

Public Document Pack



Neuadd y Sir / County Hall, Llandrindod, Powys, LD1 5LG

Os yn galw gofynnwch am - If calling please ask for
Carol Johnson

Ffôn / Tel: 01597 826206

Ffôn Symudol / Mobile:

Llythyr Electronig / E-mail: carol.johnson@powys.gov.uk

STANDARDS COMMITTEE

Friday, 21st January, 2022

The use of Welsh by participants is welcomed. If you wish to use Welsh please inform us by noon, two working days before the meeting

S U P P L E M E N T A R Y P A C K

1.	MINUTES
----	----------------

To authorise the Chair to sign the minutes of the previous meeting of the Committee held on 13 October 2021 as a correct record.

(Pages 1 - 4)

2.	REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES
----	--

To receive the report of the Head of Legal and Democratic Services.

(Pages 5 - 94)

This page is intentionally left blank

MINUTES OF A MEETING OF THE STANDARDS COMMITTEE HELD AT BY TEAMS ON WEDNESDAY, 13 OCTOBER 2021

PRESENT: Mr S Hays (Chair)

Independent Members: Mrs J Evans, Mrs C Moore and Mr N Steward

County Councillors: A Jenner, S McNicholas and K M Roberts-Jones

1. APOLOGIES

Apologies for absence were received from Mrs C Mulholland (Independent Member) and County Councillor K S Silk.

2. APPOINTMENT OF VICE CHAIR

RESOLVED that Independent Member Chris Mulholland be appointed as Vice Chair for her term of office.

3. MINUTES

The Chair was authorised to sign the minutes of the meeting held on 23 June 2021 as a correct record.

4. DECLARATIONS OF INTEREST

No declarations of interest were received.

5. REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES

The Committee received the report of the Head of Legal and Democratic Services (copy filed with signed minutes).

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

A1. Code of Conduct Training

The Committee noted that one Member is still required to complete the Mid-term mandatory Code of Conduct training. The Committee asked that the training be offered to the Member in a variety of ways to facilitate its completion.

It was moved and duly seconded that the Committee write to the Member asking them to complete the training by the end of the month, unless they had difficulties in accessing the training.

RESOLVED	Reason for decision
That a letter be sent to the member asking that the mandatory Code of Conduct training be completed by the end of October 2021, unless they had	To ensure mandatory training is completed.

difficulties in accessing the training.	
--	--

B. Referral of Councillors to the Public Services Ombudsman

B1. County Council Referrals

The Deputy Monitoring Officer advised that she had liaised with the Ombudsman and the list of referrals had been updated. The current position regarding matters with the Ombudsman is detailed below:

02/CC/2020 Ombudsman investigating

01/CC/2021 Ombudsman deciding whether or not to investigate

02/CC/2021 Ombudsman not investigating

03/CC/2021 Ombudsman deciding whether or not to investigate

04/CC/2021 Ombudsman investigating

C. Dispensations

C1. Applications - County Councillors

Further to the discussions at the last meeting, officers had drafted a dispensation in respect of wool production, in response to the request from County Councillor Vaughan.

The Committee considered the draft. The Committee considered that a farming councillor being able to speak in general terms would be of benefit to all sheep farmers, not just the speaker.

It was moved and duly seconded to approve the dispensation.

RESOLVED	Reason for decision
<p>i) a dispensation be granted to those Members who are sheep farmers, (including close personal associates involved in sheep farming) to speak but not vote on matters relating to Wool Production and having spoken to leave the room.</p> <p>(ii) the dispensation shall continue in force until the first meeting of the Standards Committee after the next ordinary council elections in 2022 unless before those elections the Standards Committee revokes, amends or alters the dispensation.</p>	<p>i) due to the rural nature of the county a significant proportion of the Council was affected and unable to take part in a discussion on this matter, and Council thereby would lose their expertise</p> <p>ii) that no fewer than half of the Members of the Authority or of a committee of the Authority by which the business is to be considered has an interest which relates to that business,</p> <p>iii) that the nature of the Member's interest is such that the Member's participation in the business to which the interest relates would not damage public confidence in</p>

	the conduct of the relevant Authority's business.
--	--

D. Late Payment of Expenses

There were no requests for late payments of expenses.

E. Standards Committee – changes to Constitution

The Local Government and Elections Act (Wales) 2021 requires that Standards Committee presents an annual report to Council. The Committee noted the draft amendments to Section 8: Standards Committee contained in the Constitution which will be considered by Council in due course. Section 4 of the Constitution had already been amended to state that the Council would be required to consider such an annual report.

The Deputy Monitoring Officer advised that the report would be drafted by officers in conjunction with the Chair and for approval by the Committee. It was noted that officers were liaising with Monitoring Officers in Wales on the format and detail of such a report.

F. Ombudsman's Casebook

There are no new Code of Conduct Casebooks.

G. North Wales Standards Forum

It was agreed that the notes of the meeting would be circulated when available.

H. Standards Conference Wales

Details of the Standards Conference would be circulated when available.

J. Correspondence

There was no correspondence.

K. Meeting dates

The Committee noted the 2022 meeting dates:

9 February 1400hrs

9 September 0930hrs – induction training [once the community council appointments have been made to the Community sub-committee]

15 September 1400hrs

5 December 1400hrs

This page is intentionally left blank

CYNGOR SIR POWYS COUNTY COUNCIL

Standards Committee 21 January 2022

REPORT BY: Head of Legal and Democratic Services

SUBJECT: Standards Issues

REPORT FOR: Decision, Information and Discussion

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

A1 Code of Conduct Training

As agreed at the last meeting the Chair wrote to the member, who had not completed the mid-term mandatory Code of Conduct training, asking them to complete the training within one month of the date of the letter. The member was advised that officers would support them to enable them to complete this training.

B. Referral of Councillors to Public Services Ombudsman

B1 County Councillor Referrals

The current position regarding matters with the Ombudsman is as follows:

02/CC/2020 Ombudsman investigating

01/CC/2021 Ombudsman deciding whether or not to investigate

03/CC/2021 Ombudsman investigating

04/CC/2021 Ombudsman investigating

C. Dispensations

D. Independent lay member vacancy

An independent member vacancy has occurred as a result of Mrs Chris Mulholland resigning with immediate effect on 6 January 2022.

The Council will consider the recruitment process at its meeting on 24 February 2022 and a copy of the report and process is attached [Appendix 2].

The report to Council is recommending the recruitment process used in previous years. Applications will be considered by an Appointments Panel of five members:

- two of the current Independent (Lay) Members of the Standards Committee,

- one of the four county councillors sitting on the Standards Committee,
- one Town/Community Councillor sitting on the Standards Community Sub-Committee

and one lay person [High Sheriff] who will act as Chair. The Standards Committee is requested to nominate Members of the Committee to sit on the Appointments Panel.

E. Late Payment of Expenses

There are no late claims for expenses.

F. Independent Review of the Ethical Standards Framework in Wales

The report is attached [Appendix 3].

G. Standards Conference Wales

The Wales Standards Conference will take place on 9 February and will be a virtual meeting. Information has been circulated to the Committee.

H. Ombudsman's Casebook

The Code of Conduct Casebook January 2021- March 2021 is attached [Appendix 4].

Back copies of the casebooks can be accessed from the website of the Public Services Ombudsman for Wales at: [Casebooks](#)

I. Adjudication Panel for Wales

A report in respect of an appeal against Standards Committee determination in relation to an alleged breach of The Code of Conduct is provided for information Appendix 5.

J. Correspondence – None

K. Requirement for Standards Committee to make annual report to Council

Members will please note that as from 5th May 2022 the s63 of the Local Government and Elections Act 2021 requires Standards Committees to make annual reports to Council as soon as reasonably practicable after the end of each Financial year.

The Act Provides as follows:

- (1) As soon as reasonably practicable after the end of each financial year, a standards committee of a relevant authority must make an annual report to the authority in respect of that year.

(2) The annual report must describe how the committee’s functions have been discharged during the financial year.

(3) In particular, the report must include a summary of—

(a) what has been done to discharge the general and specific functions conferred on the committee by section 54 or 56;

(b) reports and recommendations made or referred to the committee under Chapter 3 of this Part;

(c) action taken by the committee following its consideration of such reports and recommendations;

(d) notices given to the committee under Chapter 4 of this Part.

(4) An annual report by a standards committee of a county council or county borough council in Wales must include the committee’s assessment of the extent to which leaders of political groups on the council have complied with their duties under section 52A(1) during the financial year.

(5) An annual report by a standards committee of a relevant authority may include recommendations to the authority about any matter in respect of which the committee has functions.

(6) A relevant authority must consider each annual report made by its standards committee before the end of 3 months beginning with the day on which the authority receives the report.

(7) The function of considering the report may be discharged only by the relevant authority (and accordingly is not a function to which section 101 of the Local Government Act 1972 applies).

(8) In this section “financial year” means a period of 12 months ending with 31 March.” (2) Until section 62 comes into force, section 56B of the 2000 Act is to be read as if subsection (4) were omitted.

L. Meeting dates

To note the 2022 meeting dates:

9 September 0930hrs – appointment of town and community representatives on the Community sub-committee and induction training.

15 September 1400hrs

5 December 1400hrs

Contact Officer Name:	Tel:	Fax:	Email:
Clive Pinney – Head of Legal & Democratic Services	01597 826746	01597 826220	clive.pinney@powys.gov.uk

Role and Function

- 8.8 The Standards Committee will have the following roles and functions:
- 8.8.1 promoting and maintaining high standards of conduct by Members (including church and parent governor representatives);
 - 8.8.2 assisting Members (including church and parent governor representatives) to observe the Members' Code of Conduct;
 - 8.8.3 advising the Council on the adoption or revision of the Members' Code of Conduct;
 - 8.8.4 monitoring the operation of the Members' Code of Conduct;
 - 8.8.5 advising on training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
 - 8.8.6 granting dispensations to councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
 - 8.8.7 dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that officer by the Public Services Ombudsman for Wales.
 - 8.8.8 overseeing the Council's whistle-blowing regime;
 - 8.8.9 providing advice to individual Councillors on such issues as the treatment of personal interest and on conduct matters generally;
 - 8.8.10 determining appropriate action on matters referred to it by the Public Services Ombudsman for Wales.
 - 8.8.11 overseeing the Register of Interest of Members, Co-opted members and Church and Parent Governor Representatives and Officers.
 - 8.8.12 overseeing the Council's rules and protocols on accountability of members.
 - 8.8.13 overseeing the attendance of Members and Co-opted Members at relevant meetings;
 - 8.8.14 monitor the training of Members serving on Member Bodies.
 - 8.8.15 [As soon as reasonably practicable after the end of each financial year, the Standards Committee will make an annual report to Full Council setting out the following:](#)
 - (a) [how the Committee's and Sub-Committee's functions have been discharged](#)
 - (b) [what has been done to discharge the general and specific functions set out in Rules 8.8.1 to 8.8.5 above;](#)
 - (c) [reports and recommendations made or referred to the Committee or Sub-Committee by the Ombudsman;](#)
 - (d) [action taken by the Committee or Sub-Committee following its consideration of such reports and recommendations;](#)
 - (e) [notices given to the Committee or Sub-Committee by the Adjudication Panel for Wales.](#)

- (f) the extent to which leaders of political groups on the council have complied with their duties to promote and maintain high standards of conduct during the financial year.
- (g) such other matters as the Committee may wish to draw to the attention of Full Council in relation to the Standards Committee's functions.

