

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL

COMMITTEE:	Standards Committee
DATE:	13 December 2023
REPORT TITLE:	Summary of responses to the Welsh Government's consultation on the recommendations of the Independent Review of the Ethical Standards Framework in Wales (Richard Penn report).
PURPOSE OF THE REPORT:	To present to the Standards Committee the summary of responses to the consultation carried out by Welsh Government as published in November 2023.
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1. BACKGROUND

- 1.1 In March 2021, the then Minister for Housing and Local Government commissioned an independent review of the ethical standards framework for Local Government in Wales established by the Local Government Act 2000. The Framework includes County and County Borough Councils, Corporate Joint Committees, National Park Authorities, Fire and Rescue Authorities and Town and Community Councils. It also considered the changes that were being introduced, and that affected the Framework, under the Local Government and Elections (Wales) Act 2021.
- 1.2 The independent review was undertaken by Richard Penn, a former local authority chief executive and former chair of the Independent Remuneration Panel for Wales.
- 1.3 The full "[Independent Review of the Ethical Standards Framework in Wales](#)" by Richard Penn (independent Consultant) was published some four months later, in July 2021, and concluded that the current Framework is 'fit for purpose' and works well in practice. The report made recommendations.

2. WELSH GOVERNMENT'S CONSULTATION

- 2.1 Welsh Government carried out a consultation exercise, based on the recommendations of the Independent Review of the Ethical Standards Framework in Wales (Richard Penn report), between 24 March and 23 June 2023.

2.2 The Standards Committee met informally on 12 May 2023 to discuss the Consultation document. The Committee's response to the Consultation questions was recorded and incorporated into a draft Response.

2.3 The Chair of the Standards Committee met with the Group Leaders on 8 June to present and discuss the Standards Committee's draft Response to the Consultation. The Standards Committee's Chair provided a verbal update of the Group Leaders' suggestions at the Standards Committee [meeting in June 2023](#) (agenda item 12).

2.4 The draft response prepared on behalf of the Standards Committee (included as Enclosure 2 to the June 2023 report) was discussed at the Committee's meeting in June. In light of the Group Leaders' suggestions, the Standards Committee agreed to amend this draft response. The response sent by the Standards Committee's Chair, on behalf of the Council, includes the comments made by the Group Leaders as part of the consultation response; the matters relate specifically to questions 14 and 15 in the consultation.

2.5 A copy of the Standards Committee's final response form, as sent to Welsh Government on 22 June 2023, is included as **Enclosure 1** to this report. The deadlines for responses was 23 June.

3. SUMMARY OF RESPONSES TO THE CONSULTATION EXERCISE

3.1 In November 2023, Welsh Government published a Summary of responses to the consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report). The document can be seen [here](#).

3.2 The document is shared for information with the Standards Committee as no action is required.

4. RECOMMENDATION

4.1 For the Standards Committee to note the contents of the Welsh Government's Summary of responses to the consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report).

4.2 The Director of Function (Council Business) / Monitoring Officer will keep the Standards Committee informed of any further documentation or information received in relation to the Welsh Government's Consultation on the Penn Review.

Consultation response form: WG47012

Your name: John R Jones, Chair of the Standards Committee

Organisation (if applicable): Cyngor Sir Ynys Môn / Isle of Anglesey County Council

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Consultation Questions

We are not seeking specific responses on all the Recommendations. This is because taking into account discussions held with stakeholders and key partners Welsh Ministers' responses to the Recommendations include a number of suggestions for legislative change, highlights some actions which have subsequently been addressed without the need for legislation since the Report was published, some suggestions for non-legislative action and further suggestions for improvement which have been identified in discussion with stakeholders since the Report's publication.

However, there is a general question at the end of the consultation questions where you can add your comments on the Recommendations that do not have a specific question below, or where you wish to make any other comments on the consultation document.

