildings and surroundings as necessary.

4.6.19.3.8 Councillors shall be offered the opportunity to raise questions or seek clarification of points of fact with the planning officer and/or local councillors.

4.6.19.3.9 All local councillors in whose Ward the application site is located (if present) shall be offered the opportunity to comment on the proposal.

4.6.19.3.10 Notes shall be made of the site meeting and these shall be accordingly minuted at the following Planning Committee Meeting when the application is

discussed.

4.6.19.4 Regular Review of Decisions

4.6.19.4.1 The Audit Commission's Report 'Building Quality' recommends that councillors should visit a sample of implemented planning permission to assess the quality of the decision. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and assist with reviews of planning policy.

4.6.19.4.2 The review should be undertaken annually. It should include examples from a range of categories of development including applications which officers have determined under delegated powers.

4.6.20 Role of the Committee Chairperson and Conduct of Business at the Committee

4.6.20.1 Election of the Chairperson / Vice-Chairperson

4.6.20.1.1 The Chairperson shall be elected to his/her post by the councillors on the Committee at its first meeting following the annual Council meeting. The councillors shall at the same time elect a Vice-Chairperson for the same period of office or until such time as either or both of them step down.

4.6.20.1.2 In the absence of the Chairperson for the whole or part of the Committee meeting, the Vice-Chairperson shall be the Chairperson. If the Vice-Chairperson shall be absent, the Committee shall choose one of their number present to be Chairperson for that meeting or part of it until the Chairperson (or Vice-Chairperson) returns.

4.6.20.2 Responsibility of the Chairperson

The Chairperson shall have the following responsibilities:

4.6.20.2.1 to preside over meetings so that Committee business can be carried out efficiently and with regards to the rights of councillors, officers and the interest of the community as a whole.

4.6.20.2.2 to ensure that the Committee meeting is properly conducted as a forum for debate on planning matters and statutory orders only.

4.6.20.2.3 to ensure that the business of the meeting is carried out in accordance with the relevant provisions contained within the Council's Constitution.

4.6.20.2.4 to support the planning officers and the Monitoring Officer's representative in reminding members about their duty to adhere to genuine and material planning discussions in their decision making process.

4.6.20.3 The Role of Officers at Committee Meetings

4.6.20.3.1 Officers shall provide professional advice to the Chairperson in order to ensure that he/she is able to discharge the duties of the post.

4.6.20.3.2 Officers shall provide advice as follows:

- (i) at pre-Committee meetings so that the Chairperson is fully briefed on issues that may arise at meetings
- (ii) at any post-Committee meetings (if relevant)
- (iii) during Committee meetings where questions are directed towards the Chairperson for response
- (iv) during any meetings which may be convened by officers in order to discuss issues relevant to 'planning' or 'orders' issues

4.6.20.4 Conduct of Committee Meetings

4.6.20.4.1 Each agenda item for discussion or for information shall be introduced by the Chairperson.

4.6.20.4.2 Once introduced the Chairperson shall ensure that the officer is allowed to report on the item. Where the public speaking procedure applies to a particular application, this shall occur before the officer reports on the item.

4.6.20.4.3 The Chairperson shall allow the local councillors to speak first after the officer's report. This is whether the local councillors wish to speak for or against the item and whether or not they are on the Committee.

4.6.20.4.4 The Chairperson shall then allow the councillors to participate in the discussion in the order in which he/she acknowledges their wish to speak.

4.6.20.4.5 The Chairperson will ensure that all councillors shall abide by the provisions of the Council's Constitution and by the relevant provisions of these Procedure Rules.

4.6.20.4.6 All those councillors wishing to speak shall be allowed an opportunity to do so. Councillors shall refrain from making speeches and shall address the Committee on 'planning' (i.e. material planning considerations) and 'orders' matters only. The Chairperson may intervene and curtail councillors who are making repetitions or irrelevant statements.

4.6.20.4.7 Where officers need to respond to comments or questions from councillors then the Chairperson shall ensure that officers are given that opportunity.

4.6.20.4.8 If the Chairperson wishes to speak as a local councillor on an item then the provision of the Constitution shall apply equally to him/her as they apply to all

councillors.

4.6.20.4.9

(i) At the conclusion of the discussion the Chairperson shall request councillors on the Committee to vote on the matter under discussion. Unless councillors disagree with the officers' recommendation they shall indicate their voting intention through the showing of hands.

(ii) Should an amendment be proposed and seconded to the officer's recommendation that amendment will be voted on first.

4.6.20.4.10 All councillors and officers shall respect the position of Chairperson. The ruling of the Chairperson on all questions of procedure at the Committee shall be final and not open to discussion. The Chairperson shall ensure that at all times regard is had by all councillors (including himself/herself) and officers to the protocol on Member/Officer relationship and that respect is shown to the advice given by officers at the Committee.

4.6.21 Public Speaking

Eligibility to Speak

4.6.21.1 The planning application concerned must be on the agenda of the Planning and Orders Committee meeting in question. In the event of an application being deferred, public speaking will not be allowed if an opportunity has already been given at a previous Committee meeting when the application has been fully considered.

4.6.21.2 Both applicants (or their agents) and objectors (or their agents) can speak and there are no other qualifying criteria other than compliance with the Council's procedure.

4.6.21.3 Normally only one person can speak for and one person against an application. Very exceptionally the Chair of the Committee may exercise his/her discretion to allow one additional speaker per 'side'. This discretion will usually only be exercised for major applications where there are significant differences of view within one 'side' (e.g. two people speaking against an application for a large supermarket where one represents the views of retailers and the other the views of nearby residents). In such cases the 'other side' will be allowed 2 speakers or twice the normal time, if they wish to use it.

4.6.21.4 Anyone requesting to speak must allow the Council to give their name and contact number to other people (of the same view) wishing to speak so that they can agree on a spokesperson, the issue to raise etc. If they cannot agree, the first person who notified the Council of his/her intention to speak will normally be chosen to speak.

4.6.21.5 Requests to speak must be made to the Administrative Officer in the Planning Department before the deadline referred to in the notification letters sent to applicants and neighbours.

Time allowed to Speak

4.6.21.6 The spokesperson will be allowed up to 3 minutes to address the Committee.

Visual Aids

4.6.21.7 The spokesperson may not circulate or display written material in the Committee meeting. Any written representations should have been submitted to the Council during the statutory publicity period and will be summarised in the Officer's report.

Procedure

4.6.21.8 The procedure for public speaking at Committee is described in the appropriate documents.

4.7 Appeals Committee Procedure Rules

4.7.1 The first item of business at each meeting of an Appeals Committee shall be the election of a Chairperson for the duration of the meeting.

4.7.2 The Council will give notice in writing of at least 7 days in advance of the time and place of the hearing unless a shorter period is agreed by each side.

4.7.3 Any person exercising a right of appeal may represent himself/herself or be represented by any other person and may produce witnesses and documents relevant to the appeal.

4.7.4 The Council's representative may produce witnesses and documents relevant to the appeal.

4.7.5 Each side must give written notice to the other of the witnesses that each will present together with a resume of the evidence and the documents to be produced by each witness. These details will be delivered to the other side at least 3 days before the hearing.

4.7.6 The quorum for the Committee shall be 3 members.

4.7.7 The Monitoring Officer or his/her nominee will be Secretary to the Committee.

4.7.8 Procedure at the hearing:

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AGENDA ITEM NO.

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to	Standards Committee, The Executive & Full Council
Date	Standards Committee 12.09.13 Executive 21.10.13 Full Council ...12.13
Subject	To Make Changes to the Constitution (3.5.3.15.5) and to Planning Procedure Rules (Section 4.6 of the Constitution)
Portfolio Holder(s)	Councillor J. Arwel Roberts
Lead Officer(s)	Head of Service (Planning and Public Protection) Legal Services Manager
Contact Officer	Robyn Jones (x2134)
Nature and reason for reporting	
<p>1.1 To make changes to the Constitution, one to paragraph 3.5.3.15.5 and the other to section 4.6: Planning Procedure Rules (the Rules):</p> <p>1.1.1 <u>Change 1</u> (paragraph 3.5.3.15.5) - That, in future, departure applications made by councillors, relevant officers or their close family or friends can, rather than being referred to the Planning Committee (the Committee) as at present, be refused by planning officers under delegation and then subject to a full report to the next Committee meeting. Where officers would want to approve such a departure application then it could only be approved by the Committee.</p> <p>1.1.2 <u>Change 2</u> (section 4.6) - The Rules be amended to reflect the legal position and to take account of section 25 of The Localism Act 2011. In short, that members of the Committee are allowed to express an opinion on the merits of an application even before it comes to the Committee for a decision provided the opinion they express is a predisposition and not a predetermination. This would include allowing members of the Committee who are also members of a Town or Community Council to participate in a planning matter at meetings of their Town or Community Council.</p> <p>1.2 All of the proposed changes are set out in tracked changes to the documents attached to this report.</p> <p>1.3 The Standards Committee are consulted on these proposals.</p>	

1.4 The Executive is asked to make a recommendation to the full Council in respect of the proposed changes, and

1.5 The full Council is asked to take a decision to make the changes as shown in the Appendices to this report.

A – Introduction / Background / Issues

The current Constitution provides as follows.

2.1 Change 1

2.1.2 Planning officers are not allowed to make decisions on planning applications submitted by councillors, relevant officers (senior officers and those directly involved in the planning process) and their close family and friends. Such applications at present are decided by the Committee. However, there is a loophole, in respect of departure applications. A departure application is one contrary to the (statutory) development plan. The development plan is the primary tool for making decisions on planning applications and applications must be decided according to that plan's provisions in most cases.

2.1.3 Departures are decided by officers where they want to refuse the application but all departures must go to the Committee where officers want to approve the application. The loophole arises where a departure application made by a councillor, relevant officer or their close family or friends goes straight to Committee for a decision whereas such an application made by other people would, most likely, be refused by officers under delegation.

2.1.4 To close this loophole, it is proposed that all departure applications made by councillors, relevant officers, or their close family or friends can be determined by officers under delegation where they wish to refuse the application. Such a refusal would then be subject to a full written report to the next meeting of the Committee to ensure transparency and accountability. Where the planning officer wants to approve the departure application then, like all other departures, the matter will still need to go to the Committee for approval.

2.2 Change 2

2.2.1 The present Rules take an unduly narrow approach to what a member of the Committee may do and say outside the confines of the Committee meeting. For example, they prevent a Committee member from expressing any views on the merits of an application before it comes to the Committee and they also prevent Committee members from participating on planning matters in their capacity as members of a Town or Community Council in meetings of those councils. These rules are unnecessarily restrictive in the light of section 25 of The Localism Act 2011.

2.2.2 Whilst it has always been the case that to express a predisposition on a matter was legally permissible, to express predetermination is not. In simple terms, it is permitted to indicate what your view is at a particular point in time provided that you give a clear indication that you have not closed your mind to making a decision on the merits of that matter at a later date. Section 25 of the Localism Act 2011 has sought to reinforce that position and a copy of that section is attached. No doubt the present Rules were drafted back in 2001 based on the situation then perceived as prevailing in fact as well as, perhaps, in law.

2.2.3 However, in light of section 25 and the election of a new Council, it is now thought appropriate to change the Rules so that they better reflect the position in law. The changes to the Rules in the Appendices now allow members of the Committee to give a public view on the merits of an application subject to the safeguards mentioned, demonstration that the view is provisional and that a final decision will be made on the merits as they are then known. Whether members on the Committee wish to take advantage of these provisions will be a matter for each individual, but the changed Rules gives them a range of options for the future.

B - Considerations

3.1. Change 1 – The current Rules provide for a loophole and mean that departure applications made by councillors, relevant officers, or their close family or friends are treated differently to departure applications made by other applicants. As planning is a high-profile subject for all Councils it is better that all applicants who make departure applications are seen to be treated the same subject to certain safeguards. In this case the safeguard is the need to submit a written report to the next meeting of the Committee where a departure application by a councillor, relevant officer, or their close relatives or friends is refused by officers under delegated powers.

3.2. Change 2 – The current Rules are likely to be a reflection of the times during which they were drafted. They are, by now, unduly restrictive and prevent members of the Committee from expressing any view on the merits of an application before it comes to the Committee. Likewise, members of the Committee are prevented from participating in planning matters in their capacity as Town or Community Councillors. These restrictions are not a reflection of the legal position which allows members of the Committee to express a predisposition but not to be predetermined. The Rules can be changed and advice included so as to allow members of the Committee the discretion to play a more active part in public matters outside of the confines of the Committee.

C – Implications and Impacts		
1	Finance / Section 151	
2	Legal / Monitoring Officer	The Committee's legal adviser is a co-author of the report and the legal view is expressed in it
3	Human Resources	Not applicable
4	Property Services (see notes – separate document)	Not applicable
5	Information and Communications Technology (ICT)	Not applicable
6	Equality (see notes – separate document)	These changes will not have a differential impact on any of the groups protected under the Equality Act 2010.
7	Anti-poverty and Social (see notes – separate document)	Not applicable
8	Communication (see notes – separate document)	No comments
9	Consultation (see notes – separate document)	All elected members were consulted on the proposals. Responses received will be reported to the meeting.

C – Implications and Impacts		
10	Economic	Not applicable
11	Environmental (see notes – separate document)	Not applicable
12	Crime and Disorder (see notes – separate document)	Not applicable

CH - Summary
<p>4.1 The new Rules will:</p> <p>4.1.1 Mean that any departure application made by a councillor, relevant officer, or their close family or friends can now be refused by planning officers under delegated powers but subject to a full, written report being presented to the next Committee meeting for transparency and accountability. Where officers want to approve such a departure application then only the Committee may grant such approval. This brings the treatment of these departure applications into line with those made by other applicants and closes a potential loophole in the Rules.</p> <p>4.1.2 Clarify that members of the Committee will be able to express a view on the merits of planning applications before they come to the Committee for a decision. This will be subject to safeguards to ensure that members may express a predisposition (which is allowed) but fall short of expressing a predetermination (which is not allowed). Members on the Committee will, likewise, be able to participate in planning matters in their capacity as Town or Community Councillors should they wish. The changes allow members a greater range of options on how to deal with planning matters but how they choose to deal with matters will be a matter for the discretion of individuals who may, of course, seek advice as they see fit.</p> <p>4.1.3 To make the above changes and other minor and consequential changes to the Constitution as shown in the Appendices to this Report.</p>

D - Recommendation

5.1 The recommendations are as follows:

To the Standards Committee

5.2 For any comment as a consultee.

To the Executive:

5.3 To recommend to the full Council that the changes to the Rules in the Council's Constitution as detailed in the the Appendices to this report are made.

To the Full Council:

5.4 To make the changes to the Rules in the Council's Constitution as detailed in the the Appendices to this report, and

5.5 To delegate to the Head of Function (Legal and Administration) the power to make the necessary changes to the Constitution to implement the Council's decision.

Name of author of report: Robyn W. Jones

Job Title: Legal Services Manager

Date: 06 August 2013

Appendices:

Copy of the Rules showing the proposed amendments.

Background papers

None.

NEWID / CHANGE

1

Extract from Constitution showing proposed changes in red:

"3.5.3.15.5 all functions relating to town and country planning and building control as contained within the following Acts :

- The Town and Country Planning Act 1990
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Planning (Hazardous Substances) Act 1990
- The Caravan Sites and Control of Development Act 1961
- The Environment Act 1995
- The Planning and Compensation Act 1991
- Land Compensation Act 1961
- The Building Act 1984

NB The above provides that determining all planning applications, with the exception of the following, is delegated to Officers:

(i) applications which are considered Departures from the Development Plan on which the recommendation is to approve the proposal.

(ii) applications which are accompanied by an Environmental Impact Assessment,

(iii) applications submitted by or on behalf of the County Council or involving land owned by the County Council,

(iv) applications for consent to erect electricity lines which have a capacity of 132 kV or above,

(v) applications where the Councillor in whose ward the proposed development is located submits a written request to the Head of Development Control within the established time scale, that the matter be referred for determination to the Planning and Orders Committee.

The right granted by this paragraph shall not apply to any planning application which is deemed by or on behalf of the Head of Planning Service to be a departure from the development plan unless that application either:

PI-16971-RWJ/175854

amounts to or includes the creation of five or more new dwellings, or amounts to or includes the direct creation of five or more new jobs.

(vi) applications including Lawful Development Certificate applications submitted by serving Members of the Council or Officer of the Council who may be seen to be involved in processing and / or determination of planning applications (ie staff employed in the Planning Service, Chief Executive, Deputy Chief Executive, Corporate Directors, Heads of Service and other Officers who regularly have an input into the planning system – eg highways and drainage, legal, environmental health, housing officers, economic development or their close relatives (defined as spouses / partners, parents, children, brothers and sisters) or a close friend of a serving councillor or such officer).

The provisions of this paragraph shall not apply to such applications as are deemed to be departure applications. Those departure applications may be refused by officers under delegated powers and then subject to a full written report to the next meeting of the Committee so as to ensure the transparency and accountability of the decision taken. Where officers wish to approve such a departure application then that approval must be granted by the Committee.”

NEWID / CHANGE

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4.6 Planning Procedure Rules

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4.6.1 Introduction

4.6.1.1 Determining planning applications is an important duty undertaken by the County Council. These rules set out how the Council as local planning authority will deal with planning applications. The rules apply to councillors and officers as the context requires.

4.6.1.2 Most applications will be determined by planning officers acting on behalf of the local planning authority and the Planning and Orders Committee (the Committee) will determine all other applications. The rules as to whether officers or the Committee will determine applications are contained in Part 3 of this Constitution. Of those instances where the decision may be made by the Committee, the potentially most significant is where the local councillor (that is any one of the councillors in whose ward the proposed development site is located) may require that the application (which would otherwise be decided by officers) should be submitted to the Committee for determination. In these cases, the local councillor must 'call-in' such application in writing addressed to the Chief Planning Officer within 21 days of the date of the letter notifying him / her of the application. In the case of those applications classified as 'fast-track' economic ones, the period within which to refer it to the Committee will be only 14 days. The local councillor(s) who called-in the application may withdraw their call-in at any time before the Committee Agenda is published by notifying to the case officer and confirming the withdrawal in writing.

4.6.1.3 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also highly contentious because the decisions affect the lives of everyone and the private interests of individuals, landowners and developers. This is heightened by the openness of the system (it actively invites public opinion before taking a decision) and the legal nature of development plans and decision notices. It is important, therefore, that the process is characterised by open and transparent decision making.

4.6.1.4 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, the financial value of landholdings and the quality of the environment. It is important, therefore, that local planning authorities should make planning decisions affecting these interests, openly, impartially, with sound judgement and for justifiable reasons. The process should leave no justifiable grounds for suggesting that a decision has been partial, biased or not well-founded.

4.6.2 Decision Making on Planning Applications

4.6.2.1 Decisions on planning applications are sometimes referred to as regulatory or quasi-judicial decisions and this means that those making such decisions must

4.6.2.1.1 take into account all relevant planning considerations

4.6.2.1.2 ignore irrelevant or non planning considerations

4.6.2.1.3 act impartially, fairly and not take into account any political considerations

4.6.2.2 Planning law requires local planning authorities to determine planning applications in accordance with the Statutory Development Plan unless material planning considerations indicate otherwise. The emphasis in determining applications is upon a 'plan-led' system.

4.6.2.3 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved.

4.6.2.4 Those persons determining planning applications have a duty to take into account representations made to the local planning authority as a result of consultation with interested bodies or as a result of public notice or neighbour notification. In doing so it is necessary to decide which representations are material to the decision to be made, and, if so, what weight to attach to them. This conclusion should not be reached by the Committee until all the facts have been presented in the officer's report to the Committee.

4.6.2.5 Councillors must not give a commitment in relation to any planning matter prior to its consideration at Committee. It is recognised, however, that councillors will from time to time be approached individually by applicants, agents and objectors in relation to planning proposals. These rules are intended to assist councillors in dealing with these approaches and is designed to ensure that the integrity of the decision making process is preserved.

4.6.2.6 Failure to follow these rules without good reason could be taken into account in investigations into possible maladministration and any investigation regarding the conduct of councillors and / or officers.

4.6.3 Pre-determination Discussions by Officers with Applicants

4.6.3.1 In any discussions on planning issues, it will always be made clear at the outset, that such discussion:

- will not bind the local planning authority to make a particular decision, and
- that any views expressed are based on the officers' provisional professional judgement but do not commit the local planning authority to any particular decision.

4.6.3.2 Any advice given will:

- be consistent and based upon the Development Plan and other material considerations,,
- be impartial and the best that the officer can give in the circumstances, and
- try to highlight any apparent problems.

4.6.3.3 No Councillor - whether they serve on the Committee or not - shall take part in the officers' discussions with applicants at any stage prior to determination of the application. ~~Where this does occur, a complaint may be made against the councillor to the Council's Monitoring Officer.~~

4.6.4 Lobbying of and by Councillors

4.6.4.1 Councillors who are Members of the Committee

4.6.4.1.1 Councillors who are members of the Committee are likely to be approached by applicants, objectors and others interested in the outcome of planning applications. Because of the quasi-judicial or regulatory nature of planning decisions, councillors on the Committee should not allow themselves to be lobbied by anyone - whether for or against an application. If approached they should inform the person seeking to lobby them that if they discuss the application with that person, this may disqualify them from taking part in the decision on the application. Instead potential lobbyists should be advised to contact either their local councillor (see 4.6.4.3 below) or an appropriate officer within the Planning Department.

4.6.4.1.2 Councillors who are on the Committee should not organise local support or opposition to a planning proposal if they later wish to take part in the discussion on the application.

4.6.4.1.3 In taking into account the need to make decisions impartially, councillors on the Committee should not favour or appear to favour any person, company, group or locality and should not declare which way they intend to vote in advance of the meeting. To do so without all relevant information and views would be unfair and prejudicial. If the councillor feels that the public would believe he/she had come to a conclusive view on the planning matter or application before the meeting, or that he/she has been lobbied by an interested person then he/she should not take part in the debate, nor vote on the issue - this is without prejudice to his/her right to address the committee as provided for in section 4.6.5.2 of these rules.

4.6.4.1.4 Where the Monitoring Officer or his/her representative believes that a councillor has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee, the Monitoring Officer or his/her representative will advise the councillor that it would be inappropriate for him/her to take part in the debate, or vote on the application. The final decision, however, rests with the councillor - subject to any external scrutiny.

4.6.4.2 Councillors who are not members of the Committee

Councillors who are ~~not~~ members of the Committee should not be lobbied or allow themselves to be lobbied, whether by applicants, objectors or anyone else interested in the outcome of a planning application. Councillors - whether or not they are on the Committee - should not lobby councillors who are on the Committee. If approached such councillors should inform the person seeking to lobby them that they should either contact one of their local councillors (see 4.6.4.3 below) or an appropriate officer in the Planning Department. If such a councillor is lobbied he/she should not lobby councillors who are members of the Committee and he/she will not be entitled to speak at meetings of the Committee.

4.6.4.3 Local Councillors

4.6.4.3.1 There are differences to the rules set out in 4.6.4.1.1 and 4.6.4.2 in relation to the 'local councillor' i.e. any of the councillors in whose ward the proposed development is located.

4.6.4.3.2 If the local councillor is not a member of the Committee then he/she can legitimately be lobbied by an applicant, objector or anyone else interested in the outcome of a planning application. If such councillor is lobbied then, provided that he/she does not have an interest to declare in accordance with the Council's Code of Conduct for Councillors, he/she will be entitled to make representations to and address the Committee. However he/she must not themselves lobby, whether directly or indirectly, councillors who are on the Committee.

4.6.4.3.3 If a local councillor is a member of the Committee then, the provision of rule 4.6.4.3.2 above will also apply to them and he/she may address the Committee but will **not** have the right either to propose or second any recommendation or to vote on the application. But he/she may should they so wish, refer the person seeking to lobby them to another councillor who is not on the Committee and, for the purpose of these rules, such a councillor will be regarded as a local councillor.

4.6.4.3.4 Local councillors may not become involved in making any representations at meetings of the Committee or participating in decision making on planning applications if they have an interest to declare in accordance with the Council's Code of Conduct for Councillors. This is so regardless as to whether or not they are on the Committee. If a local councillor is in this position he / she should refer any potential lobbyists to another councillor who is not on the Committee and, for the purpose of these rules, such a councillor will be regarded as a local councillor.

4.6.4.4 Where letters of 'neighbour notification' of a planning application are sent to properties not in the same ward as the application site, then the councillors who

represents those properties may also speak as local councillors at the Committee. This rule only gives the right to speak at the Committee and confers no other rights on that councillor as a local councillor.

4.6.5 Seating and Speaking Arrangements at Meetings of the Committees

4.6.5.1.1 When attending meetings of the Committee, councillors who are not members of the Committee should sit quite separately from councillors who are on the Committee - whether or not they intend addressing the Committee. They should not communicate with those councillors who are on the Committee and who will be making decisions. The objective of this rule is to emphasise the quasi-judicial nature of the Committee's proceedings when considering planning applications.

4.6.5.1.2 Other than speaking as local councillor, members of the Committee may only participate on an application where they have been present at all previous substantive considerations of that application by the Committee. Substantive consideration means where there has been a presentation by the officer on the application, any discussion by the Committee on the merits of the application or an official site visit of the application site.

4.6.5.2 The right to address the Committee shall apply to any member of the Planning and Orders Committee (including a local councillor) who:

- has been lobbied, or
- who may have already expressed a conclusive view on an application, or
- who has spoken on the application at Town or Community Council level or the local councilor, or
- is a councillor who represents another ward as referred to in 4.6.4.3.3.

However if this right is exercised, the councillor on the Committee should comply with paragraph 4.6.5.1 above when consideration is given to the particular matter and may not participate in the decision making and should declare at the meeting why he/she is not participating in the decision.

4.6.5.3 The Committee Chairperson will conduct business at the meeting in accordance with the attached Appendix.

4.6.6 Public Meetings Relating to Development Proposals

4.6.6.1 Officers involved in the processing or determination of planning matters should not attend public meetings in connection with development proposals or submitted planning applications, unless those meetings have been arranged by or with the express agreement of the Authority. To do so could lead to allegations of bias or prejudice in relation to a particular point of view. If put in such a position of attending meetings arranged by, or with the consent of, the Authority, or by accident, then officers should take great care to maintain impartiality, concentrate on providing factual information, listen to comments and avoid giving views on the merits or otherwise of the proposal.

4.6.6.2 Similarly, councillors involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings those councillors should be cautious in expressing their views on the merits of proposals. They may express a predisposition but should not express what can be interpreted as either predetermination or bias towards or against the proposal. Councillors who wish to comment are advised to clearly state that their view is provisional, based on their knowledge as at that date, and that they will be called upon to consider the matter anew and in the light of all relevant matters when making a decision on the proposal. No view on the merits or otherwise of a proposal should be given. Where a councillor who is a member of the Committee indicates that they have a closed mind on a particular proposal (i.e. they are predetermined) or that they are biased on the proposal then the law prohibits them from participating in the decision-making process.

4.6.7 Councillors who are Members of the Committee and who are also Town or Community Councillors

~~These councillors should make a choice in relation to every planning application which may be considered by a Town or Community Council (or a committee or subcommittee of the same). The choices are either:~~

~~4.6.7.1 Participate in the discussion at Town or Community Council level and then, if they wish, speak at the Committee as provided for in of these Rules but not otherwise take part in the deliberations of the Committee or vote on the application, or~~

~~4.6.7.2 Take no part in discussions at Town or Community Council level (and preferably not be in the room when the matter is discussed) and then participate fully at the Committee.~~

~~4.6.7.3 NB: those councillors who sit on the Committee but who are not members of the Town or Community Council have, like any other member of the public, the right to attend public meetings of that Council. In these cases those councillors should only observe proceedings at the Town or Community Council and not take part in them.~~

~~4.6.7.1 In law there is nothing in principle to prohibit a councillor who has participated in a planning matter at a Town or Community Council meeting from then participating on that matter as a member of the Planning Committee **provided that the councillor is not predetermined on or biased as regards that application.**~~

~~4.6.7.2 Councillors are entitled to demonstrate a predisposition on a matter but they must ensure that they are not predetermined (i.e. that they have closed their mind on the merits of the proposal) on that matter. In other words, a councillor who sits on the Planning~~

Committee may publicly give an indication of their view on any application before they are called to make a decision on it but their view must be couched in reasonable terms and they must acknowledge that they have not closed their minds to making a decision on the merits of the matter at a future date.

4.6.7.3 Any councillor who sits on the Planning Committee and who feels the need to make a public statement on an application before it comes to that Committee is strongly advised to specifically indicate that their view is provisional; based on what they know at that point in time; and that they will need to consider the matter anew in the light of all the relevant matters relating to that application when it comes to making a decision on the application (see also 4.6.6.2 above).

4.6.8 Correspondence Received by Councillors

Should councillors receive directly any correspondence from persons interested in the outcome of a planning application they shall ensure that a copy is forwarded to the Development Control Section. The Section will then:

4.6.8.1 if time permits, send a copy to the applicant or his/her agent so as to allow him/her an opportunity to respond,

4.6.8.2 place a copy of all representations on the Planning file,

4.6.8.3 if time permits ensure that the report to Committee refers to the correspondence received.

4.6.9 Registration and Declaration of Interests

The Law and the Council's Code of Conduct for both councillors and officers in relation to these matters is of particular relevance to those dealing with planning applications and must be followed at all times.

4.6.10 Development Proposals Submitted by Councillors and Officers

4.6.10.1 Proposals by serving councillors (whether or not they are councillors on the Committee), certain categories of officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism. In these rules "relatives" encompass spouse or partner, parent, grandparent, child, grandchild, brother or sister.

4.6.10.2 Planning applications falling within the following categories will be reported to the Committee for consideration and not dealt with by officers under 'delegated powers':

- those where the applicant is a serving councillor or the relative of a serving councillor,
- those where a serving councillor acts as agent or has prepared any part of the application or plans,
- those where the applicant is a relevant officer or their relative. In this rule "relevant officer" means the Chief Executive, all Corporate Directors, all Heads of Service, all officers working in the Planning Department and all other officers whose work is directly linked to the development control process (such as officers in Highways and Environmental Health who are consultees or lawyers who advise and represent the Planning Department in development control matters),
- those where the applicant is a close friend of a serving councillor or relevant officer.

In this rule "planning application" shall mean all applications required by statute to be made and which (apart from this rule) would fall to be determined under the Council's Constitution by the Head of Planning Service. These would include applications for outline consent, reserved matters approval, listed building consent, conservation area consent, consent under Tree Preservation Orders and so forth.

4.6.10.3 Planning officers shall endeavour to identify and highlight such applications and shall accordingly inform the Head of the Planning Service and the Authority's Monitoring Officer. Serving councillors who make applications, who act as agents or who prepare plans or whose relatives make applications, should play no part in the decision-making

process for that proposal.