This page is intentionally left blank

CYNGOR SIR POWYS COUNTY COUNCIL

County Council – 24 February 2022

Arrangements to fill one vacancy arising from the resignation of an Independent (Lay) Member on the Standards Committee**1. Forthcoming Vacancy on the Standards Committee.**

- 1.1 An Independent Member of the Standards Committee, Mrs Chris Mulholland resigned from the Standards Committee on 6 January 2022.
- 1.2 The County Council will therefore need to undertake an appointment process for a new Independent Member to replace Mrs Mulholland in accordance with the Standards Committees (Wales) Regulations 2001 (as amended). The Regulations and the Constitution provide that Independent Members are appointed for not less than 4 years and not more than 6 years and the convention has been to appoint for a 6 year term. Approval is sought from the County Council for officers to commence the appointments process to ensure a new Independent Member can commence their appointment.
- 1.3 The starting point under the regulations is a requirement for the Council to publish an advertisement in not less than two newspapers (which are not published by the Council) circulating within Powys advising local government electors that the Council is seeking to appoint an independent (lay) member to its Standards Committee. Such advertisement may also, if the Council considers appropriate, notify electors:
 - (a) that the chairperson and vice-chairperson of the Standards Committee are elected from independent (lay) persons; and
 - (b) the qualities and experience that may be required of independent (lay) members serving on the Standards Committee.
- 1.4 Additionally the Council can also publish such advertisement in any newspaper that it publishes or online. It is intended to publish information on the Council's website and promote the vacancy on the Council's social media platforms.
- 1.5 A suggested draft newspaper advertisement based on the one used on the last occasion is attached as **Appendix A** which will appear in the County Times and the Brecon and Radnor Express. Other news releases will also be made referring to the information on the Council's website.
- 1.6 The Council is also required under the regulations to:
 - (a) Establish criteria for the appointment of independent members to its Standards Committee, and
 - (b) Publish those criteria in the newspaper advertisement referred to above.

- 1.7 A draft set of criteria (based on that used on the last occasion) is attached as **Appendix B** .
- 1.8 The regulations further stipulate that the Council must establish a Panel to:
- (a) Consider every application received;
 - (b) Apply the criteria established in considering applications;
 - (c) Make recommendations to the County Council in relation to applications.
- N.B.** Appointments of Independent (Lay) members must be made by the County Council which must have regard to the recommendations of the Panel.
- 1.9 The previous practice of such Panels has been to invite applicants to attend before the Panel for interview. There may also be need to consider a shortlisting stage in the event of there being a number of applicants.
- 1.10 The regulations go on to provide that a Panel established by the Council must not consist of more than 5 panel members one of whom must be a “lay panel member” and one of whom must be a member of a community council. In this context “lay panel member” means someone who is not or has not been a County Councillor and is not or has not been an independent member of the Standards Committee.
- 1.11 Based upon the composition of panels established previously it is suggested that the panel on this occasion comprises the following:
- Lay Panel Member (Who normally Chairs the Panel) – Lord Lieutenant or the High Sheriff [or previous High Sheriff]
 - Chair of the Standards Committee
 - Independent ‘Lay’ Member of the Standards Committee.
 - 1 County Council representative from the Standards Committee – to be selected by the Standards Committee
 - 1 Town / Community Council representative from the Community Standards Sub-Committee – to be selected by the Sub-Committee
- 1.12 In the event of the non-availability of any member of the Panel it is suggested in accordance with past practice that the function of appointing a substitute be delegated to the Monitoring Officer in consultation with the Chair of the County Council and the Chair of the Standards Committee.
- 1.13 A provisional timetable for the appointment process in this connection is set out in **Appendix C** and is recommended for adoption by the County Council. It will be observed that this timetable anticipates that the County Council will make the formal appointment of a new Independent (Lay) Member to the Standards Committee at its Meeting in May or June 2022.
- 1.14 Given the obvious need to attract the widest interest and encourage as many suitable candidates as possible to apply it is suggested that the Chair and Vice Chair of the Standards Committee be authorised to take such steps as appear necessary to them to achieve these objectives. This to include (but not be limited to) the power to (i) add to and modify the contents of the newspaper notice (subject to

compliance with the regulations); (ii) undertake additional advertising/awareness raising steps; and (iii) produce additional literature/promotional material.

JOIN OUR STANDARDS COMMITTEE

The Council has a vacancy for an Independent (Lay) Member on its Standards Committee and Standards Community Sub-Committee. The successful applicant will be entitled to an allowance of £105 for a half day or £210 for a whole day plus travel expenses.

Further details are obtainable on the Powys County Council website: **details to be added** or obtained from: Clerk to the Standards Committee, Powys County Council, Llandrindod Wells, Powys, LD1 5LG (e-mail: carol.johnson@powys.gov.uk)

The deadline for receipt of application is 1 April 2022.



CYNGOR SIR POWYS COUNTY COUNCIL

STANDARDS COMMITTEE

Criteria for the Appointment of Independent (Lay) Members

1. An interest in seeking to uphold and promote high ethical standards in local government.
2. Candidates should be able to demonstrate the following qualities:-
 - (a) good character;
 - (b) understanding and communication skills;
 - (c) social awareness, including an understanding of local communities within Powys;
 - (d) maturity and sound temperament;
 - (e) sound judgement.
3. Members of the Standards Committee must be able to give a commitment to serve on the Committee and its Sub-Committee as required.
4. Some knowledge of local authority or public sector business, or knowledge or experience gained within a regulatory or ethical standard area, would be an advantage.
5. The following are not eligible to serve as Independent (Lay) Members of the Standards Committee by virtue of regulations made by the National Assembly for Wales :-
 - (i) a councillor, officer, or the spouse of a councillor or officer, of Powys County Council, any other Welsh county council, a Welsh National Park Authority, or a Fire Authority or Town or Community Council in Wales.* N.B. 'Officers' includes all staff of one of these authorities including teaching staff.
 - (ii) any person who was previously a member or officer of Powys County Council (post 1996).
 - (iii) any person who, within the previous 12 months, was a member or officer of any other Welsh county council, or a Welsh Fire Authority.

*Town and Community Councillors are welcome to apply but would be required to resign from their Town or Community Council role if appointed as an Independent Member.

Timetable for Appointments Panel for 2022 vacancy

	Dates
Agree process at Council	24 February 2022
Delegate appointment of Standards Committee Panel Members to Standards Committee and Community Sub-Committee	21 January 2022 subject to Council approval of previous process
Press Notice to papers	Week commencing [w/c] 28 February 2022
Notice in the papers (2 papers)	w/c 28 February 2022
News release and publication on the Council's website / social media – ongoing Social Media promotion	w/c 28 February 2022
Re-issue of press release (if necessary)	w/c 14 March 2022
Closing date for applications	1 April 2022
Shortlisting [depends on panels availability]	w/c 4 April 2022
Panel Sitting	w/c 18 April 2022
County Council to confirm appointment (and commencement of term of office)	26 May 2022 [Annual meeting] or 14 June 2022

Independent Review of the Ethical Standards Framework in Wales

Richard Penn
Independent Consultant

July 2021

Table of contents

1.	Executive summary	3
2.	Background and methodology	10
3.	The current ethical standards framework for local government in Wales	15
4.	My findings	28
5.	Conclusions and recommendations	42

1 Executive summary

1.1 In March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the ethical standards framework for local government in Wales that was established by the Local Government Act 2000 and which has remained largely unchanged to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework. I was commissioned to undertake this review with the aim to report to Welsh Government Ministers by the end of June 2021. The intention is for any agreed changes to be made ahead of the local government elections in May 2022.

1.2 The review was to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff;
- consideration of the current sanctions and whether they are still appropriate.

1.3 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome and met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

1.4 The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

1.5 The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and viewed by many as far superior to that currently used in English local government. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations being significantly reduced. The outcome of this first phase of the review builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. The already high ethical standards in Welsh local government would be further enhanced as a result.

1.6 My key findings and recommendations for change are detailed in Section 5 of this report and are summarised below:

- ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.

- ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

- ***Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements***

The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision. However, I have proposed a number of amendments to the Code:

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.

- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- 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.

- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 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.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

The simplest way to achieve universal mandatory training would be to 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 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately.

- **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. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

- **Restricted reporting orders**

The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask for amendments to the Appeal Tribunal

procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

- ***Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

- There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be 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 that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.
- ***An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

- ***Consideration of the current sanctions and whether they are still appropriate***

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, there is support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

- **Accessibility of the ethical standards framework**

The ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, a member of the public would have great difficulty in finding helpful information if they wished to complain, particularly if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. If the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

2 Background and methodology

- 2.1 At a meeting of the Partnership Council for Wales on 1 March 2021 the then Minister for Housing and Local Government discussed a range of issues connected to the implementation of the Local Government and Elections (Wales) Act 2021. One of the issues discussed was her intention to commission an independent review of the ethical standards framework. Council Leaders agreed this was timely in light of the changes to the framework set out in the Act and the time which has elapsed since the framework was first established.
- 2.2 The ethical standards framework in Wales was established by the Local Government Act 2000 and has remained largely unchanged, though there have been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016. The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.
- 2.3 The Local Government and Elections (Wales) Act 2021 which received Royal Assent on 20 January 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. There are a number of provisions which are fundamental to greater transparency and openness between local Councils and communities, and the Act includes measures to combat bullying and harassment amongst elected members and Council staff.
- 2.4 Since the framework was established the Welsh Government has continuously set out its commitment to equality and diversity, including through the making of the Well-being of Future Generations Act 2015. Most recently the Government has published the Gender Equality Review and is currently consulting on its new Race Equality Action Plan.
- 2.5 It is with this new legislation and policies in mind that Welsh Government concluded that the ethical standards framework needed to be reviewed to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework.
- 2.6 In taking this work forward it was seen to be essential to ensure that the local government family in Wales is fully involved in the review and informs the outcome. This should include, but not exclusively, local government members (Principal and Community Councils), monitoring officers, standards committees, heads of democratic services, the Welsh Local Government Association (WLGA), Lawyers in Local Government, One Voice Wales, Society of Local Council Clerks, the Public Services Ombudsman for Wales and citizens/representative organisations. This involvement needed to be demonstrated as part of the outcome of this work.

2.7 The following were the key components of delivery:

- an audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could / should be made to the current arrangements.
- consideration of the role of standards committees, including their role in relation to Community Councils and whether the establishment of sub-committees has any impact on the process of supporting Community Councils and dealing with complaints.
- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and authorities' approach to addressing concerns.
- consideration of the current sanctions and whether they are still appropriate.

2.8 The review will take place in two phases:

- The first phase involved engagement with partners to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase was to be a roadmap for building on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published will also be explored as part of this work.
- Phase two of the work will focus on working with partners and stakeholders to deliver the necessary changes.

2.9 I am a former Chief Executive of two major local authorities in England, and amongst the other posts that I have held since returning home to Wales I was the first NAW Commissioner for Standards from 2000 to 2012.

- 2.10 I welcomed the opportunity lead this review and to collect the widest possible evidence about the strengths and weakness of the current ethical standards framework from those involved in the operation of the framework, how it might be improved and how the requirements of the recent legislation will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 2.11 I was required to produce a report on the review with my findings, conclusions and any relevant recommendations.
- 2.12 I was referred initially to a range of documents in the public domain and in the course of my review I received a large number of other relevant documents, most of which are in the public domain but a number of which were submissions by individual consultees.
- 2.13 My investigation has included a review of all of these documents together with interviews with a wide range of stakeholders involved in the operation of the ethical standards framework in Wales.
- 2.14 I met with:

Welsh Government officials

Deputy Director, Local Government Democracy Division

Head of Democracy, Diversity and Remuneration Branch

Former Head of the Ethics and Regulations Team

Policy lead, Ethical Standards Framework

Head of Local Government Partnerships Policy

Local Government Partnerships Policy - Community Councils & Regulation

Head of Fire & Rescue Services Branch, Community Safety Division

Head of Landscape & Outdoor Recreation, Economy, Skills and Natural Resources

Head of Welsh Tribunals Unit

Welsh Local Government Association

Head of Policy (Improvement and Governance)

Policy and Improvement Officer (Democratic Services)

One Voice Wales

Chief Executive

Deputy Chief Executive and Resources Manager

Society of Local Councils Clerks

Wales Policy Liaison Officer

Public Services Ombudsman for Wales

Ombudsman

Director of Policy, Legal and Governance

Adjudication Panel for Wales

APW President

Monitoring Officers

Monitoring Officer of Caerphilly County Borough Council

Monitoring Officer of Cardiff Council

Monitoring Officer of Ceredigion County Council

Monitoring Officer of Conwy County Borough Council

Monitoring Officer of Denbighshire County Council

Monitoring Officer of Flintshire County Council

Monitoring Officer of Gwynedd Council

Monitoring Officer of Monmouthshire County Council

Monitoring Officer of Powys County Council

Monitoring Officer of Rhondda Cynon Taf County Borough Council (written submission)

Monitoring Officer of Vale of Glamorgan Council

Monitoring Officer of Wrexham County Borough Council

Meeting of Monitoring Officers Group

Fire and Rescue Authorities

Monitoring Officer of South Wales Fire and Rescue Authority

National Park Authorities

Monitoring Officer of Pembrokeshire Coast National Park Authority

Chairs of Standards Committees

Mid and North Wales Forum for Chairs of Standards Committees

Chair of Cardiff Standards Committee

Chair of Rhondda Cynon Taff Standards Committee

Chair of Vale of Glamorgan Standards Committee

Chair of Mid and West Wales Fire and Rescue Authority Standards Committee

2.15 I thank all those that I interviewed as part of this review for their willingness to share with me openly and comprehensively their experience and their professional observations, opinions and conclusions about the operation of the ethical standards framework in Wales, and what needs to change to ensure that the framework is fit for purpose.

