

DRAFT
CAERPHILLY COUNTY BOROUGH COUNCIL
STANDARDS COMMITTEE

PROCEDURES FOR DEALING AT THE COMMITTEE
WITH ALLEGATIONS OF A BREACH OF THE CODE OF CONDUCT

Statutory Provisions - Section 71 Local Government Act 2000; Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001

1. **Preliminary**

This procedure relates to allegations against members of Caerphilly County Borough Council and against members of community or town councils in the Caerphilly County Borough area.

All formal allegations that a member has breached a council's code of conduct must be sent to the Public Services Ombudsman for initial investigation. The Ombudsman if he feels there is any merit in the allegation can:-

- (a) investigate, and send his report to the council's Monitoring Officer and Standards Committee, or
- (b) refer the matter to the council's Monitoring Officer for investigation, or
- (c) investigate and refer the matter to the Adjudication Panel for Wales (this is in respect of what he sees as the more serious cases).

Using the lettering above, the Standards Committee will:-

- (a) receive the report of the Ombudsman along with a report (and recommendations if any) of the Monitoring Officer, or
- (b) receive the report of the Monitoring Officer (together with recommendations if any), or
- (c) have no involvement until the matter has been determined by the Adjudication Panel.

On receipt of a report by the Standards Committee ("1st stage")

(This procedure will apply whether the report is that of the Ombudsman or of the Monitoring Officer).

1. A copy of the report is sent to the member against whom the allegations were made (referred to in this document as "the member") and to the person making the allegations (referred to in this document as "the complainant").
2. The committee will meet within one month of receipt of the report to determine either:-
 - (a) that there is no evidence of any failure to comply with the code of conduct. The committee must then notify the member, the complainant and the Ombudsman of that decision, or
 - (b) that the member should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the authority's code of conduct.

Principles which will apply at the 1st stage:-

- (i) the role of the committee at this stage is simply to consider the report and decide either (a) or (b) above;
- (ii) this meeting will normally be held in private (to avoid any public and prejudicial pre-judging of the matter). The member is entitled to attend and observe the proceedings of the meeting, but not participate in the meeting;
- (iii) if the committee determines that the member should be given the opportunity to make representations then the member will be formally notified of this and a full hearing ("the 2nd stage") will be arranged, wherever practicable within two months of the date of that decision.

3. **Hearing ("2nd stage")**

Pre-hearing process

Where appropriate the Monitoring Officer in consultation with the Chair of the Standards Committee will carry out a pre-hearing process to establish:-

- (i) whether the member disagrees with any findings of fact in the report;
- (ii) whether the member wishes to make representations and if so whether these would be in writing or in person;
- (iii) whether witnesses need to be called in respect of any element of disagreement with the findings of fact;
- (iv) whether the member wishes to call relevant witnesses;
- (v) whether the hearing or any part of it needs to be held in private or whether any documents or parts of documents ought to be withheld from publication.

Note:

The Standards Committee may require the investigating officer to attend before it at the hearing (ie the hearing when the member makes representations and only at that hearing) for the purpose of presenting the report or explaining any of the matters contained in the report (but not otherwise). This is a provision in the Assembly regulations and cannot be changed.

The duties of the committee after considering any representations are to determine one of the following:-

- (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority and that therefore no action needs to be taken in respect of the matters which are the subject of the investigation;
- (b) that a member or co-opted member (or former member or co-opted member) of the authority has failed to comply with the code of conduct but that no action needs to be taken in respect of that failure;

- (c) that a member or co-opted member (or former member or co-opted member) of the authority has failed to comply with the code of conduct and should be censured, or
- (d) that a member or co-opted member has failed to comply with the code of conduct and should be suspended or partially suspended from being a member or co-opted member for a period not exceeding six months.

In order to discharge this duty the committee will conduct the hearing in three parts:-

- (i) making findings of fact;
- (ii) consideration of whether there is any failure to comply with the code of conduct in the light of the findings of fact;
- (iii) if there is a failure to comply with the code of conduct what action (if any) should be taken in respect of that failure.

(i) Findings of fact (where there are issues in dispute)

- The Committee will consider the investigator's report (including where necessary hearing evidence from the investigating officer in presenting the report or explaining any of the matters contained in it).
- The committee will hear from any witnesses whom it has previously identified should give evidence before it and the member will be entitled to ask questions of any such witnesses.
- The committee will hear from the member or any witnesses called by the member in relation to issues of fact.
- The member will be entitled to address the committee by way of a summary submission on the findings of fact.
- The committee will deliberate on the findings of fact in private and announce these in public.

(ii) Consideration of failure to comply with the code of conduct

Having made a finding (if appropriate) in relation to facts, the committee will then consider and determine whether the member has failed to comply with the code of conduct.

In doing this the committee will consider the facts as determined by the committee under the first part of the 2nd stage ((a) above), and will receive any verbal or written representations from the member and consider the provisions of the relevant code of conduct and any relevant advice issued in relation to that code.

The member has the right to make the final address to the committee in respect of whether there is any failure to comply with the code of conduct.

The committee will deliberate on this item in private and announce in public the committee's decision on whether the member has failed to comply with the code of conduct.

(iii) Final decision

If there is a finding that the member has failed to comply with the code of conduct the committee will then consider what penalty (if any) should be set (paragraphs (b), (c) or (d) above).

It will consider any relevant advice or guidance on this point and will allow the member or the member's representative to make submissions in relation to any penalty.

The committee will then deliberate on this in private and announce its decision in public.

4. **Formalities of decision**

The committee will as soon as practicable issue a formal notification of its determination and send this to the member, the complainant and the Ombudsman, giving reasons for its decision.

The member has a right of appeal to an appeals tribunal drawn from the Adjudication Panel for Wales by giving notice in writing within 21 days of receiving the notification to:-

Local Government Modernisation Division
National Assembly for Wales
Cathays Park
CARDIFF.
CF10 3NQ.

specifying the grounds for appeal and whether or not the member consents to the appeal being conducted by way of written representations.