4.6.10.4. The Monitoring Officer should confirm in the Committee report that such application has been processed normally and must, therefore, be given the opportunity to review the file.

4.6.10.5 Officers involved in the development control process must not prepare plans or act as agent for any person or body (including their relatives) pursuing a planning matter with the Council. If they submit a proposal on their own behalf, they should take no part in the processing of that application.

4.6.11 Officers' Report to the Committee

4.6.11.1 All planning applications reported to the Committee will have a full written report including a reasoned assessment of the proposal and a justified recommendation.

4.6.11.2 Any new matters which have arisen between the preparation of the report and the date of the Committee will be reported orally and references to this will be included in the minutes.

4.6.11.3 Every planning application file will contain an accurate account of events throughout its life, particularly the outcome of meetings or significant telephone conversations.

4.6.11.4 The same principles of good record keeping will also be observed in relation to enforcement matters. Monitoring of record keeping will be undertaken on a continuous basis by managers within the Development Control Section.

4.6.12 Decisions Contrary to Officer Recommendation

4.6.12.1 Where the Committee are mindful to either approve or refuse a proposed development contrary to an Officer recommendation, the item shall be deferred until the following meeting so as to allow the officers to report further on the matter. The Committee must set out the reasons for wishing to decide against the officer recommendation. Committee members should adhere to these Rules when making planning decisions and take policy guidance from planning officers into due regard and only vote against their recommendations where genuine and material planning reasons can be identified. A detailed minute of the Committee's reason(s) shall be made and a copy placed on the application file. Where deciding the matter contrary to the recommendation may risk costs on appeal the Committee will take a recorded vote when deciding the application irrespective of the requirements of paragraph 4.1.18.5 of the Constitution.

4.6.12.2 The officer's further report shall detail the reasons put forward by the members, indicate whether such reasons are, in their view, genuine and material planning reasons and discuss the land use planning issues raised.

4.6.12.3 In the case where councillors wish to add or amend conditions which are recommended by officers, the officers should be invited to draft such a condition and bring this back for approval at the subsequent meeting unless the drafting is straightforward and can be agreed at the initial meeting.

4.6.12.4 Where planning officers are unable to defend such decisions on appeal (due to requirements of the professional conduct rules of the Royal Town Planning Institute - RTPI) they shall make this point known to the Committee before the final vote is taken. In such cases the Committee shall nominate (at least) two of its members who voted contrary to the recommendation to appear at any appeal and explain the Committee's decisions and the reasons for them. These should, normally, be the proposer and seconder of the proposal which was contrary to the officer's recommendation.

4.6.13 Appeals Against Council Decisions

4.6.13.1 Officers will organize and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances it may be necessary to appoint consultants to appear for the Council.

4.6.13.2 In giving evidence, officers will present the best possible case on behalf of the Council whilst complying with the RTPI Code of Professional Conduct.

4.6.13.3 Where a decision contrary to officer recommendation is subject to an appeal and officers have previously made known to the Committee that they are unable to defend such decisions, officers shall report the appeal to the next Committee meeting. Councillors will then be responsible for presenting the Council's case at the appeal.

4.6.14 Conduct of Officers

4.6.14.1 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute Code of Professional Conduct. All officers whether members of the Institute or not shall abide by the same principles namely they -

4.6.14.1.1 Shall act with competence, honesty and integrity;

4.6.14.1.2 Shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;

4.6.14.1.3 Shall discharge their duty to their employers, clients, colleagues and others with due care and diligence in accordance with the provisions of this Code;

4.6.14.1.4 Shall not bring the profession or the Royal Town Planning Institute into disrepute;

4.6.14.1.5 Officers shall not disclose or use to the advantage of themselves or the Authority information acquired in confidence in the course of their work;

4.6.14.1.6 Officers shall decline any discounts, gifts or commissions offered by any third parties in connection with their work as professional planners.

4.6.15 Councillor / Officer relationship

4.6.15.1 In order to engender a committed professional relationship between both officers and councillors, each shall have respect and regard for the roles both play within the decision making process.

4.6.15.2 Councillors shall respect the advice given by officers at Committee or when dealing with delegated applications and shall not place pressure on officers for a particular recommendation or decision. Any officer who considers that this has happened should deal with the matter as set-out under section 5.3.4 of this Constitution (Bullying, Intimidation and Harassment).

4.6.16 Site Visits by the Planning and Orders Committee

4.6.16.1 The protocol on site visits is attached as an Appendix to these Rules.

4.6.17 Gifts and Hospitality

4.6.17.1 Advice to councillors on registration of gifts and hospitality is contained within the Council's Code of Conduct for Members and shall be accordingly observed.

4.6.17.2 Officers during the course of carrying out their duties may be offered hospitality from people with an interest in a planning proposal. Officers should refuse offers of hospitality of any kind. If the receipt of hospitality is unavoidable officers must ensure that the absolute minimum level is accepted and declare its receipt as soon as possible to the Monitoring Officer.

4.6.18 Training

4.6.18.1 No member may sit on the Planning and Orders Committee unless and until they have attended Induction Training. The contents of the Induction Training shall from time to time be determined by the Head of Service (Planning and Public Protection). Updating training thereafter will be provided at least twice a year to include changes in legislation or procedure.

4.6.18.2 Councillors shall ensure that they attend a minimum 3 training events over a two year period in order to keep abreast of planning matters and thus provide a positive input into the decision making process. Attendance records will be monitored and reported to the Council. Any member of the Planning and Orders Committee who fails to attend the stated minimum number of training sessions shall be removed or suspended from the Committee by vote of the full Council at such time as when the attendance records are reported.

Appendix

4.6.19 Protocol Regarding Site Visits by the Planning and Orders Committee

4.6.19.1 Criteria for Site Visits

4.6.19.1.1 It is important that criteria should be set out for deciding when a site visit is justified and consider the procedure for such visits. In this respect account should be taken of the following points:-

(i) site visits can:

- cause delay to the decision making process,
- possibly lead to an appeal to The Planning Inspectorate on the basis of 'non-determination',
- affect the Service's performance in respect of its 8 week target, and
- lead to additional costs both to the Service and possibly to the applicant(s).

(ii) there needs to be consistency both in the way that it is decided that a site visit should take place and in the conduct of such visits. Otherwise it may leave the Authority open to the accusation that site visits are arbitrary or possibly a lobbying device.

(iii) site visits should be carefully organised and well-attended to ensure that the purpose, format and conduct are clearly established at the beginning and subsequently adhered to.

(iv) site visits should be used only where the expected benefits are substantial. The 'substantial benefit' test should apply in every case. Site visits should only be necessary if the impact of the proposed development is difficult to visualise and comprehend, i.e. where lack of clarity with the application makes visual assessment necessary

(v) site visits may be appropriate to consider large, more complex applications.

(vi) if the Committee are of a view that the site needs to be visited and seen before the application can be determined, then only those members who attended the official site visit may participate in and vote on the application when it is further considered by the Committee.

Recommendation of site visits by officers shall be referred to within the report to Committee.

4.6.19.1.2 Site visits should **not** apply in the following cases:

- (i) to solely consider boundary or neighbour disputes,
- (ii) to consider objections issued on competition grounds,
- (iii) to consider objections raised on the ground of loss of property values,
- (iv) to consider any other issues which are not material planning considerations,
- (v) where councillors have already visited the site within the last 12 months, except in exceptional circumstances

4.6.19.2 Requests for Site Visits

In order to adopt a structured approach to site visits the following format should be adhered to:-

4.6.19.2.1 All requests for site visits must be made in writing to the Chief Planning Officer/ Planning Control Manager by 1.00pm on the final working day prior to the Committee meeting. Any verbal request received prior to the Committee meeting must be followed up in writing before the Planning Committee commences. The reason for the 'site visit' shall be clearly stated and accordingly reported to the Planning Committee.

4.6.19.2.2 If a request is made for a 'site visit' during the Planning and Orders Committee Meeting once again the reasons for the visit shall be recorded in the minutes.

4.6.19.3 Procedures at the Site Visit

4.6.19.3.1 The applicant shall be informed that a site visit will take place but will not be allowed to be present during the visit to make any representations.

4.6.19.3.2 The primary purpose of the site visit will be for the planning officers to explain the planning issues relating to the case and for councillors to view the site.

4.6.19.3.3 There shall be no discussions at the site visit as regards the merits of the application. The site visit shall not be used as a forum for debate.

4.6.19.3.4 The Chairperson or Vice-Chairperson shall conduct and lead the site visit. If either the Chairperson or the Vice-Chairperson is absent, councillors shall vote for one of their number to act as Chairperson.

4.6.19.3.5 The Chairperson shall formally open the meeting and set out the reasons for the visit.

4.6.19.3.6 The planning officer shall be requested to outline the proposal and the main issues.

4.6.19.3.7 The councillors shall view the site, relevant buildings and surroundings as necessary.

4.6.19.3.8 Councillors shall be offered the opportunity to raise questions or seek clarification of points of fact with the planning officer and/or local councilors.

4.6.19.3.9 All local councillors in whose Ward the application site is located (if present) shall be offered the opportunity to comment on the proposal.

4.6.19.3.10 Notes shall be made of the site meeting and these shall be accordingly minuted at the following Planning Committee Meeting when the application is discussed.

4.6.19.4 Regular Review of Decisions

4.6.19.4.1 The Audit Commission's Report 'Building Quality' recommends that councillors should visit a sample of implemented planning permission to assess the quality of the decision. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and assist with reviews of planning policy.

4.6.19.4.2 The review should be undertaken annually. It should include examples from a range of categories of development including applications which officers have determined under delegated powers.

4.6.20 Role of the Committee Chairperson and Conduct of Business at the Committee

4.6.20.1 Election of the Chairperson / Vice-Chairperson

4.6.20.1.1 The Chairperson shall be elected to his/her post by the councillors on the Committee at its first meeting following the annual Council meeting. The councillors shall at the same time elect a Vice-Chairperson for the same period of office or until such time as either or both of them step down.

4.6.20.1.2 In the absence of the Chairperson for the whole or part of the Committee meeting, the Vice-Chairperson shall be the Chairperson. If the Vice-Chairperson shall be absent, the Committee shall choose one of their number present to be Chairperson for that meeting or part of it until the Chairperson (or Vice-Chairperson) returns.

4.6.20.2 Responsibility of the Chairperson

The Chairperson shall have the following responsibilities:

4.6.20.2.1 to preside over meetings so that Committee business can be carried out efficiently and with regards to the rights of councillors, officers and the interest of the community as a whole.

4.6.20.2.2 to ensure that the Committee meeting is properly conducted as a forum for debate on planning matters and statutory orders only.

4.6.20.2.3 to ensure that the business of the meeting is carried out in accordance with the relevant provisions contained within the Council's Constitution.

4.6.20.2.4 to support the planning officers and the Monitoring Officer's representative in reminding members about their duty to adhere to genuine and material planning discussions in their decision making process.

4.6.20.3 The Role of Officers at Committee Meetings

4.6.20.3.1 Officers shall provide professional advice to the Chairperson in order to ensure that he/she is able to discharge the duties of the post.

4.6.20.3.2 Officers shall provide advice as follows:

(i) at pre-Committee meetings so that the Chairperson is fully briefed on issues that may arise at meetings

(ii) at any post-Committee meetings (if relevant)

(iii) during Committee meetings where questions are directed towards the Chairperson for response

(iv) during any meetings which may be convened by officers in order to discuss issues relevant to 'planning' or 'orders' issues

4.6.20.4 Conduct of Committee Meetings

4.6.20.4.1 Each agenda item for discussion or for information shall be introduced by the Chairperson.

4.6.20.4.2 Once introduced the Chairperson shall ensure that the officer is allowed to report on the item. Where the public speaking procedure applies to a particular application, this shall occur before the officer reports on the item.

4.6.20.4.3 The Chairperson shall allow the local councillors to speak first after the officer's report. This is whether the local councillors wish to speak for or against the item and whether or not they are on the Committee.

4.6.20.4.4 The Chairperson shall then allow the councillors to participate in the discussion in the order in which he/she acknowledges their wish to speak.

4.6.20.4.5 The Chairperson will ensure that all councillors shall abide by the provisions of the Council's Constitution and by the relevant provisions of these Procedure Rules.

4.6.20.4.6 All those councillors wishing to speak shall be allowed an opportunity to do so. Councillors shall refrain from making speeches and shall address the Committee on 'planning' (i.e. material planning considerations) and 'orders' matters only. The Chairperson may intervene and curtail councillors who are making repetitions or irrelevant statements.

4.6.20.4.7 Where officers need to respond to comments or questions from councillors then the Chairperson shall ensure that officers are given that opportunity.

4.6.20.4.8 If the Chairperson wishes to speak as a local councillor on an item then the provision of the Constitution shall apply equally to him/her as they apply to all councillors.

4.6.20.4.9

(i) At the conclusion of the discussion the Chairperson shall request councillors on the Committee to vote on the matter under discussion. Unless councillors disagree with the officers' recommendation they shall indicate their voting intention through the showing of hands.

(ii) Should an amendment be proposed and seconded to the officer's recommendation that amendment will be voted on first.

4.6.20.4.10 All councillors and officers shall respect the position of Chairperson. The ruling of the Chairperson on all questions of procedure at the Committee shall be final and not open to discussion. The Chairperson shall ensure that at all times regard is had by all councillors (including himself/herself) and officers to the protocol on Member/Officer relationship and that respect is shown to the advice given by officers at the Committee.

4.6.21 Public Speaking

Eligibility to Speak

4.6.21.1 The planning application concerned must be on the agenda of the Planning and Orders Committee meeting in question. In the event of an application being deferred, public speaking will not be allowed if an opportunity has already been given at a previous Committee meeting when the application has been fully considered.

4.6.21.2 Both applicants (or their agents) and objectors (or their agents) can speak and there are no other qualifying criteria other than compliance with the Council's procedure.

4.6.21.3 Normally only one person can speak for and one person against an application. Very exceptionally the Chair of the Committee may exercise his/her discretion to allow one additional speaker per 'side'. This discretion will usually only be exercised for major applications where there are significant differences of view within one 'side' (e.g. two people speaking against an application for a large supermarket where one represents the views of retailers and the other the views of nearby residents). In such cases the 'other side' will be allowed 2 speakers or twice the normal time, if they wish to use it.

4.6.21.4 Anyone requesting to speak must allow the Council to give their name and contact number to other people (of the same view) wishing to speak so that they can agree on a spokesperson, the issue to raise etc. If they cannot agree, the first person who notified the Council of his/her intention to speak will normally be chosen to speak.

4.6.21.5 Requests to speak must be made to the Administrative Officer in the Planning Department before the deadline referred to in the notification letters sent to applicants and neighbours.

Time allowed to Speak

4.6.21.6 The spokesperson will be allowed up to 3 minutes to address the Committee.

Visual Aids

4.6.21.7 The spokesperson may not circulate or display written material in the Committee meeting. Any written representations should have been submitted to the Council during the statutory publicity period and will be summarised in the Officer's report.

Procedure

4.6.21.8 The procedure for public speaking at Committee is described in the appropriate documents.

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CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	STANDARDS COMMITTEE
DATE:	16 September 2015
TITLE OF REPORT:	Revised Guidance on the Code of conduct
PURPOSE OF THE REPORT:	To Report to the Standards Committee on the Revised Guidance to the Code of Conduct
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 2586

1. INTRODUCTION & BACKGROUND

- 1.1 Local authorities and community councils in Wales are required to adopt a statutory code of conduct which sets out the behavior expected of members and co-opted members. Such members are required to provide a written undertaking to observe the requirements of their code of conduct during their period of office.
- 1.2 The role of the Public Services Ombudsman for Wales (the Ombudsman) includes providing guidance to members of local authorities and community councils to help them better understand their obligations under the code of conduct and to reflect any legal changes and evolving experience.
- 1.3 Attached at **ENCLOSURES 1 and 2** respectively are the revised Guidance relevant to members and co-opted members of this Council and the revised Guidance for community council members.
- 1.4 This is the third version of the Guidance/s published by the Ombudsman and replaces previous versions.
- 1.5 At **ENCLOSURE 3** is a copy of the letter sent by the Ombudsman to all community councils, via their clerk, drawing attention to the new Guidance.
- 1.6 The Monitoring Officer wrote to all members and co-opted members of this Council on the 6th of July 2015 bringing the new Guidance to their attention.

2. SIGNIFICANCE OF THE GUIDANCE

In deciding whether to investigate an allegation of a breach of the code, or to continue with an ongoing investigation, or to refer an investigation to a local standards committee or to the Adjudication Panel for Wales (i.e. effectively the national standards committee) the Ombudsman will have regard to the relevant information contained within his Guidance.

In addition, the Guidance helps members to understand the level of conduct and behavior expected of them under the code and provides for a measure of fairness and consistency for all members across all relevant bodies.

3. SUMMARY OF CHANGES

The following is a summary of the changes arising from the new Guidance:-

3.1 THE INVESTIGATION TEST

Initially, the Ombudsman will expect a complainant to be able to provide direct evidence (first hand) of a breach of the code. The level of proof required is on the balance of probability. If the evidential test is met then the Ombudsman will go on to consider whether or not the matter requires investigation. In doing this he will apply the public interest test and his Guidance outlines the factors he will take into consideration. This is not an exhaustive list and every case will be fact sensitive. The following factors are included:

- The seriousness of the breach;
- Whether the member deliberately sought to secure a personal advantage for themselves (or their associates) at public expense;
- Was there a misuse of a position of trust or authority;
- What, if any, harm was caused to a third party;
- Was the breach motivated by discrimination;
- Is there any evidence of previous similar behaviour by the member;
- Is an investigation required in order to maintain public confidence in elected members;
- Is investigation a proportionate response (i.e. is it more likely or not to lead to a sanction)

The Ombudsman has a wide statutory discretion as to whether to begin, or to continue, an investigation. The revised Guidance will provide greater clarity and consistency on how he will exercise that discretion in the decisions which he reaches.

3.2 PUBLIC HEARINGS

For the first time the Ombudsman confirms that there is now a presumption that all standards committee hearings will be conducted in public. However, it should be noted that this is a presumption only. The Access to Information Regulations still apply to standards committees, in the same way as they do to other committees of the Council, and there may still sometimes be personal data about third parties, or other protected information, which justifies excluding the press and public. Such a decision will be taken by the Standards Committee as a preliminary issue and following receipt of advice. Again, every case is fact sensitive.

3.3 SOCIAL MEDIA

Given the increasing number of complaints regarding the content of some postings on social media, the Ombudsman has made it clear that if a member is referring to themselves as a “councillor” then the code of conduct will apply. In fact, he has gone further and clarified that if any comments made by a member, on social media, which do

not refer to themselves as “councillor”, but where the content of a posting or postings is related to their role as a councillor, then paragraph 6 (1) (a) of the Code will apply i.e. comments which bring the role of member, or the Council, into disrepute.

The Ombudsman recommends that members have due regard to a document produced by the WLGA entitled ‘Social Media: A Guide for Councillors’. This is available on the WLGA website at <http://www.wlga.gov.uk/social-media-a-guide-for-councillors> or by telephone from the WLGA on 029 2046 8600. The Council also has a Policy which may be found at <http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-5-codes-and-protocols/constitution-510-protocol-on-social-media/>. Copies are attached at **ENCLOSURES 4**.

3.4 THE CALVER DECISION

Following the decision of the High Court in Calver <http://apw.gov.wales/decision/appeals-decisions/appeals-decisions-apr11-mar12/cllr-m-calver/?lang=en> the Guidance has now been amended to reinforce the point that political freedom of speech enjoys enhanced protection under Article 10 of the ECHR.

The Guidance specifically requires (reflecting the case law) that politicians and senior officers are expected to have a “thicker skin”, but the law provides a greater degree of protection for those outside the category of chief officers and heads of service.

What constitutes political comment has been widely defined. Page 15 of the Guidance sets out examples.

3.5 VEXATIOUS COMPLAINTS

It is clear that the Ombudsman will be taking a more robust approach than his predecessors in dealing with vexatious complaints. He has confirmed in his Guidance that it is increasingly important to him to ensure the effective use of his resources, and that any investigation undertaken is proportionate and required in the wider public interest. This is likely to lead to the majority of vexatious complaints being thrown out at the first hurdle.

Also, for the first time, the Ombudsman makes it clear that if he finds that a member has made a vexatious complaint (i.e. without substance and designed to annoy and irritate) then the Ombudsman may then investigate the complainant’s conduct in making a complaint or complaints which have little or no merit. The Ombudsman has statutory jurisdiction to take this step without receiving a complaint.

3.6 PERSONAL AND PREJUDICIAL INTERESTS

Beginning at page 29 of the Guidance, under “Personal and Prejudicial Interests”, the Ombudsman attaches flowcharts to assist members in carrying out the exercise of determining whether or not they have a personal interest and, if so, whether that interest is also prejudicial. As you know, a member may participate, subject to making a declaration, if they have a personal interest, but are required to leave the meeting and not to speak or vote on the issue if they have a prejudicial interest. This impediment may be overcome by a dispensation from a standards committee.

4. RECOMMENDATION

To note the revised Guidance as published by the Ombudsman.

ATODIAD / ENCLOSURE

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ATODIAD / ENCLOSURE

1

The Code of Conduct

for members of local authorities in Wales

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

Preface

This revised guide from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008. 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 of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. As a member, you are required to sign up to it as part of your declaration of acceptance of 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 officers of local authorities in Wales.

This is the third version of this guidance and is my first as Public Services Ombudsman for Wales. This version, for the first time, 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 further 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 town and community councillors. It contains examples drawn from recent cases considered by my office, standards committees across Wales and the Adjudication Panel for Wales.

The following pages aim to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction, while Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and Section 4 deal with general issues surrounding interests. You can obtain a copy of the Code by 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.

I have used examples throughout to help to bring the guidance to life. These examples are drawn from actual cases considered by my office and also include decisions reached by local standards committees and the Adjudication Panel for Wales. Some of these decisions may have been taken by my predecessor, but throughout, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases will be published quarterly in “The Code of Conduct Casebook” which is on my website at www.ombudsman-wales.org.uk

As a member you will be offered training on the Code whether by a Monitoring Officer or from 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 also urge members to continue to avail themselves of local arrangements for dealing with member versus member complaints which have proved very effective as a means of resolving many of these cases.

Since taking up my office I have become increasingly concerned about the number of low level complaints that are being received. Whilst these complaints appear to have been generated by a small number of members, in these challenging times of public austerity, 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 of all of our communities.



Nick Bennett
Public Services Ombudsman for Wales
March 2015

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, and
- national park authorities

in Wales.

Acknowledgement

This guidance draws on guidance prepared and issued by Standards for England on the former English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. I would like to thank the legal services department of Ceredigion County Council for the use of its flowcharts on interests which are appended to this guidance.

Separate guidance is available for members of community councils.

First published April 2010.

This edition published March 2015.

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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 to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

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 was 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 their authorities, together with members of town and community councils in their area, to observe the Code and to arrange for advice and training to be provided. I strongly recommend that all members should attend training and take advice where it is offered. I support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies such as planning committees.

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 contrary to advice 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.

It is my role as Public Services Ombudsman for Wales to independently investigate 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 will 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 on the part of the member
- 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 for 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 committees 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.

The process I use for investigating complaints is on my website at www.ombudsman-wales.org.uk

Local Resolution Process

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. 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 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 result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then 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. This will depend on the nature of and individual circumstances of the alleged breach.

Standards Committees

Standards committees are made up of independent lay members and of elected members of the authority. When I refer a case to a standards committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. In my view, hearings should 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, or
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months.

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

The Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales its role is also to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals against the determination of a standards committee. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- 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.

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(a) (improperly using the position of member).

The Principles

The Local Government Act 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 set out in the Nolan Report “Standards of Conduct in Local Government in England, Scotland and Wales”. Three more were added to these: 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 instrument¹ and are detailed 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, or to avoid a disadvantage for, 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.

¹The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

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.

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

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, 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.

Consider conduct
in your public &
private life

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.

When does the Code apply?

- Whenever you act in your official capacity, including whenever you are conducting the business of your authority 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
- 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 to gain an advantage or avoid a disadvantage for yourself or any other person or if you misuse your authority's resources.

Where you act as a representative of your authority on another relevant authority, or any other body, you must, when acting for that other authority, comply with their code of conduct. 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.charity-commission.gov.uk).

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.

If you refer to yourself as councillor, 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.gov.uk 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

Councillor B 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 e-mail to the Chief Executive of the Council. Councillor B admitted sending the e-mail 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. Councillor B 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

An on-line poll about a person accused of murder which contained inappropriate language was set up using Councillor B’s council-provided laptop, internet access and his council e-mail address. Councillor B said he personally had not set up the poll. However, as the Council had provided him with the laptop he was responsible for it. 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 found that Councillor B had acted in his official capacity because he had used his council-provided equipment and e-mail address.

Therefore, he could reasonably be regarded as representing himself as a councillor.

2. General obligations under the Code

If you consider that the Code applies to you at a particular time then you must consider what provisions may apply and your obligations under 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.

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

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 Councillor A 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 Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

Treating others with respect and consideration

See Paragraph 4(b)

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. A member's freedom of expression attracts enhanced protection when the comments 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 and will take the view that the member needs a "thicker skin".

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 disenable them from carrying out their duties or undermine public confidence in the administration. That said, the 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.

I expect members to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. 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 member 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.

Political comments can attract Article 10 rights

Example

An appeal tribunal of the Adjudication Panel for Wales considered an appeal by Councillor X against the decision of the Council's Standards Committee. The Standards Committee found that Councillor X had failed to show respect and consideration to another member by prohibiting him from e-mailing the clerk and accessing the Council's website. Councillor X also made comments in an e-mail to the other members regarding his colleague's shower habits. In doing this the Standards Committee found that Councillor X had brought the Council into disrepute.

The Adjudication Panel found that Councillor X's comments were political in nature and attracted the enhanced protection of Article 10 of the European Convention on Human Rights. The Standards Committee's decision was overturned and the sanction rescinded. The decision of the Adjudication Panel can be found on the Panel's website <http://apw.wales.gov.uk> (Ref: APW/001/2014-015/AT).

Example

The Adjudication Panel upheld a finding of a standards committee of a failure to show respect and consideration for others by posting online comments about other members and the way in which the Council was run. The member sought judicial review of this decision. The Court found that whilst the comments which were posted 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. The Standards Committee's decision to censure the member was therefore set aside.

Example

A member of a town council wrote to a Deputy Minister of the Welsh Assembly Government about an employee ("Mr Smith") of a county council, a letter which was also copied to the Council. In the letter the member questioned Mr Smith's competence and motivation and he made a number of comments of a disparaging and personal nature about Mr Smith 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 by his use of words he had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

The member was disqualified for 12 months from being or becoming a member of a local authority.

Bullying and harassment

See Paragraph 4(c)

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

Consider your conduct from the other person's perspective

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 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 under 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.

Recently, the High Court 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.

Example

A county council member was disqualified from office for 2 years and 6 months by the Adjudication Panel for Wales following allegations of bullying, harassment, disrespect and bringing the office of member into disrepute. The alleged incidents occurred over a period of two years. During that time the member had made threatening comments to officers of both junior and senior grades. For example, comments such as, a number of managers of the Council had been dispensed with and there were more to go and “You won’t like the man I’ll become if I don’t get what I want...I don’t need to threaten you you’re an intelligent woman I know you’re listening to me”.

The member appealed the decision and the matter was referred to the High Court where all but three breaches were upheld. The decision can be found on the Panel’s website <http://apw.wales.gov.uk> (Ref: APW/005/2010-011/CT).

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 authority. 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 get 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

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 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 by 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.

The member was suspended from office for 12 months

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 his website at www.ico.gov.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. 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.

When information is provided to members during the course of an investigation I expect this 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

A member of a county borough council who sat on the Council's adoption panel disclosed publicly details of a person who had applied to the panel to adopt a child. 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. It suspended the member from the Council for 6 months.

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.gov.uk or by calling 0303 123 1113 or for specific queries, you should ask your Monitoring Officer.

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 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. 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

A leader of a county council refused to give the Council's Information Officer a letter he had written to the 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 Officer. 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. By the time the case was considered by the Panel the member had resigned from office. He was disqualified from holding office for 12 months.

Disrepute

See Paragraph 6(1)(a)

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 in both your public and private life might have an adverse impact on your office or your authority. 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.

Any conduct unbecoming of a member can constitute disrepute

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. Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute. Inappropriate e-mails or social media posts might well bring the office of member into disrepute.

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

A community councillor had been abusive to a shop proprietor and two members of her staff and had attempted to obtain a discount on a private purchase by saying it was being bought on behalf of the Community Council, and when his request for a discount was refused he had made threats against the business. The Adjudication Panel found that the member had brought the office of member into disrepute and suspended him for 9 months.

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 me and to your Monitoring Officer. In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence 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. 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 advise you of the likely threshold I will set and suggest that the matter would be more appropriately dealt with through the authority's local resolution process. Nonetheless, 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.

Where a member has reported a fellow member to their Monitoring Officer under the authority's local resolution process, there is no need to report the matter to me as well.

In determining whether to investigate a complaint of a breach I will use the two stage test that I have outlined on pages 6 and 7 above. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or e-mails. If there are other individuals who have witnessed the alleged breach, you should let us 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 breach, you can contact my office by phone at **0845 6010987**, by e-mail to **ask@ombudsman-wales.org.uk** or via the website at **www.ombudsman-wales.org.uk**. 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 complaints against other members or staff members 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 me and to your Monitoring Officer, not to your local newspaper or radio station. The press will properly cover the business of any 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. 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 or not to use your position for an improper purpose.

Example

A member of a county borough council claimed that the leader of the Council had offered to provide another councillor and his group of members with office facilities if that councillor supported the leader's preferred candidate for the post of Chief Executive. The evidence supported the leader's position that the two matters were unconnected and that therefore the complaint was malicious. The Adjudication Panel suspended the member making the complaint for 12 months.

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. 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.

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, for example, you may 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.

Using your position improperly

See Paragraph 7(a)

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. **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.

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 paragraph 6(1)(a). 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

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 e-mailed 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 e-mail 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. The member was disqualified from holding office for 18 months for this and other breaches of the Code.

The authority's resources

See Paragraph 7(b)

You must only use or authorise the use of the resources of the authority in accordance with its requirements. **This paragraph also applies 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 Paragraphs 7(b)(v) and 7(b)(vi)

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for 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.

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 e-mails 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

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 inappropriate 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. He was disqualified from being or becoming a member of a local authority for 2 years and 6 months.

Example

A member of a county borough council was found in breach of the Code for 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. The Adjudication Panel suspended the member for 9 months for this and other breaches.

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 objectively. 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, 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 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 get 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

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 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, he failed to have regard to the limited advice she 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 the 4 months’ suspension it imposed.

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

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 on registering gifts and hospitality at page 44).

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 conclude that the interest would 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 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

While you are carrying out your duties, you need to decide if 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 when deciding if you have an interest.