3 The current ethical standards framework for local government in Wales

3.1 Part III of the Local Government Act 2000 (the 2000 Act) sets out an ethical standards 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 (a county/county borough council; community council; fire and rescue authority; and a national park authority). This power was transferred to Welsh Ministers by the Government of Wales Act 2006. In 2008 (as amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

3.2 **The Model Code of Conduct** sets out what is required of all elected members in respect of appropriate standards of conduct in public office. For example, the Code requires members to show respect and consideration for others and not to use bullying behaviour or to harass any person. Councillors must act objectively and in the public interest, having regard to the advice of officers, and they must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent or unless required by law to do so.

3.2.1 The Local Government Act 2000 empowered the National Assembly to issue principles which those elected to relevant authorities must have regard to when undertaking their role. The Code of Conduct is based on these principles which are designed to promote the highest possible standards of conduct. 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 principles were added to these: '*a duty to uphold the law*', '*proper stewardship of the Council's resources*' and '*equality and respect for others*'. The current principles were set out in a statutory instrument (1. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166))

3.2.2 Members elected to relevant authorities give generously of their time and commitment for the benefit of their communities. The 10 principles provide a framework for channelling that commitment in a way which will reflect well on the Councillor and their authority, and give the local community confidence in the way that the authority is governed.

3.2.3 The individual sections of the Code of Conduct are designed to support the implementation of the 10 Principles of Public Life as 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.

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.

3.2.4 The Principles are not part of the Model Code of Conduct and failure to comply with the Principles is not of itself indicative of a breach of the Code. However, it is likely that, for example, a failure 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.

3.2.5 All relevant authorities in Wales 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 Code. This was intended to give certainty both to elected members and to the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for those elected members who serve on more than one authority and for the general public.

3.2.6 All elected members, when they sign the Declaration of Acceptance of Office, confirm that they will comply with their Council's Code of Conduct. It is the member's personal responsibility to ensure that they understand their obligations under the Code and act in a way which shows that they are committed to meeting the high standards of conduct that are expected of them as a member. Ultimately, as a member, they are responsible for the decisions they take and can be held to account for them. However, this does not imply that they can take decisions which breach the Code or which are contrary to advice simply because the decision is theirs to take.

3.2.7 The Public Services Ombudsman for Wales has issued very helpful guidance to assist Councillors in deciding when the Code of Conduct applies to them:

- Conduct in public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply when he or she is acting as an elected member or acting as a representative of the Council. However, as there may be circumstances in which a member's behaviour in private life can impact on the reputation and integrity of the Council, some of the provisions of the Code apply at all times. When reaching a decision as to whether the Code applies at a particular time the Ombudsman has regard to the particular circumstances and the nature of the conduct at that time.

- When does the Code apply?
 - whenever a member acts in an official capacity, including whenever they are conducting the business of their authority or acting, claiming to act, or give the impression that they are acting, in their official capacity as a member or as a representative of their authority.
 - at any time, if the member conducts themselves in a manner which could reasonably be regarded as bringing their office or their authority into disrepute or if they use or attempt to use their position to gain an advantage or avoid a disadvantage for themselves or any other person or if they misuse their authority's resources.

- where a member acts as a representative of their Council on another relevant authority, or any other body, they must, when acting for that other authority, comply with their Council's Code of Conduct. When nominated by their Council as a trustee of a charity they 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.
- if a member is acting as a representative of his or her Council on another body, for example on an event committee, which does not have a Code of Conduct relating to its members, the member must comply with their Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.
- if a member refers to them self as Councillor, the Code will apply. This applies in conversation, in writing, or in the use of electronic media. There has been a significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter. If the member refers to their role as a Councillor in any way or comments that they make are clearly related to that role then the Code will apply to any comments that are made there. Even if the member does not refer to their role as a Councillor, the comments may have the effect of bringing their 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 members with a clearer idea about how they can use social media, the possible pitfalls and how to avoid them.
- if a member is suspended from office for any reason, they must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while they are suspended.

3.3 The ethical standards framework in Wales is intended to promote high standards of conduct by Councillors. The **Standards Committees** of principal councils established under section 53 of the 2000 Act have a key role in this regard. They are made up of independent lay members together with elected members of the authority with an independent member as Chair.

3.3.1 The 'general functions' of a Standards Committee are:

- promoting and maintaining high standards of conduct by members of the authority;

and

- assisting members to observe the Code of Conduct adopted by the Council

3.3.2 A Standards Committee also has the following 'specific functions':

- advising the authority on the adoption or revision of a Code of Conduct;

- monitoring the operation of the Code of Conduct;

and

- advising, training or arranging training for members on matters relating to the Code of conduct.

3.3.3 Under other provisions of the 2000 Act, Standards Committees also consider applications by members for dispensation to participate in business for which they have a prejudicial interest. They consider and adjudicate on alleged breaches of the Code of Conduct following investigation by the Public Services Ombudsman or, less often, the relevant Monitoring Officer. Although there has been a tendency for some Committees to see the latter as their key role, their primary focus should be on proactive measures to support members of their Council to maintain appropriate standards of conduct and thereby avoid breaches of the Code. Standards Committees do this through a variety of means, such as working with political group leaders, attending and monitoring Council meetings and reporting annually to Councils on their activities and the standards of conduct within the authority.

3.3.4 The Standards Committee of a principal Council also exercises the above functions in respect of members of Town and Community Councils in its area. However, subject to consultation with those Councils in its area, a sub-committee may be established to undertake all the functions of a Standards Committee in relation to Community Councils. Standards Committees of principal Councils are required to assist members and co-opted members of Community Councils in their area to observe the Code of Conduct, and to arrange for advice and training to be provided. Whilst Community Councillors do not act on decision-making bodies such as Planning Committees they are called upon to take decisions on the allocation of funding from the Council's precept and to offer guidance, drawing on valuable local knowledge, to the County Council about the impact of planning applications. It is imperative that Community Council members are fully aware of the Code of Conduct and its implications for their decision-making and whether they should be involved in making a decision.

3.3.5 When a case is referred to a Standards Committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. Hearings are normally 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 or if shorter, the remainder of the member's term of office.

3.3.6 A member subject to a sanction may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a Standards Committee

3.4 **The Public Services Ombudsman** for Wales has powers to investigate allegations that individual Councillors in Wales have failed to comply with their Council's Member Code of Conduct. A complaint about a failure to comply with the Code of Conduct must be made direct to the Ombudsman, who will decide whether it is appropriate to investigate the matter.

3.4.1 Where the Ombudsman considers a complaint warrants investigation, the investigation will usually be undertaken by the Ombudsman. However, the Ombudsman has powers to refer complaints to the appropriate local authority Monitoring Officer for investigation and determination by the local Standards Committee. The Ombudsman may refer a report on the outcome of an investigation by his office to the relevant Standards Committee or, generally in more serious cases, the Adjudication Panel for Wales.

3.4.2 The Public Services Ombudsman for Wales investigates complaints that members of relevant 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 the Ombudsman uses a two-stage test:

- the first stage is to establish whether there is direct evidence that a breach of the Code actually took place. The level of proof that is required is 'on the balance of probabilities'
- if that first evidential stage is met, at the second stage the Ombudsman considers whether an investigation or a referral to a Standards Committees or the Adjudication Panel for Wales is required 'in the public interest'. 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 (the Ombudsman takes 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.

3.4.3 These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case. The Ombudsman has a wide discretion as to whether to begin or continue an investigation. He has revised the two-stage test adopted by his predecessor in order to provide greater clarity on how he will usually exercise his discretion and to secure a degree of consistency and certainty in the decisions that he reaches.

3.4.4 When the Ombudsman has investigated a complaint he may refer the matter to a relevant Standards Committee or to the Adjudication Panel for Wales for determination. This will depend on the nature of and individual circumstances of the alleged breach. When issuing his report the Ombudsman reflects on and analyses the evidence gathered and draws his conclusions as to whether it is likely that a breach of the Code has occurred. However, the authority and responsibility to make a determination of breach rests solely with a Standards Committee or the Adjudication Panel for Wales.

3.5 **Local Resolution Process**

Most principal councils in Wales have adopted 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, and there are a number of Community Councils that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code of Conduct 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 the Ombudsman about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

3.5.1 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 the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers 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.

3.6 **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent tribunal established under Part III of the Local Government Act 2000 that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

3.6.1 The Adjudication Panel for Wales has two statutory functions in relation to breaches of the Code of Conduct:

- to form Case or Interim Case Tribunals to consider references from the Public Service Ombudsman for Wales following his investigation of allegations that a member has failed to comply with their authority's Code of Conduct;

and

- to consider appeals from members against the decisions of local authority standards committees that they have breached the Code of Conduct in Appeal Tribunals.

3.6.2 The Adjudication Panel for Wales' procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended);

and

- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

3.6.3 The Adjudication Panel for Wales operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the Panel are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the Adjudication Panel for Wales clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Panel. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

3.6.4 Anyone wishing to respond to a reference from the Public Services Ombudsman for Wales or to make an application for permission to appeal to the Adjudication Panel for Wales must complete and send the relevant form to the Panel. At an Adjudication Panel for Wales Hearing the Panel is composed of a legally qualified chairperson and two lay members. Legally qualified members can also sit as a lay member. Panel Hearings are normally held in public and take place close to the authority area. The Adjudication Panel for Wales publishes its decisions on its website. Decisions of Case Tribunals can be appealed on limited grounds to the High Court, and permission to appeal to the High Court must first be sought from the High Court.

3.6.5 When the Public Services Ombudsman refers a case to the Adjudication Panel for Wales its role is to determine whether a member has breached the Code and whether a sanction should be imposed. 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.

3.6.6 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 of Conduct, in particular the provisions set out in paragraphs 6(1)(a) (*'bringing the office of member or authority into disrepute'*) and paragraph 7 (*'improperly using the position of member'*).

3.7 The role of the **Monitoring Officer** of a principal council

The Monitoring Officer is an officer employed by the County or County Borough Council. Among many other things they advise and assist County Councillors. Monitoring Officers may offer some training and advice to Community Councils in their area. The Monitoring Officer has a significant role in the local resolution process outlined earlier and they will also work closely in advising the Council's Standards Committee.

3.8 The role of the **Clerk** of a Community Council

The Clerk has a complex role and advises Community Councillors on relevant legislation, including matters relating to the Code of Conduct and on the Council's Standing Orders. The Clerk will work closely with the Chair 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 or County Borough Council's Monitoring Officer for advice and support.

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

3.9 **Complaints to the Public Services Ombudsman for Wales**

3.9.1 In 2019/20 the Public Services Ombudsman received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

	2019/20	2018/19
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	231	282

3.9.2 This decrease in 2019/20 related almost wholly to the reduction in complaints made by or against members of Community Councils. The Ombudsman found this encouraging and suggested in his Annual Report for 2019/20 that standards of conduct of members of

these bodies may be improving and/or that the local resolution of issues may be taking place with good effect. Nevertheless, he is still receiving complaints in respect of a small number of Community Councils which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues. When I spoke with him he exemplified this by referring to one complaint he had received that one member of a Community Council had been clicking his biro aggressively at another member. 18% of the Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. The Ombudsman has, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

- 3.9.3 In 2019/20 135 of the 231 complaints considered by the Public Services Ombudsman for Wales concerned Community Councillors, a welcome 18% reduction from the 190 complaints about Community Councillors considered by the Ombudsman in 2018/19. However, whilst the Ombudsman hoped that this was a sign that standards of conduct in Community Councils in particular was improving, and although the Ombudsman's Annual Report for 2020/21 is not yet published, when I spoke with him he gave me advance notice of a 47% rise in the number of complaints he received in 2020/21. He also told me that the early indications are that there will be a further significant increase in the current year (2021/22). He expressed concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view mandatory training of all Councillors combined with increased local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
- 3.9.4 As in previous years, the majority of the Code of Conduct complaints received during 2019/20 related to matters of '*promotion of equality and respect*' (49%) and '*disclosure and registration of interests*' (17%). The Ombudsman expressed concern that these themes continue to dominate and that there has been a year on year increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of principal councils/County and County Borough Councils or Community Councils. He considers that members could benefit from training or refresher training on these subjects although his impression from investigations is that many members of Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.
- 3.9.5 The Ombudsman's view, endorsed by all of those I met with during my review, is that Code of Conduct training is essential to becoming a 'good Councillor', and that members should undertake this training as soon as they become elected/co-opted and that there should be regular refreshment on the provisions and requirements of the Code of Conduct. There is currently no statutory obligation for members of Community Councils to complete such training although they are required to comply with the Code.
- 3.9.6 In 2019/20, 202 or approximately 86% of all Code of Conduct complaints were closed after assessment against the Public Services Ombudsman's two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%). The remaining complaints taken forward to

investigation represented the most serious of the complaints received.