Recommendation 4

Q1. Do you agree the relevant regulations relating to the Ethical Standards Framework should be amended to align with the definitions relating to protected characteristics in the Equality Act 2010, and that we should amend the definition of equality and respect in section 7 of The Conduct of Members (Principles) (Wales) Order 2001 (legislation.gov.uk)?

Yes

Comment: This appears logical and reasonable; it also ensures a consistency of approach across Wales.

Recommendation 10

Q2. Should the Adjudication Panel Wales (APW) be able to issue Restricted Reporting Orders?

Yes

Comment: We agree that the APW be able to issue Restricted Reporting Orders during a hearing, and its associated proceedings.

However, following the announcement / publication of the APW's decision in a case, we would suggest that Restricted Reporting Orders only be made in specific and exceptional circumstances.

We distinguish APW hearings from those of Employment Tribunals (as referred to in the Consultation). In employment matters, the issue is usually between specified parties while, in APW cases, there is a strong public interest element as the cases relate to those who are holding public office in a representative capacity.

The APW's right to issue Restricted Reporting Orders must work within the principle that cases involving councillors (which could result in the disqualification of a councillor from holding public office) require the highest possible level of transparency.

Q3. Should there be express legal provision to enable the APW to protect the anonymity of witnesses?

Yes

Comment: No further comment.

Q4. Do you support the proposed changes to the permission to appeal procedure outlined in this recommendation. If not, what alternatives would you suggest?

Yes

Comment: We support the changes but:-

(A) Clarity is needed as to the definition of "days". Is this working days?

(B) 7 days (whether it be working days or not) is not sufficient time for an Appellant to provide the requisite documentation/information. Most Appellants will be acting in person and will be unfamiliar with such proceedings. The implications of the appeal could be significant for them and therefore a reasonable timeframe would need to be adopted; and

(C) We are concerned about the proposal not to place any deadline on the APW, particularly as all other parties will have deadlines to meet (eg Appellant 7 days, PSOW 14 days). It is only fair that the APW is also held to account by having to follow a timetable. This would assist parties to manage their expectations as this would be a matter of significance to the Appellant, the Complainant, and other witnesses. The timescale should not be indefinite. Long delays are not in the public interest and would bring the process into disrepute.

Q5. Should there be an express power for the APW to summon witnesses to appeal tribunals?

Yes

Comment: Whilst we would agree with the principle of the APW having an express power to summon witnesses to appeal tribunals, we do question how effective such a power would be unless there were consequential sanctions for a breach. We would wish to know what the sanctions might be.

Q6. Should there be any changes in the procedure for referring appeals decisions back to standards committees?

No

Comment: We would not support such a change as the current arrangement works effectively and it is useful for the Standards Committee to receive the APW's recommendation, even if it decides not to follow it. To refer a matter back to the primary decision maker for reconsideration, with recommendations and even instructions, is an established judicial practice.

Q7. Do you agree there should be an express provision to enable part or all of tribunal hearings to be held in private?

Yes

Comment: We consider that there should be a presumption that all hearings be held in public, but that in certain prescribed circumstances, it would be fair and reasonable for parts/all of a tribunal hearing to be held in private. The Standards Committee, like the Council, is able to exclude the press and public in limited circumstances e.g. where personal information or commercially sensitive information is disclosed and it is appropriate that the APW have the power to conduct part/all of a hearing in private where circumstances require.

Q8. Do you agree that the requirement to provide not less than seven days' notice of the postponement of a hearing should be retained?

Yes

Comment: We suggest that the maximum possible notice of postponement of a hearing should be given and that seven days' notice (we would again ask for clarity on whether this definition included only working days) is noted as a minimum.

Q9. Should there be a wider range of sanctions available to the APW, and if so, what should they be?

Yes

Comment: We would support the APW having a varied and flexible approach to the sanctions available to it and believe that options such as restricting a member's access to resources of the authority, restricting a member's access to premises of the authority (in their elected capacity) or placing conditions such that a suspension will be shorter if the member apologises in writing / receives training / takes part in conciliation, would be useful.