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

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
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
8. any body to which you have been elected, appointed or nominated by your authority
9. any:
 - 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 in which you have membership or are in a position of general control or management
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.

Ward and electoral division issues – including Paragraph 10(2)(b)

If **a member of the public** could reasonably conclude that when you are taking a decision on behalf of the authority as a whole you are more influenced by issues in your ward or electoral division than by the interests of the authority as a whole, for example, if the authority needs to make a provision but you do not think it should be in your ward or electoral division, then you would have a personal interest.

This paragraph has given rise to great interpretative difficulties. The crux of the problem is that a strict interpretation of the paragraph, as worded, could well preclude members from participating in any decision affecting their ward - whereas the underlying policy intention had been to limit the scope of this provision to decisions made by individual councillors in the exercise of executive functions.

I do not believe that it would be in the public interest, or in the interests of local democracy, to adopt a literal interpretation as a matter of course. Therefore as a general rule, in exercising my discretion, the decision as to whether to investigate will be based on the assumption that the paragraph is actually directed at individual members making decisions in the exercise of executive functions and decisions such as those made at planning or licensing committees.

Section 25 of the Localism Act 2011 outlines circumstances when members should not be regarded as having a closed mind when taking decisions. I will continue to review this in light of any future decisions and case law on the effect of this provision.

Example

The Adjudication Panel considered a case concerning this provision of the Code. The member had declared his opposition to a controversial planning application in his election manifesto pledging to “work tirelessly on issues of concern” and to “oppose the current development proposal”. Having been elected the member voted against the first planning application which the Council considered when the application was refused. He was subsequently quoted in the local and national press defending his decision to oppose the development. The Adjudication Panel found that the member had acted in such a way that a member of the public might reasonably perceive a conflict between his role as a local councillor and his role in taking a decision on behalf of his authority. It suspended the member from the planning committee for a period of 3 months.

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.

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 member or your work in the local community.

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

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 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 paragraphs 8(a) and 10(2)(b) of the Code is also relevant here.

Obviously, if the 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 when you have a prejudicial interest” below.

Example

Councillor F participated in a meeting which was considering whether to approve the complainant’s nomination for the post of school governor; Councillor F’s husband had also applied for the post. Not only did the Adjudication Panel find that she should have declared a personal interest in the item of business by virtue of her close personal association with her husband, it also took the view that as there had been a history of animosity directed towards the member by the complainant which had been reported publicly, she also had a personal interest by virtue of her close personal association with the complainant.

A further element to this complaint was that after the complainant had made a complaint to me about the member, the member sat on the Council’s Standards Committee when it considered a separate complaint from the complainant against another member. The Adjudication Panel took the view that, in light of the acrimonious relationship between the member and the complainant, the member’s participation in the Standards Committee hearing could reasonably have been regarded as affecting the complainant’s wellbeing because she was entitled to a fair and unbiased hearing of her complaint.

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

If you decide that you have a personal interest then you must take the following action before the matter is discussed or as soon as it becomes apparent to you, except in limited circumstances:

- declare that you have a personal interest, and the nature of that interest
 - at meetings
 - when making written representations (including e-mails, faxes etc.)
 - when making oral representations, even if your interest is on the register of interests.
- confirm your interest by e-mail or in writing to the officer concerned and to the Monitoring Officer within 14 days
- consider whether you have a prejudicial interest (see below).

If you are making representations in writing to another member or an officer, you must include details of any personal interests you have. Similarly, if you are speaking with an officer or member in person, by phone or video conference you should tell them about any personal interest you have before making representations or when the interest becomes apparent. The Ombudsman would generally expect officers to make a record of any conversation in which a member has declared an interest and attach it to the appropriate file.

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. If you have disclosed an interest at a meeting which has not previously been recorded, you must give it in writing to your authority in line with the arrangements set out by your Monitoring Officer. Normally, this will mean before, or immediately after the meeting concerned or as soon as possible thereafter. 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 have agreed with your Monitoring Officer that the information about your personal interest is sensitive information then you should disclose the existence of a personal interest 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 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.

Prejudicial Interests

See Paragraph 12

Do not be swayed by what you think - consider what a member of the public would reasonably think

Do I have a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if any of the following conditions applies:

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

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 inclined to vote accordingly, whether this is the case or not.

Does the matter fall within one of the exemptions?

See Paragraph 12(2)

A member 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 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 your child attends
- decisions about statutory sick pay if you receive or are entitled to receive it from your authority
- an allowance or payment 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. 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

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, and 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 the Code to be serious ones. It decided to censure both members.

Example

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, and
- 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

If you consider that you have a prejudicial interest in your authority's business you must take certain action.

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 (or any other venue in which the meeting is being held including, for example, the location of a site meeting).

This is unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose. However, 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 remain in the public gallery to observe the vote on the matter.

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 should also not write or make any oral representations about the matter.

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. 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 take part in the discussion or observe the vote.

You must declare your interest and withdraw from the room

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

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.

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 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, where the public may be allowed to sit in the public gallery to observe the meeting, **you will be required to 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.

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?

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, or
- the committee believes that your participation would be in the interests of the people in your authority's area and that the committee notifies Welsh Ministers within seven days.

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 Interests

Key points:

All members of authorities have to provide a record of their 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 change to your register of interests, of any interests which fall within the categories set out in the Code, outlined below.

You need to register your interests so that the public, authority staff and fellow members know which of your interests might give rise to a conflict of interest. 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.

As previously mentioned, unless you are a community councillor, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any change to your register of interests, of any interests which fall within the categories set out in the Code. These categories 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

- your membership or position of control or management in:
 - any other bodies to which you were elected, appointed or nominated by the authority
 - 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

Key points:

You may be exempt from having to include sensitive information on your register of interests. If 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.

Sensitive information may include your sensitive employment (such as certain scientific research or the Special Forces) or other interests that are likely to create a serious risk of violence or intimidation against you or someone who lives with you should they become public knowledge.

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. You do not need to include this information in your register of interests, if your Monitoring Officer agrees. Ultimately, you must decide what information to include on your publicly available register of interests. If information on your register ceases to be sensitive you must notify your Monitoring Officer within 28 days asking them to amend the information accordingly.

Gifts and hospitality

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 which you have declined.

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 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. However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position or if your authority requires you to.

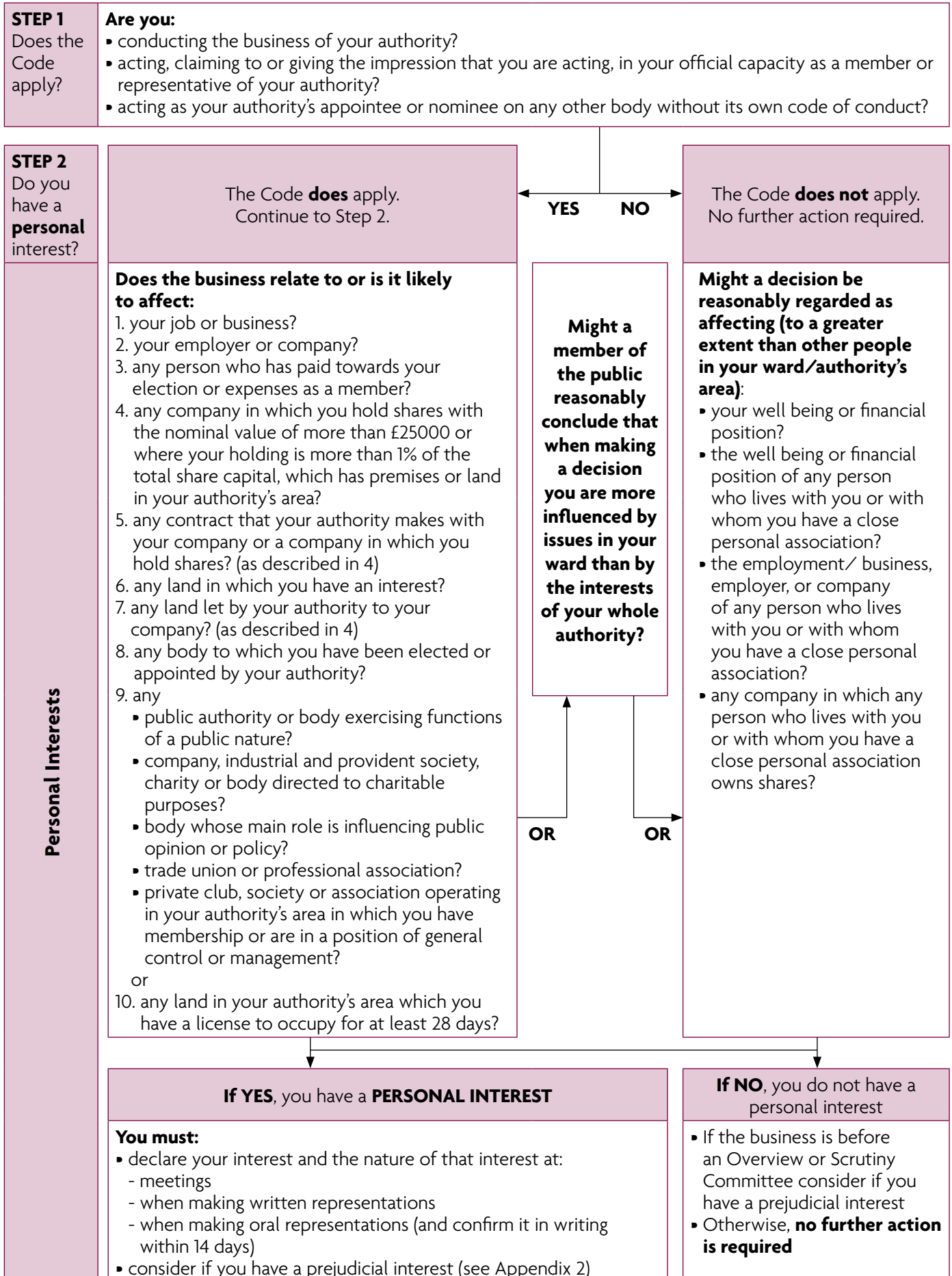
What if I do not know the value of a gift or hospitality?

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.

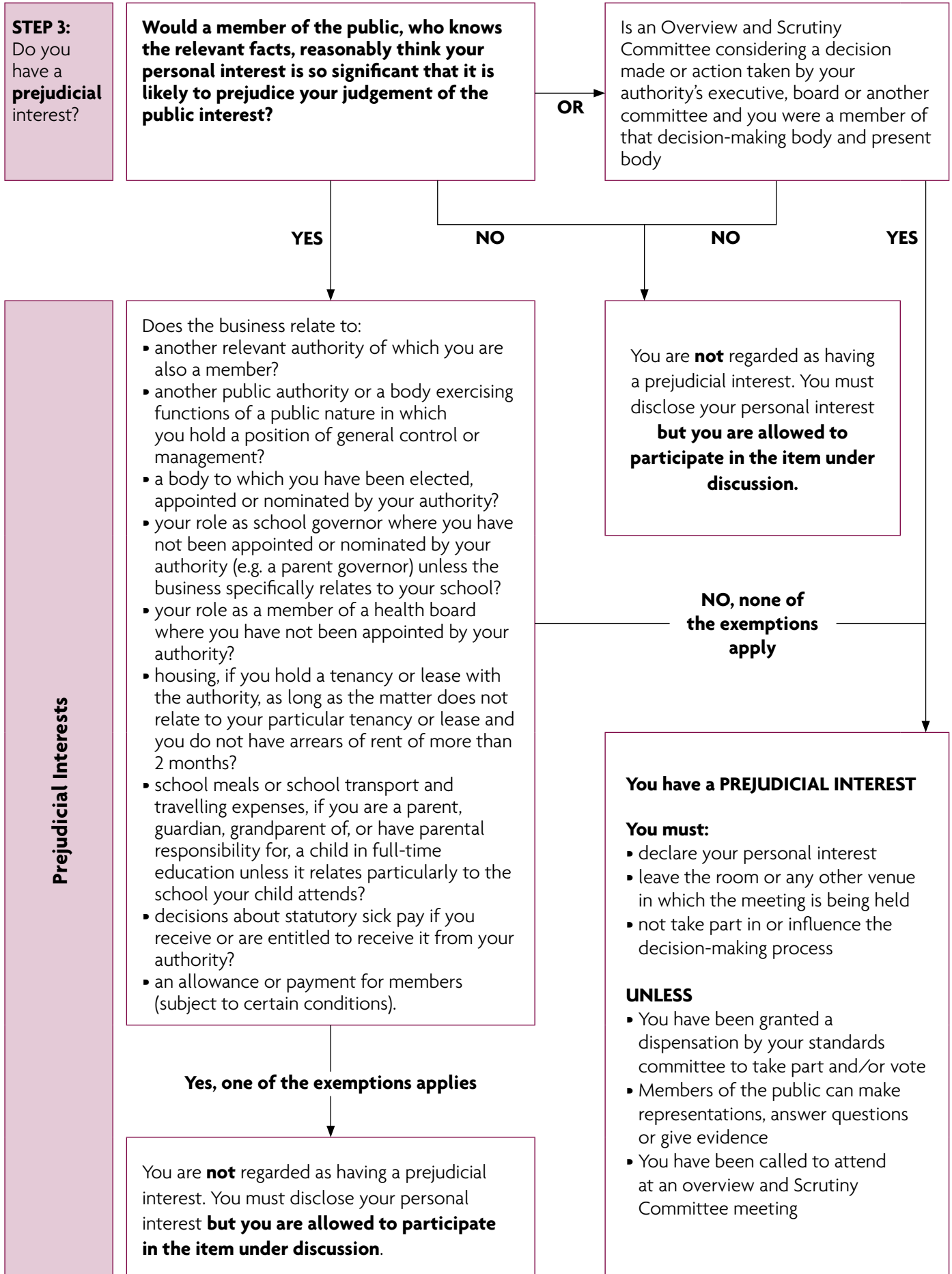
Personal Interests

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



Prejudicial Interests

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



Prejudicial Interests

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ATODIAD / ENCLOSURE
2

The Code of Conduct

for members of local authorities in Wales

Guidance from the
Public Services Ombudsman for Wales
for members of community councils

Preface

This revised guide from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008. 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 of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. As a member, you are required to sign up to it as part of your declaration of acceptance of 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 officers of local authorities in Wales.

This is a separate version of my first guidance as Public Services Ombudsman for Wales aimed at community and town councillors (referred to throughout this guidance as community councillors). The guidance differs in many parts from my guidance to county councillors as it recognises the different role that community councillors undertake.

The following pages aim to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction, while Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding interests, and aim to clarify a number of provisions which you will find in Parts 3 & 4 of the Code. You can obtain a copy of the Code 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 or Monitoring Officer and to make a decision as to the most suitable course of action.

I have used examples throughout the report to help to bring the guidance to life. These examples are drawn from actual cases considered by my office and also include decisions reached by local standards committees and the Adjudication Panel for Wales. Some of these decisions may have been taken by my predecessor, but throughout, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases will be published quarterly in “The Code of Conduct Casebook” which is on my website at www.ombudsman-wales.org.uk

As a member you will be offered training on the Code whether by your Clerk, a Monitoring Officer or from 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.

Since taking up my office I have become increasingly concerned about the number of low level complaints that are being received. Whilst these complaints appear to have been generated by a small number of members, in these challenging times of public austerity, 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 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 of all of our communities.



Nick Bennett
Public Services Ombudsman for Wales
March 2015

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 and national park authorities in Wales.

Acknowledgement

This guidance draws on the guidance prepared and issued by Standards for England on the former English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. 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 to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

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 was 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 town and community councils in their area to observe the Code, and to arrange for advice and training to be provided. I strongly recommend that all members should attend training and take advice where it is offered.

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 councillors as early in their term of office as possible.

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 contrary to advice 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.

It is my role as Public Services Ombudsman for Wales to investigate 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 will 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 committees 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 on the part of the member
- 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.

The process I use for investigating complaints is on my website at www.ombudsman-wales.org.uk 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 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

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. Typically these complaints 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 Monitoring Officer for consideration under this process. 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 result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then 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. This will depend on the nature of and individual circumstances of the alleged breach.

Standards Committees

Standards committees are made up of independent lay members and of elected members of the authority. When I refer a case to a standards committee its role is to decide whether a member has breached the Code and a sanction should be imposed. In my view, hearings should 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, or
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months.

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

The Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales its role is also to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals against the determination of a standards committee. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- 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.

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(a) (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 of policies and procedures and advising the Council on implementing and using its procedures. The Clerk acts in a supporting role and is the person you should turn to in the first instance if you need any advice.

The Clerk has a complex role and will be able to advise councillors on relevant legislation, including matters relating to the Code and on the Council's standing orders. The Clerk will work closely with the Chairman 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. Clerks may approach their relevant county council's Monitoring Officer for advice (see below).

The Clerk is an employee of the Council and is not required to abide by the Code. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of the Clerk; this is a matter for the Council as the Clerk's employer.

The Role of the Monitoring Officer

The Monitoring Officer is an officer employed by the County Council. Among many other things they advise and assist county councillors. Monitoring Officers may offer some training to community councils.

The Monitoring Officer has a significant role in the local resolution process outlined above and they will also work closely in advising the Standards Committee. 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.

The Principles

The Local Government Act 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 set out in the Nolan Report “Standards of Conduct in Local Government in England, Scotland and Wales”. Three more were added to these: 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 instrument¹ and are detailed 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, or to avoid a disadvantage for, 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.

¹The 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

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, 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.

Consider conduct
in your public &
private life

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.

When does the Code apply?

- Whenever you act in your official capacity, including whenever you are conducting the business of your authority 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
- 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 to gain an advantage or avoid a disadvantage for yourself or any other person or if you misuse your authority's resources.

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 their code of conduct. 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.charity-commission.gov.uk).

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.

If you refer to yourself as councillor, 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.gov.uk 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

Councillor A made remarks about Councillor B at a committee meeting organising a waterfront parade. The parade was being arranged by a group of volunteers which had asked the Community Council to provide representatives to help it remain aware of community issues when making the arrangements. I was satisfied that Councillor A was acting in his capacity as a councillor at the Committee meeting, as his role on the Committee was as the Council’s representative and were it not for this fact he would not have been present at the meeting. However, in this case I was satisfied that the comments made by Councillor A were not sufficiently serious that, if proven, it would lead to a sanction being imposed on the accused member by a standards committee. Therefore I did not investigate this complaint.

Example

Conversely, a complaint was received that Councillor J was intoxicated and behaving inappropriately at a street party. It was established that Councillor J did not have to undertake any action on behalf of the Council at the party. Therefore, in my view, 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 the Code did not apply (except for paragraph 6(1)(a)). 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 paragraph 6(1)(a) did not apply. I did not investigate this complaint.

2. General obligations under the Code

If you consider that the Code applies to you at a particular time then you must consider what provisions may apply and your obligations under 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.

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

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 Councillor A 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 Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

Treating others with respect and consideration

See Paragraph 4(b)

You must show respect and consideration for others.

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. A member's freedom of expression attracts enhanced protection when the comments 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 complaints made in this context and councillors need a "thicker skin".

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 disable them from carrying out their duties or undermine public confidence in the administration. That said, the officers who are in more senior positions will also be expected to have a greater degree of robustness.

I expect members to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. 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 member 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.

Political comments can attract Article 10 rights

Example

An appeal tribunal of the Adjudication Panel for Wales considered an appeal by Councillor X against the decision of the Council's Standards Committee. The Standards Committee found that Councillor X had failed to show respect and consideration to another member by prohibiting him from e-mailing the clerk and accessing the Council's website. Councillor X also made comments in an e-mail to the other members regarding his colleague's shower habits. In doing this the Standards Committee found that Councillor X had brought the Council into disrepute.

The Adjudication Panel found that Councillor X's comments were political in nature and attracted the enhanced protection of Article 10 of the European Convention on Human Rights. The Standards Committee's decision was overturned and the sanction rescinded. The decision of the Adjudication Panel can be found on the Panel's website <http://apw.wales.gov.uk> (Ref: APW/001/2014-015/AT).

Example

The Adjudication Panel upheld a finding of a standards committee about a councillor who was accused of failing to show respect and consideration for others by posting online comments about other councillors and the way in which the Council was run. The member sought judicial review of this decision. The Court found that whilst the comments which were posted 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 councillors, 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. The Standards Committee's decision to censure the member was therefore set aside.

Example

A member of a town council wrote to a Deputy Minister of the Welsh Assembly Government about an employee ("Mr Smith") of a county council, a letter which was also copied to the Council. In the letter the member questioned Mr Smith's competence and motivation and he made a number of comments of a disparaging and personal nature about Mr Smith 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) of the Code in that he had failed to show respect and consideration for others. It also found that by his use of words he had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

The member was disqualified for 12 months from being or becoming a member of a local authority.

Bullying and harassment

See Paragraph 4(c)

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.

Consider your conduct from the other person's perspective

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 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

Community Councillor P disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. Councillor P 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. The Standards Committee found that Councillor P 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 Councillor P breached paragraphs 4(b), 7(a) and 6(1)(a) of the Code. He was suspended from acting as a councillor for 12 months.

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 under 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.

Recently, the High Court 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.

Example

A county council member was disqualified from office for 2 years and 6 months by the Adjudication Panel for Wales following allegations of bullying, harassment, disrespect and bringing the office of member into disrepute. The alleged incidents occurred over a period of two years. During that time the member had made threatening comments to officers of both junior and senior grades. For example, comments such as, a number of managers of the Council had been dispensed with and there were more to go and “You won’t like the man I’ll become if I don’t get what I want... I don’t need to threaten you you’re an intelligent woman I know you’re listening to me”.

The member appealed the decision and the matter was referred to the High Court where all but three breaches were upheld. The decision can be found on the Panel’s website <http://apw.wales.gov.uk> (Ref: APW/005/2010-011/CT).

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 get 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.

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. Councillor D's father had been waiting for an allotment for almost seven years. Councillor D 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. Councillor D 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. Councillor D 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.

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 his website at www.ico.gov.uk or by calling 0303 123 1113. As a community councillor you may have sight of sensitive information, for example of a commercial nature. 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 could reasonably be regarded as confidential and you should always confirm (where possible obtain an agreement in writing) that you have the 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

A Community Councillor S received an e-mail from another Councillor T regarding the employment of the caretaker. The e-mail was marked as confidential. Councillor S disclosed the e-mail to the caretaker's wife, information in the e-mails was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that Councillor S might have breached paragraph 5(a) 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.gov.uk or by calling 0303 123 1113 or for specific queries, you should ask your Monitoring Officer or 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 on request, 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. Even if you believe that information you hold is exempt, you must provide it to your Clerk if requested 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

A leader of a county council refused to give the Council's Information Officer a letter he had written to the 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. By the time the case was considered by the Panel the member had resigned from office. He was disqualified from holding office for 12 months.

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 your Council.

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. Making unfair or inaccurate criticism of your Council in a public arena might well be regarded as bringing your Council into disrepute. Inappropriate e-mails to constituents or posts on social media might well bring the office of member into disrepute.

Example

A community councillor had been abusive to a shop proprietor and two members of her staff and had attempted to obtain a discount on a private purchase by saying it was being bought on behalf of the Community Council, and when his request for a discount was refused he had made threats against the business. The Adjudication Panel found that the member had brought the office of member into disrepute and suspended him for 9 months.

Example

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 e-mail exchange the councillor told her that she had “failed to take any responsibility for her child allowing him 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 member was found in breach of paragraphs 4(b) (respect & consideration) and 6(1)(a) (disrepute). The matter was referred to the Adjudication Panel for Wales. Although the member had claimed to have apologised for his behaviour what he had actually said was “I have nothing to apologise for... I do apologise if, for some reason it upset you”.

The Panel found that the member had breached paragraphs 4(b) (treating others with respect) and 6(1)(a) (disrepute). He had previously been suspended by the Panel for 2 months for sending inappropriate e-mails in 2006. He was suspended for 12 months in respect of these breaches.

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 me and to your Monitoring Officer. In order to have a reasonable belief that a breach has occurred, you will need to have evidence 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. 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 advise you of the likely threshold I will set. Nonetheless, 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 on pages 6 and 7 above. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or e-mails. If there are other individuals who have witnessed the alleged breach, you should let us know who they are. This latter point is especially important as if I only have one person's word against another's, it is usually not possible for me to make a finding that a breach has occurred, and in the absence of independent confirmation, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a breach, you can contact my office by phone at **0845 6010987**, by email to **ask@ombudsman-wales.org.uk** or via the website at **www.ombudsman-wales.org.uk**. 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 complaints against other members or staff members 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 relevant authority'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 so also may be a breach of the Code. You must report well-founded alleged

breaches to me and to your Monitoring Officer, not to your local newspaper or radio station. The press will properly cover the business of any 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. 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, since taking up my office I too have had concerns about the number of low level complaints that are still being received from members. Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and councils and generally harm public confidence in our elected members. 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. 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 or not to use your position for an improper purpose.

You should note that the Code only applies to those who have been elected, co-opted or otherwise appointed to a body which is covered by the Code. It does not apply to members of the public. Whilst 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, I am required to consider each complaint on its own merit. However, it is likely that such complaints would not pass the two stage test and result in an 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 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. 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, 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.

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

Using your position improperly

See Paragraph 7(a)

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. **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.

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). 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

Councillor D was a 'joint co-ordinator' of a community group. Councillor D did not notify the Council of her position in this group. She took part in the considerations and voted on the decision to negotiate a new lease in respect of a workshop used by this 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 made the Council aware of. She was found in breach of paragraph 7(a) of the Code and suspended from acting as a councillor for four weeks.

The authority's resources

See Paragraph 7(b)

You must only use or authorise the use of the resources of the Council in accordance with its requirements. **This paragraph also applies 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 applying to the use of these resources made by your Council. 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 Paragraphs 7(b)(v) and 7(b)(vi)

You must make sure you use the Council's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for 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.

Example

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 inappropriate 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. He was disqualified from being or becoming a member of a local authority for 2 years and 6 months.

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 objectively. During the decision-making process you must act fairly and take proper account of the public interest.

Most decisions taken by a community 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, and 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 have regard to all of the advice you receive from your Clerk. The Clerk is usually also the Proper Officer 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 get 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.

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.

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 conclude that the interest would 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

While you are carrying out your duties, you need to decide if 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 when deciding if you have an interest.

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

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
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
8. any body to which you've been elected, appointed or nominated by your Council
9. any:
 - 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 in which you have membership or are in a position of general control or management, or
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 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 Council'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 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 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.

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 member or your work in the local community.

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

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 your Monitoring Officer.

“Twin hatted” members

If you are a member of both a community council and a county 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(a) of the Code is also relevant here.

Obviously, if the 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 when you have a prejudicial interest” below.

Example

Councillor F participated in a meeting which was considering whether to approve the complainant’s nomination for the post of school governor; Councillor F’s husband had also applied for the post. Not only did the Adjudication Panel find that she should have declared a personal interest in the item of business by virtue of her close personal association with her husband, but it also took the view that as there had been a history of animosity directed towards the member by the complainant which had been reported publicly, she also had a personal interest by virtue of her close personal association with the complainant.

A further element to this complaint was that after the complainant had made a complaint to me about the member, the member sat on the Council’s Standards Committee when it considered a separate complaint from the complainant against another member. The Adjudication Panel took the view that, in light of the acrimonious relationship between the member and the complainant, the member’s participation in the Standards Committee hearing could reasonably have been regarded as affecting the complainant’s wellbeing because she was entitled to a fair and unbiased hearing of her complaint.

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

If you decide that you have a personal interest then you must take the following action before the matter is discussed or as soon as it becomes apparent to you except in limited circumstances:

- declare that you have a personal interest, and the nature of that interest
 - at meetings
 - when making written representations (including e-mails, faxes etc.)
 - when making oral representations, even if your interest is on the register of interests.
- confirm your interest by e-mail or in writing to the officer concerned and to the Clerk within 14 days
- consider whether you have a prejudicial interest (see below).

If you have agreed with your Clerk or your Monitoring Officer that the information about your personal interest is sensitive information then you should disclose the existence of a personal interest and confirm that the Clerk or Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section 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.

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

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. There are exemptions to this which are contained in paragraph 12(2) of the Code although many of the examples are unlikely to apply to business undertaken by a community council.

Do not be swayed by what you think - consider what a member of the public would reasonably think

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 Council area 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 inclined to vote accordingly, 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, e.g. 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. If, on the other hand, you are on such a board in your own 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 consider that you have a prejudicial interest in your Council's business you must take certain action.

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 (or any other venue in which the meeting is being held including, for example, the location of a site meeting).

This is unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose. However, 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 remain in the public gallery to observe the vote on the matter.

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 should also not write or make any oral representations about the matter.

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. You may not take part in the discussion or observe the vote.

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

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.

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 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, where the public may be allowed to sit in the public gallery to observe the meeting, **you will be required to leave the room during the debate and vote.**

Example

Councillor R attended a workshop with the Local Park Authority relating to the consideration of land for inclusion in the Local Development Plan (LDP). Councillor R had previously submitted an application for land he owned to be included in the LDP. I considered that Councillor R had a prejudicial interest in the item which was being discussed as the outcome could have a significant impact on his property and could affect his financial well being. The Standards Committee found that he was in breach of paragraph 14(1)(a) of the Code by not declaring an interest and failing to leave the room when discussions concerning the area in which his own land was situated took place.

Dispensations

If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

You can apply in writing to your County Council'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 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 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, or

- the committee believes that your participation would be in the interests of the people in your Council's area and that the committee notifies Welsh Ministers within seven days.

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 Interests

Gifts and hospitality

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.

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 which you have declined.

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. 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.

What if I do not know the value of a gift or hospitality?