3.9.7 During the Ombudsman's investigation, evidence gathered is reviewed to assess whether it remains in the public interest to continue the investigation. Where it appears that investigating a matter is no longer in the public interest, the decision is made by the Ombudsman to discontinue that investigation. Sometimes the investigation finds no evidence of a breach. Finally, when an investigation is concluded, the Ombudsman can determine that '*no action needs to be taken*' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour may be suggestive of a breach of the Code and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned. The Ombudsman made one or the other of these above determinations in 85% of the Code of Conduct investigations in 2019/20.

3.9.8 In cases which cannot be concluded in this manner or which point to serious breaches of the Code, it is necessary for the Ombudsman to refer the case to a relevant local Standards Committee or to the Adjudication Panel for Wales for consideration. In 2019/20 5 referrals were made, 2% of all the Code of Conduct complaints that were closed, compared to 8 or 3% in 2018/19. In 2019/20 these referrals were:

- 4 referrals to Standards Committees
- 1 referral to the Adjudication Panel for Wales

3.9.9 The Adjudication Panel for Wales or the relevant local Standards Committee considers the evidence, together with any defence put forward by the member concerned. It then determines whether a breach of the Code has occurred and if so, what penalty, if any, should be imposed.

3.9.10 The 4 referrals to Standards Committees in 2019/20 concerned behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct indicating bullying behaviour towards an employee of a contractor of the authority. When the 2019/20 Annual Report was published, the Adjudication Panel for Wales was considering an appeal on the issue of sanction only in that case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. When the 2019/20 Annual Report was published, these two referrals were awaiting determination.

3.9.11 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing their authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

3.9.12 Between 2016/17 and 2018/19, the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 88% of referrals by the Ombudsman. In 2019/20 Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by the Ombudsman. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice the Ombudsman's investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

3.9.13 As is clear from these statistics above, the Public Services Ombudsman for Wales makes referrals to a Standards Committee or the Adjudication Panel for Wales only in a very small number of cases, and he does not believe that the case referrals are indicative of a wider decline in member conduct in Welsh local government. Nevertheless, the outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them. Even when the Ombudsman does not refer a case, the investigation is used as an opportunity to promote good practice, and the members investigated are reminded of their obligations under the Code and, where relevant, further training or engagement with the authority to prevent further possible breaches is proposed. Members are also sometimes made aware that the matter could be taken into consideration in the event of any future complaints of a similar nature. The Ombudsman is clear in his report that it is important that innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned should be deployed.

4 My findings

4.1 In the course of my review I have met with most of those individuals and organisations that are involved in the operation of the ethical standards framework in Wales. The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and a large number of those that I consulted proposed that '*if it ain't broke don't fix it*'. Many respondents commented that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being significantly reduced, and that the already high ethical standards in Welsh local government could be further enhanced.

4.2 The Model Code of Conduct

4.2.1 Clear, relevant, and proportionate Codes of Conduct are central to maintaining ethical standards in public life. Codes of Conduct were identified by the Committee on Standards in Public Life in its first report in 1995 as one of the essential 'strands' in promoting and maintaining ethical standards in public life, at a time when many public sector organisations did not have them. Codes of Conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

4.2.2 The power to issue a Code of Conduct was transferred to Welsh Ministers by the Government of Wales Act 2006, and in 2008 (amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt. In Wales, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a Councillor behaves in a way that could '*reasonably be regarded as bringing [their] office or [their] authority into disrepute*'. This includes any time a Councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. As noted earlier, the Public Services Ombudsman for Wales has also issued guidance of the application of the Code of Conduct to social media use.

4.2.3 I was required as part of this review to conduct an audit of the Codes of Conduct adopted by all the relevant authorities in Wales against the Model Code to identify any local variances and to consider whether the ten 'principles' of conduct are still relevant and whether the Model Code of Conduct needs updating. This would include identification of areas where improvements could/should be made. The Monitoring Officers of all

principal councils, National Parks Authorities, and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a County Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half of local authorities also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

- 4.2.4 Paragraph 17 of the Model Code requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's monitoring officer, or in relation to a Community Council, to the authority's 'proper officer' of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations but a number of authorities have specified a threshold beyond which there must be a declaration. This ranges from £21 to £100 and there is agreement that the threshold should be specified in the Code to ensure consistency across Wales.
- 4.2.5 I was also required to explore options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Local Government and Elections (Wales) Act 2021 to stop Councillors' addresses being published. As I understand it, the law requiring the publication of the home addresses of Councillors was changed in the Local Government and Elections (Wales) Act 2021 so Councils will no longer do this from May 2022. This is for the safety and privacy of members, and reflects the fact that email or phone is now a more usual way of contacting members. However, Regulations issued under the Local Government Act 2000 still require members to include their home address in the Council's Register of Interests so the legislation is not in alignment. There is agreement that the Code of Conduct should not require Councillors to disclose their home address to declare the home address, and that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'

- 4.2.6 The Public Services Ombudsman has raised an issue in relation to the definition of 'person', a term frequently used in the Model Code of Conduct. A 'person' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Ombudsman has had to rely on the definition in the Interpretation Act 1978 which is 'a body of persons corporate or unincorporate'. The Ombudsman has been challenged when he has tried to use his powers to obtain information from a company or a charity and he has to threaten and or use powers to formally bring criminal proceedings and or contempt proceedings under current legislation for failing to cooperate with the investigation by the Ombudsman. So a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

4.2.7 Paragraph 4a of the Model Code of Conduct 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'

There is concern that this provision does not include all protected characteristics, and the view from consultees is that even though no problems have resulted as yet from the narrow coverage of this provision it should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

4.2.8 It is clear that there is the potential for breaches of the Code of Conduct resulting from the extensive and increasing use being made by elected members of a range of social media. The Welsh Local Government Association has produced useful guidance on social media in *'Social Media: A Guide for Councillors'*. The guidance provides members with advice about how to use social media, the possible pitfalls and how to avoid them. It reminds members that whenever something is posted on social media it becomes a publication, and is effectively made a broadcast in the public domain that is subject to both the Code of Conduct and to various laws. The WLGA guidance reminds members that the Code of Conduct applies to members whenever they 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'*, and the Code applies if a member conducts them self *'in a manner which could reasonably be regarded as bringing your office or your authority into disrepute'*. If a member can be identified as a Councillor when using social media, either by the account name or how they are described or by what they comment on and how they comment, the requirements of the Code of Conduct apply. If a member says something that could be regarded as bringing their office or authority into disrepute the Code applies even if the member is not apparently acting in an official capacity or does not identify him or herself as a member. The Ombudsman's guidance states that:

'Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute', and 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 law on equality - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010, even as a joke or *'tongue in cheek'*

This helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.

4.2.9 Criminal convictions

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. It states:

(You must) 'report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty)'

In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened until the Monitoring Officer's DBS checks have identified convictions or the matter has been reported in the press. The Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

4.3 Training for Councillors

4.3.1 Without exception, every individual or organisational representative that I met in the course of this review expressed the view that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. As was demonstrated in the audit of the Codes of Conduct adopted by all the relevant authorities mandatory training on the Code of Conduct is already a requirement of more than half of the principal councils so this would not be a controversial development for members of principal councils. However, although all members of Community Councils are currently required under the 2004 Order to be bound by the Code of Conduct it may be seen as a matter of controversy for them to be required also commit to training without due notice so advice that this is the case could be provided to all those considering standing for

election. Alternatively, it may be easier to amend the Code of Conduct to require those subject to the Code to undergo appropriate training on the Code.

4.3.2 If initial and refresher training on the Code is made mandatory there will need to be consideration of how that training can be resourced and delivered. At the moment many Monitoring Officers provide training on the Code of Conduct not only to their own members but also to members of Community Councils in the area. Some of the larger Community Councils arrange the training themselves, often using the training materials developed by One Voice Wales on the Code of Conduct and wider governance matters. Sometimes One Voice Wales provides the training direct but this has resource implications particularly for the smaller Community Councils.

4.4 **Standards Committees and Independent Chairs**

4.4.1 I met with a number of Independent Chairs of Standards Committees and also attended a meeting of the North Wales Forum for Chairs of Standards Committees in the course of this review. I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Community Councils in their area. In a number of authorities the Independent Members of the Committee attend meetings not only of their own Council but also meetings of the Community Councils in their area, recording their assessment of the meeting generally and the conduct of members specifically and feeding this assessment back to the Clerk and Chair of the Community Council. They stand ready to intervene if necessary to assist the Council and its Clerk to deal with challenging and inappropriate behaviour by members of that Council and, in one case, the Independent Chair monitors the situation in particularly problematic Community Councils in his or her area and intervenes to 'police' the behavior of the members involved.

4.4.2 There needs to be a consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the local situation for the principal authority concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

4.4.3 The Local Government and Elections (Wales) Act 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. The Act includes a number of provisions which are fundamental to greater transparency and

openness between local Councils and communities, as well as measures to combat bullying and harassment amongst elected members and Council staff. These provisions include:

- a new duty on leaders of political groups in principal councils to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- a requirement for the group leader(s) to co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct across the Council
- new functions for Standards Committees to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties
- a requirement for the Standards Committee to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards. This report at the end of each financial year should describe how the Committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the Council. The Council will be obliged to consider the report within three months of its receipt. This new duty will help to ensure that all Standards Committees adopt good practice and that standards issues are considered regularly (at least annually) by all Council members.
- a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include provision of training on the Code of Conduct at appropriate intervals.

4.4.4 There is seen to be a need for initial training of members of Standards Committee members, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The initial training should be refreshed immediately prior to a case being heard as well.

4.4.5 There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and that the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently would encourage consistency of approach and the adoption of best practice across Wales.

4.4.6 The Public Services Ombudsman for Wales accepts that there is a need for more references back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to *'nip things in the bud'* at a local level.

4.4.7 I was asked as part of my review to consider whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of its Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

4.5 **Community Councils**

4.5.1 There is agreement by all those that I met in the course of the review that local resolution combined with the mandatory training of all members has the potential to provide a means for resolving many issues locally before they get out of hand, and to prevent low-level complaints and 'grumbles' about fellow members turning into formal complaints to the Ombudsman that he either has to deal with or refer back for local consideration. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime must remain in place to deal with instances of serious misconduct.

4.5.2 Many of those I have spoken with expressed serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Community Councils. In particular, conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some Councils to retain members and Council officers. Less serious, but nonetheless disruptive behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of Council business. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Community Councils that have given rise to a disproportionate number of complaints in the past. His approach is that bullying and harassment, or lack of respect will simply not be tolerated. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and

inappropriate behaviour, including advice on formulating an effective complaint. This guidance for members of Community Councils emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration.

4.6 Local resolution of complaints

4.6.1 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 the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers 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.

4.6.2 Most principal Councils in Wales have adopted 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, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. This provides guidance relevant to Town and Community Councils in formulating and operating such protocols. 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 the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

4.7 The Public Services Ombudsman for Wales

4.7.1 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which Town and Community Councillors operate. Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the

operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of Standards Committees and the Adjudication Panel for Wales. The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

4.7.2 Section 69 of the 2000 Act empowers the Public Services Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority's Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman's attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by Standards Committees and the Adjudication Panel for Wales when exercising their respective functions.

