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For all enquiries relating to this agenda please contact Emma Sullivan
(Tel: 01443 864420 Email: sullie@caerphilly.gov.uk)

Date: 13th January 2022

Dear Sir/Madam,

A meeting of the **Standards Committee** will be held via Microsoft Teams on **Thursday, 20th January, 2022 at 2.00 pm** to consider the matters contained in the following agenda. You are welcome to use Welsh at the meeting, a minimum notice period of 3 working days is required should you wish to do so.

This meeting will be recorded and made available to view via the Council's website, except for discussions involving confidential or exempt items. Therefore the images/audio of those individuals present and or speaking will be publicly available to all via the recording on the Council website at www.caerphilly.gov.uk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Christina Harrhy'.

Christina Harrhy
CHIEF EXECUTIVE

AGENDA

- | | Pages | |
|---|--|--|
| 1 | To Appoint a Chair of the Standards Committee. | |
| 2 | To receive apologies for absence. | |
| 3 | Declarations of Interest. | |

Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on this agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.

A greener place Man gwyrddach



To approve and sign the following minutes: -

- 4 Standards Committee held on 28th October 2021. 1 - 4

To receive and consider the following report(s): -

- 5 Adoption of Procedure for Standards Committee Hearings. 5 - 26

- 6 Public Interest Test.
To receive and consider the following report which in the opinion of the Proper Officer may be discussed when the meeting is not open to the public and first to consider whether the public interest requires that the meeting should be closed to the public for consideration of this item.

- 7 Referral of an Investigation Report by the Public Services Ombudsman for Wales of a Complaint. 29 - 228

Circulation:

Councillors: C.P. Mann and Mrs D. Price

P. Brunt, J. Card, L.M. Davies and C. Finn

Community Councillor Mrs G. Davies

And Appropriate Officers

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STANDARDS COMMITTEE

MINUTES OF THE MEETING HELD VIA MICROSOFT TEAMS ON 28TH OCTOBER 2021 AT 2.00PM.

PRESENT:

P. Brunt, J. Card, L.M. Davies, C. Finn and D. Lewis.

Community Councillor Mrs G. Davies

County Councillor D. Price

Together with:

R. Tranter (Head of Legal Services and Monitoring Officer), L. Lane (Head of Democratic Services and Deputy Monitoring Officer), A. Jones (Complaints Officer), S. Hughes (Committee Services Officer), R. Barrett (Committee Services Officer), and E. Sullivan (Senior Committee Services Officer)

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors C. Mann and M.E. Sargent.

2. DECLARATIONS OF INTEREST

There were no declarations of interest received at the commencement or during the course of the meeting.

3. MINUTES – 27TH JANUARY 2021

In relation to the minutes a Member sought reassurance that a response to the complaint had been made in a timely fashion and that a letter had been sent to the complainant on the Ombudsman decision bringing the matter to a close.

The Monitoring Officer confirmed that a letter had been sent and the matter had been concluded but he would check and provided confirmation of this to the Chair by email.

RESOLVED that the minutes of the meeting held on the 27th January 21, be approved as a correct record and signed by the Chair.

REPORTS OF OFFICERS

4. PUBLIC SERVICES OMBUDSMAN FOR WALES – ANNUAL LETTER 2020/21

Consideration was given to the report which informed the Standards Committee of the publication of the Annual Letter for 2021/2021 in respect of Caerphilly Council by the Public Services Ombudsman for Wales.

Officers confirmed that the Public Services Ombudsman for Wales issues an Annual Letter to each Local Authority in Wales which sets out a summary of all complaints received and investigated by his office during 2020/21 relating to that Authority. Members were referred to Appendix 1 of the report which contained the letter in respect of Caerphilly.

It was noted that the overall number of complaints regarding local authorities decreased by 12.5% compared with last year. However, a higher proportion of Code of Conduct complaints were referred to a Standards Committee or the Adjudication Panel for Wales at 3.4% compared to 2% in the previous year. This higher referral rate was also accompanied by a sharp increase in the number of Code of Conduct complaints received.

The Deputy Monitoring Officer outlined the various areas of interest and referred Members to appendices to the report which provided greater detail.