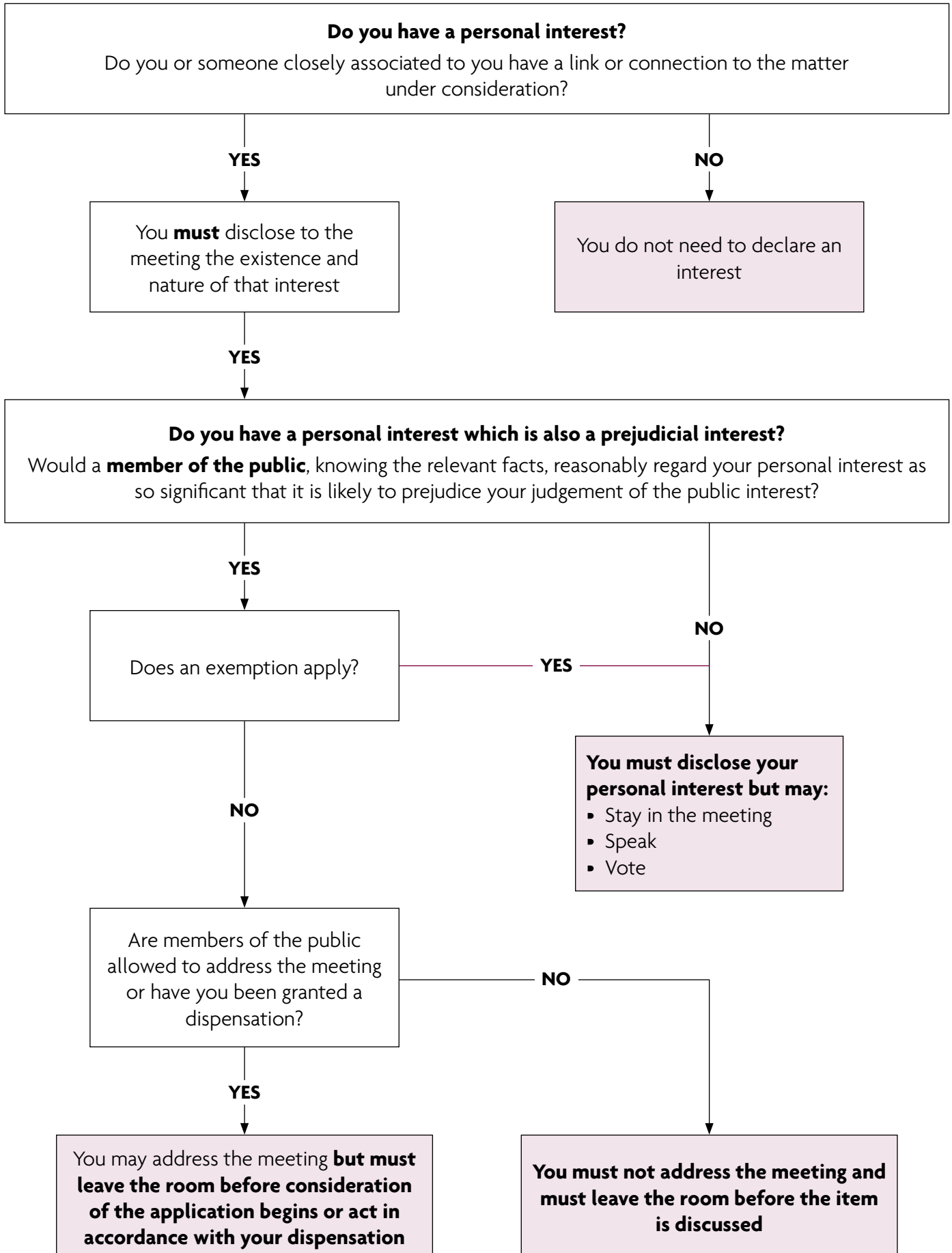
The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

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.

Declaration of personal and prejudicial interests

Questions to ask yourself. If in doubt you should ask your Clerk or your Monitoring Officer.



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ATODIAD / ENCLOSURE
3

ATODIAD / ENCLOSURE

3

TO Town/Community Council

Dear [Clerk]

I am pleased to confirm that I have issued revised Guidance on the Code of Conduct for members. Since taking up my office I have become increasingly concerned about the number of low level complaints that I am receiving from community and town council members. In view of this, I have revised the two stage test that I use when deciding whether to investigate a complaint that the Code has been breached or to continue with an investigation to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales, to include consideration of any public interest factors that may apply to a case. This is to ensure that I continue to investigate serious complaints to maintain public confidence in standards of public life. Further information about the revised test and the public interest factors that I may apply is included in Section 1 of the revised Guidance. Other changes include further guidance on the use of social media and political expression and a flowchart which has been designed to provide members with assistance and clarity on the issue of interests.

No hard copies of the Guidance will be produced. However, copies can be downloaded from my website at www.ombudsman-wales.org.uk There is a separate version available for town and community councillors. I would appreciate it if you could bring this to the attention of your members so that they can familiarise themselves with the changes that I have made. I hope that the Guidance will continue to be a useful resource to both you and the members when considering their obligations under the Code.

Yours sincerely

Nick Bennett
Ombudsman

ATODIAD / ENCLOSURE

4



Social Media: A Guide for Councillors

August 2013

Contact

Welsh Local Government Association

The WLGA's primary purposes are to promote a better local government, its reputation and to support authorities in the development of policies and priorities which will improve public service and democracy.

It represents the 22 local authorities in Wales with the 3 fire and rescue authorities and 3 national park authorities as associate members.

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We are indebted to the officers and members who have contributed to this guide, particularly the members participating in the WLGA training for members in social media, the member support officer network, LLG and monitoring officers and SOCITIM. Also to Kevin O'Keefe from EXCELA INTERIM MANAGEMENT & CONSULTANCY LTD www.excela.co.uk who has contributed to the guide and delivered the training programme.

Due to the rapid developments in this area this guide will be regularly updated. Suggestions for inclusion are welcomed and further training for members is available from the WLGA. Contact Sarah Titcombe Organisational and Personal development Adviser - 029 2046 8638 sarah.titcombe@wlga.gov.uk

Foreword

I'm delighted to present this useful guidance on social media which gives councillors a clear idea about what these tools are and how we can use them. There are some great ideas to help us think about how we make the most of these effective and cheap forms of communication.

Social media has changed the way we work in Monmouthshire. All of our employees and members have permission to use social media at any time so that they can make the most of what channels like Twitter and Facebook offer.
<http://acedigitalcomms.wordpress.com/2013/05/29/unrestricted-staff-access-to-social-media-access-a-roundup/>

In short, they're an easy way to talk and to listen to our residents, local businesses and other partner organisations. Without access to these tools we would be a weaker organisation as we would not hear what people in our communities care about, what they want to get involved with and what they think of their council.

Social media has given us a chance to be creative and try new things. Our foster carers in Monmouthshire use Yammer to stay connected and learn from each other.

<http://monmouthshirecc.wordpress.com/2012/03/12/rewind-story-fostering-communication-using-yammer/>

We use YouTube for our budget consultations.

<http://digitalmon.wordpress.com/2013/01/13/youtubing-a-budget-consultation-and-how-a-great-blogger-helped-us-get-better/>

We even recruited our current head of children's services using YouTube, Twitter and LinkedIn.

<http://acedigitalcomms.wordpress.com/2011/07/11/social-care-recruiting-using-social-media-how-monmouthshire-council-is-recruiting-a-head-of-childrens-services-using-youtube/>

I use Twitter and my blog to connect with residents, other councillors and farmers and people who share my interests. I really see the value of this form of communicating – social media is now a legitimate business tool.

<http://digitalmon.wordpress.com/2013/01/12/councillor-peter-fox-leader-of-the-council-talking-about-social-media/>

I hope you enjoy this very informative guide.



Councillor Peter Fox

Leader Monmouthshire County Council
WLGA Spokesperson for ICT and Digital
Inclusion

Introduction

A revolution is taking place in how we communicate. The world is experiencing the biggest ever change in how information is created and owned, as well as the speed in which it can be shared. This is changing the way we live, work and even how we speak and think.

This guide is for Councillors who would like to use social media as a tool to share information, open new dialogues with the people in their community and beyond, and engage their electorate in productive two-way conversation.

We live in an open, accessible and dynamic communications world. The use of social media will help ensure your voice is heard.

1. What is social media?

Social media is a blanket term applied to a range of online multimedia tools that are used for creating content and two-way communication. They can be accessed via your smartphone, PC, laptop, tablet or smart TV. All social media accounts are free of charge and can be set up quickly and easily from an Internet page. Although this guide will focus on Facebook and Twitter, some useful examples of social media include:

Blogs which are like an online diary journal where you can share information. Examples are Wordpress, Blogger, SimpleSite. Here is an example of a

typical member's blog -

<http://hughevans.wordpress.com/>

Top tip:

Share your thoughts and activities, and comment on the issues that mean the most to you. Maintaining a regular blog could make compiling your annual report all the easier.

Micro blogs allow users to share shorter pieces of information. **Twitter** is an example of a micro-blog. Short messages which you post on Twitter are called "Tweets" – they are each limited to 140 characters (letters, numbers and spaces). Tweets are not a private means of communication and can be seen by anyone who is "following" you. Twitter also has a message facility where you can send messages directly to other Twitter users. However, all such personally directed messages can also be viewed by all of your other followers. You can even forward other Twitter users' Tweets to your own followers, by using the Re-Tweet function.

Tweeting is a good way of promoting local events, live tweeting @council meetings and to give links to longer posts. #Jaynecowan

Top tip:

Follow and be followed. Twitter is a great tool for finding out what is happening, what people think of local and global issues. Listen first and then simply join in the conversation.

Social Networks such as *Facebook* are like having your own small website which can include pictures and text and can provide information and photos. Typically these sites allow you to update people on what you are doing or thinking through a 'status' update and allow you to talk about who you are, what's important to you, what you have done and your plans. You can invite people to be your 'friends' and also set different levels of access to your account, so some people can see all the information about you or you can make less detail available to others. You can also use Facebook to communicate with groups or individuals. People who find your page, comments or proposals of interest can "like" you, which encourages further use, and is a useful way of taking a straw poll of your ideas.

Linked-IN is a professional equivalent of Facebook. You can provide information about your career history and skills, and people with whom you are "linked" can endorse you for particular skills. This is a handy site for finding expertise and keeping up-to-date with business developments in your ward or area.

Flickr, Vimeo, Instagram and **You Tube** are examples of platforms for sharing videos and photographs. Don't forget to seek permission before taking photos to upload to, or copying images from these sites. **Snapchat** is a photo messaging application for photo, video, drawing and text.

Communities of Practice are a way of like minded people joining a community where they can share knowledge and discuss issues relevant to the Community for example the LGA Knowledge Hub.

2. Why Should You Use Social Media?

Social media will allow you to open new conversations with the people you represent, and the potential for councillors using social media is huge. Your Council will already have official accounts on Twitter and many also have Facebook accounts. Scrutiny Committees may also be using social media to undertake service reviews.

So what are the benefits to councillors of using social media?

- Increasing numbers of people are using Twitter and Facebook, as their preferred method of communication. If you have a presence on these platforms you have the potential to establish two- way communication with all of them.
- It's a useful way of finding out what people are talking about locally, their concerns and interests.
- It's useful for finding out about breaking news, the latest research or publication or the latest policy announcements from political parties.
- It's a good way of making the electorate more aware of the work you do personally.

- It's an effective way of coordinating campaigns for example, allowing campaign workers access to your Facebook account.
- Social media allows you to have a conversation with a range of people that you would never be able to physically meet and who do not traditionally seek out their local representatives.
- Social media allows for immediate communication. You can pass on information and receive opinions in minutes. You can forward information from other people equally quickly. "Going Viral" is not necessarily a bad thing, and refers to a mass spreading of a piece of information around the world.
- The local and sometimes national press will follow councillors' on Twitter or Facebook. This means that they know what you are talking about the minute you talk about it.
- Social media is mobile. You can take it around your community, on the train, to a coffee shop or coffee morning or even in bed.
- You can upload pictures and videos, showing for example your role in local events, pictures of potential sites for development, new buildings, local eyesores - a picture tells a thousand words.
- It's free, accounts cost nothing, you probably already have the equipment you need. All you need is time.
- You can receive immediate feedback on your ideas and manifesto to allow

you to modify your proposals in line with local thinking.

- Above all, it can be a lot of fun!

3. How to Use Social Media effectively

Choose your medium and sign up. This is very straightforward and will take you less than five minutes!

Facebook and Twitter are good places to start. You might want to begin with a trial personal account (rather than calling yourself "Councillor Jones") and experiment with family and friends. Make sure that you understand how people find you and who can access your material.

Remember:

- On Facebook you can control who has access to different parts of your account. You can manage what the world sees and what your "friends" see.
- On Twitter the whole world can see everything you Tweet. Even the messages that you Tweet directly to other people can be viewed by anyone unless you have locked down your account to followers.
- When you are ready to set up your final account, consider the identity you use. The name you give yourself online is important as it allows people to find you. Prefacing your Twitter account with Cllr lets people know exactly who you are and indicates that the Code of Conduct will apply.

- You might want to consider setting up a separate personal and “professional” account - you can talk about the amazing food in the restaurant around the corner to your friends and followers in your informal account, and the plans for the new bypass to your friends and followers on your professional account. However, many councillors think that some of their personal comments about food, places they've visited, football matches or TV helps break down perceptions of councillors and proves that they are normal like everyone else!

I use Twitter to speak with residents and engage more broadly. Also to twitter on about books, music, trains and ale, Almost human!

@LukeOHolland (Cardiff Councillor)

- Make it easy for people to find you online. Many people will start their search for the area that you represent, so make sure you mention your location frequently as that this will then be picked up by search engines. You will also want to make sure that your social media account details are on your business cards, posters and flyers.
- On Twitter, sign up to Tweety Hall and other sites where councillors can be found by their electorate.
- Increase your web presence by linking to other people and sites, leave comments on others' posts

and encourage others to link with you. The more you are mentioned, the more people will find you.

- Choose your friends on Facebook and who you would like to follow on Twitter. Bear in mind that people know who follows them and will often follow you in return. Find people on Twitter with links to your community, county or region by searching using the 'hashtag' (#) symbol to prefix your search-term for example #Reynoldston, #Gower, #Swansea, #South West Wales, #Wales.
- Be disciplined about making time available to write new content and answer your “friends” and “followers”; a regular time each week to update your Facebook status and throughout the day to check Twitter.
- Decide on what you are going to talk about and how. This could be
 - Weekly updates of your own activities as a councillor - don't forget your pictures! This works better on Facebook as you can include more detail. Remember Twitter is only 140 characters and tends to be more instant and timely.
 - Regular updates on council policies and actions of interest to your community.
 - Links and re-tweets of other relevant national activities.
 - Issues on which you would like feedback.

- Notice of events and public meetings.

Remember using social media is all about two-way communication, it's good for providing information to your community or flagging up press statements, but it's better as a tool to get useful feedback. You **will** get feedback and you should expect some people to challenge your ideas or enter into a debate with you online. This is part and parcel of social media.

4. Etiquette and style

- Keep your communications clear, positive, polite and professional. Plain language helps. Many people use abbreviations on Twitter – you'll pick these up as you go along!
- Avoid being ironic or sarcastic, it can be misinterpreted.
- On Facebook, you will need to monitor and, if necessary, censor the contributions that other people make to your site; delete them if they do not match your required standards of behaviour or language. Defamatory and offensive language will be attributed to the publisher as well as the original author and could incur financial liability. It is up to you to decide if you want to remove posts that disagree with your political position, however if you do remove them you may be accused or censoring contributions on political grounds.

- On Twitter, you can block people who are habitually offensive or vexatious. Remember however, blocking them only stops them engaging directly with you, their tweets will continue to be public to all of their followers.
- Bear in mind that constituents may find party political point scoring tedious and prefer to hear information about what you are achieving.
- If you don't have anything to say...don't say anything. Even though it's tempting to let your followers know how busy you are they will soon become bored with constant updates on your day without some relevant or interesting information.

5. Support from the Council

Councillors are generally provided with the ICT equipment that they need to do their job. The Independent Remuneration Panel expects that this will include ICT equipment, support and training.

It is also reasonable to expect that you should also have access to social media sites to enable you to carry out your councillor role more effectively. You do not need the council to set you up with a personal social media account but you should take advantage of any training or guidance provided to help you use it properly.

Most councils have a social media policy. You will need to abide by this and any social media protocols that may have

been agreed when using your “councillor” account.

It’s worth remembering that the council is responsible for any information provided on its website and is subject to legal responsibilities. **You** are personally responsible for the material that you broadcast via your own social media accounts or websites – but more of this later.

Advice will be available to you from a number of council officers. The Monitoring Officer, Head of Democratic Services, the Communications Team and the ICT Manager are likely to have useful advice.

6. Social Media and Council Meetings

Recently, especially with the advent of webcasting there has been an increase in interest in the use of Twitter in council meetings. Clearly you will need to be guided by your council’s constitution. Other than what your constitution or social media policy says, there is no legal reason why you shouldn’t use social media from meetings. However, some common sense does need to apply.

- Tweeting on meeting progress and receiving comments from the community can be helpful for transparency and engagement BUT excessive use of Twitter may give people the impression that you are not concentrating on the business in

hand or are even relying on guidance from outside the meeting. For that reason, it is probably sensible not to use Twitter during a planning or licensing debate. Committee chairs may want to decide how to address this in their meetings and you should abide by the rules set out in your constitution.

- Remember, you may not need to tweet about the detail of a meeting - some councils are introducing new arrangements for webcasting meetings and many also have “official” twitter feeds for live on-line conversations to run alongside the meetings.
- If your council webcasts your meetings, this provides a useful way of the public viewing what is happening at first hand and ensures that any video recordings are accurate. Filming meetings informally, whether this is done by councillors or the public may cause difficulties and is usually covered by the Constitution. It may provide a distraction to the proceedings and, if an edited version of events appears on You Tube it might create a false impression.
- Remember that you should not tweet or communicate in any way the content of exempt or confidential business dealt with by local authorities in closed session such as when making formal appointments.

7. The Welsh Language

You can use social media in the language of your choice; you do not have to translate your personal Tweets or Facebook accounts.

Councils' social media streams might however be available either separately in Welsh and English or bilingually. The Welsh Language Commissioner feels that there is no need for social media streams to be bilingual as the two separate streams will be accessed by, and sufficient for different communities.¹

Make sure that you are aware of your Council's rules on the use of the Welsh language set out in your Welsh Language Scheme.

8. Golden rules

Think before you tweet or post on Facebook. Do not say anything, post views or opinions that you would not be prepared to:

- Discuss face to face with the person you are speaking about.
- Write on a placard and carry down your high street and discuss and defend with anyone who sees it.
- Be prepared to have minuted in a public meeting – remember, Twitter or Facebook effectively publicly

¹ <http://www.participationcymru.org.uk/home/all-wales-public-service-organisations-internet-and-social-media-survey>

minutes everything for you as you go along!

Remember that once you have said something it may be seen by millions - friends, supporters, political opponents and the press and could be re-tweeted around the world in minutes.

Keep your messages professional, polite and positive.

Remember to try to keep tweets and texts separate – many people tweet comments that they would previously have texted someone privately; this may be about meeting up later (do you want all your followers knowing your plans and gatecrashing your lunch!?) through to 'in' jokes that could be misinterpreted. Don't follow an individual unless you know them or have a good reason for doing so. Some people, such as constituents or council employees, might find it a bit uncomfortable to have their local councillor hanging on their every word.

If you make a mistake admit it. Mistakes happen so don't try to cover it up as there will always be a record of what you've said.

Don't enter into unhelpful online arguments; remember all of your followers or friends will be witnessing this online. Ignore people or block them if they persist in vexatious comments.

Don't tweet or post on Facebook when you are "tired" it's probably sensible to

turn off your phone at any time when you think your judgement may be impaired. Bear in mind that it is possible for your followers and friends to be seen. If you follow or are Facebook “friends” with council employees, contractors who have been procured to provide services to the council, a company or member of the public making a planning application or pressure groups, this *might* be construed as having a close personal association with them and therefore a personal interest.

As with your own leaflets or newsletters, always ask permission before taking a picture that you intend to use. NEVER take photos of children without the express permission of their parents based on an understanding of what you intend to use the picture for. Your council will have a policy on taking pictures of children, take advice on this before taking or using pictures.

Do not allow anyone else access to your social media accounts, protect your passwords, especially if you use a public computer.

Just like email, you can get spam in social media! Be wary about direct messages via Twitter, even from people you know, with messages such as ‘Hi, have you seen this photo of you on Twitter?’ Delete these before opening, as the spam could then be sent to all of the people you are following...

9. Possible Pitfalls and How to Avoid Them

Time and Commitment

Maintaining your social media accounts can take time. Many people start enthusiastically and then allow their accounts to lie fallow. This is risky as friends and followers may think that you are inactive or, worse, unresponsive.

To avoid this:

- Only set up accounts that you can manage, choose either Twitter or Facebook if necessary. It is possible to set up links between the two which will save you duplicating information.
- Set time aside regularly for updates and get used to communicating ‘on the hoof’.

The Law

Councillors new to social media tend to be concerned about the legal implications. It is an important consideration, and some councillors and other politicians have fallen foul of the law, but with careful use and following some ground-rules you will be fine!

The style of communication employed in the social media environment tends to be fast and informal. Messages can appear lightweight and transitory.

Whenever you post something on social media, it becomes a publication, you have effectively made a broadcast. As it is now in the public domain, it is subject

to both the **Code of Conduct** and to various **Laws**.

Code of Conduct

If you conduct yourself on twitter or Facebook as you would in person on the street or in your leaflets, then you will be fine.

Remember that according to guidance from the Ombudsman, the Code of Conduct applies to you whenever you are "Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority" Also the Code applies if you "Conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute"² If you can be identified as a councillor when you are using social media, either by your account name or how you describe yourself or by what you comment upon and how you comment, the requirements of the Code of Conduct apply. Also if you say something that could be regarded as bringing your office or authority into disrepute the Code applies even if you are not apparently acting in your official capacity or do not identify yourself as a member. Remember that the Ombudsman's guidance states that "Making unfair or inaccurate criticism of your authority in a public arena might

² <http://www.ombudsman-wales.org.uk/en/publications/Guidance-policies.aspx>

well be regarded as bringing your authority into disrepute"

In the same way that you are required to act in council meetings or in your communities you should:

- **Show respect for others** - do not use social media to be rude or disrespectful
- **Not disclose confidential information about people or the council**
- **Not bully or intimidate others** - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- **Not try to secure a benefit for yourself or a disadvantage for others**
- **Abide by the laws of equality** - do not publish anything that might be seen as racist, sexist, ageist, homophobic or anti faith. Even as a joke or "tongue in cheek"

Predetermination

As a councillor, you are aware that when you act in a quasi-judicial capacity, for example on a planning or licensing committee, you should not make up your mind about an issue that is to be formally decided upon before you had heard all the relevant information. You are allowed to be predisposed to a particular view but not to have gone so far as to have predetermined your position. It is important to remember therefore that

anything relevant you might have said about particular issues on social media could be used as evidence of your having made up your mind in advance of hearing all the relevant information.

Criminal Offences

Don't panic! These generally apply to you already in your conduct as a councillor, but it is worth considering them as they apply to social media:

Harassment - It is a criminal offence to repeatedly pursue a campaign against someone where this is likely to cause alarm, harassment nuisance or distress.

Data Protection - It is illegal to publish personal data about individuals unless they have given you their permission. This might apply to your constituents or service users. As a councillor you are a data controller in your own right and therefore personally responsible for what you publish.

Incitement - It is a criminal offence to incite any criminal act.

Discrimination and Racially Aggravated Offences (or any other protected

Characteristic) - It is a criminal offence to make a discriminatory remark about anyone based on a "Protected Characteristic" as defined in The Equality Act (such as their race, religion, sexual orientation etc).

Malicious & Obscene

Communications - It is a criminal offence to send malicious or obscene communications.

Civil Law

This is where things get more risky for anyone who uses Twitter or Facebook, whether they are councillors, members of the public or celebrities...

Defamation - It is against the law to make a false statement about someone which damages their personal or professional reputation. Crucially - even if you simply retweet or pass on information originally posted by others, you may still be held equally as responsible as the original commentator. This can also apply to publishing images. If found liable to another person, you could be ordered to pay large sums of money as damages.

"High Court: Sally Bercow's Lord McAlpine tweet was libel"

<http://www.bbc.co.uk/news/world-22652083>

Copyright - The legal ownership of the contents of documents, photos, videos and music belong to the person who created them. You could be in breach of copyright if you reproduce such material without the owner's permission. Always ask for written

consent before you use someone else's material.

Political Comment and Electioneering - Remember that although it is acceptable to make political points or canvass votes via your own social media accounts this will not be permissible if you are using this via council supplied computer equipment, certainly in the run-up to elections. The Electoral Commission has further information about the return on expenditure that candidates need to provide on advertising or campaign literature.

10. Further Information, Interesting Sites and Sources of Help

Bear in mind that information, sites and terminology change quickly. Facebook is already reporting a drop in users. However, the next big social media platform will soon be on its way. Here are some current examples of information and useful sites but bear in mind that they may be quickly out of date.

Sign on to **Twitter** here
<https://twitter.com/>

Sign up to **Facebook** here
<https://en-gb.facebook.com/>

Tweety Hall. A platform that gathers all the Councillors that have Twitter accounts in the UK

together so that all their posts can be read in one place and the public can easily find their local councillor. All you have to do to join them is send them a Tweet.
<http://tweetyhall.co.uk/>

Twenty-first century councillors

<http://socialmedia.21st.cc/>
Useful guidance for members using social media.

<http://kindofdigital.com/>

An online innovation agency helping organisations engage online with citizens, communities and stakeholders. Has useful examples of social media guidance.

LGA's Knowledge Hub is an example of a community of practice. This one was set up specifically for people working in and with local government and has online fora, libraries full of materials and details of events.

<https://knowledgehub.local.gov.uk/>

Social Media and Online Collaboration Community. Join this Community of the Knowledge Hub to talk to other councillors and officers working with Social Media.

11. Glossary

Blog

Term derived from Weblog i.e an internet log or diary

Blogosphere

All the Blogs on the Internet

Community of Practice

Group of people who are members of an online 'club' because they have a role or an interest in an area of work

Direct Message

A message sent via Twitter to someone who follows you or who you follow.

Facebook

An example of social networking

Flickr

Photo sharing site

Follower

Someone who has chosen to follow you on Twitter

Friend

Someone who you have allowed to access your Facebook page. Not necessarily a real friend.

Forum

A virtual discussion area

#Hashtag

A hashtag or # is a way of denoting a keyword which can be used as a search term on Twitter.

Instagram

A platform for sharing photos and videos

Instant Messaging

A conversation with one other person via for example *Microsoft Live Messenger* or *Yahoo Messenger*. A conversation which, if you indicate that you are available for a chat is more immediate than e mail and easier to type than a text

Microblog

Short blog e.g. Twitter using a maximum of 140 characters

Pinterest

A virtual pinboard for creating and sharing images

RebelMouse

A free service that connects to your accounts at services such as Facebook, Twitter and/or Instagram. It integrates all your SM Tweets, postings and blogs automatically into one page, boosting your SM presence without you doing anything extra as it 'runs in the background'. It will save you having to tweet your blogs etc. to get more prominence on search engines.

Retweet

To forward a Tweet received on Twitter

RSS feeds or Really Simple Syndication feeds

Messages from websites informing you that new information is available so that you don't have to keep checking the website for updates

Social Bookmarking

A way of saving and sharing all your favourite sites on the web, for example

Delicious

Social networking

Facebook etc

Snapchat

A photo messaging application for photos, videos, drawings and text

Spam

Electronic junk mail

Trending

Current popular people or conversations as in *trending on Twitter now...*

Troll

Someone who disrupts online communities or discussions through unhelpful or irrelevant posts

Tweet

A message sent on Twitter

Tweety Hall

A virtual gathering place for councillors with Twitter accounts

Twitter

An example of microblogging

Vimeo

A platform for sharing videos and photographs

Wiki

A tool which enables anyone to add or edit content on a website

Wikipedia

Online Encyclopedia which works using this method and is therefore not always accurate

You Tube

A platform for sharing videos and photographs

5.10 Protocol on Social Media

1. Introduction

1.1 Definition of social media

1.1.1 Social media is a collective term used to describe online media which offer easy ways to publish content online and also to facilitate and participate in online conversations, which may invite the posting of comments or contributions or otherwise invite discussion.

1.1.2 Social media can involve social networks (eg. Facebook); professional networks (eg. LinkedIn); content communities sites (eg Flickr and Youtube); blogs (eg. via sites such as Wordpress and Blogger); micro-blogging sites (eg. Twitter). Social media can be accessed by a variety of digital equipment, such as laptops, smart-phones and tablets, which can also be used to capture audio-visual information.

1.2 Scope

1.2.1 This protocol is intended to set out clearly how Elected Members ought to interact with social media, both as County Councillors and private individuals. The protocol also relates to the use made of social media by members of the public whom attend meetings of the Council, Executive and other committee meetings. It is recognised that the absence of a definitive position statement on the use of social media by Elected Members and the public during meetings has resulted in a degree of uncertainty on the part of Chairs concerning an acceptable response to issues such as the filming of meetings by the public. It is therefore intended that the Protocol provides guidance concerning the permissible use of social media for Chairpersons during meetings.

1.2.2 The Protocol does not relate to Officers of the Council who are covered by separate ICT policies.

1.2.3 The use of social media by Elected Members is covered by part 2.1 of the Protocol. The use of social media by Elected Members during meetings is discussed in 2.1.5.

1.2.4 The use of social media by members of the public during meetings is covered by part 2.2 of the Protocol.

1.3 Background

1.3.1 Social media can play an important part in the operation of a democratic society by offering positive opportunities for the Council and its Elected Members to engage with the citizens of Anglesey. For example, social media can be an efficient and cost effective way for the Council to keep in touch with residents and businesses. Elected Members can also effectively use social media to interact with constituents and support local democracy. It has been demonstrated that, when used effectively, social

media can engage those who would not otherwise participate in local politics or interact with their Elected Members.

1.3.2 It is apparent that the use of social media also presents the Council and its Elected Members with certain risks and challenges. In particular, the use of social media by Elected Members can potentially result in breaches of the Code of Conduct. Therefore, it is important that Elected Members recognise the risks associated with social media and ensure that they do not use social media in a way which breaches the Code of Conduct.

1.3.3 It is intended that the Council's Standards Committee will have regard to the Protocol when determining allegations of breach of the Code of Conduct involving the use of social media.

2 Social Media and the Council

2.1 Use of social media by Elected Members

2.1.1 It is likely that the use of social media by Elected Members may include participation in Council sponsored media, such as a Leader's Blog; use made in a private, or seemingly private, capacity through a private account; anonymous participation with, or contribution to blogs, forums or other social media sites.

2.1.2 Members are bound by the terms and conditions of the individual social media sites. In addition, Members should recognise that their use of social media could be covered by the Code of Conduct, and it is likely that any failure to comply with the law and user agreements of the sites could constitute a breach of the Code of Conduct. In particular, Members should also avoid using social media in a way which suggests bias and predetermination.

2.1.3 In addition to issues covered by the Code of Conduct, Members are reminded that their use of Social Media can have implications in general law, which for an Elected Member may have serious consequences.

2.1.4 It is suggested that the potential difficulties arising from the use of social media can be avoided if the information published by Members is objective, balanced, informative and accurate. The effects of publishing information online can be long lasting, as access to online published content is pervasive and effectively published in perpetuity.

2.1.5 Members should not use social media during meetings. The restriction extends both to making contemporaneous comments on other individuals or issues and accessing social media during meetings.

2.1.6 In addition, Members should seek to avoid giving others the impression that they are not fully attending to the proceedings of a meeting. This can be done by ensuring that mobile devices are used sparingly and discreetly during meetings.

2.1.7 Members should avoid using mobile devices to send or receive information which is not connected with the matters under consideration in the meeting. Use made of mobile devices to send or receive private messages or email during meetings ought to be reasonable and discreet. Chairs should reprimand any Member whose use of mobile devices during meetings is deemed to be excessive.

