

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	13 September 2017
REPORT TITLE:	Local Resolution Arrangements for Town and Community Councils
PURPOSE OF THE REPORT:	To advise the Committee about a standard Local Resolution Protocol issued by One Voice Wales
REPORT BY:	Head of Function (Council Business)/Monitoring Officer
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1. INTRODUCTION AND BACKGROUND

- The Standards Committee will be aware that, shortly after his appointment, the current Public Services Ombudsman for Wales (PSOW) reviewed and updated his threshold test for conducting investigations into alleged breaches of the code of conduct. This change applied to both county councillors and town and community councillors.
- The PSOW's current threshold test is that he will only initiate investigations (which may be reviewed and terminated at any time) if he is satisfied that the following two conditions are met:-
 - There is evidence which indicates that the code of conduct may have been broken and;
 - Any breach which may have occurred is sufficiently significant for it to be in the public interest that an investigation be opened.
- The PSOW has been clear that it was his intention, in revising the threshold test, to ensure that the resources of his office were focused on only the most significant complaints and county councils were asked to each devise a local resolution protocol to deal with "low level disputes" alleging breaches of the code; with specific reference to disputes between councillors involving allegations of a failure to show respect / consideration. A copy of this County Council's Local Resolution Protocol is attached at **ENCLOSURE 1**. This has been adopted by full Council but remains voluntary for individual councillors.
- The Standards Committee has requested that the PSOW / Welsh Government provide a standard local resolution protocol for all county councils; to ensure fair

treatment and consistency for all. However, that request has been rejected and there is no indication of any intention to produce such a document.

- In any event, the PSOW has indicated, in his quarterly [Code of Conduct Casebook Reports](#), that the existence of a local resolution protocol has reduced the number of complaints in relation to county councillors.
- Following this theme, the PSOW asked for suitable, informal arrangements to be put in place in relation to town and community councils; the number of complaints against town and community councillors being significantly more than those against county councillors.
- To this end, One Voice Wales, the body representing / advising most town / community councils has devised and published a suggested Protocol. This is attached at **ENCLOSURE 2**.
- The One Voice Wales Protocol has been circulated to all the town and community councils on Anglesey which are members of One Voice Wales.

SUMMARY OF THE PRINCIPLES IN THE ONE VOICE WALES PROTOCOL

- The Protocol is optional and needs to be adopted by each council individually. Even so, it would have no legal effect and councillors would not be bound to participate although a failure to do so might be a relevant feature in any linked PSOW investigation.
- The Protocol has the approval and support of the PSOW.
- It is designed for minor complaints, with a particular emphasis on alleged failure to show respect and consideration.
- It applies between councillors and councillors and between officers and councillors; although council clerks/proper officers are specifically excluded. It could not have the effect of replacing any employment rights and, for staff members also, it would be a voluntary process.
- Complaints by the public, and complaints that would cross the PSOW's threshold for investigation, fall outside the Protocol; in particular failure to disclose interests / bullying / abuse of position or trust / repeated breaches.
- The second page of the Protocol lists the relevant participants who will be involved in the process and this varies according to the circumstances.
- The process does not involve any sanction and is, effectively, a mediation process designed to ensure that the parties involved re-establish functioning working relationships.
- Rather like the local resolution protocols at county council level, the outcomes may involve an apology, an undertaking not to repeat the behaviour, a commitment to undertake training or that no further action is required.

- The time for the process is described as being “as quickly as possible” but acknowledges that much will depend upon the availability of individuals etc.
- Although it is not quite clear in the Protocol, it would appear that while it is designed to deal with low level complaints involving alleged absence of respect and consideration prior to their referral to the PSOW, it is also possible that the PSOW may refer such matters, which do not reach his threshold for investigation, back to the town/community council for local resolution.
- There is no specific role identified in this process for local standards committees; perhaps because of resourcing issues and also the potential for a conflict if such disputes escalate and are, ultimately, referred to the standards committee following a PSOW investigation.

RECOMMENDATIONS

1. To note the content of the Protocol.
2. To instruct the Monitoring Officer to write to the clerks of our local town and community councils requesting confirmation as to whether or not they have/intend to formally adopt and apply the Protocol.
3. To decide whether or not the Standards Committee should, perhaps in specified / limited circumstances (and at the discretion of the Chair of the Standards Committee), offer support to town and community councils in operating the Protocol.
4. In light of the attachment to the Protocol, which makes reference to mediation training, whether the Standards Committee wishes to raise this issue, once again, with the PSOW. Extract from the North Wales Standards Committee Forum 17th October 2016 “Questions for the Ombudsman” is attached at **ENCLOSURE 3**

