

# Agenda



## Standards Committee

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Date: Thursday, 15 September 2016

Time: 5.30 pm

Venue: Committee Room 4 - Civic Centre

To: Councillors Taylor (Chair), D Fouweather, J Guy, H Thomas, Hancock, John, Westwood, Britton and Pickering

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Item		Wards Affected
a	<u>00 Agenda 15 September 2016_CY</u> (Pages 3 - 4)	All Wards
2	<u>Declarations of Interest</u>	All Wards
3	<u>Chair's Announcements</u> To receive any announcements the Chair wishes to make.	All Wards
4	<u>Minutes</u> (Pages 5 - 10) Minutes of the meeting held on 26 May 2016.	All Wards
5	<u>Matters Arising</u>	All Wards
6	<u>Complaints</u> The Monitoring Officer will report on any complaints received since the last meeting.	All Wards
7	<u>Standards Committee Annual Report 2015/16</u> (Pages 11 - 36)	All Wards
8	<u>Protocol on Member/Officer Relations</u> (Pages 37 - 50)	All Wards
9	<u>Ombudsman's Annual Letter 2015/16</u> (Pages 51 - 60)	All Wards
10	<u>Succession Planning</u>	All Wards
11	<u>Work Programme</u>	All Wards
12	<u>Date of Next Meeting</u> 19 January 2016, 5.30pm in Committee Room 4.	

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# Agenda

## Pwyllgor Safonau

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Dyddiad: 15 Medi 2016

Amser: 5.30pm

Lleoliad: Ystafell Bwyllgor 4

At: Cynghorwyr H Thomas, Guy a Fouweather, Mrs H Taylor OBE, Mr J Pickering, Mr G Hancock, Mr P Westwood, Mr B John a Ms T Britton.

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### Eitem

### Wardiau a Effeithir

#### Rhan 1

1. Ymddiheuriadau dros Absenoldeb
2. Datganiadau Diddordeb
3. Cyhoeddiadau'r Cadeirydd  
I dderbyn unrhyw gyhoeddiadau y bydd y Cadeirydd yn dymuno eu gwneud
4. Cofnodion
5. Materion yn codi
6. Cwynion  
Bydd y Swyddog Monitro yn adrodd ar unrhyw gwynion y derbyniwyd ers y cyfarfod diwethaf.
7. Pwyllgor Safonau Adroddiad Blynyddol 2015/16
8. Protocol: Swyddog/Aelod Cysylltiadau
9. Ombwdsmon Adroddiad Llythyr 2015/16
10. Olyniaeth Plannig
11. Rhaglen Waith
12. Dyddiad y Cyfarfod Nesaf  
19 Ionawr 2017, 5.30pm, Ystafell Bwyllgor 4

Cysylltwch ag: Anne Jenkins  
Ffôn: 01633 656656  
E-bost: anne.jenkins@newport.gov.uk  
Dyddiad Cyhoeddi: 8 Medi 2016

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# Minutes



## Standards Committee

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Date: 26 May 2016

Time: 5.30 am

Present: H Taylor (Chair), Councillors D Fouweather, J Guy, H Thomas,  
Hancock, John, Westwood and Britton

G Price (Head of Law & Regulation), J Owen (Chief Legal Officer), A Jenkins  
(Democratic Services Officer)

Apologies: J Pickering

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### 1. Apologies for Absence

As above.

### 2. Declarations of Interest

None received.

### 3. Chair's Announcements

The Chair requested that an item be raised relating to P Westwood's attendance at the Democratic Services Committee on 18 February 2016.

P Westwood informed those present that he found the Democratic Services Committee to be an extremely useful committee. The Agenda items discussed were the Draft Government Wales Bill and Induction for New Members in 2017. The Induction for New Members was found to be a very informative document and might be useful for those members who were not councillors. P Westwood suggested that it might be of interest to the members if a copy of the reports and minutes were circulated to Committee members.

A Jenkins would send a link to the meeting papers of the Democratic Services Committee held on 18 February 2016 to the Standards Committee members.

### 4. Minutes of the Meeting of 14 January 2016

The minutes of the meeting of 14 January 2016 were submitted. Phil Westwood had sent his apologies but they were not noted.

#### Agreed:

That the minutes of the meeting were agreed subject to the above.

### 5. Matters Arising

Item 9: Any Other Business referred to the suggestion of a joint committee with other local authorities. The Head of Law & Regulation asked what the general consensus of the committee was. This would not be a formal joint committee but more of a networking joint committee. All those present were in favour.

**Agreed:**

That a joint committee be arranged after September 2016, once the new committee members had been appointed.

## **6. Complaints**

No complaints had been received since the last meeting.

## **7. Members Code of Conduct**

The Local Authorities (Model Code of Conduct) (Wales) Amendment Order 2016 has amended the mandatory provisions of the current Members Code of Conduct. The Council formally adopted this new Model Code of Conduct at its Annual General Meeting on 17 May 2016 along with a public notice, as required by Section 51 of the Local Government Act 2000. All Community Councils have also been advised of the requirement to formally adopt this new code before 26 June 2016.

All elected members and voting co-opted members of the Council (including Members of Standards Committee) would be automatically bound by the revised Code of Conduct following its adoption at the Council's AGM on 17 May 2016 and there was no requirement for members to sign a fresh declaration or undertaking to abide by the revised Code.

One substantive change within the new Code was para 10 2b which was removed completely. Other than that the new Code remained largely as it had been since 2008.

G Hancock advised that Chair that Langstone Community Council had adopted the Code.

There were some Community Councils that were informing the Council that they had adopted the new Code, two of those were Penhow and Rogerstone Community Council.

As most of the Community Councils were due to have their AGMs and it was likely that more Community Councils would inform the Council.

**Agreed:**

That the Standards Committee noted the revised Model Code of Conduct issued by the Welsh Government.

## **8. Standards Committees, Investigations, Dispensations and Referral (Wales) (Amendment) Regulations 2016**

The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 were made by the (then) Minister for Public Services on 27 January 2016 and came into force on 1 April 2016. The Regulations made a number of consequential amendments to reflect changes in legislation which allowed for the establishment of joint Standards Committees. The Regulations provided for the referral of misconduct cases and dispensation application to other councils standards committees, where appropriate, and extended the current term of office of elected members until May 2017. Other procedural changes required prior permission to appeal to the Adjudication Panel, to filter out spurious appeals, enable misconduct reports and documents to be kept confidential until proceedings were concluded, and introduce a general ground for granting dispensations.

In terms of the regulations there were some technical changes relating to joint standards committees and how they should be made up.

The rules to the publication of a misconduct report required that misconduct hearings should be held in public. This had in the past caused problems as reports would be published before the meeting. With the changes however, standards committees were allowed to embargo reports until the hearing took place.

With regard to monitoring officer regulations, an investigation or decision could be referred to another Standards Committee if it was considered that there was a conflict of interest. The regulations specified how this could be done, as it prescribed the procedure. This could then be referred back to the original Standards Committee for a decision to be made. It was unlikely that this would occur on a regular basis. It would however be worth discussing cases that the committee would like to refer in the future to joint committees.

Rules relating to the suspension of members stipulated that the period should not exceed six months or the remainder of a member's term of office. The suspension would end at their term of office but not affect their choice to put their name forward for re-election.

Discussion ensued regarding how the suspension would affect councillors conduct from a political party point of view with the public.

Councillors raised their concern regarding appeals to the adjudication panel and whether it applied to Assembly members. This was put in place to avoid spurious or frivolous appeals that might delay the Standards Committee decision as mentioned above. It was however felt that more pressure was put on the local member to adhere to Code of Conduct rather than AMs and MPs. Councillor Fouweather considered that it should be challenged as it had a direct impact on members and the consultation period was not publicised well enough. The document would have gone through the Welsh Assembly consultation process and publicised on their website.

Councillor Fouweather requested sight of a copy of the letter from the Welsh Government in order to write a letter raising his concerns.

**Agreed:**

- To advise Standards Committee of the changes introduced by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016.
- To provide a copy of the letter from the Welsh Government as requested above.

## **9. Community Council Review**

As part of the Forward Work programme, the Standards Committee agreed to undertake a periodic review of local community councils to check that statutory registers were being properly maintained and procedures for declarations are being followed. A letter was sent by the Monitoring Officer to all 14 community council Clerks in January 2016, asking about the arrangements for maintaining and publishing statutory registers and any training and development needs. Copies of the responses received to date were attached.

At the request of the Chair, a reminder email from A Jenkins would be sent to the remaining Community Council Clerks whose responses had not yet been received.

This would also be raised as an item at the next Liaison Meeting with Community Councils in June 2016.

**Agreed:**

- To chase a response from the remaining Community Council Clerks.

- To raise the Community Council Review as an Agenda item for the next Liaison Meeting with Community Councils in June 2016.

## **10. Work Programme 2015/16**

The Standards Committee were updated on those items that were due for review.

### Annual Report

The Head of Law & Regulation advised that the Annual Report would be brought to Standards in draft form in September 2016 and presented to Council at the end of September.

### Dispensations

The Committee no longer had to review dispensations or neighbourhood allowances, therefore there were no dispensation requests for the foreseeable future.

### Local Resolution Protocol

There was only one formal complaint, which was resolved in the first instance, therefore no issues would need to go before the local resolution panel.

The Code of Conduct had also been amended and could be referred under the local resolution protocol.

The Chair commented that the changes to the protocol had really helped.

Head of Law and Regulation reminded those present of the various stages of the local resolution protocol, which were: Stage 1 - a valid complaint established at officer level. Stage 2 - a potential issue that fell within the code that might be resolved amicably and would not involve members until the final Stage 3 and whether there was a misconduct. There were only two formal complaints in the past 12 months, one was not accepted and one was going through the process.

### Review of the Council's Protocol

There was a Planning Protocol being reviewed at national level by Welsh Government which was hoped to be established and was currently under consultation, this could be reviewed in September 2016.

### Succession Planning

This could be reviewed in September in conjunction with the protocol for member officer relationships and guidance of the practical applications of the statutory Code of Conduct. A few suggestions were put to Council by the Standards Committee which were turned down. The Chair suggested that it might be worthwhile reviewing the document which could also be built into the local resolution protocol.