The Standards Committee welcomed the information in relation to the training of Officers and clarification was sought as to numbers and it was confirmed that all 4 sessions had been held and over 80 Officers had received training from the Ombudsman.

Officers explained the reporting processes in that moving forward the Governance and Audit committee and Cabinet would receive biannual reports on corporate complaints and confirmed that, proper process were in place to analyse and learn from outcomes. Members were reminded that the Annual Letter related to complaints which were referred to the Ombudsman only and that there were far more complaints dealt with by the Authority, which given the population and the services it provides was not unexpected. However it was important that the complaints were investigated and lessons learned and in this respect the authority was proceeding in the right direction.

Having fully considered the Officer's report the Standards Committee considered and noted the content of the Annual Letter ahead of its presentation to Council in November 2021.

5. REPORT OF THE ADJUDICATION PANEL FOR WALES

Consideration was given to the report on the outcome of the investigation by the Adjudication Panel for Wales relating to Councillor David Poole.

The Standards Committee were referred to Appendix 1 of the report which set out the decision of the Adjudication Panel for Wales. Members noted the referral process and timeline and were advised that the Case Tribunal on the 28th June 2021 unanimously concluded that Councillor Poole ought to have been suspended from acting as a member of the authority in respect of his breaches of paragraphs 6 and 7 of the Code, for a period of five months and in respect of his breaches of paragraphs 11 and 14 of the code, a period of two months, to run concurrently.

Clarification was sought as on the suspension process and why the matter had not been brought to the Standards Committee first. The Monitoring Officer explained that Councillor Poole had made a self-referral to the Public Services Ombudsman for Wales ('the Ombudsman') in September 2019. The process is that the Ombudsman considers whether to investigate the referral and if he decides to investigate, then he can refer the matter back to the Standards Committee or refer it to the Adjudication Panel for Wales to complete the adjudication process.

Members queried when the suspension started and were advised that this commenced on the 28th June 21 and would be concluded on the 28th November 21.

A Member expressed concern in relation to the lack of response from Councillor Poole to the letters sent to him on this matter considering the seriousness of the issues and further concern was raised as to any income generated by the shares in question. The Monitoring Officer explained that any profit made would be irrelevant to the Adjudication Panel and confirmed that the share holdings were relatively small and not major sums of money. The Monitoring Officer advised the Committee that he could not answer to the reasons why Councillor Poole did not initially respond to the Panel correspondence, however it should be remembered that we were in the middle of a pandemic during this period and that could possibly have been a factor. The Monitoring Officer informed the members that Councillor Poole did eventually respond, and the matter was taken forward.

Clarification was sought in relation to the declaration of the interest that Councillor Poole tried to make, the advice he was given at the time and the timeline of when this interest was added to his register of interests and why the advice changed during this time.

The Monitoring Officer explained that he became aware of Councillor Poole's shareholdings when Cllr Poole amended his register of interest in early 2019 and at this time, the Monitoring Officer provided advice to Cllr Polle that there was no need to amend the register of interests. The Monitoring Officer turned to the code of conduct in relation to personal interests at paragraph 10(2)(a)(iv) whereby you must regard yourself as having a personal interest in any business of your authority if it relates to or is likely to affect, '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 title issued share capital of that body'. The Monitoring Officer's interpretation of that paragraph was that Councillor Poole's shareholding did not require his entering this interest in his up-front register, as the holdings were less than the values and the business was not within the authority area.

At a meeting in April 2019, Councillor Poole quite rightly declared an interest in a matter under 10(2) (c) of the code, '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'. This is different to the upfront register of interests; these are declarations of interests that occur during a meeting, and in the meeting IQE was discussed and so the interest should be declared and entered into the minutes of the meeting. The Monitoring Officer hoped that explained the technical differences between registering an interest in the up-front register of interests and the requirement to declare an interest at a meeting..

The Deputy Monitoring Officer confirmed that she had prompted Councillor Poole in June 2019, following the declaration in the April 2019 meeting to update his upfront register which was done.

Clarification was then given on the process for updating the upfront register of interest, and the Standards Committee noted that a Member has 28 days to advise the Monitoring Officer of

any change to the upfront register of interest.

Reference was made to page 33 of the report, and the comments of the Adjudication Panel in relation to Councillors Poole's interaction with the adjudication process.

