

SECTION 18 – CODE OF CONDUCT FOR MEMBERS

Procedure for Dealing with Allegations made against Councillors and referred to the Standards Committee

INTRODUCTION

18.4.1 This document sets out the procedure that the Council's Standards Committee will follow where it is required to make decisions about the conduct of Councillors following investigations by the Public Services Ombudsman for Wales or the Council's Monitoring Officer under Part III of the Local Government Act 2000 and related regulations. If there is any conflict between this document and any statutory requirements then those statutory requirements will prevail.

INTERPRETATION

18.4.2 In this procedure:

- 18.4.2.1 the "Act" means the Local Government Act 2000;
- 18.4.2.2 the "Council" means Powys County Council;
- 18.4.2.3 the "Code of Conduct" means the code of conduct for members ⁴adopted by the Council or the community councils within the Council's area in 2008 in accordance with section 51 of the Act, including any revisions;
- 18.4.2.4 the "Complainant" means any person who made any allegation which gave rise to the investigation;
- 18.4.2.5 the "Investigating Officer" means the person who conducted an investigation into any alleged breach of the Code of Conduct and produced the investigation report, being either the Ombudsman (or a person acting on his or her behalf) or the Monitoring Officer;
- 18.4.2.6 an "investigation report" means a report on the outcome of an investigation into any alleged breach of the Code of Conduct produced either by the Ombudsman under s71(2) of the Act or by the Monitoring Officer under the Regulations;
- 18.4.2.7 the "Member" means any person who is the subject of an investigation into any alleged breach of the Code of Conduct;
- 18.4.2.8 the "Monitoring Officer" means the officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989;
- 18.4.2.9 the "Ombudsman" means the Public Services Ombudsman for Wales;
- 18.4.2.10 the "Regulations" means the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 as amended;
- 18.4.2.11 the "Standards Officer" means the officer for the time being appointed by the Council to support the work of the Standards Committee.

SUMMARY OF THE PROCEDURE

18.4.3.1 Under section 69 of the Act, the Ombudsman may investigate any alleged breach of the Code of Conduct by Members or Co-Opted Members (or former Members or co-opted Members) of the Council or a community council in the Council's area.

⁴ See Section 18.1

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- 18.4.3.2 Under section 70(4) of the Act, where the Ombudsman ceases such an investigation before it is completed, he/she may refer the matters which are the subject of the investigation to the Monitoring Officer. The Monitoring Officer will then investigate matters in accordance with the Regulations before reporting and, if appropriate, making recommendations to the Standards Committee.
- 18.4.3.3 Alternatively, under section 71(2) of the Act, where the Ombudsman decides after investigating that it is appropriate, he/she will produce a report on the outcome of the investigation and send it to the Monitoring Officer. The Monitoring Officer will then consider the report of the Ombudsman in accordance with the Regulations, before, if appropriate, present the report and make recommendations to the Standards Committee.
- 18.4.3.4 The Standards Committee will then make an initial determination either:
- (a) that there is no evidence of any failure to comply with the Code of Conduct; or
 - (b) that the Member should be given the opportunity to make representations, either orally or in writing.
- 18.4.3.5 Where the Member is given an opportunity to make representations, the Standards Committee will convene a hearing to consider any response made by the Member and it must determine under regulation 9(1) of the Regulations either that:
- (a) there is no evidence of any failure to comply with the Code of Conduct and that therefore no action needs to be taken;
 - (b) the Member has failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - (c) the Member has failed to comply with the Code of Conduct and should be censured; or
 - (d) the Member has failed to comply with the Code of Conduct and should be suspended or partially suspended from being a member or co-opted Member of his/her authority for a period not exceeding six months

and take any such action accordingly.

INVESTIGATIONS BY THE MONITORING OFFICER (REFERRALS UNDER SECTION 70(4) OF THE ACT)

- 18.4.4.1 Where the Ombudsman ceases his/her investigation before it is completed and refers the matters which are the subject of the investigation to the Monitoring Officer under section 70(4) of the Act, the Monitoring Officer must:
- (a) conduct an investigation; and
 - (b) report, and if appropriate, make recommendations to the Council's Standards Committee.

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18.4.4.2 The Monitoring Officer will investigate in accordance with the Regulations and may follow such procedures as he or she considers appropriate in the circumstances of the case.

18.4.4.3 After concluding an investigation, the Monitoring Officer must:

- (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee;
- (b) send a copy of the report to the Member; and
- (c) take reasonable steps to send a copy of the report to the Complainant.

18.4.4.4 The Standards Committee will consider the Monitoring Officer's report and any recommendations in accordance with the procedure set out below.