4.7.3 The two-stage Public Interest Test

The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman's discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of Town and Community Councils. The Ombudsman has continued to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The Ombudsman considers that the involvement of Standards Committees in applying the two-stage test is impractical, not least as it may be perceived as prejudicing the later consideration of any report of a subsequent investigation that has been referred back to a Committee. It would probably also require primary legislation to make this a function of a Standards Committee or some other person or body. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by Monitoring Officers. However, Monitoring Officers raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively. There is also a reluctance on the part of Monitoring Officers to be involved in the investigation of complaints against members of their own authorities for understandable reasons.

- 4.7.4 A number of consultees expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken, and the validity of the two-stage test was also questioned. The first stage of the test was considered to be objective and based on reasonably clear criteria. However, the second stage ‘public interest’ test was considered to be subjective and based mainly on the Ombudsman’s opinion. It was suggested that the ‘public interest’ test should be applied by a wider ‘audience’ appointed for the purpose, such as the Standards Committee of the principal council for the area. There was also concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. The exercise of the Ombudsman’s discretion more towards referral than at present would be welcome.
- 4.7.5 There is a concern that the investigations undertaken by the Ombudsman take too long, linked to a concern that the power to suspend the member concerned whilst the investigation is being carried out is not being exercised by the Adjudication Panel for Wales though a referral by the Ombudsman. This can mean that a member facing serious allegations of a criminal nature may still be able to act as a Councillor with potential implications for the safeguarding of members of the public, other Councillors and employees of the local authority. The Ombudsman responded to the concerns about the length of some investigations by pointing to the unavoidable delays resulting from the unavailability of witnesses and the need to gather evidence that had not been included as part of the initial complaint. He also reiterated his concern that too much of his organisation’s time and limited resources is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation.

4.8 The Adjudication Panel for Wales

- 4.8.1 The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the practices that apply to the Panel. The Panel is a creature of statute created by the Local Government Act 2000 but since devolution the underpinning of the Panel’s powers and processes result from a mixture of the LGA 2000 and a variety of Welsh Regulations, particularly The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and The Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (both amended). The Regulations were drafted by the Welsh Government, and it would be for Welsh Government to deliver any policy amendments. In addition, ‘practice directions’ need the approval of the First Minister and while it is for the President of the Panel to set out new procedures or changes for Appeal Tribunals, the First Minister must agree any changes. Presidential Guidance is a matter for President but it is not legally binding.

- 4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel's work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

4.8.4 Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally. This is seen to avoid delay with the Panel procedure and allow both the accused member and the Tribunal to obtain additional evidence easily.

4.8.5 Appeal Tribunal procedure

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. Service should be by first class post with deemed service rules in place and Panel should be given the express ability to anonymise witnesses. There is a grey area on the subject of witness summons – Case Tribunals expressly have the power to do this through the relevant Regulations but the Regulations for Appeal Tribunals say that the Panel President determines this with the consent of the First Minister. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

4.8.6 Case Tribunal procedure

The Panel President considers that the Regulations are outdated in several respects. Service should be by first class post with deemed service rules in place, the ability to anonymise witnesses is required, and there is a Regulation that says Hearings can only be postponed with seven days notice given to the accused member. The ability to have part public and part private hearings is not expressly permitted currently.

4.8.7 Permission to appeal procedure

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well – it only allows delegation of her power to another legal member if she is absent whereas she would prefer to have discretion about delegation, such as when the accused member is known to her, it requires her to make a decision within 21 days with an extension of time if further information is required but it is not clear from when the new deadline applies, and does not give the Public Services Ombudsman any opportunity to make submissions to the Panel. A Hearing is possible if there are special circumstances, but no extension of time is given to effectively allow this. The President proposes minor amendments to make the process more balanced and sensible.

4.8.8 Sentencing powers

Currently 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.

Monitoring Officers have confirmed that they would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

4.8.9 Interim Case Tribunals

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high. This view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The fact is that the Ombudsman has never applied for such a Hearing. The process is lengthy and the LGA 2000 does not explain sufficiently what is required to deal with such hearings. The intention in the Act appears to be to allow an accused member to be suspended for six months (it is unclear whether this is one term of suspension or if it can be renewed on application) while the Ombudsman investigates if that Councillor through their role was interfering with the investigation or if for some other reason it was necessary to suspend on an interim basis. The issue has arisen several times where Councillors are being prosecuted for historic sex offences and there is a strong feeling from Monitoring Officers and Standards Committees that it is inappropriate to continue to remunerate a Councillor who is facing such charges, and that his or her continued activities as a Councillor could endanger members of the public, other Councillors or members of staff. A member who is charged with criminal offences is innocent until proven guilty, and in order for the Ombudsman to make an interim referral there would need to be strong evidence that it is in the public interest for a suspension to be imposed, particularly if the offences are historical. This could be met if, for example, there is evidence that the member represents a risk to the public at large or to a particular group in the locality. A neutral act of suspension akin to the practice in employment matters pending hearings taking place would provide some assurance to the public and to local authorities on the risk that the member concerned could reoffend or misuse their position/standing in the local community whilst being investigated or awaiting criminal trial. In addition, an Interim Case Tribunal would follow the same process as a full Case Tribunal, which means it would take at least three months to have a Hearing, and the Hearing would require a full Panel which would then present difficulties in constituting a new Panel for the final Hearing. There is no assistance in the legislation about how to manage such Hearings and 'public interest' is not defined. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with

the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

- a) if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b) and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*
- and*
- c) and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5 Conclusions and recommendations

5.1 I welcomed the opportunity to lead this review and to collect the widest possible evidence

from those involved in the operation of the ethical standards framework about strengths and weakness of the current framework, how it might be improved and how the requirements of the recent legislation as it relates to ethical standards will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

5.2 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome. This involvement needed to be demonstrated as part of the outcome of this work. I have met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

5.3 The first phase of the review involved engagement with those individuals and representatives of organisations to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published have also been considered.

5.4 The following were required as key components of delivery:

- *An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances*
- *An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements*
- *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.*
- *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.*
- *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the*

approach to addressing concerns.

- *Consideration of the current sanctions and whether they are still appropriate*

5.5 This first stage of the review has covered each of these issues and my findings and recommendations for change below relate to the key components of delivery:

5.5.1 ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

I conducted an audit of the Codes of Conduct adopted by all the required authorities against the Model Code of Conduct to identify any local variances and to consider whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This included identification of areas where improvements could/should be made. The Monitoring Officers of all principal councils, National Parks Authorities and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a county Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half also have a mandatory training requirement again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

5.5.2 ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

All of those I met as part of this review consider that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales.

However, there are concerns by the Public Services Ombudsman and Monitoring Officers about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code of Conduct for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being

significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

5.5.3 Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.

The consensus is that the current framework is fit for purpose, works well in practice and a number of those that I consulted proposed that *'if it ain't broke don't fix it'*. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate - and superior to the Code of Conduct used in English local government - and not in need of major revision.

However, I have proposed a number of amendments to the Model Code of Conduct in respect of:

- Paragraph 17 of the Model Code that requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's Monitoring Officer, or in relation to a Community Council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations and a number of authorities have specified a threshold beyond which there must be a declaration. The threshold should be specified in the Code to ensure consistency across Wales.
- The law requiring the publication of the home addresses of Councillors has changed recently so Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. There is agreement that the Code of Conduct should not require Councillors to disclose their home address, and it is proposed that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'
- A *'person'* is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Public Services Ombudsman has had to rely in conducting his investigations on the definition in the Interpretation Act 1978 which is *'a body of persons corporate or unincorporate'*. This has caused problems, and it is considered that a clear definition of what is meant by a *'person'* on the face of the legislation or in the Model Code would be beneficial.
- There is concern that the provision in Paragraph 4a of the Model Code of Conduct 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. This provision should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

- The potential for breaches of the Code of Conduct as a result of the extensive and increasing use being made by elected members of a range of social media is a matter of concern. The helpful guidance on the use of social media by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.
- 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. In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened and the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

Every individual or organizational representative that I met proposed that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. The Local Government and Elections (Wales) Act 2021 includes a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include training on the Code of Conduct at appropriate intervals. If initial and refresher training on the Code is made mandatory for all councillors there

will need to be consideration of how that training can be resourced and delivered.

- **Increased use of local resolution of complaints**

Most principal Councils in Wales have adopted 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, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. Members may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal authority's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Consideration should be given to whether 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. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

There is concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman has had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. Greater use of the Ombudsman's discretion for referral than is the case at present would be welcomed by Monitoring Officers and Chairs of Standards Committees. The Ombudsman is sympathetic to the view expressed by some of those I spoke with that his investigations take too much time and that too often quite serious complaints are simply not dealt with. He has expressed his concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the processes that apply to the work Panel.

- **Restricted reporting orders**

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically. The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well and proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are limited and the President would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England. The Public Services Ombudsman and Monitoring Officers have confirmed their support for this.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high, and this view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a

test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

a. if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;

b. and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;

and

c. and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5.5.4 Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.

I was struck by the variation in the way that Standards Committees in Wales see their remit and at the different roles played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs

seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Town and Community Councils in their area. There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, but accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

The Local Government and Elections (Wales) Act 2021 includes a number of provisions that will have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.

There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently that would encourage consistency of approach and the adoption of best practice across Wales.

The Public Services Ombudsman for Wales accepts that there is a need for more reference back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to '*nip things in the bud*' at a local level.

I reviewed whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of the Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Town and Community Councils that have given rise to a disproportionate number of complaints in the past, and guidance prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and inappropriate behaviour. This is an issue that may be mitigated to some extent by a requirement for mandatory training of councillors and greater use of local resolution procedures, but it is a serious problem that will continue to need to be monitored and addressed where necessary by local Standards Committees and Monitoring Officers

5.5.5 *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.*

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

5.5.6 *Consideration of the current sanctions and whether they are still appropriate*

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 or if shorter, the remainder of the member's term of office.

A member subject to a sanction by a Standards Committee may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination.

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, the Public Services Ombudsman and Monitoring Officers confirmed their support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

5.5.7 Accessibility of the ethical standards framework

Although this was not an issue raised by any of those that I consulted there is nevertheless a concern that the ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, based on my own experience of searching principal Council websites as well as the Welsh Government website for information about the Code of Conduct, or the work of Standards Committees or how to complain about the conduct of a councillor, a member of the public would have great difficulty in finding helpful information if they wished to complain. And of course not every member of the public has internet access, and some members of the public have particular difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group' such as the traveler community or because of language problems. I have no practical recommendation about how this should be addressed but if the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

- 5.6 The second phase of the review will focus on working with partners and stakeholders to deliver any changes to the ethical standards framework that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

Richard Penn

Independent Consultant

July 2021

Introduction

The Public Services Ombudsman for Wales considers complaints that members of relevant authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- a) that there is no evidence that there has been a breach of the authority's code of conduct;
- b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defense put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers January to March 2021.

The Code of Conduct Casebook

Contents

No evidence of breach	3
No action necessary	3
Referred to Standards Committee	3
Referred to Adjudication Panel for Wales	4

Case summaries

No evidence of breach

There are no summaries in relation to this finding.

No action necessary

There are no summaries in relation to this finding.

Referred to Standards Committee

[Knighton Town Council – Promotion of equality and respect](#)

[Case Number: 201907610 – Report issued in January 2021](#)

The Ombudsman received a complaint from a member of the public that a Member (“the Member”) of Knighton Town Council (“the Council”) had failed to observe the Code of Conduct for members of the Council.

It was alleged that the Member shouted, and used offensive language, aimed at people present at a public meeting held to discuss the local community’s response to the coronavirus (COVID-19) outbreak. It was also alleged that the Member swore and used bullying behaviour towards the complainant. The Member had accepted a Conditional Caution from the Police for his conduct at the meeting.

The Ombudsman found that there was evidence to suggest that the Member shouted and used offensive language at the meeting and had used bullying behaviour.

The Ombudsman determined that the Member may have breached the Council’s Code of Conduct, in particular, paragraphs 4(b) and 4(c) as he failed to show respect and consideration, and used bullying behaviour, towards members of the public who attended the meeting. The Ombudsman also found that the Member’s actions could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Powys County Council for consideration by its Standards Committee.

The Standards Committee found that the Member had breached paragraphs 4(b), 4(c), and 6(1)(a) of the Code of Conduct and suspended the Member for a period of 6 months.

