

## CYNGOR SIR POWYS COUNTY COUNCIL.

Standards Committee  
5<sup>th</sup> December 2012

**REPORT BY:** Strategic Director – Law and Governance

**SUBJECT:** Matters appertaining to Standards Issues

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**REPORT FOR:** Decision, Information and Discussion

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**A. General Standards Issues for County Councillors and Co-opted Members**

**A1 Code of Conduct Training**

A training session on the Code of Conduct for those six County Councillors and one Independent Member who were unable to attend the original session has been arranged for Friday 21<sup>st</sup> December 2012.

Co-opted Members are also being invited to attend this session namely:

- The three Parent Governor Representatives appointed to the People Scrutiny Committee,
- The one Independent Member appointed to the Audit Committee, and
- The three Town and Community Council representatives appointed to the Standards Community Sub-Committee.

**A2 Member Development**

To receive an oral update on Member Development.

**B. Referral of Councillors to Public Services Ombudsman**

**B1. County Councillor Referrals**

**B1.1** The Ombudsman is still investigating complaint reference 2/12/CC regarding one County Councillor.

**B1.2** Since the last meeting the Council received notice that the Ombudsman had received complaints regarding two County Councillors (Ref 3/12/CC and 4/12/CC). The Ombudsman has decided not to investigate either of the cases.

**B2 Letter from the Public Services Ombudsman for Wales**

The Ombudsman has written to the Chief Executive of the Welsh Local Government Association (**Appendix 1**) with regard to a recent decision in the High Court concerning the Members' Code of Conduct.

The appeal was against a decision of the Adjudication Panel and the Ombudsman comments on its effect in relation to the application of his threshold in deciding whether or not to investigate a case.

The Ombudsman has produced revised Guidance which is available on his website at

[http://www.ombudsman-wales.org.uk/en/~media/Files/CodeofConductguidance\\_E/Code%20of%20Conduct%20Guidance%20for%20Members%20of%20CC%20%20CBC%20NPA%20etc%20E%20%20issued%20Oct%202012.ashx](http://www.ombudsman-wales.org.uk/en/~media/Files/CodeofConductguidance_E/Code%20of%20Conduct%20Guidance%20for%20Members%20of%20CC%20%20CBC%20NPA%20etc%20E%20%20issued%20Oct%202012.ashx)

## **C. Other Standards Issues**

### **C1.1 Social Networking**

The Chair of Standards Committee has written to the Chair of Powys County Council and the Chairs of the main Council Committees regarding the introduction of a protocol to the effect that laptops and other electronic media should not be used during training sessions or formal presentations from either external or in-house presenters. This matter is being considered by the Democratic Services Committee.

The Chair of the Democratic Services Committee has been asked to ensure that the Blogging and Social Networking Guide is clear on the position regarding the use of Council equipment/electronic media for social networking during the election purdah period.

A letter has been received from the Chair of the Employment Committee which is attached at **Appendix 2**.

## **D Dispensations**

### **D1. Applications - County Councillors**

**D1.1** No applications for dispensation have been received.

### **D1.2 Blanket Dispensation – School Governors**

A paper is attached at **Appendix 3** outlining issues affecting County Councillors who may be School Governors.

The Committee are asked to consider granting a blanket dispensation in this respect.

## **E. Late payment of expenses**

Claims for payment of expenses have been submitted by the following two Members:

Councillor Melanie Davies - submitted on 26<sup>th</sup> September 2012 for June 2012.

Councillor David Meredith - submitted on 31st October 2012 for May and June 2012.

Details will be provided at the meeting and the 2 Members have been invited to attend.

#### **F. Member Attendance**

County Councillor George has advised that he is unable to attend on 5<sup>th</sup> December 2012 as he has a commitment in connection with his work as an Assembly Member. He would also be unable to attend on 6<sup>th</sup> February 2013 as the Assembly would be in session. However, he would be able to attend on 3<sup>rd</sup> April 2013 as the Assembly would be in recess.

#### **G. Meeting Dates**

**G1** To note dates of future meetings as follows:

6<sup>th</sup> February 2013  
3<sup>rd</sup> April 2013  
3<sup>rd</sup> July 2013  
4<sup>th</sup> September 2013  
4<sup>th</sup> December 201

All meetings to commence at 10.00am with the option of training available afterwards.

Contact Officer Name:	Tel:	Fax:	Email:
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Our ref: PT/KS/mm

Ask for: Katrin Shaw

Your ref:



01656 641182

Date: 17 September 2012



Katrin.shaw@ombudsman-wales.org.uk

Mr Steve Thomas CBE  
Chief Executive  
Welsh Local Government Association  
Local Government House  
Drake Walk  
Cardiff  
CF10 4LG

Dear Steve

I thought it would be helpful to contact you in the light of a recent decision of the High Court concerning the Code of Conduct for members.<sup>1</sup>

As you may be aware a member challenged the findings of the Adjudication Panel for Wales to uphold his Council's Standards Committee's decision to censure him for breaching paragraph 4(b) of the Code of Conduct by failing to show respect and consideration to his fellow councillors. The court found that whilst the comments which were posted on a website operated by the member were sarcastic and mocking and the tone ridiculed his fellow Councillors, because the majority of the comments related to the way in which the Council was run and the competence of the Councillors, the comments were "political expression". The ruling found that the Panel took an over-narrow view of what amounts to political expression and no account had been taken of the need for politicians to have "thicker skins". In view of the member's entitlement to freedom of expression, and the fact that the majority of comments were directed at fellow Councillors, the finding of a breach of the Code 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.