2.1.8 The following paragraphs of the Code of Conduct will apply to the use of social media and other online behaviour. The rights of Members under Articles 8 and 10 (Schedule 1) of the Human Rights Act 1998 have been considered.

2.1.8.1 Paragraph 5.4 (a) “carry out your duties and responsibilities 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”;

Members should ensure that their use of social media does not breach the Council’s principles of equality. Discriminatory statements are also likely to be unlawful.

2.1.8.2 Paragraph 5.4 (b) “show respect and consideration for others”

Members should be aware that whilst political comments and the expression of political opinions and arguments are not stifled by the Code of Conduct, it is likely that personal remarks aimed at an individual could be seen as disrespectful and could constitute a breach of the Code.

Members are reminded that their use of social media could result in the libel of another individual. This also applies if a Member with a personal social media site allows any individual to publish libellous content on it.

2.1.8.3 Paragraph 5.4 (c) “not use bullying behaviour or harass any person”

Members should be cautious when making personal comments about individuals and social media should never be used to review and discuss the performance of Council staff. The Council will not tolerate any anonymous use by Members of social media which is deemed to bully or harass any person.

Members who maintain a blog or networking site (such as Twitter) should be aware that the comments of others on those sites could be attributed to the Member by association. Members should ensure that defamatory or obscene comments are removed from their personal sites.

2.1.8.4 Paragraph 5.5 (a) “disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so”

Members should always be certain that information they discuss or disclose on social media sites is not confidential and that it is proper to do so. Members should

remember that information placed on a website, whether anonymously or not, which could only have been obtained by a Member is likely to fall under the Code.

Members should never publish the personal data of individuals on social media sites in breach of the Data Protection Act 1998.

Members should avoid breaching copyright by publishing images or text on a social media site which is the intellectual property of another person.

2.1.8.5 Paragraph 10 (2)(c)(1) Personal interests: “or any person with whom you have a close personal association”

Various terms are used to define online contacts and associations on various social media sites. These terms include ‘friends’ (Facebook) and ‘followers’ (Twitter). Members should be aware that any person they include as a contact on social media sites could be regarded, for the purposes of the Code of Conduct, as a close personal associate. Members should be cautious that their use of social media sites does not give the perception that a conflict of interests exists. It is advisable that Members, when creating their own content on social media sites, seek to emphasise the distinction between business content and pages containing personal content .

2.1.8.6 Paragraph 12 (1) Prejudicial interests: “...a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest”.

Members should be cautious that their use of social media sites does not give the perception that they have a prejudicial interest in any matter.

2.1.9 Elected Members are bound by the Code of Conduct if they use social media to conduct Council business or are representing the Council. However, an Elected Member could be open to allegations that he / she acted in breach the Code of Conduct if the use made of social media was inappropriate and that he / she was not conducting official business, but merely claiming or giving the impression that he / she was acting in an official capacity.

2.1.10 Anonymous use of social media by Members can also lead to a breach of the code where it can be demonstrated that a Member uploaded the site content and that they were acting in their capacity as a member.

2.1.11 In order to determine whether a Member was acting in an official capacity, it would be necessary to consider the context of a Member’s use of social media, taking into account such factors as:

The public profile of a Member, which can result in a reasonable assumption being made that the Member was acting as a County Councillor;

The privacy settings on the social media site or blog. It is a Member’s responsibility to ensure that appropriate privacy settings are in place. If constituents can access a

Member's posts they may make the reasonable assumption that the Member is acting in an official capacity;

Members should seek to enable other users of social media to avoid any misunderstanding over the official status, or otherwise, of the Member's contributions.

2.1.12 Members should avoid discussing Council business on a personal social media site, or make remarks about others. It is not adequate for Members to subsequently claim that any disputed posts were made in a private capacity.

2.2 Use of social media by the public during meetings of the Council

2.2.1 The Council acknowledges the cultural shift towards permitting the use of social media in public life. The Council will therefore permit the use of social media by the public during its meetings provided that the use is unobtrusive and does not disrupt the meeting. The Protocol does not affect the obligations of the Chair to ensure and maintain the good order of the business meeting.

2.2.2 The Council reserves the right to request that members of the public switch off digital equipment if its operation interferes with the operation of the Council's audio-visual equipment or other systems.

2.2.3 The Council tolerates the use by the public of digital media, such as smart-phones, to film its meetings, provided that the use is unobtrusive and does not disrupt the meeting. It is the responsibility of any member of the public that makes use of social media to comply with the law.

2.2.4 It is likely that filming of meetings by the Media may be considered to be more obtrusive and disruptive to the meeting, because of the nature of the digital equipment used. The Council reserves the right to refuse a request by the Media to film meetings, but will permit filming prior to the commencement of any meeting by prior arrangement.

2.2.5 Digital equipment ought not to emit any obtrusive noise which could disrupt meetings. The public ought not to answer telephone calls during meetings, as this is likely to disrupt the meeting. Chairs must advise the public attending meetings of the need to ensure that their digital equipment is set to silent.

Part 6 Scheme of Members' Allowances for the Isle of Anglesey County Council

6.1 Rates of Allowances

6.1.1 Rates of Allowances are specified in the Schedule to this scheme, which shall be updated annually or on any change.

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CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	Standards Committee
DATE:	16 September 2015
TITLE OF REPORT:	The Local Government (Democracy) (Wales) Act 2015
PURPOSE OF THE REPORT:	To report to the Standards Committee on legislative changes
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 752586

INTRODUCTION

The Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”) received Royal Assent on the 30th July 2013. Its primary purpose was to reform the constitution and function of the Local Democracy and Boundary Commission for Wales. However, the 2013 Act also introduced other provisions connected with local government, some of which are indirectly relevant to the work of the standards committee.

RELEVANT STATUTORY CHANGES

The Local Government (Democracy) (Wales) Act 2013 (Commencement No. 2) Order 2015 activates sections 55 to 58, 68 and 69 of the 2013 Act with effect from May 2015.

The relevant changes are:-

1. Community Councils – Electronic Publication of Information

Community councils are now required to publish certain information on their websites. This includes information about the clerk, the members, minutes of meetings and any audited statements of accounts. Community councils are also required to publish public notices electronically and to make certain information about their meetings and proceedings available electronically.

Statutory Guidance has been issued to assist community councils in fulfilling their new obligations and a copy of the Guidance is attached at **Enclosure 1**.

2. Register of Members’ Interests

Section 81(1) of the Local Government Act 2000 currently requires the monitoring officer of every relevant authority to establish and maintain a register of members’ interests. To maintain the distinction with declarations in meetings, this is sometimes called the “standing register” or “pre-registration”.

Prior to implementation of the new statutory requirements in May 2015, community councils did not hold a “standing” register as the wording in the legislation required the monitoring officer of each authority to retain such a register. As community councils are separate authorities in their own right, but do not engage monitoring officers, it was interpreted that the requirement for the standing register related to unitary authorities only.

The legislation has now been amended and it is clear that community councils are required to have “standing” registers of interests, as well as that containing interests declared during meetings. The legislation also makes it clear that community council clerks are the relevant officers for maintaining the register.

Following commencement of Section 58 of the 2013 Act, the requirements are amended/clarified as follows:-

- (i) There is a duty to establish and maintain a register of members’ interests. The responsibility is with the “proper officer” of the community council i.e. the council clerk.
- (ii) In addition to being available for public inspection, the register of members’ interests must be published electronically and should therefore be available on the website for each community council (each community council is now legally required to operate a website)

3. Standards Committee (Joint Committees)

Section 68 of the 2013 Act amends the duty on the relevant authorities to establish a standards committee, empowering, but not compelling, two or more authorities to establish a joint standards committee.

4. Referral of misconduct cases/dispensation applications

Section 69 of the 2013 Act provides power for local authorities to refer misconduct cases / dispensation applications between standards committees of different authorities.

RECOMMENDATION

To note the changes listed in the report and to give particular consideration to paragraph 2 and whether or not compliance issues in relation to this new responsibility should form part of the standards committee’s next work programme.

ATODIAD / ENCLOSURE
1



Llywodraeth Cymru
Welsh Government

www.gov.wales

Statutory Guidance

Access to Information on Community And Town Councils

May 2015



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WG25090

WELSH GOVERNMENT GUIDANCE

ACCESS TO INFORMATION ON COMMUNITY AND TOWN COUNCILS

Status and Application

This guidance applies to Community and Town Councils in Wales. It is issued, in part, under section 55 of the Local Government (Democracy) (Wales) Act 2013. Section 55 places duties on local authorities to make certain information available electronically. When carrying out their duties under section 55, Community and Town Councils have a statutory duty to have regard to this guidance.

This guidance also explains further provision made in the Local Government (Democracy) (Wales) Act 2013 concerning public notices, Council meetings and proceedings and registers of members' interests.

Background

1. The Local Government (Democracy) (Wales) Act 2013, referred to as “the Act” throughout this guidance, gained Royal Assent on 30 July 2013. Its primary purpose was to reform the constitution and functions of what is now known as the Local Democracy and Boundary Commission for Wales. The Act, however, introduced various other provisions connected with local government.

2. Sections 55 to 58 of the Act are concerned with access to information, and most particularly, access to information about Community Councils (section 58 applies also to County / County Borough Councils, Fire and Rescue Authorities and National Park Authorities in Wales). For the purposes of this guidance, any reference to a Community Council or Councils includes any Community, Town or City Council which serves a community or grouped community and was established in accord with Part II of the Local Government Act 1972.

3. In summary, the Act requires Community Councils to have websites; to publish notices and papers electronically; and to publish their register of members' interests electronically (those maintained under section 81 of the Local Government Act 2000).

Community Council websites – section 55

4. Section 55 of the Act requires Community Councils to publish electronically information about how to contact it and, if different, its clerk. The information which

must be available electronically includes a telephone number, a postal address and an email address.

5. In addition, the council must publish electronically information about each of its members, including a list of the council's members, each member's name, information about how they may be contacted, party affiliation (if any) and any office held or committee they belong to within the Council. If the community concerned is divided into community wards, the ward each member represents must be shown.

6. The Community Council must also publish electronically the minutes of its meetings and, so far as reasonably practicable, documents referred to at those meetings. They must also publish their annual audited accounts electronically. In both these cases, Councils are only required to publish material produced after the date when section 55 came into force, i.e after 1 May 2015.

Community Councils are not required to publish any information they are prevented from disclosing by any other legislation.

7. In carrying out its duties under Section 55, Community Councils must have regard to this guidance.

Guidance about Community Council websites

8. It is a decision for each Community Council to take as to whether they will operate their own, independent website, or whether they decide to link up with other Community Councils in their area, or the Principal Council, or some other body which is happy to host their site. It is, however, a requirement that there is a regularly updated website providing the public with the ability to access the information described above.

9. The Welsh Government intends to improve public engagement with local government generally and Community Councils in particular. We feel it necessary for all local authorities to be contactable electronically and to publish information on the Internet. Local residents would expect to be able to have this facility.

10. The majority of Community Councils in Wales already have a presence online and publish information electronically. Community Councils are urged to seek assistance from One Voice Wales, their Principal Council or other reliable sources if they need it to develop their web presence.

11. Under section 55, the Council must publish electronically its telephone number, postal address and e-mail address on the website. Councils should have a generic email address and not use a personal email address, enabling the Clerk to access messages. The information must be available for the Council Clerk if the Council does not have an office address or telephone number. In some cases, the Community Council will have its own, or a share of, offices and the telephone number, postal address and e-mail address for these premises would be appropriate. Councils will be expected, however, to have arrangements to ensure messages are regularly retrieved and responded to.

12. It is not obligatory for individual members to have e-mail addresses. In a Principal Council this would be expected because the Council itself can usually provide e-mail addresses on the Council's site. However, the members' names must be listed and details of how they may be contacted must be available online. Some Councils will wish to place photographs of each member but this is a decision for them.

13. The Act requires that the political affiliation of the members of the Council is published. Some Community Councils choose not to do this at present. However, the public has a right to know the political persuasions of those in elected office or whether they are independent of any group. It is unacceptable for a member to hide their political affiliation.

14. If the Community Council is divided into community wards, the ward the member represents must be published. If they hold office of some sort in the Council or belong to a council committee of some sort, it must be published on the site.

15. Co-opted members should be recorded in the interest of transparency to distinguish them from elected members.

16. Paragraphs 4 to 6 above describe the documents which need to be posted on the website. Councils should develop procedures for keeping their site in good order, with past documents archived for a reasonable period, but easily accessible from the front page.

17. If the Council has a Welsh Language Scheme and its practice under the Welsh Language Scheme is to produce material bilingually, then that applies the same to material that is produced electronically.

18. The Act's provisions should be viewed as outlining the minimum requirements. Many Councils will want to place far more information than this on their webpages and are encouraged to do so. Councils will need to have regard to the Code of Recommended Practice for Local Authority Publicity when considering the appropriateness of what they may wish to publish.
<http://wales.gov.uk/topics/improvingservices/publicationevents/publications/local-authority-publicity-wales/?lang=en>

19. We would expect Community Councils to consider community needs including language, communication and accessibility. Attached is a link to Diverse Cymru's website which gives further guidance. <http://www.diversecymru.org.uk/>

20. All Community and Town Councils should register with the following website, if you would like Super Fast Broadband to be considered in your local community.
<http://btsf-wales-uat.lbi.co.uk/home>

Information about meetings and proceedings

21. Under existing legislation Community Councils are required to post any public notices in one or more conspicuous place within their area, and anywhere else which appears to be desirable for giving publicity to the notice (section 232 of the Local Government Act 1972). The Act places an additional requirement on Community Councils to publish any such notice electronically.

22. Existing legislation requires Community Councils to give notice of forthcoming Council meetings three clear days before the meeting is to be held by displaying a notice in a conspicuous place in the community. The Act places an additional

requirement for such notices to be published electronically. This must be done three clear days before the meeting. There is also a requirement to publish electronically, so far as is reasonably practicable, any documents relating to the business to be transacted at the meeting. This requirement does not apply where the documents relate to business which, in the opinion of the Council, is likely to be transacted in private or where the disclosure of such documents would be contrary to any other legislation.

23. Under Schedule 12 to the Local Government Act 1972 a community meeting may be convened at any time by a group of local government electors amounting to 10% of the local government electors for the community, or 50 of the electors (if 10% exceeds 50 electors). Those convening the meeting must give notice to the Community Council or, if there is no Community Council established in the area, notice must be given to the Principal Council in whose area the community lies. Under the new provisions, notice may be given to the Community Council either in writing or electronically. Where it is given in electronic form the notice must comply with the technical requirements set by the Principal Council.

24. The Act places a requirement on Community Councils and Principal Councils to provide a facility for notices to be given electronically and public notice of the community meeting must be published electronically as well as through traditional mediums.

25. Finally, the Act contains new requirements relating to the registration of members' interests. Section 81 of the Local Government Act 2000 requires a Community Council (as well as other authorities) to maintain and publish a register of members' financial and other interests as are specified in the model code of conduct (prescribed by Order under section 50 of the 2000 Act¹). Prior to commencement of section 58 of the Act, the register needed to be available for inspection at Council offices at all reasonable hours. Section 58 of the Act requires that the register is also published electronically. In addition, the Act transfers responsibility for establishing and maintaining the register of interests from the principal authority's monitoring officer to the 'proper officer' of each Community Council. The 'proper officer' is the member of the Council's staff designated by the Council for this purpose.

¹ Currently the 'Local Authorities (Model Code of Conduct) (Wales) Order 2008'

Status: Law In Force

Local Government Act 2000 c. 22

Part III CONDUCT OF LOCAL GOVERNMENT MEMBERS AND EMPLOYEES

Chapter V SUPPLEMENTARY

Disclosure and registration of members' interests etc.

This version in force from: **May 1, 2015** to **present**

(version 6 of 6)

81.— Disclosure and registration of members' interests etc.

(1) The monitoring officer of each relevant authority must establish and maintain a register of interests of the members and co-opted members of the authority.

(2) The mandatory provisions of the model code applicable to each relevant authority ("the mandatory provisions") must require the members and co-opted members of each authority to register in that authority's register maintained under subsection (1) such financial and other interests as are specified in the mandatory provisions.

(3) The mandatory provisions must also—

(a) require any member or co-opted member of a relevant authority who has an interest specified in the mandatory provisions under subsection (2) to disclose that interest before taking part in any business of the authority relating to that interest,

(b) make provision for preventing or restricting the participation of a member or co-opted member of a relevant authority in any business of the authority to which an interest disclosed under paragraph (a) relates.

(4) Any participation by a member or co-opted member of a relevant authority in any business which is prohibited by the mandatory provisions is not a failure to comply with the authority's code of conduct if the member or co-opted member has acted in accordance with a dispensation from the prohibition granted by the authority's standards committee [, or by the standards committee of another relevant authority,] ¹ in accordance with regulations made under subsection (5).

(5) The [Welsh Ministers]² may prescribe in regulations the [—]³

[

(a) circumstances in which standards committees may grant dispensations under subsection (4),

(b) procedure to be followed for the granting of dispensations.

]³

(6) A relevant authority must ensure that [—]⁴

[

(a) copies of the register for the time being maintained by their monitoring officer under this section are available at an office of the authority for inspection by members of the public at all reasonable hours,

(b) the register mentioned in paragraph (a) is published electronically.

]⁴

(7) As soon as practicable after the establishment by their monitoring officer of a register under this section, a relevant authority must—

(a) publish in one or more newspapers circulating in their area a notice which—

(i) states that copies of the register are available at an office of the authority for inspection by members of the public at all reasonable hours, and

(ii) specifies the address of that office, [and]⁵[...] ⁶

[(iii) states that the register is available to be viewed electronically, and

(iv) specifies how to access the electronic version,

] ⁷

[...] ⁵

[

(c) [...] ² inform the Public Services Ombudsman for Wales that copies of the register are so available.

] ⁶

[(7A) For the purposes of this section—

(a) [section 83\(13\)](#) does not apply, and

(b) in relation to a relevant authority which is a community council, the references in this section to a monitoring officer are to be read as references to the proper officer of that council (within the meaning of [section 270\(3\)](#) of the [Local Government Act 1972](#)).

] ⁸

[...] ²

Notes

1. Words inserted by Local Government (Democracy) (Wales) Act 2013 anaw. 4 [Pt 5 s.69\(3\)\(a\)](#) (May 1, 2015)
2. Amended by Localism Act 2011 c. 20 [Sch.4\(1\) para.48](#) (July 1, 2012: amendment has effect as SI 2012/1463 subject to transitional, transitory and savings provisions specified in SI 2012/1463 art.7(3) and (4))
3. Existing s.81(5) renumbered as s.81(5)(a) and s.81(5)(b) inserted by Local Government (Democracy) (Wales) Act 2013 anaw. 4 [Pt 5 s.69\(3\)\(b\)](#) (May 1, 2015)
4. Existing s.81(6) renumbered as s.81(6)(a) and s.81(6)(b) inserted by Local Government (Democracy) (Wales) Act 2013 anaw. 4 [Pt 5 s.58\(2\)](#) (May 1, 2015)
5. Repealed by Localism Act 2011 c. 20 [Sch.25\(5\) para.1](#) (January 31, 2012: repeal has effect as SI 2012/57 subject to transitional and savings provisions specified in SI 2012/57 arts 6 and 8)
6. Added by Public Services Ombudsman (Wales) Act 2005 c. 10 [Sch.4 para.22\(b\)](#) (April 1, 2006)
7. Added by Local Government (Democracy) (Wales) Act 2013 anaw. 4 [Pt 5 s.58\(3\)](#) (May 1, 2015)

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8. Added by Local Government (Democracy) (Wales) Act 2013 anaw. 4 [Pt 5 s.58\(4\)](#) (May 1, 2015)

Modifications

Pt III	Modified in relation to the shadow authority by Bedfordshire (Structural Changes) Order 2008/907, Pt 5 art. 16(8)
	Modified in relation to each shadow authority by Cheshire (Structural Changes) Order 2008/634, Pt 3 art. 7(5)
	Modified in relation to a Welsh Part 3 panel and the members of such a panel by Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012/2734, reg. 6, reg. 5, Sch. 1(3) para. 33
	Modified in relation to any allegation that a member or co-opted member of the London Assembly has failed, or may have failed, to comply with that authority's code of conduct by Police Reform and Social Responsibility Act 2011 (Commencement No. 3 and Transitional Provisions) Order 2011/3019, art. 5(2)
	Modified in relation to any allegation that a member or co-opted is not a member of the London Assembly has failed, or may have failed, to comply with that authority's code of conduct by Police Reform and Social Responsibility Act 2011 (Commencement No. 3 and Transitional Provisions) Order 2011/3019, art. 5(3)
	Modified in relation to references to the Local Commissioner in Wales by Public Services Ombudsman (Wales) Act 2005 (Transitional Provisions and Consequential Amendments) Order 2006/362, art. 4(5)

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Subject: Local government

Keywords: Disclosure; Members; Monitoring officers; Registration



CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	Standards Committee
DATE:	16 September 2015
TITLE OF REPORT:	Code of Conduct Factsheets produced by the Public Services Ombudsman for Wales for Local Authority Members
PURPOSE OF THE REPORT:	For information
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk (01248 752586)

1. INTRODUCTION

The role of the Public Services Ombudsman for Wales (the Ombudsman) was created on 1st April 2006. The main purposes of the role are as follows:-

1. To consider complaints about services provided by public bodies
2. To put service complaints right where possible
3. To recognise and share good practice and improve the standards of public services in Wales
4. To build confidence in local government in Wales by promoting high standards in public life
5. To consider complaints that members of local authorities have broken the code of conduct.

In relation to the last two points, the Ombudsman has recently appointed a new Code of Conduct Complaints Lead who has developed two new Factsheets written for members who are subject to a code of conduct investigation.

The Factsheets are attached to this report at **ENCLOSURES 1 and 2** respectively. They provide useful guidance on the processes followed and both note that members are strongly advised against discussing or sharing information with anyone, other than those providing legal or other advice to them, in order to avoid prejudicing any such investigations.

2. FACTSHEET FOR LOCAL AUTHORITY MEMBERS: What we do when we get a complaint about your conduct.

All new complaints are considered by the Complaints Advice Team and each complaint is subject to a two stage test. The first test is to see if there is direct evidence of a breach of the code and the second stage then considers whether a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. The aim is to inform the member of the decision to investigate or not to investigate within 4 weeks of receipt of the complaint.

If the decision is made to investigate, information about the process is outlined and the possible investigation outcomes are then discussed.

3. CODE OF CONDUCT COMPLAINTS: Factsheet for member interviewees.

Following on from item 2 above, this Factsheet provides information on the interview process i.e. the nature and format of the interview, what a member would need for such an interview, and confirms the arrangements for recording and agreeing the interview.

4. RECOMMENDATION

That a communication be sent to all members highlighting the Ombudsman's advice as attached at **ENCLOSURE 3**.

ATODIAD / ENCLOSURE
1

This factsheet explains the approach taken by the Ombudsman's staff when carrying out interviews with elected members who are subject to investigation under the Code of Conduct Complaints procedure.

The nature and format of the interview

Interviews will generally be conducted face-to-face, although in exceptional circumstances you may be asked to provide written answers to a series of written questions.

The Investigator will digitally record the interview to ensure that your evidence is accurately recorded. You should be prepared to answer any questions put to you. You will also be given the opportunity to make comments you feel are relevant to the investigation and which you consider the Ombudsman should take account of when reaching his determination on the complaint.

It would be helpful if you could identify any concerns that you have or identify any witnesses who you feel should be contacted during the course of the investigation so that these can be promptly resolved. Failure to comply with any request made by the Investigator to attend an interview in connection with an investigation may amount to a breach of the Code.

The Ombudsman appreciates that interviews may sometimes cause anxiety. You are therefore welcome to have someone with you when you see the investigating officer. You may attend with a legal representative or have somebody else present for support. If you wish to have somebody present at the interview to support you, please let the Investigator know who this person will be in good time. It should not be someone who is involved in the investigation; they are allowed to be present simply to offer you support and not to answer questions for you. Interviews will always be on the record.

What you will need for the interview

Make sure that you understand what the interview is about. You should have been given details of the complaint which sets out what the Ombudsman is investigating and copies of relevant evidence gathered. If you have any papers - such as letters or diaries or the formal file to which the complaint relates - which you think might be relevant to the interview, take them with you. If you have any notes you made at the time of the events under investigation, these may help the Investigator.

In addition to relevant documents, you should ensure that you have with you any other items which you might need during the course of the interview, such as reading glasses, hearing aids or medication (inhalers etc.). You should also ensure that, unless absolutely necessary, any mobile phones or tablet devices are turned off for the duration of the interview and that your colleagues are aware that you should not be disturbed.

Please notify the Investigator before the interview of any special requirements you may have, including any arising from any of the protected characteristics defined by the Equality

Act 2010 (as amended) e.g. any disability or religious considerations. You will be given the opportunity also to conduct your interview in Welsh if you would like to do so.

Although the Investigator will have a timetable and will try to keep to it, sometimes interviews overrun so you should ensure that this is taken into account when planning anything immediately after the scheduled conclusion of the interview.

Issues to bear in mind

The Investigator may also take handwritten notes of the interview and may ask you to sign and date these at the end of the interview. At the end of the interview the digital recorder will produce two compact discs, one disc will be sealed for evidential purposes and the other will be used by the Investigator as a working version of the recording. You will be asked to sign the sealed version as verification of the interview and given a notice explaining how you can request a copy of the disc.

As soon as reasonably possible after the interview, the Investigator will send you a typed transcript of the interview. This transcript will be used to form the basis of your evidence.

You should bear in mind that all comments made during the interview may be attached to any report on the investigation which the Ombudsman may refer to the Council's Standards Committee, or to the President of the Adjudication Panel for Wales.

Further information

The information provided to you in advance or during your interview should be held in strictest confidence.

Disclosure of details relating to an investigation should not be disclosed to anyone other than a legal or other adviser. If the information is disclosed to other persons disclosure may amount to a breach of paragraphs 5(a) and 7(a) of the Code. In addition you should not discuss the evidence you intend to provide at interview or contained within any witness statement with persons who may be involved in the investigation, whether directly or indirectly, as such contact may be construed as similar breaches of the Code.

**If you would like more information about this process,
please contact us:**

- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
- **write to:** The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

ATODIAD / ENCLOSURE

2

Factsheet for Local Authority Members: What we do when we get a complaint about your conduct

This factsheet explains what happens when the Ombudsman receives a complaint about the conduct or behaviour of members and co-opted members of local authorities, community councils, fire & rescue authorities and national park authorities in Wales. It does not cover every detail of our procedures, which are available at www.ombudsman-wales.org.uk.

New Complaints

All new complaints are considered by the Ombudsman's Complaints Advice Team, who will acknowledge receipt of the complaint and notify you, the Monitoring Officer of your authority and/or the Clerk of your Community Council (if appropriate) of its existence. A copy of the complaint will also be provided.

You need not respond to this letter if you do not wish to. However if you consider that specific information should be considered by the Ombudsman as part of his initial consideration of this matter please let us know. If you decide to respond or provide any information you should bear in mind that your comments may also be disclosed to the complainant, or used in any subsequent proceedings.

Each complaint, and any supporting information, will then be examined against a two stage test. At the first stage, we will consider whether there is direct evidence that a breach of the Code of Conduct has occurred. At the second stage we consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether you have deliberately sought a personal gain at the public expense for yourself or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the circumstances. We will aim to tell you within four weeks whether or not the Ombudsman intends to investigate the complaint.

If we cannot accept the complaint

If a complaint does not meet the requirements of the two stage test, you will be provided with a copy of the explanation in writing.

If we decide to investigate the complaint

If we decide to investigate the complaint it will be conducted by one of the Ombudsman's investigators. We will always write to you and the parties to the complaint confirming our decision to investigate, again you do not need to respond if you do not wish to. However it would be helpful if you could identify any concerns that you may have during the course of the investigation so that these may be promptly resolved.

Investigations are generally conducted in private. Disclosure of details relating to an investigation may amount to a breach of the Code of Conduct. You are therefore advised not to discuss the complaint with anyone (including potential witnesses) other than your legal or other adviser to avoid any prejudice to the investigation. If there are witnesses who you think should be contacted you should advise the Investigator as soon as possible.

Where a request (which identifies you by name) is received from the media or a third party for information relating to an investigation, confirmation of the existence of an investigation only will be given.

The Investigator will usually obtain further relevant documentary and witness evidence. Each investigation varies and while it may be necessary to interview those involved, some cases may be concluded through examination of documents alone. We aim to complete all investigations within 12 months but most are concluded sooner. If, for any reason, we consider it necessary to discontinue our investigation, we will write to you explaining this decision.

When all reasonable enquiries are completed the Investigator will review the evidence gathered and decide whether it is supportive of a breach of the Code. If so, copies of the relevant evidence gathered will be sent to you together with an invitation to attend an interview. Interviews will be recorded and will usually be conducted face-to-face, although in exceptional circumstances you may be asked to answer a series of written questions. Detailed information about the interview process can be found in our factsheet 'Factsheet for Member Interviewees'.

At the interview you should be prepared to answer any questions put to you. You will also be given the opportunity to make comments you feel are relevant to the investigation. You may attend with a legal representative or have somebody else present for support should you choose to do so, so long as they are independent of the matters investigated. Failure to comply with any request made by the Investigator in connection with an investigation may amount to a breach of the Code for elected members.

When we have all the information required, we will write a report or letter setting out the evidence we have considered and the conclusions we have reached.

Investigation outcomes



If we conclude there is no evidence to suggest that a breach the Code of Conduct has occurred, we will close the investigation and provide written reasons for this decision to all parties to the complaint.

If, having reviewed the evidence, it is suggestive that a breach of the Code has occurred; the Ombudsman may determine in some circumstances that no further action is appropriate. Again written reasons for this decision will be sent to all parties.

Where the Ombudsman finds that a complaint is justified and it is also considered to be in the public interest to do so, he may refer it either to the Standards Committee of the relevant authority, or to a tribunal convened by the Adjudication Panel for Wales to make a determination on the issues. You will however be given the opportunity to comment on draft version of the report within a set timescale. Any comments made will be given due consideration before the report is finalised and may be incorporated into the final report.

A copy of the Ombudsman's final report will be sent to you. The complainant will be notified of the Ombudsman's conclusions, and a summary of the report will be provided by way of information. The final report will not be disclosed by the Ombudsman until such time as a determination is made on the issues by the Standards Committee or tribunal.

If the complainant is dissatisfied with our decision



Once we have issued a decision, not to investigate a complaint or to close an investigation or that no further action is appropriate, our task is effectively ended and the file is closed. We will not re-open a case solely because the complainant disagrees with our decision. However you should be aware that a complainant can ask (within twenty working days) for us to review the complaint. If a review request is received we will notify you and provide a copy of any request received.