Chirk Town Council – Promotion of equality and respect

Case Number: 201904568 – Report issued in January 2021

The Ombudsman received a complaint that a Member (“the Member”) of Chirk Town Council (“the Council”) had breached the Code of Conduct.

It was alleged that the Member had sent an email to the complainant’s employer, in which he attempted to smear her name in her workplace and to make her feel threatened and vulnerable.

The investigation considered whether the Member had breached the following paragraphs of the Code of Conduct:

- 4(b) - show respect and consideration for others.
- 4(c) - not use bullying behaviour or harass any person.
- 7(a) - not, in his official capacity or otherwise, to use or attempt to use his position improperly to confer on or secure for himself, or any other person, an advantage or create or avoid for himself, or any other person, a disadvantage.

The Ombudsman found that the Member had sent an email to the complainant’s employer in which he threatened to take legal action against the complainant. The Member also copied his email to the Education Workforce Council, which was considered to be an aggravating factor.

The Ombudsman concluded that the Member’s conduct was such that it may amount to a breach of paragraphs 4(b), 4(c) and 7(a) of the Code of Conduct. The matter was referred to the Monitoring Officer of Wrexham County Borough Council, for consideration by the Council’s Standards Committee.

Referred to Adjudication Panel for Wales

Caerphilly County Borough Council – Disclosure and registration of interest

Case Number: 201903571 – Report issued in February 2021

The Ombudsman received a self-referred complaint that a Member (“the Member”) of Caerphilly County Borough Council (“the Council”) had breached the Code of Conduct.

The Member represented the Council as a member of the Cardiff Capital Region (“CCR”) City Deal’s Regional Cabinet. It was alleged that the Member had purchased shares in a company (“the Company”) that had been leased premises by CCR City Deal, to manufacture compound semiconductors and develop applications and that he had subsequently failed to declare an interest in the Company during CCR City Deal’s Joint Committee Meetings.

The complaint was investigated on the basis that there may have been a failure to comply with the following provisions of the Code of Conduct:

- 6(1)(a) – members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 7(a) – members must not, in their official capacity or otherwise, use or attempt to use their position to confer on or secure for themselves an advantage.
- 10(2)(viii) – members must regard themselves as having a personal interest in any business of their authority if it relates to, or is likely to affect...any body to which they have been elected, appointed or nominated by their authority.
- 11(1) – Where a member has a personal interest in any business of his authority and attends a meeting at which that business is considered, he must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration or when the interest becomes apparent.
- 14(1)(a) – Where a member has a prejudicial interest in any business of his authority, unless he has obtained dispensation from his authority's Standards Committee, he must withdraw from the room, chamber or place where a meeting considering the business is being held.

The investigation found that the Member had access to confidential information by virtue of his position on the CCR City Deal's Regional Cabinet, which enabled him to purchase shares in the Company at a low price with a reasonable expectation that he could later sell those shares at a higher value. The Ombudsman considered that his actions were not in the spirit of the Principles which underpin the Code of Conduct, in particular the principle of integrity, which expects members not to act or take decision to gain financial benefits for themselves. The Ombudsman also considered that the Member's behaviour was suggestive of a breach of paragraph 7(a) and 6(1)(a) of the Code of Conduct.

In respect of the allegation that the Member had failed to declare an interest in the Company during CCR Regional Cabinet meetings, the investigation found that the Member failed to declare an interest in the Company during a CCR Regional Cabinet meeting on 18 February 2019 and that, whilst no decisions were made about the Company during this meeting, the Member's failure to declare a personal and prejudicial interest and withdraw from the meeting was suggestive of breaches of paragraphs 11(1) and 14(1)(a) of the Code of Conduct.

The investigation concluded that the Ombudsman's report on the investigation should be referred to the President of the Adjudication Panel for Wales, for consideration of a possible breach of paragraphs 6(1)(a), 7(a), 11(1) and 14(1)(a) of the Code of Conduct.

This page is intentionally left blank

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW-002-2021-022-AT

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT**

APPELLANT: Councillor Richard Mainon

RELEVANT AUTHORITY(IES): Denbighshire County Council

INTRODUCTION

1. An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Richard Mainon against the decision of Denbighshire County Council's Standards Committee made on 11th June 2012¹ that he had breached Denbighshire County Council's Code of Conduct and should be suspended from being a member of Denbighshire County Council for a period of two months.

2. On 9th May 2017, upon his election to the office of Councillor, Richard Mainon, undertook in writing to observe the Code for the time being as to the conduct which is expected of members of Denbighshire County Council.

3. In so far as it relates to this case, Denbighshire County Council Members' Code of Conduct reads as follows.

a. Paragraph 2(d) of the Code provides that members must observe the Code of Conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

b. Paragraph 4(c) of the Code provides that members must not use bullying behaviour or harass any person.

c. Paragraph 6(1)(a) of the Code provides that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

d. Paragraph 7(a) of the Code provides that members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves or any other person, an advantage or create or avoid for themselves, or for any other person, a disadvantage.

4. The Public Services Ombudsman for Wales (“PSOW”) received a complaint that Councillor Mainon had failed to observe the Code of Conduct. It was alleged that he had abused his position by visiting a member of the public’s place of work and complaining to her employer about a private altercation between her and constituent in a local store car park.

5. The Ombudsman determined that there was evidence to suggest that Councillor Mainon had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The Ombudsman determined that the member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Council’s Code of Conduct. The Ombudsman referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.

6. On 11th June 2021, a Standards Committee Hearing took place at County Hall, Ruthin, Denbighshire and via the “Zoom” video platform.

7. The Standards Committee found the following facts.

a. On 8th December 2018, Mrs Sandie Grieve had a heated altercation with Ms Jayne Davies outside a local mini supermarket. Ms Davies is a constituent of the Appellant.

b. Ms Davies phoned the local mini supermarket that evening to ask about CCTV footage of the car park and was advised the CCTV covered the car park, but it had no sound.

c. On 10th December 2018, Ms Davies established that Mrs Grieve worked for Social Care Wales (SCW) and asked Councillor Mainon for assistance with pursuing a complaint about Mrs Grieve to her employer. Councillor Mainon agreed to handle the matter for Ms Davies.

d. On 11th December 2018, Councillor Mainon conducted an online search for Mrs Grieve’s place of work and determined an address for SCW’s local office.

e. On 11th December 2018, Councillor Mainon attended SCW’s local office to determine if it was Mrs Grieve’s place of work and to speak to her.

f. On 11th December 2018, Councillor Mainon gained access to Mrs Grieve’s workplace via a secure door entry. Mrs Grieve was not in the office at the time and Councillor Mainon spoke separately to three colleagues (an office colleague, her line manager and the organisation’s Complaint Officer) about the altercation and shared details with them about the incident and Mrs Grieve’s conduct. Councillor Mainon spoke to the office colleague in person but spoke to the line manager and Complaints Officer by telephone.

- g. On 15th December 2018 Councillor Mainon visited the local mini supermarket to ask whether the incident between Mrs Grieve and Ms Davies was recorded on CCTV.
- h. On 21st December 2018 (*corrected from "2021" within the Standards Committee's Notice of Determination because it is obviously a typographical error*) Councillor Mainon visited the local mini supermarket and obtained information on what the CCTV footage of the incident had shown.
- i. On 21st December 2018 Councillor Mainon sent a complaint on Ms Davies' behalf to SCW about Mrs Grieve and her involvement in the altercation.
- j. SCW notified Mrs Grieve of the matter on 10th January 2019, which was subsequently dealt with according to the organisation's policy. SCW determined it was a private matter and no further action was taken.
- k. Aside from submitting that it was Ms Davies that had identified Mrs Grieve's employer, Councillor Mainon did not dispute this summary of the relevant facts.

8. Based upon these findings of fact, the Standards Committee found that Councillor Mainon had failed to comply with the Code of Conduct in the following ways.

- a. The Committee was satisfied that Councillor Mainon gave the impression of acting in his capacity as a Councillor, thereby engaging paragraph 2(d) of the Code of Conduct.
- b. The Committee found that Councillor Mainon had breached paragraph 4(c) of the Code in that his conduct in visiting Mrs Grieve's place of work and speaking to her colleagues in her absence could be considered to be bullying and harassing behaviour. The Committee had, in reaching this decision, considered the written evidence of Mrs Grieve and submissions to the effect that she had genuinely felt stressed, vulnerable, upset and embarrassed. The Committee also considered the information provided by Councillor Mainon to the investigating officer and his submissions. The Committee accepted that Councillor Mainon had not intended to cause upset to Mrs Grieve and that he had no malicious intent when he attended her place of work. The Committee accepted that his intention was to assist Ms Davies and to avoid a damaging social media dispute in his community. The Committee did however conclude that Mrs Grieve was entitled to perceive Councillor Mainon's actions as bullying and harassing and that this conduct could reasonably be regarded as such.
- c. The Committee concluded that Councillor Mainon had breached paragraph 6(1) (a) of the Code of Conduct. Councillor Mainon had given the impression to Mrs Grieve's colleagues that he was acting as a councillor in pursuit of Ms Davies' complaint. In doing so, and by visiting Mrs Grieve's place of work and speaking to her colleagues about the incident there was potential damage to the Council's reputation particularly as Councillor Mainon appeared

to have accepted Ms Davies' version of events and had not sought Mrs Grieve's version of events.

d. The Committee concluded that Councillor Mainon's conduct amounted to a breach of paragraph 7(a) of the Code of Conduct. The Committee took into account Mrs Grieve's view that Councillor Mainon's actions were an effort to get her investigated and discredit her professionally. The Committee accepted that Councillor Mainon had not considered his approach to the Complainant's employer to be menacing and that his intent had been to seek to assist Ms Davies to pursue a complaint. However, the Committee concluded that in giving the impression that he was acting as a councillor in bringing to the attention of Mrs Grieve's employer a private incident, without demonstrating balance or fairness towards both parties, Councillor Mainon had attempted to use his position to cause Mrs Grieve a disadvantage.

9. Thereafter, the Standards Committee heard representations on the appropriate sanction applicable to these findings. Having considered those representations, the available material and the Sanctions Guidance published by the Adjudication Panel for Wales, the Standards Committee determined that Councillor Mainon would be suspended as a Member of the Council for a period of two months.

THIS APPEAL

10. In an email dated 12th July 2021, the Adjudication Panel for Wales received an appeal from Councillor Richard Mainon against the determination of Denbighshire County Council Standards Committee on 11th June 2021 that he had breached the Denbighshire County Council Code of Conduct; and that he should be suspended from being a member of the Council for two months.

11. Councillor Mainon sought to appeal the Standards Committee's findings that he had bullied Mrs Grieve; that he had harassed Mrs Grieve; that he had brought the Council into disrepute; and that he had taken advantage of his position to cause disadvantage to Mrs Grieve. He also sought to appeal the sanction imposed on the grounds that it was inappropriate, unnecessary, and excessive in all the circumstances.

12. Councillor Mainon accepted that he had identified himself as a councillor and as acting in support of a constituent, who was seriously ill at the material time and who complained that her child had been upset by the initial incident. Councillor Mainon said he had good reason to believe that the dispute would be aired via social media and that this would have been divisive to the local community.

13. Councillor Mainon noted that the only contact he made with Mrs Grieve was via her place of work. When he was admitted after ringing a doorbell, he did not act aggressively and quoted from the unchallenged evidence of the person who attended upon him: *“I would say that Councillor Mainon’s manner was reasonable when I spoke to him and he wasn’t intimidating or anything like that.”* Councillor Mainon worked with the information he was given.

14. Councillor Mainon noted that the Standards Committee found that he did not intend to cause upset to Mrs Grieve; that he had no malicious intent when he attended her place of work; that he intended to assist a constituent and to avoid a damaging social media dispute in the community; and that he did not consider that his approach to Mrs Grieve’s employer was menacing.

15. Councillor Mainon submitted that the Standards Committee had failed to take account that he made his complaint in a *“reasonable and unintimidating manner”* and through the correct channel for complaint about a public servant. He therefore submitted that legitimate presentation of a complaint cannot itself constitute either harassment or bullying.

