

Appendix 1

Draft

Caerphilly County Borough Council Local Resolution Protocol

1. Introduction

- 1.1 By way of background, around a third of complaints referred to the Public Services Ombudsman for Wales (**Ombudsman**) are made by a Member against a fellow Member. Many of these complaints relate to low-level behavioural issues, typically during what may often be seen as the "cut and thrust" of normal Council debates and local politics. Many of these, if investigated by the Ombudsman, would not result in a sanction being imposed.
- 1.2 This Protocol has been adopted in response to the Ombudsman's latest guidance on the Code of Conduct for Members (**Code**) which states that "low-level, Member-on-Member" complaints relating to the breaches of the Code should be dealt with at a local level. The Ombudsman's aim of doing so is to seek the resolution of matters at an early stage so as to avoid unnecessary escalation. The Protocol should be read in conjunction with the Members Code. It adds to this document and does not detract from it.
- 1.3 This Protocol seeks to define what is meant by "low-level, Member-on-Member" complaints and sets out the procedure to be adopted in response to them.
- 1.4 It is important to note that this Protocol does not preclude Members from referring any complaint to the Ombudsman if they so wish. However Members should note that the Ombudsman has made clear that, in normal circumstances, it is expected that in the first instance Members should exhaust the procedures set out in this Local Protocol before referring low-level complaints to the Ombudsman.

2. The Standards of Conduct

Members shall:-

2.1 Public Behaviour

- (a) Show respect to each other
- (b) Not make personal abusive comments about each other
- (c) Not publish anything insulting about each other
- (d) Not make malicious allegations against each other
- (e) Not publish or spread any false information about each other
- (f) Show respect to each other's diverse backgrounds and circumstances

- (g) Use social media responsibly and in accordance with the Members' Code of Conduct and this protocol

2.2 Behaviour In Meetings

- (a) Behave with dignity
- (b) Show respect to the Chairman and obey his/her decisions and conversely Members can expect the Chairman to show mutual respect to Members
- (c) Not use indecent language nor make discriminatory remarks that may be deemed to be offensive to any section of society

3. What Is A "Low-Level, Member On Member" Complaint?

3.1 In order to fall within the remit of this Protocol a complaint should satisfy all of the following criteria:

- (a) The complaint made by a Member of the Council and relates to a breach of the Code by a fellow Member.
- (b) The complaint is "low-level" in nature. Whether or not a complaint is "low-level" in nature will be dependant on the individual circumstances of a complaint.

The Ombudsman has indicated that "*typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other Members under paragraph 6(1)(d) of the Code*".

If you are unsure whether a matter you wish to complain about is "low-level" then you may wish to discuss this with the Monitoring Officer (who may consult with the Ombudsman's office) to obtain guidance.

- (c) The complaint does not relate to repeated occurrences of similar conduct that has already been dealt with under this Protocol or by the Ombudsman. In the event that the complaint relates to such a "repeated offence" it is likely that it will be appropriate to refer the matter to the Ombudsman directly.

4. Procedure

4.1 Allegations by a Member of a breach of one (or more) of the standards of conduct set out in paragraph 2 of the Protocol by another Member will be dealt with in accordance with the procedures set out below.

4.2 It is important that any allegations made under the protocol are dealt with quickly and effectively with the co-operation of all parties involved. Each party must make themselves available to attend a hearing held thereunder as a matter of priority and within the timescales set out in this Protocol.

4.3 Should following commencement of the Protocol process any member elects at any time to refer the matter to the Ombudsman for investigation the

Protocol process will be discontinued and cannot subsequently be resumed.

4.4 **Stage One - Making The Complaint And Informal Resolution**

- (i) Any Member who wishes to submit an allegation under the Protocol should send the complaint to the Monitoring Officer. The complaint must be submitted to the Monitoring Officer within one month of the event that has given rise to the complaint occurring or, within one month of the substance of the complaint coming to the attention of the Member submitting the allegation.
- (ii) Following receipt of the complaint the Monitoring Officer will advise whether the allegation falls within the Protocol or whether the complainant(s) should consider referral to the Ombudsman as an allegation of breach of the Members' Code of Conduct.
- (iii) If there is a formal referral to the Ombudsman then legislation and regulations set out how the Ombudsman may investigate that matter and if appropriate refer the result of any investigation to the Standards Committee so that the Committee may determine that complaint.
- (iv) If the Monitoring Officer determines that the allegation falls within the Protocol he/she will seek to try and resolve the matter informally.
- (v) If following Stage One the Monitoring Officer cannot resolve the matter informally between the parties and the Member(s) wishes to proceed with the allegation under the protocol the matter will be referred to a hearing before the Standards Committee under Stage Two.

NB: The Monitoring Officer may choose not to deal with the allegation at this stage in order to be able to advise the Committee later in the process, in which case the Deputy Monitoring Officer or a Legal Officer will advise the Member complainant(s).