Clarification was then sought on the self-referral process, and it was explained that this is where a Member who has a query about his actions, goes to the Ombudsman directly to seek clarification on whether the code of conduct has been breached. The Monitoring Officer confirmed that this does happen from time to time and was a practice that he supported. A Member confirmed that she had also followed the self-referral process and felt this to be a very brave action to take by an elected Member.

Reference was made to a letter sent to the Chief Executive by Audit Wales in relation to declarations/register of interest, as this seemed to be the prompter for what came later. The Monitoring Officer confirmed this to be a matter of timing, as Councillor Poole had made his self-referral prior to this letter and the Chief Executives response. The Member expressed the concern that this letter had not been presented to the Standards Committee. The Monitoring Officer confirmed that he had advised the Standards Committee of the investigation but could not provide detail at that time as the investigation was ongoing. A Member also confirmed that the Standards Committee had been advised of the investigation.

The Standards Committee noted the Decision of the Adjudication Panel for Wales as set out in Appendix 1 of the report.

The meeting closed at 14.50pm.

Approved as a correct record and subject to any amendments or corrections agreed and recorded in the minutes of the meeting held on 20th January 2022 they were signed by the Chair.

CHAIR



STANDARDS COMMITTEE – 20TH JANUARY 2022

SUBJECT: ADOPTION OF PROCEDURE FOR STANDARDS COMMITTEE HEARINGS

REPORT BY: HEAD OF LEGAL SERVICES AND MONITORING OFFICER

1. PURPOSE OF REPORT

- 1.1 For the Standards Committee to adopt a procedure to deal with investigation reports referred to it by the Public Services Ombudsman for Wales (PSOW).

2. SUMMARY

- 2.1 From time to time the Standards Committees will receive reports from the PSOW into complaints made against councillors of Caerphilly County Borough Council or councillors of the town and community councils within the boundary of the county borough alleging that the councillor has breached the code of conduct for members. The report contains a procedure that the Standards Committee can adopt when it receives an investigation report from the PSOW.

3. RECOMMENDATIONS

- 3.1 That the procedure found at appendix 1 of the report is adopted to deal with referrals from the PSOW of his investigation report into allegations that a councillor has breached the members' code of conduct.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 A procedure is required to deal with referrals from the PSOW.

5. THE REPORT

- 5.1 Under the Local Government Act 2000, on receiving a complaint, the PSOW has powers to investigate the behaviour of a councillor of the county borough or a town/community council within the boundary of the county borough who is alleged to have breached the code of conduct for members. Where the PSOW decides to investigate an allegation of a breach of the code of conduct for members, at the conclusion of the investigation, the PSOW may refer his report to the Standards Committee to conclude the matter.

- 5.2 Where this happens, the Standards Committee must have a procedure in place to deal with a referral. The procedure is attached at appendix 1.
- 5.3 Following the procedure, on receipt of the investigation report from the PSOW, the Standards Committee must first decide whether there is a case to answer. At this first meeting, the Standards Committee must decide either:
- (a) that there is no evidence of a failure to comply with the Code of Conduct; or
 - (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
- 5.4 Where the latter is decided, a subsequent hearing will be arranged where the Standards Committee will hear from the member complained against and the representative of the PSOW. At the conclusion of the hearing, the Standards Committee will make one of the following decisions:
- (a) there is no evidence of a failure to comply with the Code of Conduct and no further action should be taken;
 - (b) there is evidence of a failure to comply with the Code of Conduct but no further action should be taken; or
 - (c) there is evidence of a failure to comply with the Code of Conduct and the councillor or co-opted member should be censured or suspended.

5.5 **Conclusion**

The Standards Committee needs to adopt a procedure that will allow it to deal with referrals of investigation reports from the PSOW.

6. **ASSUMPTIONS**

- 6.1 No assumptions have been made in preparation of this report.

7. **SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 The report does not include an Integrated Impact Assessment (IIA) as a hearing procedure is required by the Standards Committee and already takes into account relevant aspects of the IIA.

8. **FINANCIAL IMPLICATIONS**

- 8.1 The payment of the allowances to the co-opted members of the Standards Committee, in accordance with the recommendations of the Independent Remuneration Panel for Wales.