Councillor Thomas referred to the advert that stated no former officer or councillor of the Council could apply and asked if there should be a timescale rather than an indefinite stipulation. The rules were very specific and independent members needed to be truly independent, the legislation would need however to be checked.

Councillor Thomas also referred to the statement that independent members must be politically active. Discussion ensued as to what was defined as politically active. Examples of roles that a person might be active in were stated in the application. The Chair felt strongly that an independent member should not have a strong allegiance, the other independent members also agreed.

Councillor Fouweather asked whether references should be included on the application. The Head of Law & Regulation advised that as it was not for a job application references were not required. It was suggested that a character reference be included or even references requested at interview stages. After discussion however the Chair suggested that references not be included.

The Chair pointed out that there was a Date of Birth (DOB) field on form, this would be removed.

The Committee noted that arrangements would need to be put in place to advertise the vacancies for Standards Committee Membership. This would be done over the course of the summer, in readiness for the September 2016 meeting through Newport Matters and possibly a local newspaper, depending on cost. With cost in mind, advertising arrangements were discussed. An advert could also be sent to other local Standards Committees, or displayed on the front page of the Council's website.

G Hancock also mentioned that his tenure expired in May 2017 and asked whether expressions of interest would be sent out at the same time. The Head of Law & Regulation advised that this could be done nearer the time of the elections next May.

A Jenkins would check memberships.

#### Code of Conduct Training

Arrangements for refresher training could be undertaken by tagging a session onto one of the future meetings.

#### **Agreed:**

- That a draft annual report be brought to the meeting in September.
- To review the Succession Planning document which could be built into the local resolution protocol.
- That arrangements be put in place for the advertisement of membership.

## **11. Date of Next Meeting**

15 September 2016 at 5.30pm in Committee Room 4.

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# Report

## Standards Committee

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### Part 1

Date: 15 September 2016

Item No: 07

**Subject** Standards Committee Annual Report 2015/16

**Purpose** To submit a draft of the Standards Committee Annual Report 15/16 for comment and approval

**Author** Head of Law and Regulation

**Ward** General

**Summary** Standards Committee present an Annual Report to the Council in September, which provides information about the work carried out by the Committee during the past 12 months, identifies particular issues that have arisen and sets out the forward work programme for the forthcoming year.

A draft of the Annual Report for 15/16 is attached for comment and approval prior to its presentation to the next meeting of full council on 27<sup>th</sup> September 2016.

**Proposal** To comment and approve the Annual Report for presentation to full Council on 27<sup>th</sup> September 2016

**Action by** Head of Law and Regulation

**Timetable** Immediate

## **Background**

1. Standards Committee present an Annual Report to the Council in September, which provides information about the work carried out by the Committee during the past 12 months, identifies particular issues that have arisen and sets out the forward work programme for the forthcoming year.
2. A draft of the Annual Report for 15/16 is attached for comment and approval prior to its presentation to the next meeting of full council on 27<sup>th</sup> September 2016.
3. The Report contains reference to the new Members Code of Conduct and changes to the ethical framework regarding joint standards committee and the referral of investigations and determinations to other councils' Standards committees.
4. There is a report on the issues raised at the all Wales Standards Committee Conference, information about the review of community council compliance arrangements, and proposed arrangements for refresher training in the light of the Code changes and the pending local elections in May 2017
5. The Report sets out the succession planning arrangements put in place for the appointment of new independent members.
6. It also highlights the fact that there were no formal findings of misconduct against any local Councillors during the past 12 months. Four complaints have been made to the Ombudsman and three have not been accepted for investigation, with a decision pending on the remaining complaint. There was one complain under the Local Resolution Protocol, which was resolved at Stage 2 and did not proceed to a hearing.
7. The Annual Report also contains a draft forward work programme for the forthcoming 12 months.

## **Financial Summary**

There are no financial implications.

## **Options Available**

To note the Report.

## **Comments of Chief Financial Officer**

There are no financial implications.

## **Comments of Monitoring Officer**

Included in the Report.

## **Staffing Implications: Comments of Head of People and Business Change**

There are no staffing or policy implications.

Dated: 7 September 2016



Draft/

# **Standards Committee Annual Report 2015-16**

## **Foreword by the Chair**

I am pleased to present the third Annual Report of the Standards Committee for 2015/16. The Annual Report provides information to the Council about the work carried out by the Committee during the past 12 months and identifies particular issues that have arisen.

This third Annual Report covers the period from August 2015 to September 2016 and follows on from the last report presented to Council in September 2015.

The Standards Committee is committed to promoting high standards of ethical conduct among elected Members and officers in order to maintain public confidence in local government. We are pleased to report that, once again, no serious complaints of misconduct were referred to the Standards Committee by the Ombudsman during the past 12 months and no complaints were referred for determination by the Committee under Stage 3 of the Local Resolution Protocol. The Council's proud record of never having any complaints upheld and sanctions imposed against individual Members has again been upheld, and long may this continue.

However, as I have mentioned previously, there is no room for complacency and it is essential that these standards are maintained. The Standards Committee will continue to proactively review all ethical standards policies and procedures as part of the forward work programme. The Committee will also be developing a training programme for Councillors as part of the induction arrangements following the May 2017 elections, in the light of the changes to the ethical standards framework introduced this year and the new Members Code of Conduct adopted by the Council in May 2016.

There have been no changes to the membership of the Standards Committee during last year. However, my second term of office comes to an end this September and my Vice-Chair John Pickering is also due to retire at the same time. As part of the succession planning arrangements, we have already advertised for replacement independent members and we will be establishing a panel to interview eligible applicants, with a view to making recommendations to Council regarding the formal appointment of the successful candidates. It will then be necessary for the Committee to appoint a new independent Chair and Vice-Chair for the forthcoming year. Gerard Hancock will also step down as the community council representative on the Standards Committee when his term of office as a Langstone Community Councillor ends next May and another community council nominee will be required to replace him.

I would like to take this opportunity to thank both John and Gerard and to record the Committee's appreciation of all their hard work and support over the years.

Finally, I would like to thank all Members of the Committee and Council officers for their advice and support throughout the last 12 months.

Hazel Taylor OBE  
Chair of Standards Committee

## 1. **Introduction**

### 1.1 **Terms of Reference**

The Local Government Act 2000 Part III requires the Council to establish a Standards Committee to carry out the following statutory functions:-

- (a) Promoting and maintaining high standards of conduct by councillors, co-opted members and church and parent governor representatives;
- (b) Assisting the councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) Advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) Monitoring the operation of the Members' Code of Conduct;
- (e) Advising, training or arranging to train councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (f) 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;
- (g) Dealing with any reports from the Monitoring Officer and hearing any complaints of misconduct or breaches of the Members' Code of Conduct referred by the Public Services Ombudsman for Wales and determining appropriate action, including the imposition of any sanctions;
- (h) The exercise of (a) to (g) above in relation to the community councils and the members of those community councils.

Standards Committee also carries out the following additional functions, making recommendations to the Council, as appropriate:-

- (i) The hearing and determination of "low level" complaints of misconduct at Stage 3 of the Local Resolution Protocol;
- (ii) Providing advice to the Council on the Council's Codes of Practice, including the Officers' Code of Conduct and the Whistle Blowing policy;
- (iii) Monitoring and updating the Codes of Practice as required; and
- (iv) Overseeing the Council's confidential complaints procedure;

### 1.2 **Structure and Membership**

The composition and membership of the Standards Committee is prescribed by the Standards Committees (Wales) Regulations 2001 (as amended).

The Standards Committee comprises:-

Five Independent Members (persons who have no connection with the local authority):

- Hazel Taylor OBE (Chair)
- John Pickering (Vice Chair)
- Phillip Westwood

- Bernard John
- Tracey Britton

Three councillor representatives:

- Councillor Herbie Thomas
- Councillor John Guy
- Councillor David Fouweather

One community council representative (nominated by the community councils for the area):-

- Gerard Hancock (Langstone Community Council)

The independent members serve a term of office of 4 years, although they are eligible to serve two consecutive terms of office. The Councillors are appointed annually by the Council at the AGM and replacement members can be appointed, as necessary, at any time. The community council representative continues as a member of the Committee until his term of office ends or he ceases to be a community councillor, or until he is replaced by another nominee.

### **1.3 Enforcement of the Members Code of Conduct**

The Council's Monitoring Officer is Gareth Price, the Head of Law & Standards, and the Deputy Monitoring Officer is Juliet Owen, the Chief Legal Officer.

The Monitoring Officer and Deputy Monitoring Officer are responsible for:

- advising Standards Committee on law and procedure,
- ensuring compliance with statutory requirements (Registers of Members interest etc.)
- resolution of "low-level" complaints under Stage 2 of the Local Resolution Protocol
- investigation of complaints referred by the Ombudsman

The Public Services Ombudsman for Wales ("Ombudsman") is responsible for:

- considering all formal complaints of breaches of the Members Code of Conduct and applying a two stage test of (1) prima facie evidence of misconduct and (2) whether the breach is so serious as to warrant any sanction
- investigating and reporting (where appropriate) any serious breaches of the Code to the Standards Committee or a Case Tribunal of the Adjudication Panel for Wales

The Adjudication Panel for Wales:

- Case Tribunals hear serious misconduct cases referred by the Ombudsman
- Interim Case Tribunals can suspend Councillors for up to 6 months pending investigation of serious complaints
- Determine appeals against Standards Committee decisions or sanctions
- Can suspend Councillors for up to 1 year or disqualify for up to 5 years

The Standards Committee:

- Conduct hearings and determine complaints referred to them by the Ombudsman and the Monitoring Officer
- Can censure or suspend Councillors for up to 6 months

## **2. The Committee's work in 2015/16**

The Standards Committee is required to meet at least once annually in accordance with the Local Government Act 2000. In practice, the Committee meets on a scheduled quarterly basis and additional special meetings are arranged, as necessary, to deal with specific matters such as misconduct hearings and requests for dispensation.