4.5 **Stage Two – Standards Committee Hearing**

- (i) Stage Two is a hearing before the Standards Committee.
- (ii) The Member(s) making the complaint will be asked to re-confirm the substance of the complaint in writing to the Monitoring Officer (including identifying which standard(s) of conduct set out in paragraph 2 above is/are alleged to have been breached) together with all the written evidence they wish to submit for consideration at the hearing within two weeks of notifying the Monitoring Officer they wish the complaint to be dealt with by way of hearing before the Standards Committee.
- (iii) The Member(s) who is the subject of that complaint must provide a written response to that complaint within one month of receipt of notification of it together with all written evidence they wish to submit for consideration at the hearing.
- (iv) The Monitoring Officer if he/she participated in Stage One will notify the Deputy Monitoring Officer or a Legal Officer of receipt of the

complaint who shall thereafter have conduct of the matter (the 'Investigating Officer').

- (v) If the Monitoring Officer chose not to deal with the allegation at Stage One he/she shall be the Investigating Officer.
- (vi) Both the Member(s) making the complaint and the Member(s) against whom the allegation(s) has been made must respond promptly to all correspondence relating to the matter including requests to confirm availability in respect of scheduling the hearing itself. Member(s) will be given dates within a two month window in which they must confirm a date they are available to attend the hearing.
- (vii) The papers referred to in paragraph 4.5(ii) and 4.5(iii) will be distributed to the Members of the Committee in accordance with the Council's Access to Information Rules.
- (viii) No additional evidence may be produced without the prior consent of the Chair of the Committee.
- (ix) Each Member must give notification in writing to the Investigating Officer of any witnesses they intend to call to give evidence at the hearing. It is the responsibility of the Member calling the witness to ensure that the witness is available to attend on the agreed date.
- (x) If either side wishes not to be present or fails to attend, the hearing may be held in their absence.
- (xi) Should they deem it appropriate the Standards Committee may invite Council officers to attend the hearing to answer any questions they may have relevant to the matter before it.
- (xii) The proceedings at the Standards Committee hearing itself shall be conducted as follows:-
 - (a) Opening address by the Chairman;
 - (b) Member(s) who submitted the complaint be invited to address the Committee;
 - (c) Questions by Committee Members;
 - (d) Member(s) who the allegations have been made against be invited to address the Committee;
 - (e) Questions by Committee Members;
 - (f) Witnesses for Member(s) who submitted the complaint address the Committee;
 - (g) Questions by Committee Members;

- (h) Witnesses for Member(s) who the allegations have been made against be invited to address the Committee;
- (i) Questions by Committee Members;
- (j) The Member(s) who has made the complaint be invited to address the Committee with any closing remarks;
- (k) The Member(s) who is/are the subject of the complaint be invited to address the Committee with any closing remarks;
- (l) Questions by Committee Members (if any) to Council Officers who have been invited to attend by the Committee;
- (m) Committee to retire to deliberate in private on the representations and decide whether or not the Member(s) who the allegations have been made against has failed to comply with the Protocol and what sanction, if any, to impose;
- (n) Committee to reconvene in public for the Chairman to announce the Committee's finding.

NB: There will be no cross examination of any of the parties save for questions asked by Committee members.

- (xiii) The Investigating Officer will be available to advise the Committee.
- (xiv) The Committee can come to one or more of the following conclusions, namely:-
 - (a) that there is no basis to the complaint and no further action required
 - (b) that there is a basis to the complaint but that no further action is required
 - (c) that there is a basis to the complaint and that the Member should be censured at the next meeting of Council and/or additional action should be taken
 - (d) referral to the Ombudsman for investigation and if the complaint is considered to be deserving of more serious sanctions than the Standards Committee has the power to impose.
- (xv) The conclusion reached by the Committee will be minuted and reported to Council. In addition, the Committee can make recommendations to Council regarding changes to the Protocol or taking any further action (for example the removal of Members from specific committees or further training requirements).

4.6 In making a decision on the sanction to be imposed, the Standards Committee may take into account (but is not limited to considering):

- a. The severity of the offence;
- b. The level of remorse the Member in question has shown and any apologies they have made.

NB: The time-limits and deadlines set out in these procedures are subject to there being flexibility in exceptional circumstances as determined by the Chairman.

5. **General**

- 5.1 Both the name of the complainant and the Councillor against whom the complaint has been made will be kept confidential at Stage 1 of the Protocol process.
- 5.2 Where complaints are resolved at Stage 1 the Monitoring Officer shall report to Standards Committee periodically the numbers and types of complaints determined under this Protocol, but shall maintain the anonymity of both the complainant and the Councillor concerned.
- 5.3 The Stage 2 hearing before the Standards Committee will generally be conducted in an open session of the Standards Committee.