9. PERSONNEL IMPLICATIONS

9.1 None.

10. CONSULTATIONS

10.1 Any consultation responses received will be included in the main body of the report.

11. STATUTORY POWER

11.1 Local Government Act 2000

Author: Mr. R.J. Tranter, Head of Legal Services & Monitoring Officer
tranrtj@caerphilly.gov.uk

Consultees: Cllr Gordon – Cabinet member for Corporate Services,
Mr Peter Brunt – Vice-chair of the Standards Committee
Public Services Ombudsman for Wales
Lisa Lane – Head of Democratic Services and Deputy Monitoring Officer

Appendix 1 Procedure for dealing with complaints of breaches of the members' code of conduct

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CAERPHILLY COUNTY BOROUGH COUNCIL STANDARDS COMMITTEE
PROCEDURE FOR DEALING WITH COMPLAINTS OF BREACHES
OF THE MEMBERS CODE OF CONDUCT

1. Introduction

- 1.1 This procedure will be followed when the Standards Committee are required to reach a decision following an investigation by the Public Services Ombudsman for Wales (“the Ombudsman”) or the Council’s Monitoring Officer under Part III of the Local Government Act 2000 and the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001) (as amended by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016) (“the Functions Regulations”).
- 1.2 If there is any conflict between this document and any statutory provisions, then the statutory provisions will prevail.

2. Statutory Background

- 2.1 In accordance with Section 69 of the Local Government Act 2000 (“the 2000 Act”), the Ombudsman may investigate any alleged breach of the adopted Members Code of Conduct by elected Councillors or co-opted members of Caerphilly County Borough Council (“the Council”) or members of any of the town/community councils within the Council’s area (or former councillors or co-opted members).
- 2.2 Where the Ombudsman ceases such an investigation into allegations that a Councillor or co-opted member has breached the Code of Conduct before it is completed, he or she may refer the matters which are the subject of the investigation to the Council’s Monitoring Officer in accordance with Section 70(4) of the 2000 Act.
- 2.3 Alternatively and more common in practice, the Ombudsman may decide after completing the investigation that there is evidence of a failure to comply with the Code and that action should be taken in respect of the matters which are the subject of the investigation. A report will then be produced on the outcome of the investigation, which will be sent to the Council’s Monitoring Officer and the Standards Committee in accordance with Section 71(2) of the 2000 Act.
- 2.4 In accordance with the Functions Regulations, the Council’s Monitoring Officer is required to:-
- (a) investigate matters referred by the Ombudsman under Section 70(4) before reporting and, if appropriate, making recommendations to the Standards Committee; or

- (b) where a matter has been investigated by the Ombudsman and referred under Section 71(2), the Monitoring Officer will consider the Ombudsman's report and, if appropriate, make recommendations to the Standards Committee.
- 2.5 In carrying out an investigation, the Monitoring Officer may follow such procedures as he/she considers appropriate in the circumstances of the case and, in particular, may:-
- (a) make such enquiries of any person as he/she thinks necessary for the purposes of carrying out the investigation;
 - (b) require any person to provide him/her with such information, explanation or documents as he/she considers necessary;
 - (c) require any member or co-opted member or officer of the Council to appear before him/her for the purposes of (a) and (b) above
- 2.6 In conducting the investigation, the Monitoring Officer may be assisted by any person and may obtain expert or other advice. In certain cases, expenses may be paid to persons attending or assisting the Monitoring Officer or providing advice to him/her. The Monitoring Officer may also appoint or nominate another suitably qualified person to undertake the role of Investigating Officer where he/she wishes to maintain independence and undertake the Legal Advisor's role in advising Standards Committee.
- 2.7 After concluding an investigation, the Monitoring Officer must:-
- (a) produce a report on the findings of his/her investigation and, if appropriate, may make recommendations to the Standards Committee;
 - (b) send a copy of the report to any person who is the subject of the investigation; and
 - (c) take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.
- 2.8 The Standards Committee must consider a report from the Monitoring Officer on his/her investigation or a report from the Ombudsman, together with any recommendations of the Monitoring Officer. The Committee must then make an initial determination that either:-
- (a) that there is no evidence of a failure to comply with the Code of Conduct; or
 - (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
- 2.9 Where the Standards Committee decides that an opportunity to respond needs to be given and, after considering any response made by any such person, the Committee must come to one of three conclusions:-
- (a) there is no evidence of a failure to comply with the Code of Conduct and no further action should be taken;
 - (b) there is evidence of a failure to comply with the Code of Conduct but no further action should be taken; or