Three members are required to attend for a quorum at meetings (including the independent Chair or Vice Chair) and at least half of those present must be independent. The community council representative is not "independent" for this purpose.

The Standards Committee met on 4 occasions between July 2014 and September 2016:-

- 22<sup>nd</sup> October 2015
- 14<sup>th</sup> January 2016
- 26<sup>th</sup> May 2016
- 15<sup>th</sup> September 2016

### **2.1 Dispensation Applications**

There have been no applications for dispensations during the past year in accordance with the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 and Section 81(4) of the Local Government Act 2000.

Previously, most of the work of the Committee had been taken up with determining applications regarding the use of Neighbourhood Allowances. We were aware that, as from April 2015, Newport City Council had tightened up the rules on the use of these Neighbourhood Allowances and that they could only be used to support voluntary or community groups where there was a wider public benefit. We were advised that as from April 2016, these Neighbourhood Allowances had been discontinued as part of Council budget savings. Therefore, we are unlikely to have to rule on these issues in the future.

### **2.2 Training**

The Standards Committee has always stressed the importance of regular Member training, to ensure that Councillors keep up to date with the requirements of the Code of Conduct and any changes in the law or procedures.

It is the responsibility of each individual Councillor to ensure that they fully understand the requirements of the Code and that they comply fully with their obligations. As always, "ignorance of the law is no excuse" and a lack of understanding or training would be no mitigation if there is any breach of the Code.

The Committee has previously recommended to the Council that it should be compulsory for all City Councillors to attend training on the Code of Conduct. The vast majority of Councillors attended ethical standards training as part of their Induction Programme following the last elections in May 2012.

The Standards Committee will continue to proactively review all ethical standards policies and procedures as part of the forward work programme. The Committee will also be developing a training programme for Councillors as part of the induction arrangements following the May 2017 elections, in the light of the changes to the ethical standards framework introduced this year and the new Members Code of Conduct adopted by the Council in May 2016.

The training requirements of the community councils and their compliance arrangements will continue to be monitored and reviewed as part of the Committee's forward work programme.

### **2.3 Local Resolution Protocol**

In accordance with the recommendations of the Minister for Local Government and the Ombudsman, the Council has adopted an internal procedure for dealing with “low-level” member/member and officer/member complaints that are not sufficiently serious as to warrant formal investigation and sanction.

It was agreed that the Monitoring Officer would periodically update the Committee on the numbers and types of complaints determined at officer level under Stages 1 and 2 of the, but maintaining the anonymity of both the complainant and the Councillor concerned.

One formal complaint was received under the Local Resolution Protocol in 2015/16 regarding allegations of conflict of interest and disrespectful behaviour on the part of a Councillor but this was resolved by the Monitoring Officer at Stage 2 and it did not proceed to a Stage 3 hearing.

### **2.4 Revised Member code of Conduct**

The Local Authorities (Model Code of Conduct) (Wales) Amendment Order 2016 was made on 27<sup>th</sup> January 2016 and came into force on 1<sup>st</sup> April 2016. The Order amended the Model Code of Conduct for elected members of the Council and co-opted members with voting rights.

In accordance with Section 51 of the Local Government Act 2000 (“the 2000 Act”), all local authorities were required to formally adopt this new Model Code of Conduct before 26<sup>th</sup> June 2016. Newport City Council formally adopted the new Code at its Annual General Meeting held on 17<sup>th</sup> May 2016. Public notice was given regarding the adoption of the new Code and a copy has been sent to the Ombudsman. All of the local Community Councils were advised of the requirement to adopt the new Code before 26<sup>th</sup> June and they have been asked to confirm that this has been done.

A copy of the revised Code of Conduct is set out in [Appendix 1](#). For the most part, the revisions to the previous model Code of Conduct are technical in nature and reflect changes introduced by the Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”) but there are some substantive changes which clarify previous uncertainty regarding conflicts of interest, reporting of misconduct and registration of interests.

The main changes are as follows:

- (a) The 2013 Act transferred responsibility for maintaining the register of members’ interests for community councils from the Council’s Monitoring Officer to the “Proper Officer” of the community council (usually the Clerk) as from 1<sup>st</sup> May 2016.
- (b) Paragraph 15 of the Code of Conduct relating to the registration of members interests is amended to clarify that any interest disclosed for the first time must be entered on the public register. This is not a change of policy but simply clarifies the original intention. In practice, where Members have declared a personal interest for the first time at meetings of the City Council, they are recorded in writing and are already included within the public register of members interests maintained under Section 81 of the 2000 Act. Therefore, the City Council already complies with this requirement. The exemption for community councillors to register certain financial and employment issues upfront is maintained. Therefore, community councillors are still only required to register interests if and when they are declared at meetings in relation to any business being conducted.
- (c) The obligation for Members to report potential breaches of the Code of Conduct by other Councillors to the Ombudsman is removed. This reflects the adoption of Local Resolution Protocols by principal authorities, in accordance with the requirements of Welsh Government and the Ombudsman, and the encouragement for low-level member against

member complaints to be resolved at a local level without the need for any involvement on the part of the Ombudsman

- (d) Paragraph 10 (2) (b) of the original Code is omitted. This is to overcome unintended difficulties in the practical application of this conflict of interest provision in relation to ward issues and business relating to constituency matters. As originally drafted, members were deemed to have a personal interest and were prevented from participating in any Council decision where there could be a perceived conflict of interest between their duties in representing the interests of the constituents in their wards and their wider public duty. This was considered to be a particular problem in the context of Planning Committee decisions where members could be disqualified from taking any decision relating to their particular wards. The provision was never intended to have such a restrictive effect, particularly as the common law rules regarding pre-determination and bias have been relaxed considerably by Section 25 of the Localism Act. Therefore, this provision has now been removed in its entirety and ward members will not be regarded as having any personal interest in matters relating to their ward simply because they represent the interest of those constituents. However, ward members will still need to ensure that they take decisions objectively and in the public interest in accordance with the general principles of decision-making set out in paragraph 8 of the Code of Conduct.

## **2.5 Succession Planning**

The independent members serve a term of office of 4 years, although they are eligible to serve two consecutive terms of office. The second term of office of both the independent Chair and Vice Chair of the Committee will come to an end at the end of September 2016. Therefore, as part of the succession planning arrangements, we have started the process of recruiting replacement independent members. Standards Committee has approved the advertisement and the person specification for the role and the vacancies have been advertised on the Council's web-site and in the South Wales Argus with a closing date for applications of 30<sup>th</sup> September.

A panel of Committee members will be established to interview the short-listed candidates and a recommendation will then be made to full Council to ratify their appointments.

It will then be necessary for the Committee to appoint a new independent Chair and Vice-Chair for the forthcoming year.

Community Councillor Gerard Hancock will also step down as the community council representative on the Standards Committee when his term of office as a Langstone Community Councillor ends in May 2017 and another community council nominee will be required to replace him.

Induction training will then be provided for the new Committee members.

## **2.6 All Wales Standards Conference**

Committee Members and officers attended the All Wales Standards Conference that took place in Cardiff on 20 October 2016.

It was considered to be one of the best and inclusive conferences attended, where everyone felt they had a part to play. The speakers were excellent and the workshops informative. Papers from the conference were circulated to all members of the Committee

The Public services Ombudsman for Wales and the Chair of the Adjudicator Panel for Wales presented a review of all misconduct investigations and hearings during the past 12 months and

identified common themes and lessons to be learned. There was a common theme regarding a lack of training and awareness.

It was reported that Standards Committees in other regional areas of Wales were meeting regularly to discuss common issues and share good practice. This was something that we agreed to pursue with other Standards Committees in the Gwent area.

Concern was expressed by some delegates about impartiality and conflict on the part of elected Councillors sitting on Standards Committee. We discussed this as a standards Committee and considered that this was not generally an issue in Newport where all members acted independently and impartially. If there was any concern, it might be that elected members were sitting in judgement of their peers. We felt that it was a matter of conscience for the individual and a member could disqualify themselves if they thought that they were sitting in judgement of a peer.

The issue of local resolution protocols for community councils was also raised at the conference. Community Councils often felt removed or isolated and did not have a support mechanism in place, in particular those that did not subscribe to One Voice Wales. This was something that could not be imposed upon Community Councillors and would need to be a purely voluntary decision. However, as part of our review of compliance arrangements, we did ask local community councils whether they would be interested in voluntarily adopting Newport's protocol and the majority of those who responded were in favour.

Finally, there was an interesting session on ethical standards and the use of social media, particularly the dangers of posting comments on twitter and Facebook. WLGA Guidance on the use of social media by Councillors was subsequently distributed to all members.

## **2.7 General work**

The Committee received an update on the changes introduced by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016.

The Regulations came into force on 1<sup>st</sup> April 2016 and make a number of consequential amendments to reflect changes in legislation which allow for the establishment of joint Standards Committees. The Regulations also provide for the referral of misconduct cases and dispensation application to other councils standards committees, where appropriate. The arrangements for establishing a joint committee, including the apportionment of costs, are a matter for agreement between the authorities entering into such arrangements. The 2001 Standards Committees Regulations (as amended) make provision as to the size and composition of standards committees and matters relating to the conduct of meetings, including public access to meetings, agendas and papers etc.

The Regulations also establish a procedure for the "home" Standards Committee to refer investigations and reports to other Standards Committees and their Monitoring Officers, where they feel there is a conflict of interest.

We considered that it was more appropriate for complaints about local Councillors to be dealt with locally and that it would only be in exceptional cases that we would need to refer investigations or determinations to other Standards Committees.

Amendments were also made to the term of office of sitting councillors. The term of office of a member of a local authority or a community committee member serving on a standards committee was limited to the shorter of four years or the period to the next ordinary election following that member's appointment. A member may serve two such terms. Following the postponement of the next local government elections until May 2017, the 2001 Regulations were amended to permit

local authority and community council members of Standards Committee to continue to serve until the next ordinary election in May 2017.

Further amendments were also made to remove the four year restriction on a Member's term of office. In future, the term of office of local authority and community committee members is to be such as the authority determines, up to the period ending with the next ordinary elections following the member's appointment.