16. He further submitted that the Standards Committee’s expression of its findings using the conditional term *“could”*, (*“...could be considered to be bullying and harassing behaviour...”*; *“...the Complainant was entitled to perceive Councillor Mainon’s actions as bullying and harassing and that this conduct could reasonably be regarded as such”*) was insufficient to constitute a public finding of misconduct. Overall, the Standards Committee gave too much weight to untested statements as to Mrs Grieve’s feelings; too little to Councillor Mainon’s intent; and too little to all the circumstances of the case.

17. Councillor Mainon submitted that a course of conduct was required for a finding of harassment and that the Standards Committee had not identified such a course of conduct. He further submitted that his actions after attending Mrs Grieve’s place of work did not amount to a course of conduct.

18. Councillor Mainon submitted that the Standards Committee’s finding that he had brought the Council into disrepute, *“...particularly as (he) appeared to have accepted (Ms Davies’) version of events and had not sought (Mrs Grieve’s)...”* misunderstood that he was only trying to file a complaint and hand it on to the proper authority for investigation. It was, therefore, an error to hold his failure to investigate as an aggravating feature, not least because Mrs Grieve was not available for comment when he attended.

19. Councillor Mainon also submitted that the Standards Committee was wrong to find that he had taken advantage of his position to cause Mrs Grieve disadvantage, because all he had done was make a formal complaint about the

conduct of a public servant to the relevant department of her employer. The finding that Councillor Mainon intended to assist a constituent to pursue a complaint meant this further finding was not open to the Standards Committee. The fact that Mrs Grieve believed that Councillor Mainon acted “..to get her investigated and discredit her professionally”, did not assist that decision.

20. On sanction, Councillor Mainon submitted that the finding of a lack of malice, coupled with a finding of “*lack of understanding*” and “*relative inexperience*” meant that suspension was inappropriate and unnecessary. The public findings of reprehensible conduct are themselves massively important and the Standards Committee failed to take this into account. The potential impact upon Mrs Grieve had to be set against the fact that there was no actual impact upon her arising from the complaint made.

21. On the findings made, Councillor Mainon submitted that training (also bearing in mind the experience of this entire process) could be the appropriate remedy, rather than suspension; that depriving the Councillor’s constituents of representation for a period was unnecessary and wrong; and that two months’ suspension, that is one-third of the maximum available, was excessive in any event.

22. The President of the Adjudication Panel for Wales gave limited permission to appeal on the following grounds. At paragraphs 9(c) and 9(d) of her decision dated 28th July 2021: -

9c. The Appellant submits that the Standards Committee did not define “bullying” or “harassment” and failed to identify a course of conduct in relation to harassment.

The decision of the Standards Committee...shows that the Committee was taken to the definition of bullying and harassment within the Ombudsman’s guidance; it accurately summarises that relevant factors when dealing with allegations of bullying include the perception of the victim and the intention of the Appellant. I note that the report pack before the Standards Committee included excerpts of the Ombudsman’s guidance explaining both bullying and harassment.

The decision of the Standards Committee did not separate bullying from harassment; the two are not the same thing. The decision does not set how the Committee concluded that there was a course of conduct/repeated behaviour which constituted harassment. While the Notice sets out the activities of the Appellant towards the Complainant, which could be seen as more than one act and repeated behaviour, the Committee does not set out its conclusions in that regard to its decision; while it is likely that the Appellant’s case here is not strong, I cannot say it has no reasonable prospect of success. However, the decision does set out how the Committee concluded that the Appellant’s conduct could

*be reasonably perceived subjectively and objectively as bullying. **I do not consider this ground of appeal to have a reasonable prospect of success in respect of bullying and direct it not to be considered by the Appeal Tribunal. I do consider this ground of appeal to have a reasonable prospect of success in respect of harassment and it therefore will be considered by an Appeal Tribunal in due course.***

*9d. The Appellant goes on to dispute the Standards Committee's finding that he undertook a course of conduct which equated to harassment. For the relevant reasons given in sub paragraph c above, **I do consider this ground of appeal to have a reasonable prospect of success and it therefore will be considered by an Appeal Tribunal in due course.***

23. The President gave permission to appeal the sanction imposed in the following terms and with the following caveat.

*9k. I cannot say in all the circumstances that there is no reasonable prospect of success...as it is generally always arguable that a sanction imposed was too harsh or too lenient. This is despite the Appellant at the hearing, according to the Notice of Decision, saying that he would accept its judgment, and the evidence within the Notice of Decision that the Standards Committee considered the Sanctions Guidance. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be reconsidered by the standards committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. **It therefore will be considered by an Appeal Tribunal in due course.***

24. The Public Service Ombudsman for Wales responded in writing to those grounds upon which permission to appeal was granted.

25. The Standards Committee was taken to the definition of bullying and harassment within the Ombudsman's guidance, and the report pack before the Standards Committee included excerpts of the Ombudsman's guidance, explaining both bullying and harassment.

[That material reads as follows: -

"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.”]

26. The Ombudsman submitted that the evidence supported the finding of harassment and that this was an appropriate finding for the Standards Committee to make in the circumstances. When Councillor Mainon established that Mrs Grieve was not a Council employee and was employed by a different organisation, he searched that organisation’s website and determined its address and complaints procedure. He did not try to call that organisation or use its complaints procedure although relevant information and contact numbers were available on the website. Instead, he made an unannounced visit to Mrs Grieve’s place of work, with the expressed aim of getting her to refer herself to her professional/ regulatory body. On determining that she was not available at her workplace, Councillor Mainon then discussed the incident with three of Mrs Grieve’s colleagues, including her Line Manager. Councillor Mainon subsequently sought to validate Ms Davies’ account by obtaining information about the incident from staff at the local supermarket and then made a written complaint to Mrs Grieve’s employer on Ms Davies’ behalf.

27. The Ombudsman further submitted that Councillor Mainon’s actions had a huge impact on Mrs Grieve and made her feel upset, embarrassed, vulnerable, afraid to be alone in her office and stressed. She felt that Councillor Mainon’s actions were an effort to discredit her professionally. He acknowledged that his visit caused distress to Mrs Grieve and made her feel unsafe.

28. As to sanction, the Ombudsman submitted that the two-month suspension imposed was fair and reasonable in all the circumstances and that a more severe sanction could have been justified. The Standards Committee considered the relevant applicable Sanctions Guidance, and that at the time of the initial decision, Councillor Mainon said that he would accept the Standards Committee’s judgment.

29. The mitigating features were that the Appellant was a relatively new councillor at the time of the events. He had not previously been found to have breached the Code of Conduct. He had been motivated to try to defuse a

potential conflict on social media and assist a sick constituent. He had co-operated fully with the processes of the Ombudsman's office and the Standards Committee.

30. The aggravating features were the impact of the Appellant's conduct on the Complainant. He had shown a reckless disregard for the Complainant in contacting her employer without seeking to check her version of events in respect of the original incident. The incident had been a private matter on the view of the Complainant's employer. Some of his comments at the hearing suggested a lack of understanding of the seriousness of the matter.

31. The Ombudsman's representative noted that the nature of the breaches of the Code suggested that suspension would be appropriate to maintain public confidence, and that a censure would be inappropriate, given the Appellant's apparent lack of understanding of the significance of the issues.

32. The Ombudsman noted that the Sanctions Guidance is an appropriate framework for a fair decision, balancing the need for both a disciplinary response, the public interest in any case; and that a local Standards Committee with local knowledge is best placed to take the action necessary to maintain public confidence in elected members in their area.

PRE-HEARING LISTING DIRECTIONS

33. Councillor Mainon was permitted to serve any further evidence relevant to sanction by 15th October 2021.

34. Both Councillor Mainon and the PSOW were permitted to make further submissions in writing as to those issues upon which permission to appeal was given by 22nd October 2021.

35. The Monitoring Officer was permitted to attend the hearing, send a representative or make written representations by 22nd October 2021. The Monitoring Officer chose to contribute by an email which was sent the Registrar of the Adjudication Panel for Wales, and which was read in full to those attending the hearing.

THE HEARING

36. A hearing was held by the Appeal Tribunal at 10am on 29th October 2021 via Cloud Video Platform. The hearing was open to the public. Councillor Mainon was represented by Mr Owain James. The Public Service Ombudsman for Wales was represented by Ms Katrin Shaw. There were no preliminary applications.

37. The first stage of proceedings was to find as a fact whether Councillor Mainon had harassed Mrs Grieve. In the light of any finding, the second stage was to determine the extent to which Councillor Mainon had breached the Code of Conduct. Mr James indicated that he was content to deal with the first stage by way of submissions; and further content for the panel to decide the first and second stages together, without further submissions between those stages. For the PSOW, Ms Shaw agreed with this approach.

38. Mr James relied upon the written grounds of appeal and submitted that throughout both the investigation and hearing before the Standards Committee, bullying and harassment had been treated as effectively the same thing, when as a matter of law, they are quite separate. Harassment requires repeated behaviour; a course of conduct and the Standards Committee made no finding of any such course of conduct.

39. Mr James accepted that on appeal, the panel were able to consider the matter afresh and to consider whether the evidence amounted to harassment as well as bullying. He accepted that this task involved both a subjective consideration of both Councillor Mainon's understanding and actions; and Mrs Grieve's understanding and reactions. It also included an objective assessment of Councillor Mainon's actions in the circumstances.

40. Mr James invited the Tribunal to consider Councillor Mainon's actions in the round as a single matter rather than a course of conduct. He submitted that Councillor Mainon's actions after his attendance at Mrs Grieve's place of work did not contribute beyond his attendance at Mrs Grieve's work and so bullying by attending in person was the height of it, rather than harassment. Whilst harassment requires repeated behaviour against the same person, this was also not "repeated" behaviour, when considered subjectively from Councillor Mainon's perspective.

41. During submissions and responding to a matter raised by the Chair, Mr James also asked the Tribunal to consider whether these matters taken as a whole, can truly amount to harassment where, as here, Mrs Grieve found out about those matters after the event and thus suffered upset. Accepting that she was upset by what she had discovered, Mr James suggested that the single, ongoing incidence of upset militated in favour of characterising Councillor

Mainon's actions at most as a single instance of bullying rather than a course of conduct amounting to harassment.

42. For the PSOW, Ms Shaw invited the Tribunal to consider the allegation of harassment afresh, in the light of facts which were not disputed. She submitted that Councillor Mainon's actions could and should properly be considered as more than one act and so therefore amount to a course of conduct and harassment. He had involved himself in a matter unrelated to his role, sharing details of a private incident with three other people. He made enquiries in relation to the available evidence. He made a further effort to determine what the CCTV footage showed. His final submission gave an inaccurate impression about his state of knowledge and at best, an inaccurate impression as to the facts. His actions could properly be considered as a course of conduct involving separate actions. Mrs Grieve was entitled to the upset she reported when the complaint was relayed to her, given that Councillor Mainon had submitted it in his official capacity, relaying in accurate information and thereby appearing to already have taken sides.

DECISION ON FIRST AND SECOND STAGES

43. The Appeal Tribunal found by unanimous decision that between 11th December 2018 and 21st December 2018, Councillor Mainon harassed Mrs Grieve.

44. The Tribunal reminded itself that the civil standard of proof applies, and all findings are made on the balance of probabilities. The burden of proof lies on those responding and not on the appellant, Councillor Mainon.

45. The Tribunal referred to the Ombudsman's guidance both prohibiting harassment and defining it as "*repeated behaviour which upsets or annoys people.*" The Tribunal considered Mrs Grieve's perspective and whether Councillor Mainon intended his actions to be harassing. The Tribunal also considered whether Mrs Grieve was reasonably entitled to believe that she had been harassed.

46. The Tribunal found that Councillor Mainon engaged in repeated behaviour. His actions on 11th December 2018 can properly be considered together as parts of one incident. His actions that day are however distinct and therefore separate from his actions on both 15th December 2018; and 21st December 2018. Those actions obviously took place on different days. They engaged separate decisions and processes by Councillor Mainon.

47. These distinct incidents were individually considered and acted upon. They were however joined by the nexus of Councillor Mainon's ongoing pursuit

of Ms Davies' complaint against Mrs Grieve. To this extent therefore Councillor Mainon engaged in a course of conduct which is properly characterised as repeated behaviour.

