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## Consultation response

Consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report)

Welsh Government - Local Government Policy Division

Submitted: 23 June 2023

As Public Services Ombudsman for Wales (PSOW), we have three main roles:

- We investigate complaints about public services.
- We consider complaints about councillors breaching the Code of Conduct.
- We drive systemic improvement of public services and standards of conduct in local government in Wales.

We are independent, impartial, fair and open to all who need us. Our service is free of charge.

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Mae'r ddogfen hon hefyd ar gael yn y Gymraeg.  
This document is also available in Welsh.

## Recommendations and questions

**Recommendation 4:** Paragraph 4a of the Code which requires that a member must: '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' does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

**Question 1:** 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?

Yes, we think it is right that paragraph 4a should be updated to reflect the definitions in the Equality Act 2010. In relation to users of Welsh and other languages, in light of a recent previous case, we are satisfied that, in the context of Code of Conduct findings, users of Welsh and other languages would be protected under the characteristic of race (which also includes nationality as per the definitions within the Equality Act 2010).

**Recommendation 6:** 6 (1) (b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

Many members have self-reported to their Monitoring Officer and subsequently PSOW, possible breaches of the Code including potential/proven criminal conduct. Self-reporting is encouraged and is listed as a potential mitigating factor in relation to the determination on sanction,

should a breach of the Code be proven. It is also the case that failure to self-report could have the potential to bring the authority or office of member into disrepute, as it would not be open and transparent, which is a principle that underpins the Code. It is clear therefore that it is in the members interest to self-report potential breaches of the Code and criminal behaviour that may amount to a breach of the Code.

Paragraph 6(1)(b) relates to reporting conduct (of another member or someone who works for the authority), which they reasonably believe involves, or is likely to involve, criminal conduct, to the authority. It would appear that this is intended to place the onus on a member to report activity, they have become aware of, which may place the authority at risk. This suggests that this provision relates to *suspected* criminal activity, rather than conduct which has already been prosecuted and proven in the courts. It is likely therefore that if a member is engaged in such activity, deception is already being practiced and changing this provision would have a limited practical effect.

This issue therefore is not the same issue as envisaged in paragraph 6(1)(c) of the Code of Conduct – the requirement for members to report to their Monitoring Officer conduct which, they reasonably believe breaches the Code of Conduct (which could include conduct which is criminal in nature). This is also specific only to conduct by another member and it is this provision which we consider may benefit from being changed to include a requirement to self-report conduct which may amount to a breach of the Code. This may or may not be conduct which is or may amount to criminal behaviour.

**Recommendation 7: Mandatory training on the Code of Conduct for all members of principal councils and community councils. Include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004.**

We commonly see that the members we refer for hearing to standards committees or the APW have not taken up the training which has been offered to them. Recent examples include a [member](#) of Pembrokeshire Council (with separate referrals considered by the APW and the Standards Committee), a [member](#) of Chirk Town Council and a [member](#) of Denbighshire County Council.

It is also often the case, in complaints about Town & Community Council members, that there is a lack of understanding of the obligations under the Code, not only by the member who has been complained about, but more widely across the Council. This is particularly relevant in relation to complaints about the failure to declare personal and prejudicial interests. We often close cases, which are not referred to the Standards Committee or APW, with a recommendation for the Clerk to arrange training for the Council as a whole. Recent information we've received from One Voice Wales suggests that although there has been a significant increase in councillors being trained since the elections, only 232 of Town & Community Councils have taken up the training offered and for most of those councils only one or very few members attended the training on behalf of the Council.

In light of the PSOW's experience of handling Code of Conduct complaints since the inception of the ethical standards regime in Wales in 2001, we are strongly of the view that training for members should be mandatory when they take up their role as a member. Anyone undertaking a new role or employment in any other walk of life is expected to undertake training. Furthermore, given the overall purpose of the ethical standards regime, we consider that mandatory training is essential to ensure that those holding public office

understand their obligations to act in the public interest and in accordance with the Nolan principles, thus maintaining public confidence in local democracy. In our view, the Welsh Government should take this opportunity and make training on the Code of Conduct mandatory, whether by including the relevant reference in the declaration of acceptance of office or in another appropriate way.