The impact of this ruling is that my staff will have to apply a higher threshold when deciding whether to investigate any conduct complained about which may be regarded as being "political expression". I will not therefore investigate such cases where 'political' criticisms are made, regardless of the tone of the exchange.

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<sup>1</sup> Calver, R (On the Application Of) v The Adjudication Panel for Wales (Rev 1) [2012] EWHC 1172 (Admin) (03 May 2012).

Allegations of disrespectful behaviour towards officers, particularly those who may hold senior positions, must also be considered in the light of this ruling.

I have today issued my revised Guidance on the Code of Conduct which includes the impact of this ruling and other amendments. It is available on my website [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk) .

I would be grateful if you would bring this issue to the attention of your members so as to avoid complaints being made which stand no prospect of being investigated in the light of this ruling. You may wish to incorporate this issue into the training materials which you recently prepared for members.

Yours sincerely

Peter Tyndall  
Ombudsman

GRAIG BARN FARM  
LLANGENNY LANE  
CRICKHOWELL  
POWYS  
NP8 1HB  
22<sup>nd</sup> October 2012

Mrs Helen Rhydderch-Roberts  
Chair of Standards Committee  
Powys County Council

Dear Helen

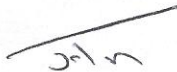
**Protocol for Training Sessions and Presentations**

Thank-you for your letter and apologies for not getting back sooner. The letter was discussed at a joint chairs meeting and it was concluded that each chair write back separately.

I personally fully support this protocol and would like to see it go forward. Like you I have been concerned that training sessions need to have the full attention of members. I have also had concerns about member participation at committee meetings and that merely attending a committee meeting is not good enough, unfortunately too many members do not engage at these meetings.

I am not sure how your proposal can be taken forward as there is likely to some opposition. It may be best to get an agreement with the various political groups with a motion to full council. I would be happy to assist with this.

Yours sincerely



Cllr John Morris  
Chair of Employment Committee.

## Standards Committee and Sub-Committee

### Application for Dispensations – School Governors.

The Members' Code of Conduct provides that councillors either elected by their Council or appointed by other means as school governors have a personal interest when matters relating to education or the school where they are a governor are considered.

The Code in addition grants an exemption to Councillors who have been appointed by their Council as school governors to take a full part in discussions excluding regulatory type matters e.g. planning. It is also arguable that another exemption applies i.e. the one relating to "another public authority or body exercising functions of a public nature in which you hold a position of general control or management" as it would be difficult to argue that governing bodies are not public bodies.

This exemption, however, does not apply for those Councillors not appointed by their Council. In effect this means that they are not allowed to speak on matters relating to the school where they are a governor in the same way as those Councillors appointed by their Council. They are therefore restricted to speaking about general school policy matters only, and when that general policy matter is applied specifically to the school where they are a governor, the Code says that this is a prejudicial interest, and the Councillor must withdraw from the meeting.

A complaint has been received from the Chair of a Community Council in Powys that democracy in his opinion is being hindered by the current wording of the Code in relation to voluntary organisations and the ability of Councillors to support / raise issues relating to those organisations in the Council due to the restrictive wording in the Code. A specific example is given relating to a school governor not appointed by the Council.

As officers advising on the Code of Conduct it is difficult to argue the case for governors appointed or not appointed by their Council being treated differently by the Code of Conduct as they are currently, and it is suggested that they should all be treated equally, irrespective of how they are appointed.

The Committee / Sub-Committee is considering issues in relation to charities at its meeting on 5<sup>th</sup> December. As school governing bodies are clearly public bodies, it would seem appropriate that this "type" of organisation should, in addition to charities, be considered for a blanket dispensation by the Standards Committee / Sub-Committee to remove the current restriction. It is further suggested that because of the type of organisation i.e. a public body, the same argument as for charities applies i.e. that granting a blanket dispensation would not damage public confidence if Councillors were fully involved in matters relating to schools. The only exception that should be considered is that used for previous blanket dispensations i.e. where the councillor has a pecuniary prejudicial interest.

The Committee / Sub-Committee is therefore requested to consider the following:

- (i) granting a blanket dispensation to all councillors who are school governors appointed by their Council to take part in regulatory type matters (i.e. speak and vote);
- (ii) granting a blanket dispensation to all councillors who are school governors not appointed by their Council to take part in all matters relating to their school (including regulatory matters) (i.e. speak and vote)
- (iii) that the blanket dispensation does not apply where the Councillor has a pecuniary prejudicial interest.