48. There is no challenge to the fact that Mrs Grieve was upset and, no doubt, annoyed when she was told on 10th January 2019 that the issue with Ms Davies had come to her employer's attention via a complaint. She describes herself as "*very upset and embarrassed*", and ultimately "*shocked to learn...that Councillor Mainon also came to my place of work...*" The Tribunal accepted that Mrs Grieve's upset and annoyance can be properly taken as a single, ongoing revelation to her. That was inevitable given that the matters causing her upset were only brought to her attention after the event. The Tribunal found that this was no bar to characterising Cllr Mainon's actions as harassment. The working definition of harassment set out above does not require repeated upset or annoyance. Only repeated behaviour which causes such upset or annoyance.

49. The Tribunal therefore considered whether the repeated behaviour amounted to harassment, looking at that behaviour objectively but also considering the perspectives of both Councillor Mainon, Mrs Grieve and the other available evidence.

50. The Tribunal accepted that Councillor Mainon did not intend to harass Mrs Grieve. It however noted from Ms Davies' evidence (paragraph 6) that before he went to Mrs Grieve's place of work, Councillor Mainon already knew that Mrs Grieve was not a Council employee. Ms Davies does not recall whether she asked Cllr Mainon to make a complaint or if he offered to do it but (paragraph 7) she recalls that she asked Cllr Mainon to type up her complaint. He said that he would progress it as he would also be going near her workplace. As Councillor Mainon accepted, he did not attend the office to establish Mrs Grieve's version of events, but to ask her to refer herself to her professional body or regulator.

51. The Tribunal noted the evidence provided by Mrs Grieve's manager, Meilir Thomas, who said that Councillor Mainon's manner was reasonable when he attended and spoke to him "*...and he wasn't intimidating or anything like that*". Mr Thomas followed by saying in his statement that "*...it was an odd, really strange episode and not something I have experienced before. I should say I was completely shocked that Councillor Mainon had come to the door and discussed the events with me and been so open about it, and the nature of his visit*".

52. Events culminated in a written complaint that, at best, contained factually inaccurate information. The Tribunal had the full text of the complaint, in which Councillor Mainon purported to describe events recorded on the store's CCTV

in a manner which suggests he viewed that material. “A black Audi TT can be seen on the convenience stores CCTV...” Councillor Mainon accepts that he did not view that material. The complaint he drafted neither says nor suggests that he did not see it.

53. In the complaint, Councillor Mainon also described the words allegedly exchanged between Mrs Grieve and Ms Davies. He described an alleged response from Mrs Grieve as “...offensive. Given the angry way in which it was delivered...I find this unacceptable and worthy of challenge...Your organisation has been identified and associated with this behaviour and I deemed it a courtesy to bring it to your attention. Kindest Regards. Cllr Richard Mainon, Lead Member for Developing Community Infrastructure.” The CCTV does not record sound. Therefore, Councillor Mainon’s inclusion of the alleged conversation in the complaint coupled with his comments and opinions noted above lead the Tribunal to conclude that he had taken sides from the outset.

54. It follows therefore that Councillor Mainon took it upon himself to go to Mrs Grieve’s workplace; to take further investigative steps; and to initiate the complaint, citing his official status. Once he knew that Mrs Grieve was not a Council employee, the Tribunal found that he could and should have left it at that. The Tribunal accepted Mr James’ submission that to continue as he did was “overzealous”, but that is no answer. He pursued her regardless, repeatedly, when both he ought not have done so; and should have known not to do so, starting with the objectively unreasonable action of attending her workplace.

55. The Tribunal therefore found that Councillor Mainon acted in an extreme way and continued to do so when he had no right to do so. Mrs Grieve was entitled to perceive herself as having been harassed, even though the Tribunal accepted that Councillor Mainon did not intend to harass her. On balance, his actions amounted not only to bullying but also to harassment. He engaged in unjustified, extreme, repeated behaviour which he ought to have known he should not have done; ought to have known would upset or annoy Mrs Grieve; and which a reasonable person in possession of the same information as Councillor Mainon would think amounted to harassment.

FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

56. The Appeal Tribunal therefore further found by unanimous decision that Councillor Mainon's behaviour amounted to harassment of Mrs Grieve and therefore amounted to a further breach of paragraph 4(c) of the Council's Code of Conduct.

57. The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of Denbighshire County Council's Standards Committee that Councillor Richard Mainon had breached Denbighshire County Council's Code of conduct by harassing Mrs Grieve.

SUBMISSIONS ON SANCTION

58. The Tribunal announced its decision on the first and second stages. The Tribunal then moved to the third stage, to consider the appeal against the sanction imposed. Councillor Mainon gave evidence on oath as to the effect that these proceedings have had on his family, together with his personal, political, and professional life. He gave evidence of the effect the reporting of this matter had had upon him and the fact that he had effectively been unable to function as a member of the Council's cabinet for months, notwithstanding the great deal of work there is still to do and the good work he has already done for the Council. He said that he had tried to be discreet, that he had done as he did for a person with difficulties, that this "*landed on his desk*" and that he would not have done it for anyone else. He said he could see how Mrs Grieve was entitled to feel violated.

59. In her submissions on sanction, Ms Shaw took the panel to the Sanctions Guidance and the five-stage process at paragraph 33 therein. Taken as a whole, she submitted the breaches to be dealt with were serious, if not at the very serious end of the spectrum bearing in mind the actual harm caused to Mrs Grieve; the potential for harm to her; and the harm to the Council caused by the finding in relation to disrepute. This was to be considered even though the actual and potential harm was not intended. Albeit that one might have great sympathy for Councillor Mainon now, suspension was reasonable, and censure was not appropriate. The lack of malicious intent, assisting a constituent with real health difficulties, seeking to avoid a social media spat and co-operation with the investigating authorities were mitigating features. The impact on the complainant, the nature of the breaches and Councillor Mainon's role as a lead member of the Council were aggravating features, even though to some extent, at the time he was relatively inexperienced. A suspension of less than a month would not fulfil the purposes of the sanctions regime. She finished by submitting that the sanction imposed by the Standards Committee was appropriate.

60. For Councillor Mainon, Mr James submitted that this was not a case where Councillor Mainon's position was worse for bringing his appeal. As the

Chair observed, he had not sought to contest the facts of the case. Mr James observed that the argument at the first and second stages had been somewhat technical. To that extent, he submitted that Councillor Mainon's sanction should not be increased. Whilst he had acted "overzealously", he was trying to assist a constituent and gained nothing for himself from his actions. Given the findings as to motive, the harassment proved was objective in nature and to that extent, less serious than subjective harassment, had that been intended. He had been seeking to engage a complaint's process. The actual harm caused was significant but limited. The potential harm to Mrs Grieve remained potential and was mitigated again by reason of the fact that it was not intended. The panel was to avoid double counting as aggravating features those facts considered in the general assessment of seriousness. Mitigating features included inexperience; a previous record of good service; the fact that the misconduct was a one-off; that Councillor Mainon acted in good faith, albeit in breach; and it arose from an honestly held, albeit mistaken view that the conduct involved did not constitute a failure to follow the Code. Mr James submitted that to an extent, the act of reporting alleged poor behaviour had some beneficial effect for the public interest. He relied upon Councillor Mainon's recognition and regret as to the misconduct and consequences and his co-operation with the investigating authorities. He recognised that Councillor Mainon's position of responsibility could potentially be an aggravating feature but that it was irrelevant to the breach. Otherwise, he submitted that none of the listed aggravating features applied to this case if one is not double counting. The sanction to be imposed could fairly be mitigated by reason of the broad knowledge of the findings and the size of the effect those findings have and will continue to have on Councillor Mainon's personal, professional, and political life. Given that he had effectively suspended himself from his office for some months, Mr James invited the Tribunal to censure Councillor Mainon and if that was not possible, a period of suspension measured in weeks rather than months would not be inappropriate, bearing in mind the totality of the effect of this case upon Councillor Mainon.

DECISION ON SANCTION

61. The Appeal Tribunal considered all the facts of the case, the documents presented, the submissions made and its findings in the context of the earlier findings of Denbighshire County Council's standards committee, namely that Cllr Mainon bullied Mrs Grieve contrary to paragraph 4(c) of the Code of Conduct; that he brought his office or the Authority into disrepute contrary to paragraph 6(1)(a) of the Code; and that he attempted to use his position to cause a disadvantage to Mrs Grieve, contrary to paragraph 7(a) of the Code.

62. The Tribunal considered the relevant Sanctions Guidance and applied the five-stage process identified at paragraph 33. The breaches took place over

several days and involved both bullying and harassment. Councillor Mainon's culpability was reckless rather than intentional, but it was nonetheless quite high. Councillor Mainon did not intend to bully or harass Mrs Grieve, but his actions had that effect, causing her the upset already referred to, embarrassment and worry lest such a thing would happen again. This was no way to pursue a complaint. Councillor Mainon ought to have known that what he was doing was wrong and ought to have known the likely effect his actions would have. By his actions, Councillor Mainon has also brought his position and, to an extent, the Council into disrepute. As he mentioned in his evidence, there has been a significant degree of local press coverage of these matters, albeit that, for balance, Councillor Mainon has borne the brunt of much of it.

63. Whilst there was potential for further harm to have been caused, the Tribunal considered that against the lack of intended harm. In this case, the actual harm caused to Mrs Grieve and the Council is the main feature of harm. Nonetheless, the Tribunal found that the actual harm was still significant and was caused by an elected Member, purporting to act in his official capacity, to the real detriment of a member of the public in her private and working life. Councillor Mainon lent his official weight to a cause in which he ought to have known he had no official business. Taken together, these were serious breaches of the Code of Conduct.

64. To that extent, the Tribunal found that suspension was the broad type of sanction most likely to be appropriate, having regard to those breaches, and that censure was not appropriate.

65. The Tribunal considered the mitigating and aggravating circumstances. Councillor Mainon was relatively inexperienced in his post, but his common sense should have told him not to involve himself in this matter. He cited his position as the Lead Member for Developing Community Infrastructure to emphasise the weight of his authority. Taken overall, the Tribunal considered this aspect to be a fact of the case already counted and therefore not aggravating; but also, that it could not amount to mitigation.

66. The Tribunal accepted that Councillor Mainon has a previous record of good service to his community; and that this matter was a one-off.

67. Given the observations made above, Councillor Mainon's overzealousness and failure to know better could not properly be characterised as acting "*in good faith*", albeit that again, the Tribunal referred to the fact that he did not intend the harm he caused. He held a view arising from a mistaken belief he should not have held. For that reason, his actions cannot be described as having had any beneficial effect for the public interest.

68. In his evidence to the Tribunal, Councillor Mainon recognised and regretted his misconduct. He had not sought to challenge any facts and the Tribunal recognised that this had been so during the Appeal hearing. Whilst the Tribunal did not find that an apology was specifically clear, it recognised that Councillor Mainon had co-operated with the investigation of this matter, had taken a degree of training in the meantime, and had complied with the Code of Conduct since the events giving rise to the adjudication.

69. When considering possible aggravating factors, the Tribunal was careful not to double-count as aggravating those factors already accounted for in the assessment of seriousness. Councillor Mainon's conduct in his appeal had not aggravated his position and so the Tribunal did not find that any of the aggravating features listed at paragraph 42 of the Sanctions Guidance applied.

70. The Tribunal considered any further adjustment necessary to ensure the sanction imposed achieves an appropriate effect in terms of fulfilling the purposes of the sanctions.

71. On the one hand, the Tribunal acknowledged the need to maintain both public confidence; the public interest in upholding the standards of conduct in public life; and the need to maintain confidence in local democracy.

72. On the other hand, the Tribunal also acknowledged the scale of the past, present and likely future personal, professional and political consequences of matter for Councillor Mainon; and the effect that any period of suspension would have on the electorate, temporarily depriving them of local representation.

73. Whilst the Tribunal considered that such breaches of the Code of Conduct involving bullying and harassment could ordinarily attract a three-month period of suspension, looking at matters afresh at this stage, the sanction imposed by the Standards Committee of two months' suspension from membership of the Council was the least sanction appropriate in the circumstances and one with which the Tribunal would not seek to interfere, balancing the overriding objectives of the sanctions regime with the effect of these findings on Councillor Mainon.

74. The Appeal Tribunal therefore further determined to endorse the decision of the Standards Committee that Councillor Mainon should be suspended from being a member of Denbighshire County Council for a period of two months.

75. Denbighshire County Council and its Standards Committee are notified accordingly.

Signed: Tom Mitchell

Date: 2nd November 2021

Tom Mitchell
Chairperson of the Appeal Tribunal

Siân McRobie
Panel Member

Hywel Eifion Jones
Panel Member