The Standards Committees Amendment Regulations now provide that Standards Committee may exempt from publication agendas, records or information connected to the consideration of a misconduct report, until such time as the misconduct proceedings are concluded, that is when any time limit for appealing to the Adjudication Panel has expired or any such adjudication has been completed. This removes the uncertainty and problems that had been caused by Ombudsman reports being published with agenda papers in advance of a Standards Committee meeting. It preserves both the anonymity of the Councillor and the integrity of the evidence until the hearing has been concluded.

Standards Committee may determine that a member who has failed to comply with the authority's Code of Conduct should be suspended or partially suspended for a period not exceeding six months. The Regulations are now amended to make it clear that a period of suspension cannot exceed the remainder of a member's term of office, to bring this into line with the provisions relating to the Adjudication Panel.

A member seeking to appeal against the determination of the Standards Committee will, in future, first need to obtain the permission of the President (or another nominated member) of the Adjudication Panel for Wales. The requirement to obtain permission to appeal is intended to ensure that only appeals that have a reasonable prospect of success (in whole or in part) will proceed. A member will have no right to challenge, or indeed seek to delay implementation of, a sanction imposed by Standards Committee on entirely frivolous or spurious grounds

The Local Authorities (Grant of Dispensations) (Wales) Regulations 2001 (the "2001 Dispensations Regulations") have been amended to enable the Standards Committee to refer a dispensation application to another council's standards committee, for example if we have a conflict of interest or where we are unable to deal with an urgent application due to the unavailability of members. The terms of any referral are to be a matter for agreement between the relevant authorities concerned. The written consent of the Chair (or Vice –Chair if the Chair is unavailable) must be given to the Monitoring Officer before such a referral can be made.

Notice of such a referral must be given to the member requesting the dispensation, specifying the reason for the referral. Again, we considered that this referral process would only be used in exceptional circumstances and the vast majority of dispensation applications would continue to be dealt with locally and expeditiously.

A general category of dispensation has also been introduced, to bring the Regulations into line with Section 33 of the Localism Act 2011 in England. The specific intention of this amendment is to enable standards committee to grant a dispensation, if it considered it appropriate in all the circumstances to do so, where it was not otherwise possible to make reasonable adjustments to accommodate a member's disability. A dispensation under this category is subject to ongoing annual review. For example, a disabled member may have difficulty in physically withdrawing from the room if there are no adjustments to the venue or the agenda that could facilitate this. But the general dispensation has much wider application than this and could potentially be utilised where a member seeks a dispensation in circumstances which are not covered by one of the specific dispensation categories in the Regulations. However, Welsh Government has advised caution in using this power more widely.

The Committee carried out a review of the Council's Whistleblowing Policy and the Action Plan produced in response to the Wales Audit Office Report. It was pleasing to note that the revised policy was fully compliant with changes in legislation and the Public Concern at Work Code of Practice. We were satisfied with the steps taken by the Council to implement the measures set out in the Action Plan to address the areas for improvement identified by the Wales Audit Office and the procedures for communicating this Policy to the staff. There had only been 2 recorded complaints of whistleblowing and we were assured that this was not due to any lack of awareness about the Policy or the right to complain, but the nature of the malpractice covered by the Policy. Other complaints and grievances were dealt with through the Council's employment policies.

In January 2016 we wrote to all of the community council clerks to ensure that proper arrangements are in place to maintain and publish the registers of members' interests. Sections 55-57 of the Local Government (Democracy) (Wales) Act 2013 Act require Community Councils to publish certain information electronically (i.e. on a website). This includes the public register of members' interests, information about the council's clerk and Members, Minutes of council meetings and any audited statement of the council's accounts. Community Councils are also required to publish public notices electronically, and to make certain information about their meetings and proceedings available electronically.

We were pleased that the 8 councils who responded had arrangements in place to meet their statutory obligations and that registers were being maintained and published properly, in compliance with the legislation. However, we will continue to press the remaining 6 councils for confirmation that they are meeting their legal obligations.

The majority of councils who responded to the review were also interested in adopting Newport's local resolution process, on a voluntary basis. In terms of refresher training, most councils considered that this could await the May 2017 elections and be dealt with as part of their induction training.

We also reminded community councils of their obligations to formally adopt the new Members Code of Conduct before 26<sup>th</sup> June 2016 and publish its adoption. We will follow this up as part of the work programme for the next 12 months.

## **2.8 Ombudsman complaints**

The Ombudsman advises the Monitoring Officer of complaints made against elected members of Newport City Council and community councillors and the outcome. The Monitoring Officer updates the Committee at each meeting about the numbers of on-going complaints being referred to and considered by the Ombudsman's office. This information is provided on a general basis, without disclosing precise details of individual complaints, to avoid any issues about pre-determination in case the complaints are reported to the Standards Committee for determination.

The Committee was advised that 2 complaints were referred to the Ombudsman about City Councillors in 2015/15. However, neither of these complaints was accepted for investigation on the basis that there was no evidence of any serious breaches of the Code.

Two complaints were also referred to the Ombudsman regarding alleged breaches of the Code by local community councillors. One of these complaints has not been upheld and the other is subject to on-going investigation.

No complaints were referred to Standards Committee in 2015/16 for hearing and determination.

### 3. Forward Work Programme for 2016/17

Date	Topic	Information
September	Annual Report to Council	<p>Review of work undertaken in the past 12 months, identifying any specific ethical standards issues facing the Council and priorities for the forthcoming year.</p> <p>Summary of numbers of complaints received and outcomes.</p>
<p>As and when applications received</p> <p>Review annually</p>	Dispensations	<p>Granting individual and blanket dispensations to Councillors.</p> <p>Reviewing decisions annually to identify common issues and consistency of approach.</p> <p>Produce guidance to Members on any issues arising.</p>
As and when required	Local Resolution Protocol complaints	Conducting hearings into any Stage 3 complaints by Members or Officers
Monthly	Complaints of Misconduct	<p>Update of numbers of complaints received and outcomes.</p> <p>Update on complaints resolved through Local Resolution Protocol.</p>
By May 2017	Member training and development	<p>Carry out review of member training, re-assessing the need for refresher training in the light of any changes in legislation, guidance and Code of Conduct.</p> <p>Arrange and deliver any necessary refresher training as part of the induction programme for new councillors post May 2017</p> <p>Induction training for new independent members to be delivered in October 2016.</p>
Annually	Ethical standards audit	<p>Check that statutory registers are being properly maintained procedures for declarations are being followed</p> <p>Review Gifts and Hospitality Protocol and Protocols for hearings and recommend amendments, as necessary.</p>

Annually	Review of community councils	<p>Check that statutory registers are being properly maintained procedures for declarations are being followed</p> <p>Engage with community councils to ensure compliance and to identify any training and development needs.</p> <p>Check that new Code of Conduct has been properly adopted – October 2016</p>
By September 2017	Review of Council Protocols	<p>(a) Member /Officer relations</p> <p>(b) Planning Protocol</p> <p>How they are implemented, communicated to staff, training and compliance monitoring.</p>
On-going	Review of Council Policies and procedures relating to ethical standards	<p>(a) Bullying and Harassment.</p> <p>(b) Grievance and complaints policies.</p> <p>(c) Ethical Procurement policy</p> <p>How they are implemented and communicated, monitor compliance.</p>
By October 2016	Succession Planning for new independent members of Standards Committee	<p>Shortlist and interview for 2 new independent members of Committee.</p> <p>Elect Chair and vice-Chair for the forthcoming year.</p> <p>Deliver training and induction.</p>

#### **4. Helpful Information**

##### **4.1 Can I attend Meetings of the Standards Committee?**

Yes, all of our meetings are open to the public, except for specific items where personal or confidential information is likely to be disclosed and the public interest requires that these meetings are conducted in private, for example hearings into misconduct complaints

Dates of forthcoming meetings, agendas, reports and minutes are available on our own webpage on the Council website which can be accessed by clicking here: [Standards Committee Webpage](#)

##### **4.2 Who do I contact if I want to know more?**

If you wish to find out more about the Standards Committee or make a comment or suggestion, please visit our website: [Standards Committee Webpage](#) where you will find an online contact form or email us at [info@newport.gov.uk](mailto:info@newport.gov.uk)

Hazel Taylor OBE  
Chair of the Standards Committee;

Gareth Price  
Head of Law & Regulation and Monitoring Officer

Juliet Owen  
Chief Legal Officer and Deputy Monitoring Officer

Richard Jefferies  
Chief Democratic Services Officer

## APPENDIX 1

### THE MODEL CODE OF CONDUCT

#### PART 1 INTERPRETATION

1.—(1) In this code —

"co-opted member" ("*aelod cyfetholedig*"), in relation to a relevant authority, means a person who is not a member of the authority but who —

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question which falls to be decided at any meeting of that committee or subcommittee;

"meeting" ("*cyfarfod*") means any meeting —

(a) of the relevant authority,

(b) of any executive or board of the relevant authority,

(c) of any committee, sub-committee, joint committee or joint sub-committee of the relevant authority or of any such committee, sub-committee, joint committee or joint sub-committee of any executive or board of the authority, or

(d) where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990,

and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority;

"member" ("*aelod*") includes, unless the context requires otherwise, a co-opted member;

"registered society" means a society, other than a society registered as a credit union, which is —

(a) a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014; or

(b) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969;

"register of members' interests" ("*cofrestr o fuddiannau'r aelodau*") means the register established and maintained under section 81 of the Local Government Act 2000;

"relevant authority" ("*awdurdod perthnasol*") means—

(a) a county council,

(b) a county borough council,

(c) a community council,

(d) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,

(e) a National Park authority established under section 63 of the Environment Act 1995;

"you" ("*chi*") means you as a member or co-opted member of a relevant authority; and

"your authority" ("*eich awdurdod*") means the relevant authority of which you are a member or co-opted member.