We also consider that a partial suspension would be useful e.g. for failing to disclose a personal interest in a planning matter, allowing the member to continue with their local duties but they would be suspended from sitting on the Planning Committee for three months etc. In those circumstances, their electorate would not be disenfranchised. A similar approach could be taken to senior salaried roles, where local member duties continue but a member is suspended from undertaking a leadership role and receiving that element of their allowance.

Q10a. Do you support the proposed amendments to the process for interim case tribunals outlined in this recommendation? If not, could you please explain.

Yes

Comment This would be helpful in avoiding councils, in some circumstances, in having to apply for injunctions to exclude members in certain circumstances.

It is also assumed that an interim suspension order would follow the same logic as that for employees when suspended from their employment and thus remuneration/allowances would continue in full.

Q10b. If you do support the changes to the process for interim case tribunals, do you agree that an intermediate arrangement should be put in place i.e., by shortening and streamlining the process for interim case tribunals in The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001?

No

If yes, do you have any suggestions as to how this process could be streamlined within the regulations?

Comment: Putting resource into developing an interim arrangement now could distract from the efforts to ensure a long-term change, and we believe that limited resources would be put to better use by concentrating efforts on that long-term strategy.

Q11. Do you have any further views on the recommendations made in relation to the operation of the APW?

No

Recommendation 12

Q12. Do you have any suggestions as to how work might be taken forward to raise awareness of the Ethical Standards Framework, in particular for people with protected characteristics as described in the Equality Act 2010?

Comment: Co-ordinated central action would be useful in delivering this aim. To that end, it is suggested that this may be something which the National Forum of Standards Committee Chairs could discuss and agree a consistent approach.

However, while raising awareness of the ethical framework is generally positive, we are concerned about managing public expectations. While there is often evidence of breach, the PSOW applies a high public interest threshold and local resolution arrangements only apply to elected members and not complaints from the public. So, to “advertise” or “promote” the framework could result in many more complaints which will ultimately be rejected. We wonder whether this is wise?

Other related matters outside of the Review Report

Q13. Advertising for independent members of standards committees: Do you agree the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed?

Yes

Comment: We consider that where such vacancies are advertised should be a matter of local choice and not a legislative requirement.

In our previous experience, newspaper advertising has proved beneficial. However, we have also used other advertising too including website and social media.

We would support a practice that ensures the greatest possible pool of candidates are reached, of varying demographics, where inclusivity is of paramount consideration.

Our Standards Committee Selection Panel is about to fill a casual vacancy. The recommendation will be to include newspaper advertising because of the older demographic of the area served by the Council and to avoid any possibility of digital exclusion.

Q14a. Former council employees sitting as independent members on standards committees: Do you agree that the lifelong ban on former council employees being independent members of their previous employer’s standards committee should be removed?

Yes

Q14b. If yes, what do you think would be a suitable period of grace between employment and appointment to a standards committee, and should this be the same for all council employees, or longer for those who previously holding statutory or politically restricted posts?

The Standards Committee considers that most former Council employees should be able to sit as an independent member after 12 months of their employment ending.

However, in accordance with the Standards Committee's opinion, an individual who held a politically restricted post should wait 2 years following the termination of their employment before sitting as an independent member.

There is no consensus opinion amongst the Group Leaders on this matter, with some agreeing with the opinion of the Standards Committee and others of the opinion that officers that held a politically restricted post should wait a minimum of 3 years following the termination of their employment before sitting as an independent member.

Q15. Former councillors sitting as independent members on standards committees:

Do you agree that the lifelong ban on serving as an independent member on the standards committee of the council to which a councillor was elected should be removed? If yes, what do you think would be a suitable period of grace?

Yes and No

Comment: The Standards Committee considers that a former Councillor might sit as an independent member after 2 years of leaving elected office .