- (c) there is evidence of a failure to comply with the Code of Conduct and the councillor or co-opted member should be censured or suspended.
- 2.10 The Standards Committee must take any appropriate action arising from the conclusions it has drawn.
- 2.11 The decision of the Standards Committee is subject to a right of appeal to an Appeals Tribunal drawn from the Adjudication Panel for Wales.
- 2.12 A member seeking to appeal against the determination of a Standards Committee will 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 the Standards Committee on entirely frivolous or spurious grounds
- 2.13 An Appeals Tribunal may endorse the decision of the Standards Committee, refer a matter back to it recommending a different sanction, or overturn the decision.

3. Referral to another Standards Committee.

- 3.1 As from 1st April 2016, the Standards Committees (Wales) Regulations 2001 were amended by regulations made under Section 69 of the Local Government (Democracy) (Wales) Act 2013 to enable a Monitoring Officer or a Standards Committee to refer a report or recommendations relating to a misconduct investigation to another authority's Standards Committee. This enables arrangements to be made where the "home standards committee" considers that it may have a conflict of interest. The terms of any referral are to be a matter for agreement between the relevant authorities concerned.
- 3.2 In accordance with the amended Standards Committees (Wales) Regulations
- (a) A Standards Committee which receives a report or recommendations from a Monitoring Officer may make arrangements with another authority's standards committee to exercise its functions under the Functions Regulations in relation to that report or recommendations.
 - (b) Notice of such a referral must be given to the complainant and the Ombudsman, specifying the reason for the referral.
 - (c) Written notice of the determination must also be given to Standards Committee who referred the matter and the monitoring officer of the member's home authority.
 - (d) Publication of the report is by the monitoring officer of the member's home authority

4. Initial Determination

- 4.1 Following receipt of the Investigating Officer's report from the Ombudsman or the Monitoring Officer, a meeting of the Standards Committee (or a sub-Committee if the function has been delegated) will be arranged as soon as possible.
- 4.2 The Access to Information provisions of the Local Government Act 1972 Part VA and Schedule 12A will apply to the meeting. The agenda papers will need to be sent out at least 3 clear days before the date of the meeting and would be open to public inspection unless they contained "exempt information" as defined in Schedule 12A and the public interest in maintaining confidentiality outweighed the public interest in disclosure. Since the Investigating Officer's report will contain personal information relating to individuals, this will usually be treated as a confidential agenda item and not sent out to anyone other than the members of the Standards Committee. However, if the Committee decides not to exclude the press and public at the meeting, then the agenda and the report (with any redactions, if necessary) will then be made public.
- 4.3 The Standards Committees (Wales) Regulations (as amended) expressly provide that Standards Committee may exempt from publication agendas, records or information connected to the consideration of an investigation report, until such time as the 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 recognises there may be circumstances in which it is appropriate for Standards Committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination.
- 4.4 The business of the meeting will be confined to considering the Investigating Officer's report. Where the Ombudsman has investigated the complaint, the Monitoring Officer will act as Legal Advisor to the Standards Committee. Where the Monitoring Officer has investigated the complaint, the Council's Deputy Monitoring Officer or some other suitably qualified person, who has not been involved in the investigation, will advise the Committee.
- 4.5 The Standards Committee shall determine, on the basis of the Investigating Officer's report:
- (a) whether there is no evidence of any failure to comply with the Code of Conduct; or
 - (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the investigation and any allegation that he/she has failed, or may have failed, to comply with the Code of Conduct.
- 4.6 Where the Standards Committee decides that there is no evidence of any failure to comply with the Code of Conduct, the decision will be recorded in the minutes of the meeting and written confirmation of the decision will be sent to the person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Ombudsman. Where the proceedings were conducted in private, excluding the press and public, then the Investigating Officer's report and the identity of the individuals involved shall remain confidential.
- 4.7 Where the Standards Committee decides that that any person who is the subject of the investigation should be given the opportunity to make representations, then the matter will proceed to a full hearing in accordance with the **Procedure for Standards Committee Hearings** ([Annex A](#)).