(2) In relation to a community council—

(a) "proper officer" ("*swyddog priodol*") means an officer of that council within the meaning of section 270(3) of the Local Government Act 1972; and

(b) "standards committee" ("*pwyllgor safonau*") means the standards committee of the county or county borough council which has functions in relation to the community council for which it is responsible under section 56(1) and (2) of the Local Government Act 2000.

## **PART 2 GENERAL PROVISIONS**

**2.—(1)** Save where paragraph 3(a) applies, you must observe this code of conduct —

- (a) whenever you conduct the business, or are present at a meeting, of your authority;
- (b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;
- (c) whenever you act, claim to act or give the impression you are acting as a representative of your authority; or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

(2) You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales.

**3.** Where you are elected, appointed or nominated by your authority to serve —

- (a) on another relevant authority, or any other body, which includes a Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or
- (b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

**4.** You must —

- (a) 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;
- (b) show respect and consideration for others;
- (c) not use bullying behaviour or harass any person; and
- (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.

**5.** You must not —

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

**6.—(1)** You must —

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- (b) 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);

(c) report to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;

(d) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.

(2) You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

**7. You must not —**

(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;

(b) use, or authorise others to use, the resources of your authority —

(i) imprudently;

(ii) in breach of your authority's requirements;

(iii) unlawfully;

(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;

(v) improperly for political purposes; or

(vi) improperly for private purposes.

**8. You must —**

(a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by —

(i) the authority's head of paid service;

(ii) the authority's chief finance officer;

(iii) the authority's monitoring officer;

(iv) the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);

(b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

**9. You must —**

(a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;

(b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

## PART 3 INTERESTS

### Personal Interests

**10.—**(1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.

(2) You must regard yourself as having a personal interest in any business of your authority if —  
(a) it relates to, or is likely to affect —

- (i) any employment or business carried on by you;
- (ii) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
- (iii) any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;
- (iv) any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
- (v) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- (vi) any land in which you have a beneficial interest and which is in the area of your authority;
- (vii) any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in subparagraph (iv) above;
- (viii) any body to which you have been elected, appointed or nominated by your authority;
- (ix) any —
  - (aa) public authority or body exercising functions of a public nature;
  - (bb) company, registered society, charity, or body directed to charitable purposes;
  - (cc) body whose principal purposes include the influence of public opinion or policy;
  - (dd) trade union or professional association; or
  - (ee) private club, society or association operating within your authority's area,in which you have membership or hold a position of general control or management;
- (x) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

*[Note: subparagraph (b) is omitted.]*

(c) a decision upon it might reasonably be regarded as affecting —

- (i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;

- (ii) any employment or business carried on by persons as described in 10(2)(c)(i);
- (iii) any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;
- (iv) any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (v) any body listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management,

to a greater extent than the majority of—

- (aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
- (bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

### **Disclosure of Personal Interests**

**11.—**(1) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you 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.

(2) Where you have a personal interest in any business of your authority and you make —

- (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication; or
- (b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.

(3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.

(4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any requirements identified by your authority's monitoring officer, or in relation to a community council, your authority's proper officer from time to time but, as a minimum containing —

- (a) details of the personal interest;
- (b) details of the business to which the personal interest relates; and
- (c) your signature.

(5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.

(6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.

(7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

### **Prejudicial Interests**

**12.—**(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business—

(a) relates to —

(i) another relevant authority of which you are also a member;

(ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;

(iii) a body to which you have been elected, appointed or nominated by your authority;

(iv) your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;

(v) your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

(b) relates to —

(i) the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;

(ii) the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;

(iii) the functions of your authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;

(iv) the functions of your authority in respect of an allowance or payment made in accordance with the provisions of Part 8 of the Local Government (Wales) Measure 2011, or an allowance or pension provided under section 18 of the Local Government and Housing Act 1989;

(c) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.

(3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

## Overview and Scrutiny Committees

13. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint subcommittees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, board, committee, sub-committee, joint-committee or joint sub-committee mentioned in sub-paragraph (a) and you were present when that decision was made or action was taken.

## Participation in Relation to Disclosed Interests

14.—(1) Subject to sub-paragraphs (2), (2A), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee —

(a) withdraw from the room, chamber or place where a meeting considering the business is being held—

(i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or

(ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;

(b) not exercise executive or board functions in relation to that business;

(c) not seek to influence a decision about that business;

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and

(e) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.

(2) Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(2A) Where you have a prejudicial interest in any business of your authority you may submit written representations to a meeting relating to that business, provided that the public are allowed to attend the meeting for the purpose of making representations, answering questions or giving evidence relating to the business, whether under statutory right or otherwise.

(2B) When submitting written representations under sub-paragraph (2A) you must comply with any procedure that your authority may adopt for the submission of such representations.

(3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if —

(a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or

(b) you have the benefit of a dispensation provided that you —

(i) state at the meeting that you are relying on the dispensation; and

(ii) before or immediately after the close of the meeting give written notification to your authority containing —

(aa) details of the prejudicial interest;

(bb) details of the business to which the prejudicial interest relates;

(cc) details of, and the date on which, the dispensation was granted; and

(dd) your signature.

(4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.

## **PART 4 THE REGISTER OF MEMBERS' INTERESTS**

### **Registration of Personal Interests**

**15.—**(1) Subject to sub-paragraph (4), you must, within 28 days of—

(a) your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or

(b) your election or appointment to office (if that is later),

register your personal interests, where they fall within a category mentioned in paragraph 10(2)(a), in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(2) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any new personal interest falling within a category mentioned in paragraph 10(2)(a), register that new personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(3) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any change to a registered personal interest falling within a category mentioned in paragraph 10(2)(a), register that change in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

(4) Sub-paragraphs (1), (2) and (3) do not apply to sensitive information determined in accordance with paragraph 16(1).

(5) Sub-paragraphs (1) and (2) do not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.

(6) You must, when disclosing a personal interest in accordance with paragraph 11 for the first time, register that personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

### **Sensitive information**

**16.—**(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) is no longer sensitive information, notify your authority's monitoring officer, or in relation to a community council, your authority's proper officer asking that the information be included in your authority's register of members' interests.

(3) In this code, "sensitive information" ("*gwybodaeth sensitif*") means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

### **Registration of Gifts and Hospitality**

**17.** You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written notification to your 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.

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# Report

## Standards Committee

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### Part 1

Date: 15 September 2016

Item No: 08

**Subject** Protocol on Member/Officer relations

**Purpose** To review the current Protocol for Member/Officer relations

**Author** Head of Law and Regulation

**Ward** General

**Summary** Standards Committee have previously undertaken a review of the Protocol for Member/Officer Relations as part of their Ethical standards audit. The Protocol forms part of the Constitution and, as such, requires approval and adoption by full Council. The purpose of the Protocol is to supplement the statutory Members Code of Conduct and the contractual Employee Code of Conduct by providing practical guidance on the application of the general principles of mutual trust and respect and integrity which are enshrined in both codes.

The last review was undertaken in 2012 and a copy of the revised version is attached at Appendix 1. This was submitted for approval to Council in January 2012, but it was not approved and adopted because of concerns about its status and impact. Therefore, the original version is still included within the published Council Constitution, albeit that it is marked as being “under review”. This is attached at Appendix 2.

**Proposal** To review the Protocol for Member/Officer relations and consider whether it should be amended and recommended to the Council for adoption

**Action by** Head of Law and Regulation

**Timetable** Immediate

## Background

1. Standards Committee have previously undertaken a review of the Protocol for Member/Officer Relations as part of their Ethical standards audit. The Protocol forms part of the Constitution and, as such, requires approval and adoption by full Council. The purpose of the Protocol is to supplement the statutory Members Code of Conduct and the contractual Employee Code of Conduct by providing practical guidance on the application of the general principles of mutual trust and respect and integrity which are enshrined in both codes
2. The Protocol deal with issues such as
  - Personal relationships
  - Professional Relationships
  - How to deal with enquiries
  - Mutual respect
  - Complaints
  - Relationships with the Leader and or Chairpersons
  - Members' representational roles.

The protocol then looks at issues around neutrality, the rights of access for members who are not members of committees and the use of Council facilities.

3. The last review was undertaken in 2012 and a copy of the revised version is attached at [Appendix 1](#). This was submitted for approval to Council in January 2012, but it was not approved and adopted because of concerns about its status and impact
4. Therefore, the original version is still included within the published Council Constitution, albeit that it is marked as being "under review". This is attached at [Appendix 2](#)
5. The original Protocol is now outdated and has been superseded by changes in the Codes of Conduct and the Council's internal management and decision-making arrangements. The revised 2012 version also needs minor changes to reflect developments such as the Local resolution protocol
6. Therefore, it needs to be updated as part on the on-going review of the Council's Constitution.

## Financial Summary

There are no financial implications.

## Options Available

- (a) To review the Protocol for Member/Officer relations
- (b) Not to review the Protocol

The preferred option is (a) because the original Protocol is now outdated and has been superseded by changes in the Codes of Conduct and the Council's internal management and decision-making arrangements. The revised 2012 version also needs minor changes to reflect developments such as the Local resolution protocol.

## Comments of Chief Financial Officer

There are no financial implications.

**Comments of Monitoring Officer**

Included in the Report.

**Staffing Implications: Comments of Head of People and Business Change**

There are no staffing or policy implications.

Dated: 7 September 2016

## Appendix 1

### **Protocol on Member/Officer Relations**

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#### **Principles**

1. The basic principle of good Councillor / employee relations in local government is based on trust, mutual respect and a common understanding of respective roles.
2. Councillors have a responsibility to the electorate for decisions that are made. Employees /officers are appointed by the Council to give robust and impartial advice, which will assist Councillors in reaching the best decisions for the city.
3. Councillors and employees should show respect and consideration for each other and should not do anything which compromises, or which is likely to compromise, the impartiality of the Authority's employees.
4. Mutual respect between employees and Councillors is essential to good local government, and working relationships should be kept on a professional basis.
5. Members and officers should not only seek to avoid actual impropriety they should also at all times avoid any occasion for suspicion or any appearance of improper conduct.