INVESTIGATIONS BY THE OMBUDSMAN (REFERRALS UNDER SECTION 71(2) OF THE ACT)

18.4.5.1 Where the Ombudsman completes his or her investigation and sends a report to the Monitoring Officer and the Council's Standards Committee under section 71(2) of the Act, the Monitoring Officer must consider the Ombudsman's report and, if appropriate, make recommendations to the Council's Standards Committee.

18.4.5.2 The Standards Committee will consider the Ombudsman's report together with any recommendations made by the Monitoring Officer in accordance with the procedure set out below.

THE FIRST MEETING OF THE STANDARDS COMMITTEE - INITIAL DETERMINATION

18.4.6.1 After the Monitoring Officer has:

- (a) produced an investigation report in accordance with rule 18.4.4.3(a); or
- (b) considered the Ombudsman's investigation report in accordance with rule 18.4.5.1

he/she will arrange for a meeting of the Standards Committee to be convened as soon as possible and for a copy of the investigation report, together with the Monitoring Officer's recommendations (if any), to be sent to each of the members of the Standards Committee.

18.4.6.2 Notice of the time and place of the meeting will be given in accordance with Part VA of the Local Government Act 1972 as amended by the Standards Committees (Wales) Regulations 2001. The agenda will name the Councillor against whom the allegation of misconduct have been made. The first substantive item on the agenda will be to determine whether the members of the public and Members should be excluded in accordance with Rule 4.81.

18.4.6.3 If the investigation report is produced by the Ombudsman, the Monitoring Officer will advise the Standards Committee. If the investigation report is

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produced by the Monitoring Officer, the Standards Officer or some other suitably qualified person will advise the Standards Committee.

18.4.6.4 The business of the Standards Committee meeting will be limited to considering the investigation report and the Monitoring Officer's recommendations (if any) and to making an initial determination either:

- (a) that there is no evidence of any failure to comply with the Code of Conduct; or
- (b) that the Member should be given the opportunity to make representations,

either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the Code of Conduct.

18.4.6.5 The decision of the Committee under Rule 18.4.6.4 will be published and the name of the Councillor against whom the allegation of misconduct has been made will be made public even if the Committee decides that there is no failure to comply with the Members' Code of Conduct.

AFTER THE FIRST MEETING OF THE STANDARDS COMMITTEE

18.4.7.1 Where the Standards Committee decides that there is no evidence of any failure to comply with the Code of Conduct, the Standards Officer will accordingly notify the Member, the Complainant and the Ombudsman.

18.4.7.2 Where the Standards Committee decides that the Member should be given the opportunity to make representations, the Standards Officer will notify the Member of the Committee's decision and the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

PREPARING FOR THE HEARING TO CONSIDER THE MEMBER'S REPRESENTATIONS

18.4.8.1 The Standards Officer, in consultation with the Chair of the Standards Committee, will write to the Member to propose a date for a hearing to consider any representations that the Member may wish to make and the Member will respond in writing within 7 days indicating whether he / she wishes to attend the hearing and his / her ability to attend the hearing. In the event that the Member is unable to attend a hearing on the date(s) proposed, the Member will be able to propose alternative dates for consideration by the Chair of the Standards Committee, who will decide the reasonableness or otherwise of the proposed alternative date and arrange the date for the hearing to take place at which meeting the Committee will decide whether or not to proceed in the event that the Member fails to attend the hearing.

18.4.8.2 The letter from the Standards Officer in accordance with 18.4.8.1 will also ask the member to respond in writing within 14 days of that letter to confirm whether he / she:

- (a) wants to make representations, whether orally or in writing and if so, to include any written representations in his or her response;

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- (b) disagrees with any of the findings of fact in the investigation report, and if so, which matters he or she disagrees with and the reasons for any disagreements in addition to the disputed facts set out in the investigation report;
- (c) wants to appear before the Committee in person or be represented at the hearing by a solicitor, barrister or any other person, in accordance with his/her right under the Regulations;
- (d) wants to give evidence to the Standards Committee, either orally or in writing;
- (e) wants to call relevant witnesses to give evidence to the Standards Committee and confirm their identity and either provide a statement of their evidence or the substance of the evidence to be given orally to the Standards Committee;
- (f) wants any part of the meeting to be held in private and the reasons why the meeting should not be in public;
- (g) wants any part of the investigation report or other relevant documents to be withheld from the public and the reasons why the document should not be made public

18.4.8.3 The Standards Officer will notify the Investigating Officer of the proposed hearing date and ask whether he or she will be attending the hearing.