There was a difference of opinion amongst the political Group Leaders. Some felt that former Councillors had beneficial skills and therefore agreed with the Standards Committee's view; whilst others believed that the lifelong ban on former Councillors should not be removed as they were concerned about motivation.

In relation to the responses to questions 14 and 15 to extend the pool of persons who could sit as independent members on the Standards Committee, the comment was also made that there should be a range of backgrounds and skills amongst the independent members of a Standards Committee i.e. not all independent members should be former councillors or former officers.

Q16. Standards committees' summoning witnesses and sanctions: Should standards committees have the power to summon witnesses?

No

Comment: We do not consider that summoning an unwilling witness would assist a case; we would seek to hear from witnesses who are willing to contribute to the proceedings and will offer information of their own accord. In any such event,

providing such a power, but without any means of enforcement, would merely bring the exercise of the power into disrepute.

Q17. Do you agree that the sanctions a standards committee can impose should be changed or added to?

Yes

If yes, what sanctions would you suggest?

Much as with the provision to extend the APW's sanctions [discussed under question 9 above], we would welcome added flexibility to the type of sanctions available to the Standards Committee.

As a pro-active Standards Committee, we believe that education is key. This also applies to those who have breached the Code of Conduct. We would like to have a more refined set of sanctions available that would support this overall aim. Wherever it is reasonable to do so, in the public interest, we would seek to support and encourage good practice rather than "punish".

We would support the APW having a varied and flexible approach to the sanctions available to it and believe that options such as restricting a member's access to resources of the authority, restricting a member's access to premises of the authority (in their elected capacity) or placing conditions such that a suspension will be shorter if the member apologises in writing / receives training / takes part in conciliation, would be useful.

We also consider that a partial suspension would be useful e.g. for failing to disclose a personal interest in a planning matter, allowing the member to continue with their local duties but they would be suspended from sitting on the Planning Committee for three months etc. In those circumstances, their electorate would not be disenfranchised. A similar approach could be taken to senior salaried roles, where local member duties continue but a member is suspended from undertaking a leadership role and receiving that element of their allowance.

Welsh language

We would like to know your views on the effects that the above changes to the Framework and Model Code of Conduct would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

Q18. What effects do you think there would be?

Q19. How could positive effects be increased, or negative effects be mitigated?

Q20. Please also explain how you believe the proposed amendments could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh

language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We note that the Penn report states that it is “essential the Framework reflects significant legislation made since its establishment, in particular the Equality Act 2010, the Well-being of Future Generations (Wales) Act 2015 and the Local Government and Elections (Wales) Act 2021”. It does not refer to the legal regime of the Welsh Language (Wales) Measure 2011, which gives official status to the language and places a duty on public bodies to ensure that:

- Welsh is not treated less favourably than English; and
- that persons in Wales should be able to live their lives in Welsh if they wish.

Any changes should comply with Welsh language standards, be mindful of local authorities’ Welsh language policies and respect the freedom of elected members and others to use the language if they wish.

Q21. Do you have any other comments you wish to make on the matters raised in this consultation, including for those Report Recommendations where no specific question has been posed?

Yes

Comment: Training on the Code of Conduct is essential. Whilst the Code of Conduct for this Council includes a provision that members will complete training on the Code within 6 months of taking up office, there is no requirement in the Model Code, and no such requirement on town and community councillors. We are of the view that the Model Code should include this provision.

Training for community council clerks is also something that should be considered. A well-informed clerk, who understands both the Code of Conduct and the rules of procedure, is essential in a high functioning community council. The PSOW’s office has repeatedly reported that the majority of cases received relate to town and community councillors. Perhaps compulsory training might assist in reducing that number. We have arranged four training sessions for town and community councillors, and their clerks, but the uptake has been very low. Perhaps, national, digital training materials which town and community councils might view in their own meetings/view remotely, might be useful.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick

here:

Thank you for taking time to respond to this consultation. A summary of responses will be published in due course.