#### **Personal Relationships**

6. Close personal familiarity between individual councillors and employees can damage these principles and might prove embarrassing to other councillors and employees.
7. Councillors should declare to the Leader or to the Party Whips, any relationship with an employee, which could be considered as influencing their work as a member. This might be a family relationship, a business relationship, or another close relationship, which might be considered such as might influence the Councillor's decision-making.
8. Officers also have a duty to declare any such relationships to their Manager or to his or her Head of Service, where appropriate.
9. Councillors should not accept any Cabinet position or sit on any Committee which is responsible for any Service Area where a member's relationship with an employee might be considered as such that it could influence the Councillor's decision-making or the work of the Service Area in question.
10. Councillors should not accept any Cabinet position or sit on any Committee where his or her family, personal or business relationships might be considered as such that it could influence the Councillor's decision-making.
11. The provision of this part of the Constitution does not absolve members or employees from their statutory duties in relation to disclosure of personal interests.
12. Members should be aware of the requirement for officers:
  - to serve all members of the Council;
  - to avoid close, personal familiarity with members; and
  - to inform Managers at any-time that a member asks for, or seeks to influence an employee to deal with a matter outside the Council procedures or outside of policy. Any request to act illegally or improperly will be reported to the Monitoring Officer or to the Head of Finance and Scrutiny (Acting as Section 151 Officer) if financial impropriety is suspected.

## **Councillors' Roles**

13. All Councillors have a responsibility to fulfil representational and constituency roles in respect of their electoral divisions or wards. They also have responsibilities as members of the full Council to take some of the most important decisions the Council can make, including approval of the budget and policy framework.
14. Some Councillors will be involved in taking other more detailed Council decisions, particularly those serving on the Cabinet, the planning committee or the licensing committee. Others will have responsibility for maintaining an overview and scrutiny of executive decisions and the efficient performance of Council functions. All of these roles will involve relationships with employees and will require appropriate working relationships as described in this part of the constitution.

## **Officer Roles and Advice**

15. Council employees have an obligation to give impartial advice and to implement the Council's decisions. They have operational responsibilities and powers which are generally set out in the Council's scheme of delegation.
16. Councillors taking decisions must reach those decisions having regard to any relevant advice by the authority's officers. In advising, officers are free to give their professional advice wherever appropriate. Councillors may wish to test this advice by questioning and challenging in an appropriate manner and not in a way that could be interpreted as intimidating, threatening or bullying.
17. Councillors should ensure that any challenge of advice given is made to an employee of suitable seniority, generally a Chief Officer.
18. Employees should remember that councillors are entitled to question advice given, and to receive a full and complete explanation.
19. The Council has three main statutory officers; the Head of Paid Service, the Monitoring Officer and the Section 151 Officer, who have duties to advise the Council as a corporate body or the Executive in relation to executive functions, and have a statutory right to advise as they believe appropriate within their statutory duties. The Head of Human Resources and Policy should provide advice on staffing issues or procedures.

## **Correspondence with Councillors and others**

20. Officers should always respond to Councillors within the Council's target timescales for response, and if they cannot, should keep the Member informed as to progress.

## **Relationships between Officers and Members**

21. Councillors should not, by their conduct, language, or actions, make employees feel intimidated, threatened or bullied. Personal comments about individual members of staff should not take place in public.
22. Officers should not, by their conduct, language, or actions, make elected members feel intimidated, threatened or bullied. Personal comments about individual members of the council should not take place in public.
23. All councillors and employees will demonstrate mutual respect and will deal with each other sympathetically, efficiently and without bias. Officers are responsible for advising the whole Council but may occasionally be called upon by individual Members to advise or give information on particular issues that relate to the councillor's representational or constituency roles. This is

entirely proper and, within available resources, advice should be given. Officers should not advise councillors on or to assist them in personal or political capacities.

#### **24. Leader, Cabinet Members and Chairs**

Certain employees will work closely with the Leader and Cabinet Members on policy matters. Certain employees will also work closely with Chairs of Committees or Forums. These employees may be asked to brief these members on legal or constitutional issue, the implementation of policies and/or available options. This is entirely acceptable, whether done individually or collectively. However, the relationship should not be so close (or appear to be so close) as to bring into question the employees ability to deal impartially with other members or party groups.

#### **Party Groups and Officers**

25. No officer may be compelled to attend a meeting of the Council's political groups and similarly may not insist on doing so. Officers will not attend party group meetings which include individuals other than Council Members or Council officers acting in that capacity. If an officer gives a briefing to any political group represented on the Council, he/she will be available for a similar briefing to the other party groups.

#### **Conduct and Effectiveness / Complaints**

26. Personal criticism by elected Members of individual officers or identifiable groups of officers will not take place in public forums (including the media)
27. No Council employee will publicly criticise any councillor in public forums (including the media)
28. If councillors have any concerns about the effectiveness or conduct of particular officers, they must take this up directly and confidentially with the appropriate Chief Officer with responsibility for the officer's service area. In the case of a Chief Officer the councillor should raise the matter with the appropriate Corporate Director or the Head of Paid Service. If the complaint is about the Head of Paid Service, this must be raised with the Leader. In all such cases the issue raised will be handled in accordance with the Council's procedures and the Member and officer concerned will be advised of the outcome, unless there are legal reasons why they may not. The outcome of the process is the only information Councillors will be entitled to.
29. If any employee has concerns about the conduct of a particular Member, he/she will raise it in the first instance with his/her Chief Officer or Corporate Director so that attempts can be made to resolve the issue. If this is not possible, or the alleged misconduct is of a serious nature, the matter will be reported to the Council's Monitoring Officer, who will then advise on whether it is appropriate for the issue to be referred to the Local Government Ombudsman.
30. The Council's disciplinary and appeals processes are set out in the relevant policy documents

#### **Access to Information and Documents**

31. The common law right of members is based on the principle that any member has a right to inspect Council documents so far as his/ her access to the document is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the "need to know" principle.
32. Councillors have a right to see some information on Cabinet, Forum or Committee agendas, which is judged to be exempt from disclosure to the public. This access is on a "need to know" basis.
33. The Council promotes openness and access to information by all its councillors. Whilst Councillors have no automatic right to exempt information, and they may have to establish a 'need

to know', generally reports to be considered by the Council, the Cabinet, Cabinet Members, Committees or Forums are made available to all members of the Council. Employees and councillors will abide by the Access to Information Procedure Rules set out in the Council's Constitution. Confidential information or exempt information provided to Councillors must be used properly, and only for the purposes for which it has been released.

34. Reports relating to specific members of staff will not be released to any member of the Council, other than the appropriate decision maker, unless a 'need to know' is established.

### **Appointment of Staff / Referee**

35. Councillors will play no part in the appointment of staff to the Council, other than the appointment of Chief Officers.
36. Councillors should not act as referee or canvass the appointment of any individual for a post within the City Council. Councillors will take their own personal view as to whether to act as referee for any member of staff applying for a post which is not within the City Council.

### **Interests**

37. Advice on the circumstances in which a councillor should declare an interest is set out in the Code of Conduct. However, the Monitoring Officer or his/her nominee may advise individual councillors on the Member Code of Conduct and their responsibilities in relation to declaration of interests. The responsibility on deciding whether or not to declare rests with the Councillor.
38. If a Councillor seeks advice from the Monitoring Officer in relation an interest, the advice should be provided in writing.
39. A register is held to record Councillors interests and shall be updated by the Chief Democratic Services Officer
40. A register is held in each service area to record officer interests and hospitality received and shall be updated and held by the Head of Service.

### **Use of Council Facilities and equipment**

41. Councillors must use any Council facilities and / or equipment provided for them for use in their role as member strictly for that purpose. Premises must not be used for any personal, business related or party political matter nor on behalf of any community group. Rooms will be made available only for meetings of political groups serving on the Council.
42. Officers must use any Council facilities and / or equipment provided for them for use in their role as officers strictly for that purpose. Premises must not be used for any personal or business related matter.
43. Members will sign an 'acceptable use policy for the use of ICT equipment provided and will use ICT equipment in accordance with acceptable use policy
44. Officers shall also sign an 'acceptable use policy for the use of ICT equipment provided and will use ICT equipment in accordance with acceptable use policy

### **Party Political Advisers**

45. Members often are assisted by political party workers. No such party worker has any entitlement to access to Council facilities provided for the use of councillors or to information to which councillors have access in their roles as councillors.

## Protocol on Councillor/Officer Relations

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### Purpose and Principles

1. The purpose of this protocol is to guide councillors and officers of the council in their relations with one another.
2. This protocol does not seek to be either prescriptive or comprehensive. It seeks to offer guidance on some of the issues which most commonly arise.
3. The protocol produced here is based on current practices. The intention is to provide a protocol which provides clarity about these relationships
4. This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to councillors and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.
5. A relevant extract from the National Code of Local Government Conduct for councillors is reproduced below:

*23. Both councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees.*

*24. Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers.*
6. In line with the National Code's reference to "mutual respect", it is important that any dealings between councillors and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
7. Councillors and officers should not only seek to avoid actual impropriety they should also at all times avoid any occasion for suspicion or any appearance of improper conduct.

### Personal Relationships

8. Councillors should declare to the Leader of his or her Political Group or to the Leader of the Council or to the Monitoring Officer, any relationship with an employee, which could be considered as influencing their work as a councillor. This might be a family relationship, a business relationship, or another close relationship, which might be considered such as might influence the Councillor's decision-making.
9. Officers also have a duty to declare any such relationships to their Manager or to his or her Head of Service, where appropriate.
10. Councillors should not accept any Cabinet position or sit on any Committee which is responsible for any Service Area where a councillor's relationship with an employee might be considered as such that it could influence the Councillor's decision-making or the work of the Service Area in question or be perceived as such
11. Councillors should not accept any Cabinet position or sit on any Committee where his or her family, personal or business relationships might be considered as such that it could influence the Councillor's decision-making.
12. Employees and councillors have statutory duties in relation to disclosure of personal interests.
13. Officers must:
  - serve all councillors of the Council;
  - avoid close, personal familiarity with councillors; and
  - Inform managers at any time that a councillor or employee asks for, or seeks to influence an employee to deal with a matter outside the Council procedures or outside of policy. Any request to act illegally or improperly will be reported to the Monitoring Officer or to the Head of Finance and Scrutiny (Acting as Section 151 Officer) if financial impropriety is suspected.