If you would like more information about this process, please contact us:

- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
- **write to:** The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

ATODIAD / ENCLOSURE

3

Annwyl Aelod

Yng: Taflenni Gwybodaeth gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru

Gweler ynghlwm os gwelwch yn dda ddwy Daflen Wybodaeth sydd wedi cael eu cynhyrchu gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru mewn perthynas â chwynion a wneir yn erbyn aelodau etholedig mewn perthynas â'r Côt Ymddygiad.

Mae'r Taflenni Gwybodaeth yn hunan-egluhaol ac yn rhoi canllawiau ar y prosesau i'w dilyn pan dderbynnir cwyn – **“Beth fyddwn ni'n ei wneud pan gawn no gwyn am eich ymddygiad”** ynghyd â chanllawiau ar gyfer y broses gyfweld ffurfiol - **“Talen ffeithiai i aelodau sy'n cael eu cyfweld”**.

Yn y ddwy Daflen Wybodaeth, cyngorir yr aelodau'n gryf i beidio â thrafod neu rannu gwybodaeth gydag unrhyw un ac eithrio'r rheiny sy'n darparu cyngor cyfreithiol neu gyngor arall iddynt er mwyn osgoi rhagfarnu unrhyw ymchwiliad sy'n mynd rhagddo.

Mae'r ddwy Daflen Wybodaeth ar gael ar wefan yr Ombwdsmon.

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_cy/Welsh%20%20Factsheet%20for%20Local%20Authority%20Members%20%20What%20we%20do%20when%20we%20get%20a%20complaint%20about%20your%20conduct%20W%20%20Version%2010%20July%202015.ashx

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_cy/Welsh%20%20%20Code%20of%20Conduct%20complaints%20%20Factsheet%20for%20member%20interviewees%20%20Version%2010%20July%202015.ashx

Dear Member,

Re: Factsheets from the Public Services Ombudsman for Wales (O)

Please see attached two Factsheets which have been produced by the Ombudsman in relation to code of conduct complaints against elected members.

The Factsheets are self-explanatory and provide guidance as to the processes followed when a complaint is received – **“What we do when we get a complaint about your conduct”** and also guidance about the formal interview process – **“ Factsheet for member interviewees”**.

Both Factsheets note that members are strongly advised against discussing or sharing information with anyone other than those providing legal or other advice to them in order to avoid prejudicing any ongoing investigations.

Both Factsheets are also available from the O's website -

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_en/Factsheet%20for%20Local%20Authority%20Members%20%20What%20we%20do%20when%20we%20get%20a%20complaint%20about%20your%20conduct%20%20Version%2010%20July%202015.ashx

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_en/Code%20of%20Conduct%20complaints%20%20Factsheet%20for%20member%20interviewees%20%20Version%2010%20July%202015.ashx

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	STANDARDS COMMITTEE
DATE:	16 September 2015
TITLE OF REPORT:	Draft Local Guidance on the Officers' Code of Conduct
PURPOSE OF THE REPORT:	Consultation
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 2586

1. BACKGROUND

The statutory code of conduct for Council officers is attached at **ENCLOSURE 1** and the code is in Part 5 of the constitution and to be found at <http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-5-codes-and-protocols/> .

The code automatically applies to officers when they take up their employment with the Council and it forms part of the induction process for new employees.

2. **CONTEXT**

The code of conduct for officers is more generic, and less specific, than the code of conduct for members and it does not separate personal and prejudicial interests although the same concept is present i.e. where a personal interest might reasonably be perceived to have a significant impact on an officer's objectivity then they are expected not to participate and for alternative arrangements to be put in place.

Given the generic nature of the officers' code, legal officers are frequently asked to advise managers on how the code applies in particular circumstances. So, to try and supplement the code and provide further direction/steer, it is suggested that the Council publish a guidance document specifically in relation to the officers' code. The first draft of this document is attached at **ENCLOSURE 2**.

3. **RECOMMENDATION**

As part of the consultation process, the standards committee is asked to consider the draft Guidance and to make any recommendations for changes or improvements.

ATODIAD / ENCLOSURE

1

Officers' Code of Conduct

5.2 Code of Conduct for Qualifying Employees of Relevant Authorities in Wales

The Code

General Principles

5.2.1 The public is entitled to expect the highest standards of conduct from all qualifying employees of relevant authorities. The role of such employees is to serve their employing authority in providing advice, implementing its policies, and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

5.2.2 Qualifying employees of relevant authorities work for their employing authority and serve the whole of that authority. They are accountable to, and owe a duty to that authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political Neutrality

5.2.3 Qualifying employees of relevant authorities, whether or not politically restricted, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where qualifying employees are politically restricted (by reason of the post they hold, the nature of the work they do, or the salary they are paid), they must comply with any statutory restrictions on their political activities.

Relations with members, the public and other employees

5.2.4 Mutual respect between qualifying employees and members is essential to good local government, and working relationships should be kept on a professional basis.

5.2.5 Qualifying employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently, and without bias.

Equality

5.2.6 Qualifying employees of relevant authorities must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

5.2.7 Qualifying employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner, and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal Interests

5.2.8 Whilst qualifying employees' private lives are their own concern, they must not allow their private interests to conflict with their public duty. They must not misuse their official position or information acquired in the course of their employment to further their private interests, or the interests of others. In particular, they must comply with:

5.2.8.1 any rules of their relevant authority on the registration and declaration by employees of financial and non - financial interests,

5.2.8.2 any rules of their relevant authority on the declaration by employees of hospitality or gifts offered to or received by them, from any person or organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from a relationship with the authority. Qualifying employees must not accept benefits from a third party unless authorised to do so by their relevant authority.

Whistleblowing

5.2.9 In the event that a qualifying employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee should report the matter, acting in accordance with the employee's rights under the Public Interest Disclosure Act 1998, and with the relevant authority's confidential reporting procedure, or any other procedure designed for this purpose.

Treatment of Information

5.2.10 Openness in the dissemination of information and decision making should be the norm in relevant authorities. However, certain information may be confidential or sensitive and therefore not appropriate for a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of Staff

5.2.11 Qualifying employees of relevant authorities involved in the recruitment and appointment of staff must ensure that appointments are made on the basis of merit. In order to avoid any possible accusation of bias, such employees must not be involved in any appointment, or any other decisions relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related, or with whom they have a close personal relationship outside work.

Investigations by Monitoring Officers

5.2.12 Where a monitoring officer is undertaking an investigation in accordance with regulations made under section 73(1) of the Local Government Act 2000 a qualifying employee must comply with any requirement made by that monitoring officer in connection with such an investigation.

5.3.1 Relationship Protocol for Members and Officers

INDEX

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- 5.3.1.2 Principles**
- 5.3.1.3 The Role of Members**
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- 5.3.1.16 Breach of this Protocol**

5.3.1.1 Introduction

5.3.1.1.1 The Council subscribes to the view that no local authority can function effectively without a good professional relationship between its Members and Officers.

5.3.1.1.2 The purpose of this Protocol is to guide Members and Officers of the Council in their relationships with one another; aiming to promote the high standards in public office which are required for successful local government.

5.3.1.1.3 This Protocol seeks to promote greater clarity and certainty and to offer general advice and guidance.

ATODIAD / ENCLOSURE
2

Draft Local Guidance on the Officers' Code of Conduct

Section 5.2 of our Constitution includes the Officers' Code of Conduct <http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-5-codes-and-protocols/constitution-52-officers-code-of-conduct/>.

This Guidance seeks to provide advice on key elements of the Code, focusing on behaviour, declarations of interest and gifts and hospitality.

1. GENERAL PRINCIPLES

The County Council subscribes to the statutory principles of conduct in public life, and commends them as the underlying principles that should guide the conduct of all Members and Officers.

The statutory principles require that we all carry out our duties with due regard to:-

1. Selflessness
2. Honesty
3. Integrity and propriety
4. Legality
5. Stewardship
6. Objectivity
7. Equality and Respect
8. Openness
9. Accountability
10. Leadership

2. THE EXPECTED STANDARDS

- We have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in us, and in such a way as to preserve public confidence in the Council.
- We have a general duty to act in the interests of the Council as a whole and the local community.
- As well as avoiding actual impropriety, we should avoid the appearance of improper behaviour.

Where we have private interests which conflict with our public duty, we must resolve this conflict in favour of the public interest.

- We should make declarations of financial or non-financial interests whenever our personal interests may conflict with the public interest. Such declarations should be made to our manager / supervisor on the “Notification of Personal Interest” form attached at **ENCLOSURE 1**.

We must not make, or become involved with any official or professional decisions about matters in which we have a personal interest, and should declare all personal interests we have in relation to items discussed in meetings on the “Form to Declare and Register a Personal Interest – Employee” form attached at **ENCLOSURE 2**.

- We should respect the role of our elected Members and treat them with courtesy. The Council has adopted a Protocol to govern the relationship between Members and Officers and we should abide by its provision; which are to be found at: (<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-5-codes-and-protocols/constituion-531-relationship-protocol-for-members-and-officers/>)
- When making appointments, awarding contracts or transacting other business, we should ensure that our decisions are made solely on merit and ensure that we maintain a proportionate, documented audit trail.

We should ensure that confidential material, including material about individuals, is handled in accordance with the expected standards set out by the Council’s Data Protection Policy

(<http://monitor.anglesey.gov.uk/corporate-resource/information-governance-data-protection/data-protection/data-protection-policy-information-on-security-policies-and-related-documents/>)

3. DECLARING AN INTEREST – ALL OFFICERS

PLEASE NOTE: You only need to disclose personal interests which conflict, or may conflict, with your duties to the Council. If you are at all unsure, you should disclose your interest using the relevant form and discuss this with your manager.

Additionally, in the conduct of our responsibilities as Council Officers we should all immediately declare any relevant financial or personal interests to our line managers whenever a failure to do so would undermine public confidence in our activities (eg in meetings / other communications when the interest is relevant). Line managers should make alternative arrangements in these circumstances i.e. we should not participate in or influence matters in which we (or our families/friends)) might benefit or lose out. This applies to all Officers at every level. It may also be necessary to complete one of the forms at **ENCLOSURES 1 AND 2** and line managers can advise which may be appropriate.

Interests or involvement which could conflict with the interests of the Council could be either financial and / or non-financial, for example:

- Partnership in a business
- Work done for any person or organisation other than as an employee of the Council
- Serving as a member of a group, committee or board which may work in conflict with the Council
- Applications submitted by relatives or friends for consideration by the Council, eg. tendering for work
- School governor, or council clerk within the Council's jurisdiction.

If you have a personal interest in any matter which arises at any meeting where you are reporting or advising (or might be called upon to advise, or otherwise be able to influence) any Councillor(s) of the Council, or any third party, you must declare the interest, and take no part in the consideration or determination of the matter. Any such declaration made at an official meeting will be recorded in the minutes. If appropriate, arrangements should be made for another employee to attend and report and / or advise on the matter. An example would be involvement in a meeting regarding a school, which your son/daughter/grandchild attends.

If you have a personal interest which could conflict with the interest of the Council, then you may only remain in the meeting and participate in the proceedings, if the person presiding at the meeting (having taken advice from the Monitoring Officer) is satisfied that to do so would be in the interests of the Council or local people.

4. GIFTS & HOSPITALITY

- We must consider the position carefully before accepting any personal gift or offers of hospitality. The principle is that we must avoid placing ourselves in a position where acceptance of such gift or hospitality might be perceived to influence our decisions or judgment in respect of awarding contracts, making appointments, deciding on planning applications etc.
- The Council has a Register for recording the receipt of gifts or hospitality and we are required to register gifts, and invitations which are accepted, in that Register; which is kept by the Head of Democratic Services. Any offers of gifts and hospitality which could be deemed to influence you/your decision making powers or judgment if it had been received by you should also be registered.
- We should refuse all personal gifts and offers of hospitality if we think that may damage public confidence in us or in the Council.
- We may receive tokens of goodwill when attending conferences or when on civic visits. We may from time to time receive diaries, pens, calendars and so on. These do not require registration. Anything received over the value, or reasonably estimated value, of £10 should be registered. We also advise that as a matter of good practice, all gifts / hospitality received worth less than £10 should be recorded with your line manager.

- Hospitality may be defined as anything beyond the offer of non-alcoholic drinks and light refreshment. We should only accept hospitality if there is a genuine need for the Council to be represented at a function or event. The more “lavish” the hospitality the more important that we exercise caution.
- When receiving hospitality, Members and Officers should be particularly sensitive as to its timing in relation to decisions which the Council may be taking and which may have a beneficial or adverse impact on those providing hospitality.
- Where visits to inspect equipment, or related to the award of any contract are required, Members and Officers should ensure that the Council meets the cost of any such visits so as to avoid prejudicing the integrity of subsequent purchasing decisions.
- Members and Officers should not avail themselves of the services of contractors employed by the Council for acquiring materials, labour or plant at cost, trade or discounted prices.
- Hospitality received through attendance at relevant conferences and courses is acceptable where it is clear that hospitality is corporate rather than personal, and where such hospitality does not compromise purchasing decisions.
- Acceptance of hospitality should be authorised in advance by line managers and recorded in the Register kept by the Head of Democratic Services.

5. CHECKLIST (GIFTS AND HOSPITALITY)

The following checklist of queries should help you to decide whether a gift or an offer of hospitality should be accepted or tactfully declined:-

- Is the donor, or event, significant in the community or area? If so, is the refusal likely to cause offence?
- Are you expected to attend because of your position in the community or area?
- Will the event be attended by others of a similar standing in the community or in other communities?
- What do you think is the motivation behind the invitation?
- Would acceptance of the invitation be, in the way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?
- Could you justify the decision to the Council, press and public?
- Is the extent of the hospitality, or the nature of the gift, reasonable and appropriate?
- Are you likely to be expected to respond to the hospitality, and if so, how?
- Are you comfortable about your decision?

6. **CORRUPTION**

- 6.1 You must be aware that it is a serious criminal offence under the Bribery Act 2010 to receive or give any gift, loan or reward or advantage in your official capacity “for doing, or not doing, something”, or “showing favour, or disfavour” to any person. If an allegation is made against you, it will be for you to demonstrate that any such reward had not been corruptly obtained.
- 6.2 For your own protection, if anyone approaches you in a way which seems to you, or might seem to a third party, to be aimed at obtaining some form of preferential treatment, or in any suspicious circumstances in connection with a contract, you must report the matter to your line manager.

7. **RELATIONSHIPS WITH CONTRACTORS**

- All relationships of a business nature, relevant to the work which you undertake, must be made known to your line manager.
- Orders and contracts must be awarded on merit, by fair competition, in accordance with the Council's Contract Procedure Rules
<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-4-rules-of-procedure/constitution-49-contract-procedure-rules/>
<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-4-rules-of-procedure/constitution-48-financial-procedure-rules/> .
- No special favour should be shown to businesses run by, for example, friends, partners or relatives. No part of the local community should be discriminated against.
- Officers involved in the tendering process and/or in dealing with contractors should be clear on the separation of client and contractor roles within the Council. Officers who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- Officers in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, contractors and sub-contractors.
- Officers who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

- Officers contemplating a management buy-out should, as soon as they have formed a definite intent, inform the relevant line manager and withdraw from the contract awarding process.
- Officers should ensure that no special favour is shown to current or recent former Officers or their partners, close relatives or associates, in awarding contracts to businesses run by them or employing them in a senior or managerial capacity.
- Section 117 of the Local Government Act 1972 requires you to make a formal declaration about contracts or personal contracts with the Council in which you have a pecuniary interest. Such declarations should be registered on the Notification of Personal Interest Form (**ENCLOSURE 1**).

8. BREACH OF THE CODE

Breaches of the Officers' Code may be dealt with under the Council's Disciplinary Procedure <http://monitor.anglesey.gov.uk/at-work/conduct-at-work/disciplinary-procedure/>.

ATODIAD / ENCLOSURE

1



**CYNGOR SIR
YNYS MÔN
ISLE OF ANGLESEY
COUNTY COUNCIL**

Hysbysiad o Fuddiant Personol / Notification of Personal Interest/ANNEX 1

Noder os gwelwch yn dda: Nid oes ond angen i chi ddatgelu diddordeb personol os yw'n gwrthdaro gyda'ch dyletswyddau yn y Cyngor neu os gall wrthdaro â nhw. Os nad ydych yn sicr, dylech ddatgelu eich diddordeb trwy ddefnyddio'r ffurflen hon neu drafod y mater gyda'ch rheolydd llinell.

Please note- you need only disclose a personal interest which conflicts, or may conflict, with your duties in the Council. If you are at all unsure, you should disclose your interest using this form and discuss with your line manager.

Enw y Gweithiwr/ Employee Name	
Swydd/ Job Title	
Gwasanaeth/ Service	
Manylion y fuddiant personol/ Details of the personal interest	
PERTHYNAS / RELATIONSHIP	
(i) Perthynas gyda unrhyw Aelodau, Contractwyr, y Cyhoedd a Gweithwyr eraill:/ Relationship with Member/s, Contractor/s, the Public and other employees (where applicable):	Cynghorydd/ Councillor <input type="radio"/> Contractwr/ Contractor <input type="radio"/> Gweithiwr/ Employee <input type="radio"/> Arall/ Other <input type="radio"/>

<p>(ii) Enw / Name</p> <p>(iii) Swyddogaeth / Position</p> <p>(iv) Natur fy mherthynas gyda'r unigolyn/ Nature of my relationship to the named person</p> <p>(v) Effaith a gall ei gael ar fy swyddogaeth/ Potential impact on my post</p>	
<p>AELODAETH / MEMBERSHIP</p> <p>(i) Aelodaeth o gyfluniant, busnes, partneriaeth, corff proffesiynol neu gymdeithas gyfrinachol megis; corff llywodraethol ysgol, rôl mewn cyfluniant gwirfoddol, cysylltiad â busnes teuluol. /</p> <p>Membership of an organisation, business, partnership, professional body or society e.g. school governing body, voluntary organisation role, involvement in a family business. (ii)</p> <p>(ii) Disgrifiad o fy muddiant / Description of my interest</p> <p>(iii) Enw a lleoliad y cyfluniant o dan sylw (os yn gymwysiadol) / Name and location of organisation concerned (if applicable):</p>	

<p>(iv) Dyddiad cychwyn / Starting date:</p> <p>(v) Budd ariannol / ymhlygiad / Financial benefit /other implication</p> <p>(vi) Manylion y camau a ellir eu cymryd i warchod buddiant y Cyngor / Details of steps that could be taken to protect the Council's interests</p>	
<p>Buddiant mewn tir o fewn y Sir</p> <p>Cyfeiriad neu ddisgrifiad o dir neu eiddo yr ydych gyda buddiant ynddo, natur y buddiant a defnydd y tir. Nodwch:</p> <p>(i) Dylid datgan buddiant fel lesddaliwr am brydles o 12 mis neu fwy;</p> <p>(ii) Dylid datgan buddiant fel deiliad opsiwn neu ddarpar brynwr;</p> <p>(iii) Dylid datgan os ydych chi eich hun yn ceisio cadarnhau caniatâd cynllunio neu unrhyw ganiatâd neu benderfyniad gan y Cyngor;</p> <p>(iv) Ni does angen datgan buddion tir nag eiddo tu allan y Sir.</p> <p>(v) Nid oes angen i chi ddatgan budd mewn tir neu eiddo oni bai bod hynny'n debygol o wrthdaro gyda'ch rôl fel gweithiwr, e.e. eich bod yn bwriadu cyflwyno cais cynllunio / ymgeisio am gymorth grant ac ati.</p>	

<p>Interest in land within the County</p> <p>Address or description of land or property in which you have an interest, the nature of the interest and the use to which the land is put. Please note:</p> <ul style="list-style-type: none"> (i) Interests as a leaseholder for a lease of 12 months or more should be declared; (ii) Interest as an option holder or prospective purchaser should be declared; (iii) Interests by which you are directly concerned in seeking planning permission or some other consent or decision of the Council should be declared; (iv) You need not declare interest in land or property outside the County. (v) You need not declare an interest in land or property unless there is a likely conflict with your role as an employee eg you intend to lodge a planning application / apply for grant funding etc 	
<p>Gwybodaeth ychwanegol / Unrhyw ddatgeliad arall</p> <p>Rhowch unrhyw wybodaeth arall y dylech ei ddatgelu am eich buddiannau busnes, cyllid neu bersonol.</p>	

<p>Further information / Any other declaration</p> <p>Please give any further information you may wish to record about your business, financial or personal interests.</p>			
<p>Hysbysu newidiadau Rwyf yn ymgymryd i hysbysu'r Cyngor o unrhyw newidiadau a all ddigwydd o fewn 28 diwrnod o'r newid, gan gyflwyno ffurflen newydd i fy rheolwr llinell.</p> <p>Notification of Changes I undertake to notify the Council in writing of any changes which may occur within 28 days from the date of the change, by submitting a new form to my line manager.</p>			
Llofnod/ Signature		Dyddiad/ Date	

ATODIAD / ENCLOSURE
2

ISLE OF ANGLESEY COUNTY COUNCIL
FORM TO DECLARE AND REGISTER A PERSONAL INTEREST-EMPLOYEE

Name of Employee:

If relevant:-

Meeting:

Date:-

Time declaration is made:

Item (number and name):

I left the meeting when the item was discussed (*tick the box*)

I HEREBY DECLARE that I have a personal interest under the Code of Conduct for Qualifying Employees of Relevant Authorities in Wales under the Local Government Act 2000.

Details of the Personal Interest:

.....

.....

.....

.....

.....

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.....

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.....

.....

Signed

Date

**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 – 16.09.2015 – 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 (i) 201304118	29.10.13	11.09.14 – Aeth y mater i wrandawriad llawn o'r pwyllgor safonau ar 19.12.2015. Cyflwynodd y Cynghorydd apêl i Banel Dyfranu Cymru yn erbyn y penderfyniad ac rydym yn disgwyl canlyniad yr apêl / 11.09.14 – The matter went to a full hearing of the standards committee on the 19.12.2015. The Councillor raised an appeal against the decision with the Adjudication Panel for Wales and we await outcome of the appeal
2. Cynghorydd Sir / County Councillor	Aelod o'r cyhoedd / Member of public	(i) 17724 (ii) 5941 /201400183 & 201400184	08.04.2014	16.02.15 – Mae'r Ombwdsmon wedi penderfynu peidio ymchwilio / The Ombudsman has decided not to investigate
3. Cynghorydd Sir / County Councillor	Aelod o'r cyhoedd / Member of public	(i) 17726 (ii) 5941/ 201400813	08.04.2014	116.02.15 – Mae'r Ombwdsmon wedi penderfynu peidio ymchwilio / The Ombudsman has decided not to investigate
4. Cynghorydd Sir / County Councillor	Deputy Chief Executive/ Dirprwy Prif Weithredwr	(i) 18079 (ii) 201405333	11.11.2014	17.02.2015 – Mae'r Ombwdsmon wedi penderfynu ymchwilio ond ar 27.07.2015

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
				daeth cadarnhad fod yr ymchwiliad ddim yn mynd ymlaen bellach / 17.02.2015 - The Ombudsman has decided to investigate but on 27.07.2015 confirmation received that the investigation has been discontinued
5. Cynghorydd Sir / County Councillor	Aelod o'r cyhoedd / Member of public	(i) 18780 (ii) 201502637	10.08.15	19.08.2015 – Mae'r Ombudsmon wedi penderfynu peidio ymchwilio / The Ombudsman has decided not to investigate

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

Pwyllgor Safonau- 16 Medi 2015/ Standards Committee 16 September 2015

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
Cyngor Tref Caergybi / Holyhead Town Council	Aelod o'r cyhoedd / Member of the public	(i) CC-018538-LB (ii) 4036/201500266	20.04.2015	8/5/2015 Ddim yn ymchwilio i'r gŵyn / Not investigating complaint
Cyngor Tref Caergybi / Holyhead Town Council	Aelod o'r cyhoedd / Member of the public	(i) CC-018538-LB (ii) 4036/201500476	20.04.2015	8/5/2015 Ddim yn ymchwilio i'r gŵyn / Not investigating complaint
Cyngor Tref Llangefni / Llangefni Town Council	Aelod o'r cyhoedd / Member of the public	(i) CC-018520 (ii) 8812/201500874	15/5/2015	12/6/2015 Ddim yn ymchwilio i'r gŵyn / Not investigating complaint

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CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	STANDARDS COMMITTEE
DATE:	16 September 2015
TITLE OF REPORT:	Annual Review of Registers
PURPOSE OF THE REPORT:	At the request of the committee to discuss the revised process
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 2586

1. INTRODUCTION AND BACKGROUND

The annual review of registers appears every year in the standards committee's work programme.

The process of review usually begins at the end of January, with the next to be January 2016, with a report of findings presented to the Standards Committee in its March meeting.

As there are 30 councillors, the usual arrangement is for the independent members of the standards committee to review the registers of any six councillors, selected at random.

The registers are:-

- "Standing" register i.e. pre-registration of interests. The standard document is attached at <http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/councillors/councillors-and-voting-co-opted-members-declarations-of-interest/> .
- Declaration at Meetings. The standard document is attached at **ENCLOSURE 1**
- Gifts and Hospitality. The standard document is attached at **ENCLOSURE 2**

All three registers are available, in summary, online.

Before the most recent review, in January 2015, the process was undertaken as a "desk top" exercise only with members of the standards committee having regard to a general advice note **ENCLOSURE 3** and elected members receiving prior notice of the review. The last such letter was sent to members on the 3rd January 2014.

ENCLOSURE 4

2. CONTEXT

In or around January 2015 the independent members of the standards committee undertook the review, with the summary of findings at paragraph 6 of the minutes of the standards committee meeting held on the 11th March 2015 (item 2 on this agenda).

The standards committee instructed officers to issue generic advice to members which is at **ENCLOSURE 5**. Members are specifically referred to the penultimate paragraph of that advice which includes, for the first time, a degree of direct interaction between elected members and the independent members of the standards committee in introducing a process of discussion with members in relation to any issues arising from the review.

As stated, the next review is due early in 2016, but the committee has asked for an opportunity to discuss the revised methodology, their recollections and experiences of undertaking the review and whether or not the process could be improved before the next review is undertaken. It is considered to be an opportunity to pool learning and experience with a view to improving the process.

3. ICT

One recommendation from the minute of the 11th March 2015 relates to the outcome of investigations in relation to ICT issues. This was discussed at the standards committee on the 11th March 2015, at the group leaders' meeting on the 23rd of April 2015 and at the meeting of the strategic leadership team (i.e. chief officer team) on the 27th April 2015 and thereafter the outcomes with the Chief Executive and the Online Services Manager on the 28th May 2015.

The relevant extract from the minute of the meeting on the 28th May 2015 is attached, at **ENCLOSURE 6**, and confirms the current position.

4. RECOMMENDATION

To discuss the process undertaken for review of the registers and to determine whether or not any improvements can be made when the process is undertaken again in 2016.

In light of Enclosure CH herewith, is the standards committee of the view that in 2016/17 it should also undertake a sample review of compliance at town and community council level? How and when would the standards committee undertake this and what information should be gathered in advance.

ATODIAD / ENCLOSURE

1

MEMBERS' DECLARATION OF INTEREST AT MEETINGS

Name of Member:
Name of Meeting:
Date of Meeting:
Agenda Item (number and title):

Members are required to complete boxes 1, 2, 3 and 4 below.

1. The nature of the personal interest is:

2. The Council business to which the personal interest relates is :

3. Members are required to tick one box

D The personal interest is not prejudicial* and I took part in the item OR

D The personal interest is prejudicial* and I left the meeting when the item was discussed OR

D The personal interest is prejudicial* but I have a dispensation

*A prejudicial interest is a personal interest which is so significant that a well-informed member of the public would reasonably believe that the Member would be unable to act on the matter in the public interest.

4. Members are required to tick one box and to provide reasons

D I believe my personal interest is not prejudicial*
Because:

OR

D I believe my personal interest is prejudicial*
Because:

Signed Date of signature
THIS COMPLETED FORM SHOULD BE HANDED TO A MEMBER OF THE COMMITTEE SERVICES STAFF DURING THE COURSE OF, OR IMMEDIATELY AFTER, THE MEETING

ATODIAD / ENCLOSURE
2

ISLE OF ANGLESEY COUNTY COUNCIL

**DECLARATION BY MEMBERS AND CO-OPTED MEMBERS OF
ACCEPTANCE OF GIFT AND/OR HOSPITALITY**

Please read the Guidelines set out in the Protocol on Gifts and Hospitality at 5.9 of the Council's Constitution and then complete the details below.

Name of Member/Co-opted Member	
Name of Donor/Provider	
Description of the gift or hospitality	
Value/estimated value of the gift/hospitality	
When and where you received the gift/hospitality	
Were there any special circumstances justifying acceptance of this gift or hospitality?	
Do you have any contact whether in your role as a Councillor, or otherwise, with the person or organisation providing the gift or hospitality? Please provide details	
Details of any contract the Donor/Provider is interested in securing	
Further comments (if any)	
Signed	
Date	

ATODIAD / ENCLOSURE

3

REVIEW OF THE REGISTERS - GENERAL ADVICE NOTE (OCTOBER 2013)

The review documents will include the following:-

1. **The Standing Register** – This appears online and the link is “Councillors and voting Co-opted Members – declaration of interests”

<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/councillors/councillors-and-voting-co-opted-members-declarations-of-interest/>

This is completed within 28 days of election and then updated as and when changes occur. An annual letter is sent to all Members to remind them of the requirements in the Code of Conduct which expects Members to update this Register within 28 days of any material change to the relevant interests. The entries in this Register are available for public inspection online but are not interactive i.e. Members may only update in hard copy. Do you think it would be useful if they were interactive?

The form used is the standard statutory form required under the Code of Conduct and therefore modifications are not possible.

These forms are checked when received at the Council, for clear signature, date, voids in the forms (which are not permitted) and clarity of content. The versions online are typed. You should also check them for the above details.

Any forms that have not been updated since the last election (May 2008) should be highlighted.

You should have regard to the previous advices issued by the Standards Committee. These are contained in Enclosure 1 with the Report.

One concern has been the anomalies between membership of outside bodies, as recorded by the Council, when compared with declarations of membership of outside bodies as made by some Members. The Council's current list of outside bodies and including a list of School Governors is at Enclosure 3.

There have been previous cases where forms appeared to have been completed prior to Members being appointed to outside bodies but the forms were not updated after such appointments were made. Members have been reminded that whenever they are appointed to an outside body or cease to be a member of an outside body, they are required to update their entry in the standing register within 28 days of the change.

2. **The Register of Declarations of Interests at Meetings**

Aside from the earlier advices offered by the Standards Committee, as referred to in paragraph 1 above (Enclosure 1), you may wish to express a view as to whether or not the data provided in these forms has improved as a result of the said forms having been revised by the Standards Committee.