**Recommendation 8: Increased use of local resolution of complaints, the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman.**

We would reiterate that it was not our understanding of the intention of the recommendation that all complaints would first be the subject of local resolution before referral to PSOW. We remain of the view that local resolution should continue to be used for low level member v member complaints.

**Recommendation 10: Changes to the powers and processes of the Adjudication Panel for Wales (APW).**

We support the changes outlined. We offer some further comments on several questions.

**Question 2: Should the Adjudication Panel Wales (APW) be able to issue Restricted Reporting Orders?**

Yes. It is necessary and in the interests of justice for the APW to have this power in order to protect the rights and privacy of individuals who may be at risk and are in the main involved as witnesses in hearings. This additional power would not, in our view, inhibit the need for there to be open reporting of proceedings.

**Question 5: Should there be an express power for the APW to summon witnesses to appeal tribunals?**

Yes. This is especially essential if part of the appeal is that witness evidence was not appropriately examined.

**Question 9: Should there be a wider range of sanctions available to the APW, and if so, what should they be?**

Yes. The sanctions should include a power to order steps in relation to training or issuing an apology. APW should also be able to conditionally suspend a sanction in some circumstances, for example if a councillor takes required remedial action (e.g. issues an apology) within the specified time. We also believe that a similar, more extensive range of sanctions should be available to Standards Committees (see Question 17).

**Question 10a: Do you support the proposed amendments to the process for interim case tribunals outlined in this recommendation? If not, could you please explain.**

We have highlighted before that the threshold for meeting the legislative requirements for an interim referral to the APW is high. Furthermore, the APW's Regulations do not distinguish between a referral after full investigation and one which is made as an interim basis. The full process therefore applies to any interim cases. A process which would provide the APW with the power to swiftly apply an interim suspension akin to the 'neural' act of suspension which applies in employment situations would ensure that public confidence is maintained and the public are protected if, for example, safeguarding concerns have been raised in relation to a member's conduct and there is prima facie evidence that they may misuse their position as a member if they are not suspended on an interim basis.

Therefore, we support the amendments to the process outlined in the recommendations.

## **Recommendation 11: The role of Standards Committees**

**Additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.**

**Establish an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees.**

We welcome the establishment by LLG & the WLGA of a national forum for Standards Committee chairs. We look forward to contributing to the work of the forum as appropriate.

**Recommendation 12: Accessibility of the ethical standards Framework. Make the framework process more accessible for the public.**

**Question 12: 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?**

We strongly agree that an effective ethics regime requires good public awareness of duties and processes, including among some groups that may find it more difficult than others to engage with local democracy structures in Wales. We would argue that the first essential step should involve capturing the level of public awareness beyond anecdotal evidence, with the methodology allowing to analyse the research findings by protected characteristics, socio-economic status and Welsh language ability. We would also welcome any opportunities to work with the Welsh Government and other stakeholders to raise awareness of the Framework. However, we suspect that an average member of the public would expect to receive clear information about the Framework first and foremost from their local authority.

## **Other related matters raised in discussions with stakeholders post publication of the Penn Review Report**

**Question 13: 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?**

We have no strong view on this point, except to note that this requirement seems overly specific and not in step with the current landscape of effective communications platforms available to local authorities.

**Question 16: Standards committees' summoning witnesses and sanctions: Should standards committees have the power to summon witnesses?**

Yes – this would be in the interest of justice.

**Question 17: Do you agree that the sanctions a standards committee can impose should be changed or added to? If yes, what sanctions would you suggest?**

Yes – we believe that Standards Committees should be able to additional sanctions, in line with those suggested for the APW in Question 9 above.


**Question 18: 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. What effects do you think there would be?**

None, but see our comments in relation to Question 1 above.



## Closing remarks

We trust that you will find these comments useful. Should you wish to discuss any of our points further, please do not hesitate to contact Ania Rolewska, our Head of Policy ([ania.rolewska@ombudsman.wales](mailto:ania.rolewska@ombudsman.wales)).

A handwritten signature in black ink that reads "MMA. Morris." The signature is written in a cursive, slightly slanted style.

**Michelle Morris**

**Public Services Ombudsman for Wales**

June 2023