### Guidance and Advice

14. Council employees have an obligation to give impartial advice and to implement the Council's decisions. They have operational responsibilities and powers which are generally set out in the Council's scheme of delegation.
15. Councillors taking decisions must reach those decisions having regard to any relevant advice by the authority's officers. In advising, officers are free to give their professional advice wherever appropriate. Councillors may wish to test this advice by questioning and challenging in an appropriate manner and not in a way that could be interpreted as intimidating, threatening or bullying.
16. Councillors should ensure that any challenge of advice given is made to an employee of suitable seniority, generally a Chief Officer.
17. Employees should remember that councillors are entitled to question advice given, and to receive a full and complete explanation.

18. The Council has three main statutory officers; the Head of Paid Service, the Monitoring Officer and the Section 151 Officer, who have duties to advise the Council as a corporate body or the Executive in relation to executive functions, and have a statutory right to advise as they believe appropriate within their statutory duties. The Head of Service that deals with Human Resources should provide advice on staffing issues or procedures.

#### **Correspondence with Councillors and others**

19. Officers should always respond to Councillors within the Council's target timescales for response, and if they cannot, should keep the councillor informed as to progress.

#### **Relationships between Officers and Councillors**

20. Councillors should not, by their conduct, language, or actions, make any employee(s) feel intimidated, threatened or bullied. Similarly, officers should not, by their conduct, language, or actions, make any councillor(s) feel intimidated, threatened or bullied.
21. All councillors and employees will demonstrate mutual respect and will deal with each other sympathetically, efficiently and without bias. Officers are responsible for advising the whole Council but may occasionally be called upon by individual Councillors to advise or give information on particular issues that relate to the councillor's representational or constituency roles. This is entirely proper and, within available resources, advice should be given.
22. Officers must not advise councillors on or to assist them in personal or political capacities unless employed as a political assistant.

#### **Leader, Cabinet Councillors and Chairs**

23. Certain employees will work closely with the Leader and Cabinet members on policy matters. Certain employees will also work closely with Chairs of Committees. These employees may be asked to brief these councillors on legal or constitutional issues, the implementation of policies and/or available options. This is entirely acceptable, whether done individually or collectively. However, the relationship should not be so close (or appear to be so close) as to bring into question the employees ability to deal impartially with other councillors or party groups.

#### **Political Parties and Groups**

24. No officer may be compelled to attend a meeting of the Council's political groups. No officer may insist on doing so.
25. Officers will not attend party group meetings which include individuals other than City Councillors or Council officers acting in that capacity.
26. If an officer gives a briefing to any political group represented on the Council, he/she will be available for a similar briefing to the other party groups.
27. Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business.

### **Conduct and Effectiveness / Complaints**

28. Personal criticism by elected Councillors of individual officers or identifiable groups of officers will not take place in public forums (including the media). Similarly personal criticism by employees of elected Councillors or groups of councillors will not take place in public forums (including the media)
29. If councillors have any concerns about the effectiveness or conduct of particular officers, they must take this up directly and confidentially with the appropriate Chief Officer with responsibility for the officer's service area. In the case of a Chief Officer the councillor should raise the matter with the appropriate Director of the Head of Paid Service. If the complaint is about the Head of Paid Service, this must be raised with the Leader of the Council. In all such cases the issue raised will be handled in accordance with the Council's procedures and the Councillor and officer concerned will be advised of the outcome, unless there are legal reasons why they may not. The outcome of the process is the only information Councillors will be entitled to.
30. If any employee has concerns about the conduct of a particular Councillor, he/she will raise it in the first instance with his/her Chief Officer or Corporate Director so that attempts can be made to resolve the issue. If this is not possible, or the alleged misconduct is of a serious nature, the matter will be reported to the Council's Monitoring Officer, who will then advise on whether it is appropriate for the issue to be referred to the Local Government Ombudsman.
31. In certain circumstances, appeals by employees are heard by the cabinet member who is responsible for Human Resources unless the Cabinet Member has been involved in the case. In such cases the appeal will be heard by an alternative Cabinet Member

### **Access to Information and Documents**

32. The common law right of councillors is based on the principle that any councillor has a right to inspect Council documents so far as his/ her access to the document is reasonably necessary to enable the councillor properly to perform his/her duties as a councillor of the Council. This principle is commonly referred to as the "need to know" principle.
33. Councillors have a right to see some information on Cabinet, Forum or Committee agendas, which is judged to be exempt from disclosure to the public. This access is on a "need to know" basis.
34. The Council promotes openness and access to information by all its councillors. Whilst Councillors have no automatic right to exempt information, and they may have to establish a 'need to know', generally reports to be considered by the Council, the Cabinet, Cabinet Members, Committees or Forums are made available to all councillors of the Council. Employees and councillors will abide by the Access to Information Procedure Rules set out in the Council's Constitution. Confidential information or exempt information provided to Councillors must be used properly, and only for the purposes for which it has been released.

35. Reports relating to specific councillors of staff will not be released to any member of the Council, other than the appropriate decision maker, unless a 'need to know' is established.
36. The Monitoring Officer has the overriding responsibility to determine whether consideration of reports to the Council, Cabinet, Cabinet members or Committees are likely to disclose confidential or 'exempt' information as defined in legislation.
37. If any report is issued within Part 2 of the agenda for a meeting and unless the Council, Cabinet or Committee decides that it should be discussed in public, all employees and councillors must respect the confidentiality of the report and not disclose it to a third party.
38. It does not however follow that all the contents of a Part 2 report must be regarded as secret. It may only be certain items of information or terms of negotiations justify the inclusion of that report within Part II: other aspects may already be within the public domain or otherwise outside the definition of 'exempt'. In such circumstances, an employee of councillor member may refer to these 'public' aspects in discussions with third parties but must exercise proper care and judgement not to reveal those elements of the paper which are protected. Any employee or councillor must consult with the Monitoring Officer before doing so.

#### **Appointment of Staff / Referee**

39. Councillors will play no part in the appointment of staff to the Council, other than the appointment of Chief Officers.
40. Councillors should not act as referee or canvass the appointment of any individual for a post within the City Council. Councillors will take their own personal view as to whether to act as referee for any councillor of staff applying for a post which is not within the City Council.

#### **Interests**

41. Advice on the circumstances in which a councillor should declare an interest is set out in the Code of Conduct. However, the Monitoring Officer or his/her nominee may advise individual councillors on the Councillor Code of Conduct and their responsibilities in relation to declaration of interests. The responsibility on deciding whether or not to declare rests with the Councillor.

#### **Use of Council Facilities and equipment**

42. Councillors and employees must use any Council facilities and / or equipment provided for them for use in their role as councillor or employee strictly for that purpose. Premises and equipment must not be used for any personal, business related or party political matter or on behalf of any community group. Rooms will be made available only for meetings of political groups serving on the Council or for employees carrying out their duties.
43. Councillors and employees will sign an 'acceptable use policy for the use of ICT equipment provided and will use ICT equipment in accordance with acceptable use policy

**Party Political Advisers**

44. Councillors often are assisted by political party workers. Such party worker have the same rights of access to Council facilities, council employees or to information as any member of the public.

Under review

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# Report

## Standards Committee

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### Part 1

Date: 15 September 2015

Item No: 09

**Subject** Ombudsman Annual Letter 2015/16

**Purpose** To report the Ombudsman's Annual letter and the numbers of complaints of maladministration and misconduct dealt with during 2015/16

**Author** Head of Law and Regulation

**Ward** General

**Summary** Following the publication of his Annual Report for 2015/16, the Ombudsman has now issued the Council with his Annual letter, which sets out information relating to the numbers of complaints of maladministration and misconduct which were referred to his office during this period relating to Newport City Council and its Councillors

**Proposal** To note the Report and the Ombudsman's Annual letter.

**Action by** Head of Law and Regulation

**Timetable** Immediate

## **Background**

1. Following the publication of his Annual Report for 2015/16, the Ombudsman has now issued the Council with his Annual letter, which sets out information relating to the numbers of complaints of maladministration and misconduct which were referred to his office during this period relating to Newport City Council and its Councillors
2. A copy of the Annual letter is set out in the Appendix to this Report.
3. Although there has been a general increase of 4% in caseloads, the number of complaints against public bodies fell by the same amount; only the second time that this has happened in the last decade. During 15/16 the Ombudsman received 906 complaints against local authorities in Wales, down from 938 in 14/15.
4. Housing and Planning are consistently the largest areas of complaint generally, although Newport no longer has any housing management related complaints following the housing stock transfer to Newport City Homes.
5. However, the Ombudsman has issued fewer maladministration reports against local authorities in 2015/11, which indicates that many more complaints are now being settled and resolved locally. Only 1 Public sector Interest report was issued against a Welsh council in the last 12 months. This Report identified failings in the way in which that authority dealt with a special educational needs issue.
6. The number of Code of Conduct complaints rose by 19% compared with 2014/15 (274 in 2015/16 against 231). This increase was almost entirely attributable to community councils where there was a 49% increase. The Ombudsman considers that the public interest test that he introduced for deciding whether or not to investigate misconduct complaints has assisted in reducing the numbers of complaints taken forward. However, he does express concern about the possible increase in vexatious, politically-motivated, complaints in the lead-up to the next local elections
7. In relation to Newport City Council, there was a reduction in the number of maladministration complaints compared with last year (33 compared with 40 and this is also below the Welsh average of 42
8. The largest single areas of complaint are Planning and Building Control, Education and Children services.
9. However, there were no public interest reports issued in 2015/16. The one complaint that was upheld in part related to procedural delays in responding to the complainant rather than any service failure.
10. Two complaints of misconduct were referred to the Ombudsman during 2015/16 in respect of Newport City Council members but, in both cases, a decision was taken not to accept the complaint for investigation.

## **Financial Summary**

There are no financial implications.

## **Options Available**

To note the Report

## **Comments of Chief Financial Officer**

There are no financial implications.