Does your review indicate whether or not some Members are having difficulty with the new forms? If so, is there any further advice that you might wish to issue?

It has also become apparent in the past that some Members are not always providing a clear enough description of their land holdings. Members have been reminded of the need to provide an accurate and full description of parcels of land and property holdings, and the same principle can be extended to buildings.

Is there any indication that Members are still declaring interests that are not relevant? In undertaking the analysis of previous declarations of interests at meetings previously it was discovered that the forms generally seemed to be a bit rushed and sometimes quite illegible and they felt members should be making more of an effort to complete them in a way that will make sense to the reader (i.e. a member of the public without specific knowledge or expertise of the code). Generally, as a matter of principle these forms should “stand alone” for the public to understand what the interest is and how it relates to and is linked with the agenda item under consideration, and whether it is a personal interest or personal and prejudicial, thereby resulting in the Member needing to leave the meeting.

It was also found that certain Members were being unnecessarily cautious in their declarations at meetings, specifically in relation to family members employed by the Council, where there appeared to be no item on the agenda to which the interest related. This created the impression that some Members may not be properly addressing their minds to their obligation to declare interests and may have, mistakenly, formed the view that such general/blanket declarations provide some kind of immunity.

Are they providing enough information about what the interest is and how it relates to Agenda items? If you wish to look at this issue in more depth, then Agenda, Reports and Minutes are available on the Council’s website. We will be happy to provide hard copies if required.

Is there any indication that Members are struggling with the distinction between declaring a personal interest (which permits them to remain in a meeting) and declaring personal and prejudicial interests (which requires them to leave meetings)?

Some of the forms reviewed previously showed a lack of understanding by the members of the difference between both interests. The form used for declaration of interests at meetings was changed to try and make the process easier for members.

Are there any changes that you wish to suggest to the form in order to assist Members or to improve clarity or transparency for the public?

Would it be useful for these forms to appear online? Obviously they do not need to be interactive as they are completed during the course of meetings. (The Committee’s attention is drawn to the Report of the Corporate Web and Information Manager which is item 4 of the Agenda).

During the previous audit it was discovered that some Members were declaring interests at meetings but then neglecting to complete the declaration of interest at

meetings form. Members have been reminded of the requirement to complete these forms and submit them to the relevant Committee Clerk before the end of the meeting at which the interest is declared.

3. **Register of Gifts and Hospitality – This appears online and the link is “Councillors”**

<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/councillors/>

This Register is also open to public inspection but, the forms may only be completed in hard copy. You may wish to make a recommendation here about providing an interactive facility?

(The Committee’s attention is drawn to the Report of the Corporate Web and Information Manager which is item 4 of the Agenda).

Declarations must be made within 28 days of any gift or hospitality having been received above the £20 limit.

Again, the Standards Committee has improved the registration form (which was submitted with its Protocol on Gifts and Hospitality, 5.9 in the Constitution, currently at page 253).

You are asked to review the registrations to see whether there is compliance with the Protocol. Is sufficient information being provided? Are the registrations timely? Do you think the new form provides greater clarity and transparency? Can you suggest any further improvements or advice that needs to be issued to Members?

Of concern may be the fact that so few (12 altogether in 12 months) registrations have been made, particularly with regards to hospitality. You may wish to ask the Monitoring Officer to undertake further enquiries or to issue a reminder to Members about their obligations.

ATODIAD / ENCLOSURE

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LYNN BALL LL.B., (Hons.)Cyfreithiwr/Solicitor
PENNAETH SWYDDOGAETH (BUSNES Y CYNGOR) /
SWYDDOG MONITRO
HEAD OF FUNCTION (COUNCIL BUSINESS) /
MONITORING OFFICER

Cynghorwyr a Aelodau Cyfetholedig
Councillors and Co-opted Members

CYNGOR SIR YNYS MON /
ISLE OF ANGLESEY COUNTY COUNCIL
Swyddfa'r Sir / Council Offices
LLANGEFNI
Ynys Môn / Anglesey
LL77 7TW

DX: 701771 - LLANGEFNI

03/01/2014

ffôn / tel: (01248) 752563
ffacs / fax: (01248) 752132
E-Bost - E-mail: APXCE@anglesey.gov.uk

Ein Cyf - Our Ref. AP/EC/CC-015794-LB
Eich Cyf - Your Ref.

Annwyl Gynghorydd/Aelod Cyfetholedig

Dear Councillor/Co-opted Member

**ADOLYGIAD O'R COFRESTRAU
DATGAN DIDDORDEB GAN Y
PWYLLGOR SAFONAU**

**REVIEW OF REGISTERS OF
DECLARATION OF INTEREST BY THE
STANDARDS COMMITTEE**

Ysgrifennaf i'ch atgoffa y bydd y Pwyllgor Safonau yn cynnal ei adolygiad blynyddol o'r Cofrestrau sy'n cael eu cadw gan y Cyngor ynglŷn â datganiadau o ddi-ddordeb gan Gynghorwyr / Aelodau Cyfetholedig.

I write to remind you that the Standards Committee will be carrying out its annual review of the Registers in respect of declarations of interest by Councillors / Co-opted Members which are held by the Council.

Y flwyddyn hon bydd y Pwyllgor Safonau hefyd yn adolygu cofnod hyfforddi pob Cynghorydd ac Aelod Cyfetholedig. Nodwch os gwelwch yn dda na chynhelir adolygiad o'r adolygiadau datblygu personol sydd yn gyfrinachol.

This year the Standards Committee will also be reviewing each Councillor and Co-opted Member's training record. Please note that a review will not be undertaken of any personal development reviews which are confidential.

Ymhellach, ni fydd y Pwyllgor Safonau yn adrodd ar ganlyniadau unigol yr archwiliad ond bydd yn cynhyrchu canlyniadau ystadegol ar gyfer adrodd arnynt i gyfarfod o'r Pwyllgor Safonau yn y dyfodol.

Further, the Standards Committee will not report on individual results of the audit but will produce generic statistical results to be reported to a future standards committee meeting.

Cyn i'r adolygiadau gael eu cynnal, yn ystod Chwefror 2014, bydd cyfle i

Before the reviews take place, during February 2014, an opportunity is given to

Gynghorwyr ac Aelodau Cyfetholedig edrych ar eu manylion yn y Cofrestrau a'u siecio er mwyn gwneud yn siŵr eu bod yn gyflawn, yn gywir ac yn gyfredol.

1. Y Gofrestr Sefydlog

Byddwch yn gwerthfawrogi bod yn rhaid rhoi gwybod am unrhyw newidiadau i'r gofrestr sefydlog o fewn 28 diwrnod i'r newid fod wedi digwydd.

Mae'r cofnodion yn y "Gofrestr Sefydlog" ar-lein a gellir eu gweld trwy ddilyn y cyswllt canlynol :-

<http://www.ynysmon.gov.uk/cyngor-a-democratiaeth/cynghorwyr-democratiaeth-ac-etholiadau/cynghorwyr/cynghorwyr-ac-aelodau-cyfetholedig-syn-pleidleisio-datganiadau-diddordeb?redirect=false>

Gellir hefyd eu cwblhau ar lein.

2. Datgan Diddordebau mewn Cyfarfodydd

Dylid cwblhau datganiad a wneir mewn cyfarfod yn ystod y cyfarfod neu wedi i'r cyfarfod ddod i ben. Ni fedrir eu llenwi ar-lein ond gellir gweld y gofrestr ar-lein drwy'r ddolen isod:-

<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/councillors/councillors-and-voting-co-opted-members-declarations-of-interest/>

3. Datganiad o Roddion a Lletygarwch

Dylid cwblhau'r rhain o fewn 28 diwrnod o'u derbyn. Yn unol â'r ohebiaeth flaenorol a anfonwyd atoch, mae'n bosibl cwblhau'r rhain ar-lein. I adolygu'r ffurflenni hyn, cysylltwch os gwelwch yn dda â'r Rheolwr Gwasanaethau Pwyllgor sy'n cadw cofrestr ysgrifenedig.

Er mwyn eich cynorthwyo i ddiweddarau eich cofrestrau,, amgaeaf gyda hwn gopi o ddogfen o'r enw "Casgliadau o Archwiliadau Blaenorol o Gofrestrau" sydd

Councillors and Co-opted Members to look at their details in the Registers and to check them for completeness, accuracy and to confirm that they remain current.

1. The Standing register

You will appreciate that, in relation to the standing register, any changes must be notified within 28 days of the change having occurred.

The entries in the "Standing Register" are online and can be accessed by the following link :-

<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/councillors/councillors-and-voting-co-opted-members-declarations-of-interest/>

These can also be completed on-line.

2. Declaration of Interests at Meetings

Declarations at meetings should be completed during the meeting or immediately after the end of the meeting. These cannot be completed on-line but the register can also be accessed on-line by the following link:-

<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/councillors/councillors-and-voting-co-opted-members-declarations-of-interest/>

3. Declarations of Gifts and Hospitality

These should be completed within 28 days of receipt. As per previous correspondence sent, it is possible to complete these on-line. To review these forms please contact the Committee Services Manager who maintains a written register.

In order to assist you with updating your registers, I enclose herewith a copy of a document entitled "Findings of Previous Audits of Registers" which sets out typical generic

yn nodi materion cyffredinol nodweddiadol a gododd o'r archwiliad diwethaf y byddwch efallai'n dymuno eu hystyried wrth ddiweddarau'r gofrestr.

Ar gais y Pwyllgor Safonau, gofynnwyd i mi eich sicrhau mai'r pwrpas y tu ôl i'r ymarfer hwn yw helpu'r Pwyllgor Safonau i wneud argymhellion cyffredinol i'r Cyngor a fydd efallai'n cynnwys ysgrifennu atoch yn unigol os oes dygwyd sylw at faterion penodol sy'n ymwneud â'ch datganiad chi.

Pe bai unrhyw ymholiadau'n codi yn ystod yr archwiliad, efallai y bydd yr aelodau cyfetholedig o'r Pwyllgor Safonau'n cysylltu â chi'n uniongyrchol i ofyn am eglurhad/gwybodaeth bellach yn ystod yr archwiliad. Efallai y gwneir hyn dros y ffôn neu drwy e-bost a byddwn yn hynod ddiolchgar petaech yn ymateb i'w hymholiadau o fewn amser rhesymol fel y gellir cwblhau'r archwiliad.

Mae'r Pwyllgor Safonau wedi gofyn i mi ddiolch i chi ymlaen llaw am eich cydweithrediad. Os oes gennych unrhyw ymholiadau, cysylltwch gyda mi drwy e-bost neu dros y ffôn os gwelwch yn dda.

Rwyf allan o'r swyddfa yr wythnos sydd yn dechrau ar y 6ed o Ionawr ond fydd y swyddog monitor Lynn Ball yn medru eich helpu yn fy absenoldeb.

issues that arose from the last audit which you may want to consider when updating the register.

At the request of the Standards Committee I have been asked to assure you that the purpose behind this exercise is to assist the Standards Committee to make general recommendations to the council which may also include writing to you individually if there are any particular issues highlighted in relation to your declarations.

If any queries arise during the audit, the individual co-opted members of the Standards Committee may then contact you directly to ask for further clarification/information during the course of the audit. This may be done by telephone or email and we would be most grateful if you could respond to their queries within a reasonable timescale to enable the audit to be completed.

The Standards Committee has asked me to extend their thanks to you in anticipation for your co-operation. If you have any queries please contact me by email or telephone.

I am out of the office on the week commencing the 6th January 2013 but the monitoring officer Lynn Ball will be able to assist you in my absence.

Yn gywir / Yours sincerely

Awena Parry
Cyfreithwraig (Llywodraethu Corfforaethol)
Solicitor Corporate Governance)

ATODIAD / ENCLOSURE
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From: Dafydd Humphreys
Sent: 13 April 2015 13:33
To: Aelodau GW6
Cc: Michael Wilson
Subject: Y Tair Cofrestr o Ddiddordebau Aelodau / The Three Registers of Members' Interests

Annwyl Gyngorydd,

Fel y gwyddoch mae'r Pwyllgor Safonau yn cynnal adolygiad blynyddol o'r tair Cofrestr o Ddiddordebau Aelodau. Mae'r Pwyllgor Safonau yn credu mai ei swyddogaeth yw cynorthwyo Cyngorwyr i gydymffurfio â'u dyletswyddau yn hytrach 'na chwilio am gangymeriadau, ac rydym yn gobeithio bydd argymhellion yr adolygiad yn ddefnyddiol i chi.

Diolch am eich cymorth a'ch cefnogaeth gyda'r adolygiad, ac am ddiweddarau eich ffurflenni pan yn angenrheidiol cyn i'r adolygiad gael ei gynnal.

Yn dilyn yr adolygiad eleni, mae'r pwyllgor yn gofyn i chi roi sylw dyledus i'r casgliadau cyffredinol sydd fel a ganlyn:-

Y Gofrestr Sefydlog

1. Rydym yn atgoffa Aelodau yn benodol i sicrhau bod eu cyfeiriadau a'u daliadau tir wedi eu disgrifio yn glir yn rhan 1.6 o'r gofrestr. Os nad oes gan Aelod diddordeb mewn tir yna dylai nodi 'Dim' neu 'Dim diddordeb' ar y gofrestr.
2. Mae'n bwysig hefyd i Aelodau ddatgelu eu haelodaeth o gyrff cyhoeddus eraill, elusennau a chymdeithasau. Dylai Aelodau nodi enw a chyfeiriad llawn y gyrff/elusennau y maent yn aelodau ohonynt.
3. Mae yna hefyd anghysondebau o ran aelodaeth o gyrff allanol, fel y cofnodwyd gan y Cyngor, a'r rheini a ddatganwyd; nid ydynt yn cael eu datgan yn y ffurflenni bob amser er eu bod yn cael eu rhestru ar "dudalen flaen" pob Cyngorydd. Gellir gweld enghraifft o "dudalen flaen" Cyngorydd ar y ddolen a ganlyn:-
<http://democratiaeth.ynysmon.gov.uk/mgUserInfo.aspx?UID=650&LLL=1>
4. Pan fo Aelodau yn datgan diddordeb busnes nid ydynt yn rhoi digon o wybodaeth ynglŷn â natur y diddordeb busnes.

Datgan diddordebau mewn cyfarfodydd

1. Mae yna lawer o enghreifftiau o Aelodau yn ticio'r blwch i ddweud fod ganddynt diddordeb ond nid ydynt yn rhoi manylion am y diddordeb. Mae angen rhoi manylion am beth yw'r diddordeb a hefyd a yw'r diddordeb yn un personol neu'n un sydd yn rhagfarnus neu'r ddau.
2. Nid yw Aelodau yn rhoi digon o wybodaeth am natur y diddordeb a sut mae'n ymwneud â'r eitemau ar y rhaglen. Mae angen bod yn fwy eglur yn hyn o beth;
3. Mae yna ddatganiadau diddordeb anghyson yn cael eu gwneud mewn gwahanol gyfarfodydd gan yr un Aelod ynghylch yr un mater. Mae Aelodau weithiau yn pleidleisio mewn rhai cyfarfodydd

ac ymatal mewn rhai eraill pan mae'r un mater yn cael ei drafod. Mae hyn yn awgrymu diffyg dealltwriaeth. Os nad yw Aelod yn sicr a oes yna ddi-ddordeb sydd angen ei ddatgelu, dylai'r Aelod ofyn am gyngor.

4. O bryd i'w gilydd, mae Aelodau yn datgan diddordeb mewn cyfarfodydd ar lafar, ond ddim yn cwblhau'r gwaith papur. Bydd angen cwblhau'r ffurflen ar gyfer datgan diddordeb mewn cyfarfod bob tro lle mae diddordeb fel hyn yn cael ei ddatgan ar lafar, gan nid yw yn ddigon i ddatgan diddordeb ar lafar yn unig.

5. Mae rhai datganiadau'n parhau i gael eu gwneud heb fod raid, er enghraifft, datganwyd diddordeb gan un Aelod pan nad oedd yn bresennol yn y cyfarfod.

Cofrestr o roddion a lletygarwch

Ychydig iawn o ddatganiadau sydd yn cael eu gwneud ynghylch rhoddion a lletygarwch a gwahoddir Aelodau i ailymgyfarwyddo gyda'r Protocol ar gyfer Rhoddion a Lletygarwch:- <http://www.ynysmon.gov.uk/cyngor-a-democratiaeth/cynghorwyr-democratiaeth-ac-etholiadau/cyfansoddiad/cyfansoddiad-rhan-5-codau-a-phrotocolau/cyfansoddiad-59-protocol-ar-roddion-a-lletygarwch?redirect=false>

Hyfforddiant

Mae'r Pwyllgor Safonau wedi nodi bod sawl Aelod wedi methu â dod i ddigon o sesiynau hyfforddiant eleni.

Mae'r casgliadau yma yn gosod allan y canlyniadau cyffredinol o'r adolygiad, ond mi fydd aelodau o'r Pwyllgor Safonau yn cysylltu gydag ambell Aelod Etholedig yn uniongyrchol lle bydd angen, er mwyn sicrhau fod yr Aelodau yna yn diweddarau eu datganiadau lle teimlwyd fod problem wedi codi yn ystod yr adolygiad. Os gwelwch yn dda a fuasech felly yn barod i drafod eich cofrestr gyda'r Pwyllgor Safonau rhag ofn bod un ohonynt yn cysylltu gyda chi.

Mae'r pwyllgor yn gwerthfawrogi eich bod i gyd yn brysur iawn ac yn ymwybodol mai dim ond un o nifer o'r tasgau y mae'n rhaid i chi roi sylw iddynt yw hon. Fodd bynnag, rydym yn gobeithio fod yr argymhellion uchod o gymorth i arbed amser i Aelodau oherwydd fod gwella safon y ffurflenni, gyda gobaith, yn osgoi cyflwyno cwynion di sail sy'n draul ar amser.

Dear Councillor,

As you know, the Standards Committee conducts an annual review of the three Registers of Members' Interests. The Standards Committee believe their role is to assist councillors to comply with their duties, not to look for errors, and we hope that you will find the recommendations from the review helpful.

Thank you for your support and assistance with the review, and for updating your forms where necessary prior to the review being conducted.

Following this year's review, the Committee asks that you have due regard to its general findings, which are as follows:-

The Standing Register

1. We would remind Members specifically to ensure that their addresses and land holdings are clearly described in section 1.6 of the register. If a Member has no interest in land they should enter 'None' or 'No Interest' on the register.

2. It is also important that Members disclose their membership of other public bodies, charities and associations. Members should provide the full name and address of organisations/charities of which they are members.

3. There are also inconsistencies in terms of membership of external organisations between those listed by the Council and those declared by individual members; they are not always recorded on the forms although they are listed on every Councillor's "front page". An example of a Councillor's "front page" can be found via the following link:-

<http://democracy.anglesey.gov.uk/mgUserInfo.aspx?UID=650&LLL=0>

4. Where members are declaring a business interest they're not providing enough information on what the business interest is.

Declaration of interests in meetings

1. There are many examples of Members ticking the box to declare an interest but not providing details of that interest. Details are required of the nature of the interest and whether that interest is a personal or a prejudicial interest or both.

2. Members do not provide sufficient information regarding the nature of the interest and how it relates to the items on the agenda. Greater clarity is required in this respect.

3. Inconsistent declarations of interest are made in various meetings by the same Member on the same matter. Members occasionally vote in some meetings and abstain in others when the same matter is being discussed. This suggests a lack of understanding. If Members are unsure as to whether they have a declarable interest they should seek advice.

4. Members occasionally declare an interest orally at meetings but do not complete the paperwork. The form needs to be completed for declarations of interest at every meeting where such an interest is declared orally, as oral declarations of interest alone are not sufficient.

5. Some interests are continuing to be declared unnecessarily, for example, one Member declared an interest when he was not present at the meeting.

Register of Gifts and Hospitality

Few declarations are made with regard to gifts and hospitality and members are invited to re-familiarise themselves with the Protocol of Gifts and Hospitality:-

<http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-5-codes-and-protocols/constitution-59-protocol-on-gifts-and-hospitality/>

Training

The Standards Committee has observed that several members have failed to attend sufficient training this year.

These findings set out the general conclusions of the review but Members of the Standards Committee will be contacting some elected Members direct, if needed, in order to ensure that they update their declarations where it is felt that a problem has arisen during the review. Would you therefore please be ready to discuss your register with the Standards Committee in case one of them contacts you.

The Committee appreciates that you are all very busy and is aware that this task is only one of a number that you have to address. However, we hope that the above recommendations will assist in saving time for Members as improving the standard of the forms will hopefully avoid groundless and time consuming complaints.

Yn Gywir / Regards

Mike Wilson

Cadeirydd y Pwyllgor Safonau /Chair of the Standards Committee,
Cyngor Sir Ynys Môn / The Isle of Anglesey County Council
Document: CC-017471-AP/257200

Attendance Note

For Legal Services Manager

Matter reference: CC-017471-AP
Matter name: Standards Committee / Pwyllgor Safonau
Attended by: Lynn Ball
Attendance with: Dr Gwynne Jones
Pegi Allsop

Attendance on: 28 May 2015
Recorded on: 28 May 2015
Subject: Standards Committee/ Group Leaders' meeting 23 April 2015 and
SLT 27th April 2015

Issues discussed:-

- "Registers of Interest and the differences in Welsh and English versions"
 - Discrepancies in the standing register have been removed.
 - The technical glitch has now been resolved.
 - The only remaining difficulty, which Members are aware of from their training, is that when they fill in or update the standing register it will only complete on the English side of the form even when the Member input is in Welsh.
 - This could be remedied, but at an estimated cost of around £10k. It was agreed that it was not worth it and that it has not created a problem for Members or any complaints from Members. If the form is filled in in one language only then the input will be passed to the Translation Service before it is uploaded. There is no problem now with the front facing elements of the register.

[Redacted]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

LB

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	STANDARDS COMMITTEE
DATE:	16 September 2015
TITLE OF REPORT:	Training for Town Councillors
PURPOSE OF THE REPORT:	Agree Training Content
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 2586

1. INTRODUCTION

As part of its work programme for 2015/16 the standards committee decided to focus its training efforts on town councils. At **ENCLOSURE 1** is a copy of the current work programme

2. CONTEXT

The training dates thus far agreed with town councils are listed at **ENCLOSURE 2**.

The draft training slides are attached at **ENCLOSURE 3**

3. RECOMMENDATION

Standards committee to:-

- Confirm/amend the content of the slides;
- Identify any specific issues to be raised with the town councils;
- Confirm which independent member/s of the standards committee will attend the training sessions with the Monitoring Officer.

ATODIAD / ENCLOSURE

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STANDARDS COMMITTEE WORK PROGRAMME – MAY 2015 TO APRIL 2016

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		TIMETABLE	RESOURCES	STATUS AS AT YEAR END
1.	To conduct hearings into alleged breaches of the Members' Code of Conduct following a referral from the Public Services Ombudsman for Wales (PSOW)	<ul style="list-style-type: none"> As and when referrals are made and in accordance with the performance indicator 	<ul style="list-style-type: none"> Monitoring Officer Deputy Monitoring Officer 	
2.	To conduct hearings into applications for Dispensations made by County Councillors and Town/Community Councillors	<ul style="list-style-type: none"> As and when referrals are made and in accordance with the performance indicator 	<ul style="list-style-type: none"> Monitoring Officer Deputy Monitoring Officer 	
3.	To undertake an advisory role in connection with any matters arising under the Council's Local Resolution Protocol, or its successor, in the event that a national model is developed	<ul style="list-style-type: none"> As and when requested 	<ul style="list-style-type: none"> Monitoring Officer Deputy Monitoring Officer 	
4.	To oversee training and development on the Members' Code of Conduct in accordance with paragraph 2.6 of the Code; particularly Town Councils.	<ul style="list-style-type: none"> As and when required 	<ul style="list-style-type: none"> Monitoring Officer Deputy Monitoring Officer 	
5.	To supervise the two Registers of Members' Interests by annual reviews followed by any necessary advice and guidance.	<ul style="list-style-type: none"> By the end of April 2016 	<ul style="list-style-type: none"> Monitoring Officer Deputy Monitoring Officer 	

6.	To supervise the register of Gifts and Hospitality by annual reviews followed by any necessary advice and guidance	<ul style="list-style-type: none"> • By the end of April 2016 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	
7.	To undertake the role of consultee on any proposed change to the Constitution relevant to the role of the Standards Committee and especially where such proposed changes might disproportionately prejudice the rights and interests of any minority group.	<ul style="list-style-type: none"> • As and when required 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	
8.	To undertake the role of consultee on any proposed legislative/policy changes relevant to the Standards Committee's area of responsibility.	<ul style="list-style-type: none"> • As and when required 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	
9.	To make any recommendations to the Council for improvements in those areas of work which relate to the Standards Committee.	<ul style="list-style-type: none"> • As and when required 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	
10.	The Chair of the Standards Committee to present an annual report to the Council outlining the work of the committee during the previous year.	<ul style="list-style-type: none"> • May 2016 	<ul style="list-style-type: none"> • Chair 	
11.	<p>To ensure that the knowledge and skills of the Standards Committee are developed and updated by:-</p> <ul style="list-style-type: none"> - regular reviews of decided cases from <ul style="list-style-type: none"> o other relevant authorities o Adjudication Panel for Wales - to participate and contribute on the North Wales Standards Committee Forum 	<ul style="list-style-type: none"> • As and when required subject to capacity 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	

	<ul style="list-style-type: none"> - to participate and contribute to the All Wales Standards Committee Conference. - To be reviewed under a performance review scheme similar to that used by the elected members. 			
12.	To monitor progress on Member complaints filed with the PSOW and to undertake an annual analysis of complaints data in relation to Ynys Mon County Council in order to identify trends/issues of concern/training needs.	<ul style="list-style-type: none"> • As and when required 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	
13.	To maintain contact with Group Leaders, through regular informal meetings, in order to discuss issues of concern/common interest.	<ul style="list-style-type: none"> • As and when required 	<ul style="list-style-type: none"> • The Chair 	
14.	<p>Report quarterly performance indicators</p> <ol style="list-style-type: none"> 1. Relationship between Members and Political Groups. 2. The effectiveness of the Council's Standards Committee 3. Standards of conduct and behaviour of Members 	<ul style="list-style-type: none"> • Quarterly 	<ul style="list-style-type: none"> • Monitoring Officer • Deputy Monitoring Officer 	

ATODIAD / ENCLOSURE
2

CODE OF CONDUCT TRAINING SESSIONS FOR TOWN COUNCILS

Town Council	Contact details	Date of training session (in bold if confirmed)
Holyhead	Cliff Everett 01407 764608	Monday 9th November 2015 at 6.30pm
Menai Bridge	Meinir Davies – 01248 716959	Offered 23.11.15 at 6.30pm nothing heard as at 3.9.15
Beaumaris	e-mail sent to beaumaristowncouncil@tiscali.co.uk on 25.8.15	December 2015?
Amlwch	e-mail sent to marilynhughes@amlwchcf.org on 25.8.15	January 2016?
Llangefni	Janice Davies 01248 723332	6.30 pm on Monday 1st February 2016

ATODIAD / ENCLOSURE

3

Côd Ymddygiad Code of Conduct

Cynghorau Cymuned
Ynys Môn
Community Councils
Anglesey
2015/16

Cyflwyniad

- Sesiwn gan:-
 - Aelod Annibynnol y Pwyllgor Safonau
 - Lynn Ball, Pennaeth Swyddogaeth (Busnes y Cyngor) Swyddog Monitro
- Iaith/cyfieithiad
- Taflenni
- Amseriad
- Rhaglen
 - Cyflwyniad gan (Aelod Annibynnol y Pwyllgor Safonau)

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Introduction

- Session by:-
 - Independent Member of the Standards Committee
 - Lynn Ball, Head of Function (Council Business)/Monitoring Officer
- Language/translation
- Handouts
- Timing
- Agenda
 - Introduction from (Independent Member of the Standards Committee)

Cyflwyniad

- Y Côd
 - Yn gyffredinol
 - Ymddygiad
 - Pethau y dylech eu gwneud
 - Pethau na ddylech eu gwneud
 - Diddordebau
- Plismona'r Côt
- Gwybodaeth ynghylch cysylltiadau ac adnoddau
- Crynodeb allweddol

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Introduction

- The Code
 - Generally
 - Conduct
 - Do's
 - Don'ts
 - Interests
- Policing the Code
- Contact information and resources
- Key summary

Cefndir

- Cynrychiolwyr Cymunedol
- Dyletswydd statudol i weithredu'n foesebol
- Côt Ymddygiad Mandadol
- Canlyniadau torri'r Côt
 - cosb personol
 - colli enw da
 - her gyfreithiol

Background

- Community Representatives
- Statutory duty to act ethically
- Mandatory Code of Conduct
- Consequences of breaching the Code
 - personal sanction
 - loss of reputation
 - legal challenge

Y Côd – yn Gyffredinol

The Code - Generally

1. Pa bryd mae'r Côt yn berthnasol

- **Ar fusnes y Cyngor**
 - Y tu mewn i'r Cyngor
 - Y tu allan i'r Cyngor
 - Ffurfiol ac anffurfiol
- **“Bob amser ac mewn unrhyw swyddogaeth”**
 - Defnydd amhriodol o'r swydd
 - **Dwyn anfri** – rhaid bod cysylltiad, e.e.

1. When does the Code apply?

- **On Council business**
 - Inside the Council
 - Outside the Council
 - Formal and Informal
- **“At all times and in any capacity”**
 - Improper use of position
 - **Disrepute** – must be a link e.g.