5. Pre- Hearing Procedure.

- 5.1 The Committee Services Officer will liaise with the Monitoring Officer and the Chairman of Standards Committee to arrange a provisional date for the full hearing.
- 5.2 The Monitoring Officer will write to the person who is the subject of the investigation with details of the provisional date, time and place of the hearing, an outline of the procedure to be adopted at the hearing and the person's rights.
- 5.3 The person who is the subject of the investigation will be required to confirm, in writing, within 14 days of receiving notification of the hearing, whether or not he/she:-
 - (a) is able to attend the hearing or wishes to request a postponement;
 - (b) wishes to submit any written representations or wishes to attend the hearing to make oral representations;
 - (c) disagrees with any of the findings of fact in the Investigating Officer's report and, if so, the reasons for any such disagreement;
 - (d) intends to be represented at the hearing by a legal representative or any other person;
 - (e) wishes to call any witnesses to give evidence at the hearing or wishes to submit any written evidence;
 - (f) wants any part of the meeting to be held in private and, if so, the reasons why;
 - (g) wants any part of the Investigating Officer's report or other relevant documents to be treated as confidential and withheld from the public and, if so, the reasons why.
- 5.4 The Investigating Officer shall be advised of the date and time and place of the hearing and asked whether he/she intends to attend.
- 5.5 The response from the person who is the subject of the investigation will be sent to the Investigating Officer and he/she will be asked to confirm within 7 days whether he/she:
 - (a) intends to be represented at the hearing;
 - (b) wishes to call any witnesses to give evidence at the hearing;
 - (c) wants any part of the meeting to be held in private and, if so, the reasons why;
 - (d) wants any part of his/her investigation report or other relevant documents to be treated as confidential and withheld from the public and, if so, the reasons why.
- 5.6 It should be made clear to all parties that details should be provided beforehand of all the findings of fact that they intend to challenge and the evidence that they intend to produce.
- 5.7 The Committee Services Officer or Monitoring Officer will write to all members of the Standards Committee (or members of the sub-Committee if the matter has been

delegated) at least 7 days before the hearing to confirm the date, time and place for the hearing and will send to the members:-

- (a) a copy of the Investigating Officer's report;
- (b) any other relevant background documents;
- (c) the response from the person who is the subject of the investigation;
- (d) any further response from the Investigating Officer;
- (e) a summary and outline of the allegation, the main facts of the case that have been agreed and those that have not been agreed;
- (f) a list of the witnesses, if any, who will be giving evidence at the hearing;
- (g) whether the parties intend to appear and/or be represented at the hearing;
- (h) the procedure for the conduct of the hearing.

5.8 Depending on the responses from the parties regarding the need for confidentiality, much of this information will be treated as a confidential and will not sent out to anyone other than the members of the Standards Committee (or sub-Committee). However, if the Committee decides not to exclude the press and public for all or part of the hearing then some or all of the documents (with any redactions, if necessary) will then be made public.

ANNEX A

PROCEDURE FOR STANDARDS COMMITTEE HEARINGS

1. Interpretation.

In this Procedure, the following words and phrases shall have the meanings assigned to them unless the context otherwise requires:

- 1.1 "Committee" means the Standards Committee or any Standards Sub-Committee to which it has delegated the conduct of the hearing;
- 1.2 "Democratic Services Officer" means the officer of the Council responsible for providing clerical and administrative support to the Committee, including the recording of decisions.
- 1.3 "Investigating Officer" means
 - (a) in the case of an investigation undertaken under Section 71(2) of the Local Government Act 2000, the Ombudsman or his Investigator who referred the report to the Council and includes his or her nominated representative.
 - (b) In the case of an investigation referred for local investigation under Section 70(4) of the Local Government Act 2000, means the Monitoring Officer, Deputy Monitoring Officer or other investigating officer, and his or her nominated representative.
- 1.4 "Legal Advisor" means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.5 "Member" means the elected or co-opted member of the Council (or community council) who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
- 1.6 "The Monitoring Officer" means the officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989 and shall include, where appropriate, the person appointed as Deputy Monitoring Officer.
- 1.7 "The Chairman" means the person presiding at the hearing;

2. Modification of Procedure.

The Chairman may agree to depart from or vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness and transparency.