ISLE OF ANGLESEY COUNTY COUNCIL

LOCAL RESOLUTION PROTOCOL

Generally

1. The purpose of the Protocol is to promote high standards of conduct, with a view to fostering positive working relationships among Members, and between Members and Officers, to avoid spurious complaints to the Public Services Ombudsman for Wales (PSOW) and to safeguard the Council's reputation.
2. The Protocol will only apply to cases of alleged misconduct against Members under paragraphs 4(b) and 6(1)(d) of the Code of Conduct. That is to say, allegations of failure to show respect and consideration for others, or allegations that a Member has made vexatious, malicious or frivolous complaints against other Members or anyone who works for, or on behalf of, the Council.
3. The Protocol seeks to achieve swift mediation and reconciliation. It is not punitive but it may become relevant to sanction if a formal complaint, involving a pattern of similar conduct, is made to the PSOW.
4. The Protocol is not intended to interfere with, or take the place of, group or party discipline.
5. The Protocol is not intended to interfere with, or take the place of, any statutory or contractual rights which Officers may have.
6. The Protocol is not intended to oust the jurisdiction of the PSOW but, rather, to deal with a limited category of cases, where a breach of paragraphs 4(b) or 6(1)(d) of the Code may have occurred, but where such a finding would probably not result in disciplinary action. Such cases, at least individually, would not meet the PSOW's threshold test for investigation.

Procedure

7. A Member or Officer wishing to use the Protocol must put their complaint in writing to the Monitoring Officer, explaining when and where the alleged breach occurred, how and why paragraph 4(b) and/or 6(1)(d) have been breached, together with the details of any witnesses and any relevant documentation.
8. Any written complaint must be sent to the Monitoring Officer within 7 working days from the date of the event which is the subject of the complaint, or 7 working days from the date when the event came to the knowledge of the complainant.
9. The Monitoring Officer, or his/her representative, will send a copy of the complaint, and any supporting evidence, to the Member who is the subject of the complaint. That Member will have 7 working days, from receipt, within which to send a written reply to the Monitoring Officer setting out their response and providing details of any witnesses and any relevant documentation.
10. Having received a reply from the Member complained of, or when the time for reply has elapsed, the Monitoring Officer will:-

- copy the full response to the complainant;
 - arrange a meeting of an informal Panel of the Standards Committee to consider the complaint on the first convenient date available for all concerned.
11. The meeting of the Standards Committee Panel will take place in private and any paperwork which it receives, or which it generates, will remain confidential to the Panel, its advisors, and the parties. This is, however, subject to any legal duty to disclose e.g. to the PSOW in the event that matters escalate.
 12. Any informal Panel of the Standards Committee will consist of two Members of the Committee, on a rotational basis, but will not include a Community Council Member.
 13. The parties will be asked to attend the Panel and will be responsible for bringing along any witnesses upon whom they intend to rely.
 14. In the absence of a party or witness it will be a matter for the discretion of the Panel as to whether or not they proceed, or reschedule.
 15. If the complainant, or the Member complained of, is a Member of a political group then he/she may invite their Group Leader to attend the Panel. Any relevant Group Leader is not required to attend, but is encouraged to do so.
 16. The Monitoring Officer, or his/her representative, will attend to advise the Panel.
 17. The procedure of any Panel will be informal. The Panel will endeavour to be fair and even handed to both parties. There will be no rules of evidence, as such, but any witnesses called will only attend to share their information with the Panel; they will not “sit in” during the meeting.
 18. After hearing from the parties, and any witnesses, together with the Group Leaders (should there be Group Leaders in attendance and should they wish to address the Panel) the Panel will then retire to private session, returning to express its view and to put forward any recommendations it may have for resolution. The Panel has no disciplinary powers but may make recommendations to Group Leaders individually, in relation to Members of their Group and, to the Group Leaders collectively in relation to any unaffiliated Member.
 19. There will be no right of appeal under this process.
 20. The parties will receive written confirmation of the Panel’s findings and the outcome of all Panels will be reported, albeit in an anonymised format only, to all quarterly meetings of the Standards Committee.
 21. The outcome of any Panel will also be discussed as a standing item at Group Leaders’ meetings.

Un Llais Cymru



One Voice Wales

**Model Local Resolution Protocol
for Community and Town Councils**

ONE VOICE WALES

Model Local Resolution Protocol for Community and Town Councils

Background

The Public Service Ombudsman has agreed to the principle of referring some complaints against Members back to Community and Town Councils for a local resolution. However to date there has not been a common process for Community and Town Councils to follow in dealing with such matters. To assist the sector, One Voice Wales has drawn up the following as a model protocol which any Community and Town Council can use in dealing with such complaints.

This model protocol is meant as a starting point for Community and Town councils. Individual councils may wish to add or amend this model to suit their particular needs. Councils wishing to use this process should first of all be clear about its purpose and intention, formally adopt it in its current or in a revised form and ensure that all Councillors are provided with a copy for their attention. The Council should then determine the framework through which it is operated which may require the establishment of a Committee or Panel or an extension of the terms of reference of an existing Panel or Committee such as a Complaints Panel or Committee. In the case of establishment of a new Panel it is important that terms of reference are prepared and approved by the Council. In either case it will be important for Councils to document in the terms of reference as to what will happen if there is a lack of co-operation shown by the member concerned or a breakdown occurring during the operation of the process. For example, in such cases the default position might be that the matter is referred to the Public Ombudsman for Wales.