18.4.8.4 The Standards Officer will send a copy of the Member's response under rule 18.4.8.1 to the Investigating Officer and will ask him/her to confirm in writing within seven days whether he/she:

- (a) has any comments on the Member's response;
- (b) wants to be represented at the hearing;
- (c) wants to call relevant witnesses to give evidence to the Standards Committee;
- (d) wants any part of the meeting to be held in private; and
- (e) wants any part of the investigation report or other relevant documents to be withheld from the public.

18.4.8.5 The Standards Officer will write to the members of the Committee, the Member and the Investigating Officer at least two weeks before the hearing to:

- (a) confirm the date, time and place for the hearing;
- (b) summarise the allegation;
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the Member or the Investigating Officer will attend or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the investigation report, any relevant documents, the Member's response and any further response from the Investigating Officer; and
- (h) outline the proposed procedure for the meeting.

POWERS OF THE STANDARDS COMMITTEE

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- 18.4.9.1 The Standards Committee may, in accordance with the requirements of natural justice, conduct the meeting in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings. The Committee must to whatever extent it considers to be appropriate, seek to avoid formality and inflexibility in its proceedings. The Standards Committee will decide factual evidence on the balance of probabilities.
- 18.4.9.2 The Member or the Investigating Officer, whether or not they are legally qualified, may be represented or accompanied by another person but if in any particular case the Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.
- 18.4.9.3 The Standards Committee may take legal advice from a Council officer appointed for this purpose at any time during the meeting or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the Member and the Investigating Officer if they are present.
- 18.4.9.4 Where appropriate, and in accordance with the Regulations, the Standards Committee has power to censure the Member, or suspend or partially suspend the Member for a period not exceeding six months.

PROCEDURE AT THE HEARING

- 18.4.10.1 The hearing will be held in public unless the Standards Committee is persuaded that there is a good reason to exclude the public.
- 18.4.10.2 The procedure at the meeting shall be as set out below, subject to the Chair making such changes as he or she thinks fit in order to ensure a fair and efficient hearing.

Introduction

- 18.4.10.3 The Chair of the Standards Committee will introduce those persons present and will explain the manner and order of proceedings

First Stage - Preliminary Procedural Issues

- 18.4.10.4 The Standards Committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the prehearing process.

Second Stage - Making Findings of Fact

- 18.4.10.5 The Standards Committee will then consider whether or not there are any significant disagreements about the facts contained in the investigation report.

- 1 If there is a disagreement as to the facts:
 - (a) the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the investigation report;
 - (b) the Investigating Officer may call any necessary supporting witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Member an

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- opportunity to challenge any evidence put forward by any witness called by the Investigating Officer;
- (c) the Member will then be invited to make representations to support his or her version of the facts;
 - (d) the Member may call any necessary witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.
- 2 At any time, the Standards Committee may question any of the people involved or any of the witnesses.
- 3 If the Member disagrees with any relevant fact in the investigation report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
- (a) continue with the hearing, relying on the information in the investigation report;
 - (b) allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
- 4 At the conclusion of the representations as to matters of fact, the Standards Committee will retire to deliberate in private on the representations, after which the Chair of the Standards Committee will announce their findings of fact.

Third Stage - Deciding whether the Member has failed to comply with the Code

18.4.10.6

- 1 The Standards Committee will then consider whether, based on the facts it has found, the Member has failed to comply with the Code.
- 2 The Standards Committee will invite the Investigating Officer to make representations as to whether or not, based on the facts the Committee has found, the Member has failed to comply with the Code of Conduct.
- 3 The Standards Committee will invite the Member to respond to the representations of the Investigating Officer and to make representations as to whether or not, based on the facts the Committee has found, he or she has failed to comply with the Code of Conduct.
- 4 The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.

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- 5 The Member will be invited to make any final relevant points.
- 6 The Standards Committee will retire to deliberate in private on the representations and decide whether or not the Member has failed to comply with the Code of Conduct, after which the Chair of the Standards Committee will announce their findings.