3. Representation.

The Member may be represented or accompanied during the meeting by a legal adviser or (with the permission of the Committee) another person. The costs of any such representation must be met by the Member, subject to any council indemnity.

4. Legal advice

The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. Where appropriate, the substance of any legal advice given to the Committee should be shared with the Member and the Investigating Officer if they are present.

5. Setting the Scene

- 5.1 At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the Legal Adviser and the Democratic Services Officer and shall invite the Member (if present), the Investigating Officer (if present) and any other persons in attendance to introduce themselves.
- 5.2 After all the Committee and everyone involved have been formally introduced, the Chairman will explain the procedure which the Committee will follow in the conduct of the hearing. The Committee will conduct the proceedings as informally as possible but will ensure that the Member is given a fair hearing, according to the rules of natural justice. The hearings will not be recorded and a verbatim note of the proceedings will not be taken, unless there are exceptional circumstances and good reason to do so.
- 5.3 The hearing will be conducted in English unless the Member expresses a preference to have the hearing conducted in Welsh and the Committee agrees that it is reasonably practicable to do so. If a hearing is conducted in Welsh, an instantaneous translation service will be provided for the Committee and any other persons attending the hearing who request it.
- 5.4 The Member has the right to make representations to the Committee and to be represented by a legal representative or any other person. The Member will be entitled to give evidence, call witnesses, question any witnesses and address the Committee both on the evidence and generally on the subject matter of the hearing. The right to make representations will not extend to the person making the complaint, though this may be allowed by the Committee if it is considered that their attendance would assist the Committee with any matter relevant to the proper determination of the complaint.
- 5.5 The Committee may limit the number of witnesses called by the Member, where this is conducive to the fairness and efficient hearing of the case. The circumstances in which the Committee may impose such a limitation include, for example, where it appears to the Committee that such witnesses will not be presenting significant new evidence or facts, or where an excessive number of witnesses are being called by the Member to give character testimony.
- 5.6 Witnesses will not be allowed to sit in the public gallery prior to being called to give evidence before the Committee and, where the Committee meeting is held in private, they will be required to leave after giving their evidence. A designated waiting room will be available for witnesses until they are called.

- 5.7 Evidence before the Committee may be given orally or by written statement. At any stage during the proceedings the Committee can request the attendance of any person making a written statement or any other person they consider will be able to assist them, but the Committee has no power to require the attendance of any person. Members of the Committee can ask questions of anybody present, at any time. No cross-examination of witnesses will be allowed by the parties, but questions can be directed through the chair.
- 5.8 The Committee can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law. The Committee shall not refuse to admit any relevant evidence.
- 5.9 The Public Service Ombudsman for Wales (“the Ombudsman”) shall be entitled to attend before the Committee for the purposes of:
- (a) presenting the Investigating Officer’s Report and/or explaining any matters in it; and
 - (b) otherwise playing such part or assisting the Committee as the Committee considers appropriate.
- 5.10 The Investigating Officer may attend on behalf of the Ombudsman, and the Ombudsman/Investigating Officer may be represented by a legal adviser..
- 5.11 The usual procedure to be followed is set out in the following paragraphs, but the Committee is free to depart from that procedure where it considers it appropriate to do so. The Committee will decide factual evidence on the balance of probabilities. There will be four possible stages to a hearing.

6. Stage 1 – Preliminary procedural issues

The following procedural matters shall be dealt with in the following order:-

6.1. Disclosure of interests.

The Chairman shall ask the members of the Committee to disclose the existence and nature of any personal and/or prejudicial interests that they may have in the matter and to withdraw from the consideration of the matter, if so required.

6.2 Quorum.

At least 3 members of the Committee must be present at all times during the hearing for the meeting to be quorate. The 3 members must include a majority of independent lay members. If the Committee is dealing with a complaint against a community councillor, then it must include one community councillor representative, but there is no requirement for him/her to actually attend the meeting for the hearing to be quorate. The Chairman shall confirm that the Committee is quorate before proceeding with the hearing;

6.3 Exclusion of Press and Public

The Committee will consider the Public Interest Test prepared by the Monitoring Officer and vote on whether to exclude the press and public.