The Local Resolution Process

Issues which should be considered under this process

Low level complaints about Members, including:

- Minor complaints from Members about Members
- Minor complaints from Officers about Members
- Members alleged to have not shown respect and consideration for others – either verbally or in writing

Issues which should not be considered under this process

Complaints which must be directed to the Public Services Ombudsman for Wales, including:

- Complaints instigated by a member of the public
- Serious complaints – breaches of the Code of Conduct/failure to disclose interests/bullying/abuse of position or trust/repeated breaches
- Complaints made by the Clerk/Proper Officer
- Vexatious, malicious or frivolous complaints
- Members' complaints about officers which should be dealt with using the Council's internal complaints process
- Repetitive low level complaints

The Process

The complaint

The complaint would need to be sent to the Clerk/Proper Officer of the Council to undertake a first sift to ensure that the complaint is at a low level and should not be dealt with by way of a complaint to the Ombudsman. If appropriate, therefore, the Clerk/Proper Officer should firstly seek an early resolution of any such dispute by liaising informally with the individual members concerned prior to the resolution process described below. It is vitally important that the 'accused' member is given full details of the complaint against them so that in the interests of natural justice they are in a position to prepare their response to the accusation.

Resolution Process

The involvement of the Chair/Vice Chair of the Council in the following process is not to adjudicate on the complaint, but to attempt to get the members/officers involved to come to an agreement as to how the issue(s) could be resolved on an amicable basis.

The Clerk/Proper Officer will act as a facilitator for the resolution process below.

If the complaint is between Members other than the Chair of the Council, the Clerk/Proper Officer and the Chair will meet individually with the complainant and Member subject of the complaint to seek an agreed resolution.

If the complaint is between Members, one of whom is the Chair of Council, but not the Vice Chair, the Clerk/Proper Officer and the Vice Chair will meet with the complainant and Member subject of the complaint to seek an agreed resolution.

If the complaint has been made by an officer/employee, but not the Clerk/Proper Officer, against a Member other than the Chair of Council, the Clerk/Proper Officer and the Chair of Council will meet with the officer and the Member subject of the complaint to seek an agreed resolution.

If the complaint has been made by an officer/employee, but not the Clerk/Proper Officer, against the Chair of Council, the Clerk/Proper Officer and the Vice Chair of Council will meet with the officer and the Chair to seek an agreed resolution.

If the complaint has been made by the Clerk/Proper Officer, then it is likely to be best practice that this complaint is forwarded by way of a complaint to the Ombudsman.

Possible results of the process

If an agreement is reached by Members and/or officers during this Stage then no further action is required.

If agreement cannot be reached the aggrieved Member/officer would always have the opportunity of referring the matter to the Ombudsman.

Examples of agreements might include issue of a letter of apology, a written undertaking or commitment not to breach the Code of Conduct in the future, a commitment to undertake training or an agreement that on the basis of the evidence that no further action should be taken and the matter be closed.

Time for the process

It is the intention that all of the processes can be completed as quickly as possible to resolve the issue. However exact timing will depend on the availability of individuals to attend the meetings.

Important Points to Note in preparing a process for use by the Council

The Clerk/Proper officer, Chair and Vice Chairs of Councils should consider receiving appropriate training in facilitation and mediation to be in a position to maximise the benefit of this process. Councils wishing to pursue this route should contact One Voice Wales for guidance.

Councils might want to include some guidance where complaints which are most appropriately dealt with under this process are referred back to the Council by PSOW. The PSOW could actively do this if the Council has an approved process.

It is suggested that any meetings held with a view to discussing the issues of complaints and/or resolving matters are at the very least minuted, if not recorded. This is to ensure that agreements are captured. This will also be useful in the event that matters break down or escalate and need to be referred to the PSOW. It may also be useful as evidence in the event of further similar breaches of the conduct and future conduct.

Councils need to be clear on their powers in respect of code of conduct matters. The Ombudsman has seen examples of councils who have deemed it appropriate to fully investigate a code complaint, decide that there has been a breach and some have even thought it appropriate to consider the issue of a sanction. Investigations of possible breaches of the Code are matters for the Ombudsman. The Local Government Act 2000 gives him the authority to carry out such investigations. The Council has no legal authority to undertake such investigations or to make findings of a breach of the Code of Conduct, which are decisions that can only be reached by a Standards Committee or the Adjudication Panel for Wales.



ABOUT ONE VOICE WALES

One Voice Wales is the national representative organisation for Community and Town Councils throughout Wales. The vision subscribed to by One Voice Wales is:

“Working with local councils in Wales to shape places communities want to live in”

One Voice Wales aims to support Community and Town Councils in achieving this vision and has adopted the following Mission Statement to guide its work:

“To represent the interests of Community and Town Councils; raise awareness and understanding of this primary tier of government; and work collaboratively with our partners to ensure the sector contributes fully to the goal of developing dynamic and sustainable communities in Wales.”

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

20. Ian Trigger, Denbighshire County Council:

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

Ombudsman:

Yes whilst we agree that training in this area would be beneficial particularly if Clerk's are to play a role in local resolution but this is something that we as an organisation would be unable to resource. Organisations such as one voice wales or Society of Local Clerks may wish to take up.