Fourth Stage - Action to be Taken

18.4.10.7

- 1 If the Standards Committee decides that the Member has not failed to comply with the Code of Conduct, it will formally record that there is no evidence of any failure by the Member to comply with the Code of Conduct and that therefore no action needs to be taken.
- 2 If the Standards Committee decides that the Member has failed to comply with the Code of Conduct it will invite the Member and the Investigating Officer to make representations as to:
 - (a) whether or not the Committee should apply a sanction; and
 - (b) what form any sanction should take.
- 3 The Standards Committee will retire to deliberate in private on the representations and decide either that:
 - (a) no action needs to be taken in respect of the failure to comply with the Code of Conduct;
 - (b) the Member should be censured; or
 - (c) the Member should be suspended or partially suspended from being a member or Co-Opted Member of his or her authority for a period not exceeding six months (or, if shorter, for the remainder of that person's term of office);after which the Chair of the Standards Committee will announce their decision in public.
- 4 After making a decision the Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision (including details of the Member's right of appeal) to the Member, the Complainant and the Ombudsman as soon as reasonably practicable.
- 5 The decision of the Standards Committee will be deemed to have been received by the Member on the second day after the date the letter was sent by first class post, provided that the Standards Officer has proof of postage.

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FAILURE TO MAKE REPRESENTATIONS / ATTEND THE HEARING

18.4.11.1 If the Member fails to make representations, the Standards Committee may:

- (a) unless it is satisfied that there is sufficient reason for such failure, consider the investigation report and make a determination in the Member's absence; or
- (b) give the Member a further opportunity to make representations.

18.4.11.2 If a party fails to be present or represented at a hearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence:

- (a) adjourn the hearing; or
- (b) hear and decide the matter in the party's absence;
- (c) and in either case the Standards Officer will inform the Member of the outcome of the hearing by email or telephone and will thereafter arrange for the outcome to be notified to the press.

ILLNESS OR INCAPACITY

18.4.12 If the Standards Committee is satisfied, based upon the medical evidence supplied, that any party is unable, through physical or mental sickness or impairment, to attend the hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter, which may include adjourning the hearing to a suitable date or proceeding with the hearing in the absence of the party if appropriate to do so in the opinion of the Standards Committee.

SUSPENSION

18.4.13 A period of suspension or partial suspension will commence on the day after:

- 18.4.13.1 the expiry of the time allowed to lodge a notice of appeal to the Adjudication Panel for Wales under the Regulations (i.e. 21 days after receiving notification of the Standards Committee's determination in accordance with Rule 18.4.10.7.5); or
- 18.4.13.2 receipt of notification of the conclusion of any appeal in accordance with the Regulations; or
- 18.4.13.3 a further determination by the Standards Committee made after receiving a recommendation from the Adjudication Panel for Wales under the Regulations,

whichever occurs last.

REFERRAL TO THE ADJUDICATION PANEL FOR WALES

18.4.14.1 Where the Standards Committee determines that the Member has failed to comply with the Code of Conduct, the Member may seek permission to appeal against the determination from the President of the Adjudication

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Panel for Wales (APW) within 21 days of receiving notification of the Standard Committee's determination.

18.4.14.2 The APW may endorse the decision of the Standards Committee, refer a matter back to the Standards Committee recommending it impose a different penalty, or overturn the decision.

18.4.14.3 If:

- (a) the Standards Committee determines that the Member failed to comply with the Code of Conduct; and
- (b) the Member appeals to an APW drawn from the Adjudication Panel for Wales; and
- (c) the APW refers the matter back to the Standards Committee with a recommendation that a different penalty be imposed,

the Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the APW and will determine whether or not it should uphold its original determination or accept the recommendation.

- (d) After making its determination the Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision to the Member, the Complainant, the Ombudsman and the president of the APW as soon as reasonably practicable.

PUBLICATION OF THE STANDARDS COMMITTEE'S REPORT

18.4.15.1 The Standards Committee will produce a report on the outcome of the investigation and send a copy to the Ombudsman, the Monitoring Officer, the Member and take reasonable steps to send a copy to the Complainant within 14 days after either:

- (a) the expiry of the time allowed to lodge a notice of appeal under the Regulations, or
- (b) receipt of notification of the conclusion of any appeal in accordance with the Regulations, or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an Adjudication Panel for Wales under the Regulations,

whichever occurs last.

18.4.15.2 Upon receipt of the report of the Standards Committee, the Monitoring Officer shall:

- (a) publish the report on the Council's website for a minimum period of 21 days and make copies available for inspection by the public without charge during office hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available;
- (b) supply a copy of the report to any person on request if he or she pays such charge as the Council may reasonably require, and

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- (c) not later than seven days after the report is received from the Standards Committee, give public notice, by advertisement in newspapers circulating in the area and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

COSTS

- 18.4.16 The Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

Exclusion of Public and Members from Standard Committee Hearings

- 18.4.17.1 Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Section 14 of this Constitution or Rules 4.89 and 4.90 (Disturbance by the Public).
- 18.4.17.2 For the purpose of this Rule 18.4, where members of the public have been excluded pursuant to Rule 18.4.17.1, Members are also excluded (save for the Member appearing before the Standards Committee).