## **Comments of Monitoring Officer**

Included in the Report.

## **Staffing Implications: Comments of Head of People and Business Change**

There are no staffing or policy implications.

## **Background Papers**

Ombudsman's Annual Report and letter 2015/16.

Dated: 7 September 2016

Our ref: NB/LG/MM



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[matthew.aplin@ombudsman-wales.org.uk](mailto:matthew.aplin@ombudsman-wales.org.uk)

28 July 2016

### **Sent by email**

Dear Mr Godfrey

### **Annual Letter 2015/16**

Following the recent publication of my Annual Report I am pleased to provide you with the Annual Letter (2015/16) for **Newport City Council**.

Overall my office's caseload has increased by 4% this year, but I am pleased to say that public body complaints fell by the same amount; only the second time in a decade this has happened. However, disappointingly the NHS in Wales was the only sector in my jurisdiction that saw a rise in complaints which now count for over a third of all public body complaints; a total increase of 51% in the last five years.

During 2015/16 we received 906 complaints against local authorities, down from 938 from the previous year.

In reference to outcomes there has been a large increase in the number of early resolutions and voluntary settlements achieved with local authorities with 81 cases in 2015/16 compared to 58 in 2014/15. I am committed to ensuring where possible, bodies from all sectors resolve complaints as quickly and effectively as possible and I am therefore pleased with these statistics.

My office has issued only one public interest report against a local authority during the past year – the same number as 2014/15. This related to failings around a council's failure to properly consider assess and identify the special educational needs of a primary school pupil.

Across all public bodies, after health (36%), housing is the second biggest area of complaint (13%) of our caseload, followed by Planning and Building Control (10%) and Social Services (9%).

The number of Code of Conduct complaints rose by 19% compared with 2014/15 (274 in 2015/16 against 231). It is disappointing to see this rise, although it is almost entirely attributable to community councils where there has been a 49% increase.

Last year I introduced a public interest test for code of conduct complaints and I am pleased to say this has helped my office in dealing with these complaints in an effective manner.

I am only too aware that we are in the run-up to the local elections where historically there is a spike in code of conduct complaints against local authority members. I have spoken previously about vexatious complaints and I would be most disappointed to see an increase in complaints of a trivial matter over the next 12 months when my office is dealing with issues of real concern across public services in my jurisdiction.

More generally my office is working in a number of ways to “turn the curve” of complaints against a backdrop of austerity and an ageing population.

During the past year, I introduced some staffing changes at my office, key amongst these was enhanced roles for a number of investigation staff to include ‘improvement officer’ duties. This places a greater emphasis on best practice, corporate cultural development, and ending cycles of poor service delivery. Whilst the new arrangements are still in their early days, I have been very pleased with the progress that has been made.

Whilst the ombudsman scheme in Wales is well respected at home and abroad, I feel strongly that we must ensure that it is future-proofed and citizen-centred.

I have been particularly pleased that the Finance Committee of the National Assembly for Wales agreed to undertake an inquiry into the powers of the Public Services Ombudsman for Wales, and that a draft Public Services Ombudsman (Wales) Bill has resulted from this. I am now keen to see the Fifth Assembly take this bill forward and introduce it as legislation as soon as is practically possible.

You will find below a factsheet giving a breakdown of complaints data relating to your local authority along with explanatory notes.

This correspondence has been copied to the Leader of the Council for consideration by the cabinet. I will also be sending a copy to your contact officer within your organisation and would again reiterate the importance of this role. Finally, a copy of all annual letters will be published on my website.

**Yours sincerely**

A handwritten signature in black ink, appearing to read 'Nick Bennett', written in a cursive style.

Nick Bennett

Ombudsman

### Factsheet

In reference to your local authority, the number of complaints received by my office has reduced from 40 in 2014/15 to 33 in 2015/16. The highest number of complaints were made about Planning and Building Control (7) followed by Education (6) and Children's Social Services (6). In 20% of cases, request for information were met within one to two weeks, 60 % were met within three to four weeks and 20% were met within four to five weeks.

#### **A) Comparison of complaints received by my office with average, adjusted for population distribution**

In total my office received **33** complaints against **Newport City Council** during 2015-16 compared to a local authority average of **42**.

#### **B) Comparison of complaints by subject category with LA average**

<b>Subject</b>	<b>2015/16 Newport</b>	<b>2015/16 LA Average</b>
Adult Social Services	3	3
Benefits Administration	0	1
Children's Social Services	6	5
Community facilities, recreation and leisure	0	1
Complaints-handling	0	2
Education	6	2
Environment and Environmental Health	1	4
Finance and Taxation	0	2
Health	0	0
Housing	5	5
Planning and building control	7	9
Roads and Transport	0	3
Agriculture and Fisheries	0	0
Independent Care Providers	0	0
Various Other	5	3
<b>Total</b>	<b>33</b>	<b>40</b>

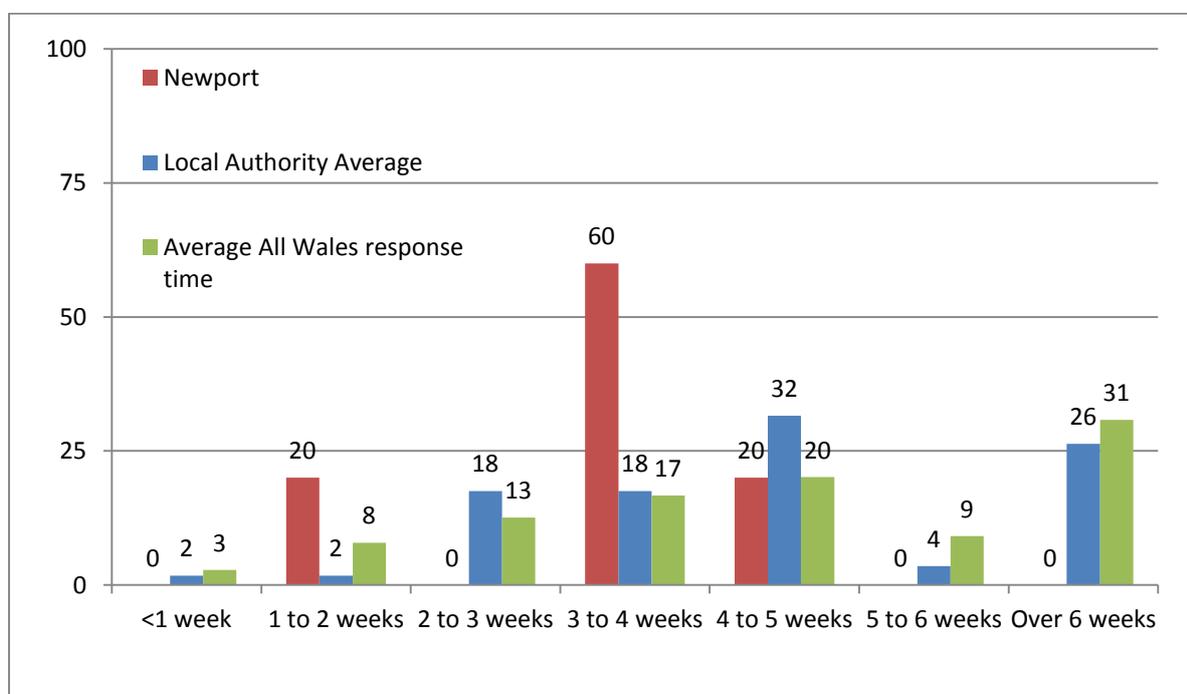
#### **C) Complaints taken into investigation by my office**

	<b>2015/16 Newport</b>	<b>2015/16 LA Average</b>
Number of complaints taken into investigation	5	3

**D) Comparison of complaint outcomes with average outcomes, adjusted for population distribution**

Complaint Outcomes	2015/16 Newport	2015/16 LA average
Out of jurisdiction	1	7
Premature	10	14
'Other' cases closed after initial consideration	14	17
Discontinued	1	0
Quick fix / Voluntary settlement	4	4
Section 16 – Upheld – in whole or in part	0	0
Other report upheld – in whole or in part	1	1
Other report – not upheld	4	1
Withdrawn	0	1

**E) Comparison of times for responding to requests for information with average LA and average All Wales response times, 2015/16 (%)**



## **F) Code of Conduct complaints**

In total **two** code of conduct complaints were made against members of **Newport City Council** were made during 2015-16. In both cases the decision was made not to investigate the matter.

## **G) Summaries**

### **[Casebook 21](#)**

201408415

201307099

### **Casebook 22**

No summaries

### **[Casebook 23](#)**

201503460

### **[Casebook 24](#)**

201408415

201307099

## **Appendix**

### **Explanatory Notes**

Section A compares the number of complaints against the Council which were received by my office during 2015/16, with the Local Authority average (adjusted for population distribution) during the same period.

Section B provides a breakdown of the number of complaints about the Council which were received by my office during 2015/16 with the with the Local Authority average for the same period. The figures are broken down into subject categories.

Section c provides the number of complaints against the Council which were investigated by my office during 2015/16 with the Local Authority average (adjusted for population distribution) during the same period.

Section D compares the complaint outcomes for the Council during 2015/16, with the average outcome (adjusted for population distribution) during the same period. Public Interest reports issued under section 16 of the Public Services Ombudsman (Wales) Act 2005 are recorded as 'Section 16'.

Section E compares the Council's response times during 2015/16 with the average response times for all Local Authorities and all public bodies in Wales during the same period. This graph measures the time between the date my office issued an 'investigation commencement' letter, and the date my office receives a full response to that letter from the public body.

Section F provides a breakdown of all Code of Conduct complaints received against Councillors during 2015/16. Finally, Section G contains the summaries appearing in our casebook during 2015/16.

### **Feedback**

We welcome your feedback on the enclosed information, including suggestions for any information to be enclosed in future annual summaries. Any feedback or queries should be sent to [lucy.geen@ombudsman-wales.org.uk](mailto:lucy.geen@ombudsman-wales.org.uk) or [matthew.aplin@ombudsman-wales.org.uk](mailto:matthew.aplin@ombudsman-wales.org.uk)

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