Y Côt – Ymddygiad (1)

Yr hyn y mae'n rhaid i Gynghorwyr ei wneud

- Hyrwyddo cydraddoldeb
- **Trin eraill â pharch**
- Darparu mynediad i wybodaeth
- Gwneud penderfyniadau gwrthrychol
- Rhoi sylw dyledus i gyngor Swyddogion
- Glynu wrth unrhyw reolau ynghylch costau
- Rhoi gwybod am unrhyw achosion o dorri'r Côt neu ymddygiad troseddol gan Gynghorydd arall
- Cydweithredu gydag ymchwiliadau

The Code – Behaviours (1)

What Councillors must do

- Promote equality
- **Treat others with respect**
- Provide access to information
- Make decisions objectively
- Have due regard to advice of Officers
- Abide by any rules on expenses
- Report any breaches of the Code or criminal behaviour by another Councillor
- Cooperate with investigations

Y Côt – Ymddygiad (2)

Yr hyn y mae'n rhaid i Gynghorwyr beidio â'i wneud

- Derbyn rhoddion/lletygarwch answyddogol
- Datgelu gwybodaeth a roddwyd yn gyfrinachol
- Defnyddio adnoddau'r Cyngor mewn modd amhriodol
- Gwneud cwynion blinderus neu faleisus
- Ceisio cael mantais
- Dwyn anfri ar y Cyngor

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The Code – Behaviours (2)

What Councillors must not do

- Accept unofficial gifts/hospitality
- Disclose information given in confidence
- Use Council resources improperly
- Make vexatious or malicious complaints
- Seek to gain an advantage
- Bring the Council into disrepute

Diddordebau Personol (1) – Yn Gyffredinol

- Rhaid i'r cyhoedd fod yn hyderus fod y penderfyniadau er budd gorau iddynt
- Diddordeb proffesiynol neu bersonol y tu allan i'ch swyddogaeth a all wrthdaro gyda'ch dyletswydd fel Cynghorydd o ran gwasanaethu'r gymuned
- Os oes gan Gynghorydd ddiddordeb yna rhaid iddo/iddi ei ddatgan ac **efallai** y bydd raid iddynt adael yr ystafell

Personal Interests (1) Generally

- The public must have confidence that decisions are in their best interests
- A professional or personal interest outside your role which may conflict with your duty as a Councillor in serving the community
- If a Councillor has an interest they must declare it and **may** have to leave the room

Diddordebau Personol (2) – Personal Interests (2) Yn Gyffredinol ... parhad Generally ... cont

Mae diddordeb personol yn bodoli os yw'r eitem dan drafodaeth **yn ymwneud â neu yn debygol o gael effaith** ar un neu ragor o'r categorïau a restrir yn y Côd

Cael effaith arnoch (neu gydnabod agos personol) i raddau helaethach na mwyafrif eich hetholwyr

A personal interest exists if the item under discussion **relates to or is likely to affect** one or more of the categories listed in the Code

Must affect you (or your close personal associate) to a greater extent than the majority of your electorate

Diddordebau Personol (3) - Cydnabod Agos Personol

Pwy sy'n 'Gydnabod Agos Personol'

- Cyfeillion agos
- Cydweithwyr gyda chysylltiadau cryf
- Cydnabod Busnes
- Perthnasau agos
- Rhywun y bu mewn anghydfod â chi

- Ond nid pobl y daw ar eu traws yn achlysurol, perthnasau pell neu bobl y daeth i gysylltiad â chi drwy'r gwaith

Personal Interests (3) - Close Personal Associate

Who is 'a Close Personal Associate'

- Close friends
- Colleagues with strong connections
- Business associates
- Close relatives
- Or someone with whom you have been in dispute

- But not casual acquaintances, distant relatives or people you come into contact with through work

Diddordebau Personol (4) – Categoriâu

- Swydd neu fusnes
- Cyflogwr neu fusnes yr ydych yn bartner/cyfarwyddwr ynddo
- Rhywun sydd wedi cyfrannu at eich costau etholiad neu dreuliau aelodau
- Unrhyw gwmni y mae ganddoch gyfranddaliadau o dros £25k ynddo, neu ragor nag 1% o gyfanswm gwerth y cyfranddaliadau ac sydd ag eiddo neu dir yn eich ardal

Personal Interests (4) - Categories

- Job or business
- Employer or a business in which you are a partner/director
- Someone who has contributed to your election costs or member expenses
- Any company where you have shares over £25k, or more than 1% of the total share value, and which has premises or land in your area

Diddordebau Personol (4) – Categoriâu ... Parhad

- Unrhyw gontract y mae eich Cyngor yn ei wneud gyda busnes yr ydych yn bartner, yn gyfarwyddwr sy'n derbyn tâl neu â chyfranddaliadau ynddo
- Unrhyw dir y mae ganddoch fudd ynddo yn ardal eich Cyngor
- Unrhyw dir sy'n cael ei osod gan eich Cyngor i fusnes yr ydych yn bartner, yn gyfarwyddwr sy'n derbyn tâl neu â chyfranddaliadau ynddo
- Unrhyw dir yn ardal eich Cyngor y mae ganddoch drwydded i'w ddefnyddio am o leiaf 28 diwrnod
- Unrhyw gorff yr ydych wedi cael eich ethol, ei benodi neu ei enwebu iddo gan eich Cyngor

Personal Interests (4) - Categories... Cont

- Any contract that your Council makes with a business in which you are a partner, paid director or hold shares
- Any land in which you have an interest in your Council's area
- Any land let by your Council to a business in which you are a partner, paid director or share holder
- Any land in your Council's area in which you have a licence to occupy for at least 28 days
- Any body to which you have been elected, appointed or nominated by your Council

Diddordebau Personol (4) – Categoriâu ... Parhad

- Unrhyw awdurdod neu gorff cyhoeddus sy'n cyflawni swyddogaethau o natur gyhoeddus, elusen, corff sy'n llunio barn gyhoeddus neu bolisi, undeb llafur neu gymdeithas broffesiynol, clwb neu gymdeithas breifat yn ardal eich Cyngor yr ydych yn aelod ohono neu â swyddogaeth reoli
- Diddordebau Lles / Ariannol

Personal Interests (4) - Categories ... Cont

- Any public authority or body exercising functions of a public nature, charity, body forming public opinion or policy, trade union or professional association, private club or society in your Council's area of which you are a member or in a management position
- Wellbeing / financial interests

Diddordebau Personol (5) - Personal Interests (5) - Datganiadau Declarations

Beth ddyliwch wneud os oes ganddoch Ddiddordeb Personol?

- Datgan y diddordeb ar lafar ym mhob cyfarfod perthnasol
- Datgan y diddordeb wrth wneud sylwadau ysgrifenedig neu lafar y tu allan i gyfarfod
- Llenwi ffurflen datgan diddordeb
- OND mae ganddoch hawl i gymryd rhan mewn trafodaeth a phleidleisio oni bai bod y diddordeb yn un sy'n rhagfarnu

What Do You Do If You Have a Personal Interest?

- Declare it verbally at all relevant meetings
- Declare it when making written or verbal representations outside a meeting
- Complete a declaration of interest form
- BUT you are entitled to take part in discussions and vote unless it is a prejudicial interest

Diddordebau sy'n Rhagfarnu (1) – Yn Gyffredinol

Unrhyw ddiddordebau personol a fyddai, yn nhŷb aelodau o'r cyhoedd, yn debygol o gael dylanwad ar eich gallu i fod yn wrthrychol, er enghraifft:

- Mae eich merch yn byw drws nesa i safle lle bwriedir codi tai newydd
- Mae eich mab yn mynychu ysgol leol y bwriedir ei chau

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Prejudicial Interests (1) Generally

Are personal interests which a member of the public would regard as likely to influence your ability to be objective, for example:

- Your daughter lives next to a proposed site for a new housing development
- Your son attends a local school which is due for closure

Diddordebau sy'n Rhagfarnu (2) - Datgan a Gadael y Cyfarfod

Beth ddyliwch wneud os oes ganddoch Ddiddordeb sy'n Rhagfarnu?

- Datgan y diddordeb a gadael y cyfarfod yn ystod y drafodaeth
- Rhaid iddynt beidio â cheisio dylanwadu ar y penderfyniad
- Rhaid iddynt beidio â gwneud unrhyw sylwadau ysgrifenedig neu lafar

ONI BAI

- Fod y Pwyllgor Safonau wedi rhoi caniatâd arbennig
- Fod gan y cyhoedd hawl i siarad (ond rhaid i chi adael ar ôl siarad)

Prejudicial Interests (2) – Declaration and Withdrawal

What Do You Do If You Have a Prejudicial Interest?

- Declare the interest and leave the meeting during the discussion
- Must not try to influence the decision
- Must not make written or verbal representations

UNLESS

- The Standards Committee has granted a dispensation
- The public have a right to speak (but you must leave after having spoken)

Diddordebau sy'n Rhagfarnu (2)

Prejudicial Interests (2)

Caniatâd Arbennig

- Sicrhau cydbwysedd rhwng cyfranogiad democrataidd a hyder cyhoeddus
- Yn mynd y tu draw i ddiddordebau personol
- Rhesymau statudol cyfyngedig
 - dros hanner y Cynghorwyr yn rhannu diddordeb
 - hyder y cyhoedd
 - cyfran sylweddol o'r cyhoedd
 - cyfiawnhad oherwydd rôl/arbenigedd
 - sefydliad gwirfddol
 - o ddiddordeb i'r ardal
- Cais ysgrifenedig i'r Swyddog Monitro
- Panel y Pwyllgor Safonau
- Mynychu gwrandawriad cyhoeddus
- Efallai y bydd cyfyngiadau
- Rheidrwydd i ddatgelu

Dispensations

- Balance democratic participation with public confidence
- Overreaches prejudicial interest
- Limited statutory grounds:
 - half + Councillors share interest
 - public confidence
 - significant proportion of the public
 - justified by role/expertise
 - voluntary organisation
 - interest of locality
- Written application to the Monitoring Officer
- Standards Committee Panel
- Attendance at public hearing
- May be limitations
- Disclosure requirement

Diddordebau – Crynodeb Interests - Summary

- Diddordeb Personol
 - datgan a chymryd rhan yn y drafodaeth
 - tor-amod technegol
- Diddordeb Personol ac un sy'n Rhagfarnu
 - datgan a gadael y cyfarfod
 - risg ddifrifol
- Cyflwyno cais am ganiatâd arbennig?
- Edrych ymlaen a chyflwyno cais am ganiatâd arbennig
- Personal interest
 - declare and participate
 - technical breach
- Personal and prejudicial interest
 - declare and withdraw
 - serious risk
- Apply for a dispensation?
- Look ahead and apply for a dispensation

Plismona'r Côt (1)

SWYDDOGAETHAU A CHYFRIFOLDEBAU

- 1.Ombwdsmon Gwasanaethau
Cyhoeddus Cymru
- 2.Panel Dyfranu Cymru
- 3.Pwyllgor Safonau

Policing the Code (1)

ROLES AND RESPONSIBILITIES

- 1.Public Services Ombudsman for
Wales
- 2.Adjudication Panel for Wales
- 3.Standards Committee

Plismona'r Côt (2) parhad ... Policing the Code (2) cont ...

1. Ombwdsmon Gwasanaethau Cyhoeddus Cymru

- rôl ddeublyg
- “yr hidliad cyntaf” dan y Côt
- prawf trothwy dau gam
- ymchwiliadol / erlyniadol
- dim camau pellach neu
- cyfeirio i'r Pwyllgor Safonau neu
- cyfeirio i Banel Dyfarnu Cymru

1. Public Services Ombudsman for Wales

- dual role
- “first sift” under the Code
- two stage threshold test
- investigative/prosecutorial
- no further action or
- refer to Standards Committee or
- refer to Adjudication Panel for Wales

Plismona'r Côd (2) parhad ... Policing the Code (2) cont ...

2. Panel Dyfarnu Cymru

- “Pwyllgor Safonau” cenedlaethol
- Statws tribiwnlys / 3 aelod / cyfreithiwr / bargyfreithiwr yn cadeirio
- Yn derbyn:
 - cyfeiriadau gan yr Ombwdsmon
 - apeliadau yn erbyn Pwyllgorau Safonau
- Gwrandawiadau
 - yn gyhoeddus os oes her
 - gwrthwynebol
 - cynrychiolaeth gyfreithiol
 - “ar y papurau”, os cosb yn unig
- Cosbau sydd ar gael
 - dim camau pellach
 - cerydd
 - atal am hyd at 1 flwyddyn
 - Gwahardd am hyd at 5 mlynedd

2. Adjudication Panel for Wales

- national “Standards Committee”
- tribunal status / 3 members / chaired by solicitor / barrister
- receives:
 - referrals from the Ombudsman
 - appeals against Standards Committees
- hearings
 - in public, if contested
 - adversarial
 - legal representation
 - “on the papers”, if sanction only
- sanctions available
 - no further action
 - censure
 - suspension up to 1 year
 - disqualification up to 5 years

Plismona'r Côt (2) parhad

3. Pwyllgor Safonau

- 9 Aelod
 - 5 wedi eu cyfethol
 - 2 gynghorydd sir
 - 2 gynghorydd cymuned
- dyletswyddau statudol
 - **cyfeiriadau gan yr Ombwdsmon**
 - gwrandawiadau rhagarweiniol
 - gwrandawiadau llawn
 - yn gyhoeddus
 - gall y partïon gael cynrychiolaeth gyfreithiol
 - apêl i'r Panel Dyfarnu
 - atal am gyfnod hyd at 6 mis
- cyfrifoldebau eraill
 - gweler yr adroddiad i'r Cyngor 8/5/2014
<http://democracy.anglesey.gov.uk/documents/s500000757/Adroddiad%20Blynyddol%20y%20Pwyllgor%20Safonau%202013-14.pdf?LLL=0>
 - caniatâd arbennig
 - hyfforddiant a datblygiad
 - adolygu cofrestrau (gan gynnwys Cyngorau Tref a Chymuned)

Policing the Code (2) cont..

3. Standards Committee

- 9 Members
 - 5 co-opted
 - 2 county councillors
 - 2 community councillors
- statutory duties
 - **referral from Ombudsman**
 - preliminary hearings
 - full hearings
 - in public
 - parties may be legally represented
 - appeal to Adjudication Panel
 - maximum 6 months suspension
- other responsibilities
 - see report to Council 8/5/2014
<http://democracy.anglesey.gov.uk/documents/s500000757/Adroddiad%20Blynyddol%20y%20Pwyllgor%20Safonau%202013-14.pdf?LLL=0>
 - dispensations
 - training and development
 - review registers (including Town and Community Councils)

Gwybodaeth Gyswilt ac Adnoddau (1)

- Os oes gennych unrhyw amheuaeth, gofynnwch i'r Swyddog Monitro
 - Lynn Ball – Swyddog Monitro
rhif ffôn 01248 752586 / ebost:
lbxcs@ynysmon.gov.uk
 - Robyn Jones – Dirprwy Swyddog Monitro
rhif ffôn: 01248 752134 / ebost:
rwjcs@ynysmon.gov.uk
 - Awena Walkden – Cyfreithwraig (Llywodraethu Corfforaethol)
rhif ffôn: 01248 752563 / ebost:
awpce@ynysmon.gov.uk
 - Mike Wilson, Cadeirydd y Pwyllgor Safonau
rhif ffôn: 01248 752586 / ebost:
lbxcs@ynysmon.gov.uk

Contact Information and Resources (1)

- If in doubt ask the Monitoring Officer
 - Lynn Ball – Monitoring Officer
[tel:01248 752586](tel:01248752586) / email:
lbxcs@anglesey.gov.uk
 - Robyn Jones – Deputy Monitoring Officer
tel: 01248 752134 / email:
rwjcs@anglesey.gov.uk
 - Awena Walkden – Solicitor (Corporate Governance)
tel: 01248 752563 / email:
awpce@anglesey.gov.uk
 - Mike Wilson, Chair of the Standards Committee
[tel:01248 752586](tel:01248752586) / email:
lbxcs@anglesey.gov.uk

Gwybodaeth Gyswilt ac Adnoddau (1)

- **Côd Ymddygiad Statudol**
 - Y Côd
http://www.legislation.gov.uk/wsi/2008/788/pdfs/wsi_20080788_mi.pdf
 - Canllawiau
http://www.ombudsman-wales.org.uk/~media/Files/CodeofConductguidance_W/Code%20of%20Conduct%20Community%20Councils%20%20amended%20May%202013%20WELSH.ashx
 - Achosion a gyhoeddwyd
<http://apw.wales.gov.uk/decision/?skip=1&lang=cy>

<http://www.ombudsman-wales.org.uk/cy-GB/publications/The-Code-of-Conduct-Casebook.aspx>
- Caniatad Arbennig
http://www.legislation.gov.uk/wsi/2001/2279/pdfs/wsi_20012279_mi.pdf
- Egwyddorion Ymddygiad mewn Bywyd Cyhoeddus
http://www.legislation.gov.uk/wsi/2001/2279/pdfs/wsi_20012279_mi.pdf

Contact Information and Resources (1)

- **Statutory Code of Conduct**
 - Code
http://www.legislation.gov.uk/wsi/2008/788/pdfs/wsi_20080788_mi.pdf
 - Guidance
http://www.ombudsman-wales.org.uk/~media/Files/CodeofConductguidance_E/Code_of_Conduct_Community_Councils_-_amended_May_2013_ENGLISH_.ashx
 - Published cases
<http://apw.wales.gov.uk/decision/?lang=en>

<http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>
- Dispensations
http://www.legislation.gov.uk/wsi/2001/2279/pdfs/wsi_20012279_mi.pdf
- Principles of Conduct in Public Life
http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf

Casgliad

- Trin eraill gyda pharch ac ystyriaeth
- Peidiwch â dylanwadu ar unrhyw benderfyniad sy'n debygol o fod er budd i chi neu rai sydd agosaf atoch
- Prawf trothwy'r Ombwdsmon
 - Tystiolaeth uniongyrchol bod y côd wedi cael ei dorri
 - Ymchwiliad er budd y cyhoedd
- Nodweddion Gwaethygol
 - Malais
 - Budd Personol
 - Niwed i eraill
 - Torri'r Côd dro ar ôl tro
- Gweithredwch ar unwaith er mwyn lliniaru/unioni'r sefyllfa
- Cydweithredu gydag unrhyw ymchwiliad gan yr Ombwdsmon

Conclusion

- Treat others with respect and consideration
- Do not influence any decision which is likely to benefit you or "yours"
- Ombudsman's threshold test:
 - First hand evidence of a serious breach
 - Investigation in the public interest
- Aggravating features
 - Malice
 - Personal gain
 - Damage to others
 - Repeated breaches
- Act quickly to mitigate/repair
- Cooperate with any Ombudsman investigation

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CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	Standards Committee
DATE:	16th September 2015
TITLE OF REPORT:	North Wales Standards Committee Forum
PURPOSE OF THE REPORT:	Update on North Wales Standards Committee Forum - 16th June 2015
REPORT BY:	Committee Chairman
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 752586

1. INTRODUCTION

This Report is designed to update members of the standards committee on the meeting of the North Wales Standards Committee Forum on the 16th June 2015

2. CONTEXT

The meeting followed the prepared Agenda which is attached at **ENCLOSURE 1**.

2.1 Re-organisation of Local Government - No comments were received in respect of the consultation on reorganisation of local government in Wales pending further proposals from Welsh Government.

2.2 Training - All members of the Forum contributed to a discussion on training for clerks of community councils and elected members of local authorities, including community councils.

Some training for county councillors has been made compulsory (for example, in respect of Finance and Planning) to ensure as full attendance as possible. Some councils also indicated that in some instances members were not being allowed to sit on particular committees without having had the relevant training.

There was some concern that those in community councils were not attending sufficient training and a discussion took place as to how this could be improved; either by way of “cluster” meetings, more focused training to meet particular needs, e.learning packages, attendance at other councils’ training events, provision of hard copies of the code of conduct, regular communications from monitoring officers raising awareness of any new matters.

One particular concern, in areas where there are substantial numbers of community councils, was the pressure on the monitoring officers time if they were to attend to provide the training. It would appear unrealistic for the monitoring officers to cover all the training.

County councillors had individual training records which set out annually what training each member had attended. This is also reported annually to the public. (**ENCLOSURE 2**). There are no training records for community councils presently.

2.3 Code of Conduct

The latest Guidance from the Public Services Ombudsman for Wales (Ombudsman) was considered.

It was felt that the content in some respects might be confusing for community council members.

At present the version is electronic only.

It was suggested that county councils ensure that a hard copy of the Guidance is available to all community councils.

There was some uncertainty as to whether the Ombudsman had contacted all community councils to provide them with a link to the latest version; in which case they could print it off if they so wished.

It was suggested that One Voice Wales may be able to fund and produce an e.learning package on the code of conduct as they had done for freedom of information and data protection previously.

2.4 Regional Standards Committees

As a result of two questions being put to the meeting by the Anglesey representatives, there was a discussion as to the feasibility, and current appetite, for regional standards committees.

Presently the law surrounding this is not yet in force. However even when it does come into force it will only be a power to set up regional standards committees and will not be compulsory.

Owing to the imminent announcement from Welsh Government concerning reorganisation in Wales it was thought by the Forum that if councils in North Wales were to be reorganised in future that the standards aspect would need to be considered in the light of that and would be something that needed to align itself with future plans. It was thought that no council would wish to agree to set up regional standards committees pending the final model of reorganisation.

If regional standards committees were to be set up in future there would have to be a legal agreement between the relevant councils as to how it would operate and also the constitutions of the relevant councils would need to be changed by full council to reflect new arrangements.

2.5 At the end of the meeting the Chairman (Conwy) announced that he was standing down and that on the occasion of the next Forum Meeting this would be an Agenda Item for discussion and appointment of a new Chairperson.

2.6 The date and time of the next Forum Meeting to be arranged and agreed at a suitable date , time and venue to be agreed following the Standards Conference in October 2015

3. **RECOMMENDATION**

To note the report and to inform the standards committee chair and vice chair as to whether there are any issues which members of the committee would like to see raised at the next meeting of the regional Forum.

ATODIAD / ENCLOSURE
1

Private Document Pack



North Wales Standards Committees Forum

Tuesday, 16 June 2015 at 2.00 pm

Conference Room 1a, County Hall, Ruthin.

To:-

Isle of Anglesey	Michael Wilson – Chair Islwyn Jones – Vice-Chair Lynn Ball – Monitoring Officer Robyn Jones – Deputy Monitoring Officer
Conwy	Howie Roberts – Chair (Chair) John Roberts – Vice-Chair Delyth Jones – Monitoring Officer Ceri Williams – Deputy Monitoring Officer
Denbighshire	Ian Trigger – Chair Rev. Wayne Roberts – Vice-Chair Gary Williams – Monitoring Officer Lisa Jones – Deputy Monitoring Officer
Flintshire	Edward Hughes – Chair Robert Dewey – Vice-Chair Gareth Owens – Monitoring Officer
Gwynedd	Gwilym Ellis Evans – Chair Sam Soysa – Vice-Chair Dilys Ann Phillips – Monitoring Officer Sion Huws – Propriety Officer
Wrexham	Rob Dawson – Chair Ceri Nash – Vice-Chair Trevor Coxon – Monitoring Officer Sioned Wyn Davies – Deputy Monitoring Officer
Fire and Rescue Authority	Jane Eyton-Jones – Chair
Snowdonia National Park	David Vaughan – Chair

Sian Harland – Committee Services Officer
Cyngor Bwrdeistref Sirol Conwy County Borough Council, Bodlondeb, Conwy, LL32 8DU
01492 576065 sian.harland1@conwy.gov.uk

A G E N D A

Note - In accordance with the provisions of the Local Government Act 1972, the Public and Press may be excluded from the meeting during consideration of items where exempt information is likely to be disclosed.

1. Apologies for absence

2. Minutes

To approve as a correct record minutes of the previous meeting.
(Pages 3 - 10)

3. Devolution, Democracy and Delivery White Paper - Reforming Local Government: Power to Local People

To receive the feedback on the extract of the White Paper consultation relating to Standards Committees. A summary of the White Paper is attached to the agenda, and a full copy is available here <http://bit.ly/1K7Qt3v>
(Pages 11 - 44)

- i) Gwynedd County Council (Page 45)
- ii) Conwy County Borough Council (Page 46)
- iii) Denbighshire County Council (Pages 47 - 48)
- iv) Isle of Anglesey County Council (Pages 49 - 65)
- v) Flintshire County Council (Pages 66 - 68)
- vi) Wrexham County Borough Council (Pages 69 - 80)

4. Public Services Ombudsman for Wales - Consultation Responses

- i) Conwy County Borough Council (Pages 81 - 85)
- ii) Isle of Anglesey County Council - See Item 3(iv) (Pages 49 - 65)
- iii) Wrexham County Borough Council (Pages 86 - 93)

5. Revised Guidance on Member Code of Conduct

To consider the revised guidance of the Ombudsman on the Member Code of Conduct. (Pages 94 - 180)

6. Open Session for Items of Current Interest

ATODIAD / ENCLOSURE
2

Member's Annual Report 2014/15

This is the report by the Councillor below regarding his key activities over the year ending 31 March 2015. It is provided for the information of all constituents and for no other purpose. The views expressed in this report are those of the Councillor and not necessarily reflect the views of the Isle of Anglesey County Council.

Councillor:

Group:

Ward:

1 - Role & Responsibilities

Between April 2014 and March 2015, I sat on the following main committees / sub-committees:	¹ Attendance Figures

The statistics provided are relevant only to the committees listed in this table. The statistics do not include attendance at other meetings related to the work of the Council.

Attendance levels may vary due to the nature of work and responsibilities of members - as portfolio holder, committee chair or representing the Council on outside bodies, for example.

I am a member of the Isle of Anglesey Charitable Trust (I attended meetings).

I represent the Council on the following outside bodies:	Number of meetings arranged	Number attended

2 - Constituency Activity

¹ Attendance figures supplied by the Isle of Anglesey County Council

3 - Initiatives and Special Activities

4 - Learning and Development

I have attended the following learning and development initiatives during the past year (information supplied by the Isle of Anglesey County Council):

5 - Other Activities and Issues

Councillor

April 2015

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CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	STANDARDS COMMITTEE
DATE:	16 September 2015
TITLE OF REPORT:	National Standards Committee Conference Wales October 2015
PURPOSE OF THE REPORT:	For the committee to identify any issues to the Chairman and Vice Chairman
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk 01248 2586

1. INTRODUCTION

Every two or three years a Standards Conference takes place in Wales, rotating venues from South Wales, Mid Wales or North Wales, and inviting members from all areas.

An event is to take place this year, hosted by Cardiff City Council on the 20th October 2015. The chairman and vice chairman of Anglesey county council's standards committee will attend and feed back to the standards committee at its meeting on the 10th December 2015.

2. CONTEXT

Attached at **ENCLOSURE 1** is a copy of the agenda for the conference, including information about the six workshop sessions.

3. RECOMMENDATION

Members of the committee are asked to:-

- Identify the priority workshop sessions;
- Identify any specific issues or questions they would like the chairman and/or vice chairman to address during the conference;
- To agree on the nature and extent of the feedback to be provided to the committee on the 10th December 2015.

ATODIAD / ENCLOSURE
1



[new cardiff](#) > [ENG](#) > [Visiting](#) > [Standards Conference Wales 2015](#) > [Conference Programme](#)

Standards Conference Wales 2015 - Conference Progr

'Standards and Ethics in a Changing World'

Monday 19 October: Lord Mayor's Reception at the Mansion House, Cardiff

Tuesday 20 October: Conference at Cardiff City Hall

Conference Programme

9.15am –
10.00am

Registration & Tea/Coffee

10.00am –
10.15am

Welcoming Address

Paul Orders – Chief Executive, The City of Cardiff Council

10.15am –
10.45am

Key Note Speech : Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?

Nick Bennett : Public Service Ombudsman for Wales

10.45am –
11.30am

Panel Session:

Chaired by Richard Tebboth: Cardiff Standards and Ethics Committee Independent Chair

Nick Bennett : Public Service Ombudsman for Wales

Lyn Cadwallader: Chief Executive : One Voice Wales

Peter Davies : President of the Adjudication Panel Wales

Jan Williams: Independent Police Complaints Commissioner for Wales

11.30am – 12.00pm	Tea/Coffee
12.00pm – 1.00pm	<p>Workshops – Session One</p> <p>1. Social Media – Staying out of Trouble Workshop led by Daniel Hurford WLGA and a Monitoring Officer exploring best practice, latest cases and case law.</p> <p>2. Whistle Blowing – Adapting to deal with new operating models for public services Workshop led by a Monitoring Officer reviewing best practice, role of standards and ethics committee in reviewing cases and communication approaches.</p> <p>3. Community Councils – Governance and Standards Workshop led by One Voice Wales and a Monitoring Officer looking at proposed new WG tests of competency; democracy, capability, capacity and Governance.</p> <p>4. Local Complaints Resolution – Practicalities Workshop to look at Hearing panel process, role play session and dealing with media led by a Monitoring Officer.</p> <p>5. Are the Nolan Principles fit for purpose in the current climate and for the next 20 years? Workshop to continue the Panel Discussion led by a Monitoring Officer.</p> <p>6. Probity in Planning - Update Workshop to review current status of Planning Protocol required under Planning Act led by a Monitoring Officer.</p>
1.00pm – 2.00pm	Lunch
2.00pm – 3.00pm	<p>Workshops – Session Two</p> <p>1. Social Media – Staying out of Trouble Workshop led by Daniel Hurford WLGA exploring best practice, latest cases and case law.</p>

2. Whistle Blowing – Adapting to deal with new operating models for public services

Workshop led by a Monitoring Officer reviewing best practice, role of standards and ethics committee in reviewing cases and communication approaches.

3. Community Councils – Governance and Standards

Workshop led by One Voice Wales and a Monitoring Officer looking at proposed new WG tests of competency; democracy, capability, capacity and Governance.

4. Local Complaints Resolution – Practicalities

Workshop to look at Hearing panel process, role play session and dealing with media led by a Monitoring Officer.

5. Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?

Workshop to continue the Panel Discussion led by the Monitoring Officer.

6. Probity in Planning - Update

Workshop to review current status of Planning Protocol required under Planning Act led by a Monitoring Officer.

3.00pm –
3.30pm

Tea/Coffee

3.30pm –
4.00pm

Discussion and Closing Remarks

Richard Tebboth
Cardiff Standards and Ethics Committee Independent Chair

James Downe
Cardiff Standards and Ethics Committee Independent Vice-Chair

4.00pm

Close

Conference Workshops

In order to attend the workshops at this year's event, all delegates will need to indicate their preferred workshop choices **in advance**.

Two workshop sessions will be held 12.00pm-1.00pm **and** 2.00pm-3.00pm and will each contain six workshops.

Workshops – Session One

12.00pm to 1.00pm

1 **Social Media – Staying out of Trouble**

Workshop led by Daniel Hurford WLGA and a Monitoring Officer exploring best practice, latest cases and case law.

2 **Whistle Blowing – Adapting to deal with new operating models for public services**

Workshop led by a Monitoring Officer reviewing best practice, role of standards and ethics committee in reviewing cases and communication approaches.

3 **Community Councils – Governance and Standards** Workshop led by One Voice Wales and a Monitoring Officer looking at proposed new WG tests of competency; democracy, capability, capacity and Governance.

4 **Local Complaints Resolution – Practicalities** Workshop to look at Hearing panel process, role play session and dealing with media led by a Monitoring Officer.

5. **Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?**

Workshop to continue the Panel Discussion led by a Monitoring Officer.

6. **Probity in Planning - Update**

Workshop to review current status of Planning Protocol required under Planning Act led by a Monitoring Officer.

Workshops – Session Two

2.00pm to 3.00pm

1. Social Media – Staying out of Trouble

Workshop led by Daniel Hurford WLGA and a Monitoring Officer exploring best practice, latest cases and case law.

2. Whistle Blowing – Adapting to deal with new operating models for public services

Workshop led by a Monitoring Officer reviewing best practice, role of standards and ethics committee in reviewing cases and communication approaches.

3. Community Councils – Governance and Standards Workshop led by One Voice Wales and a Monitoring Officer looking at proposed new WG tests of competency; democracy, capability, capacity and Governance.

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