The hearings should generally be conducted in public. The Committee should only exclude the press and public where “exempt information” within the meaning of Schedule 12A of the Local Government Act 1972 is likely to be disclosed during the hearing and the public interest in maintaining confidentiality outweighs the public interest in disclosure. There is a presumption that the public interest is best served by holding hearings in public unless there are overriding and compelling reasons to the contrary. It is expected that a Standards Committee would normally hear evidence and submissions in relation to an alleged breach of the Code of Conduct in public. Among other things, this recognises a member’s right under Article 6 of the European Convention on Human Rights to a fair and public hearing. However, the legislative framework recognises there may be circumstances in which it is appropriate for the Standards Committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination.

Where the agenda papers or any reports have been classified as exempt items and withheld in advance of the meeting, and the Committee does not resolve to exclude the press and public, the papers should now be provided to the press and public.

The Standards Committees (Wales) Regulations (as amended) expressly 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 recognises there may be circumstances in which it is appropriate for Standards Committee to consider matters in private, including when deliberating the evidence and submissions it has received prior to making a determination

6.4 Hearing procedure

The Chairman shall confirm that all present know and understand the procedure which the Committee will follow in determining the matter.

6.5 Proceeding in the absence of any Member.

If the Member fails to attend or is not represented at the hearing, the Committee may:

- (a) hear and decide the matter in the absence of the Member, if it is satisfied that the Member was duly notified of the hearing and that there is no good reason for such absence or
- (b) adjourn the hearing.

Before deciding to hear and determine any matter in the absence of the Member, the Committee shall consider any written representations submitted by the Member and whether the Member had indicated that he/she did not intend to attend the hearing.

Where the Member has failed to attend, without good reason and the Committee has decided the matter in his/her absence, there is no further right of appeal or re-hearing of the matter.

If the Standards Committee is satisfied (after receiving a medical certificate) that any party is unable, through sickness, to attend the hearing and that the party’s inability is likely to continue for a long time, the Standards Committee may make such

arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter.

7. Stage 2 – Findings of Fact

- 7.1 After dealing with any preliminary issues, the Committee will next seek to resolve any remaining disputes of fact that have been identified in the Investigating Officer's Report.
- 7.2 If there is no disagreement about the facts, the Committee can move on to the next **Stage 3** of the hearing.
- 7.3 If there is disagreement, the Ombudsman/Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Investigation Report. With the Committee's permission, the Ombudsman / Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witnesses called by the Ombudsman / Investigating Officer.
- 7.4 The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any witnesses to give evidence.
- 7.5 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Ombudsman/Investigating Officer to challenge any evidence put forward by witnesses called by the Member.
- 7.6 If the Member disagrees with any relevant fact in the Ombudsman/Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Ombudsman/ Investigating Officer is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
 - (a) Continue with the hearing, relying on the information in the Ombudsman/Investigating Officer's Report;
 - (b) Allow the Member to make representations about the issue, and invite the Ombudsman/Investigating Officer to respond and call any witnesses, as necessary; or
 - (c) Postpone the hearing to arrange for appropriate witnesses to be present, or for the Ombudsman/Investigating Officer to be present if he or she is not already.
- 7.7 At the conclusion of the representations as to matters of fact, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient factual information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct, as set out in the Investigating Officer's Report.
- 7.8 The Committee will then adjourn the meeting and retire in private to consider its decision. The Committee shall reach its decision on the balance of probability based on the evidence which it has received at the hearing.

- 7.9 The Committee may, at any time, reconvene the meeting in order to seek additional evidence from the Investigating Officer, the Member or any of the witnesses, or to seek advice from the Monitoring Officer or Legal Advisor. If the Committee requires any further information, it may adjourn the proceedings pending the production of further evidence.
- 7.10 Once the decision has been reached, the meeting shall be reconvened and the Chairman will announce the Committee's findings of facts.

8. Stage 3 – Did the Member fail to follow the Code?

- 8.1 The Committee will then need to consider whether or not, based on its findings of fact and/or the facts that have been agreed by the parties, the Member has failed to comply with the Code of Conduct, on the basis set out in the Investigating Officer's report. The function of the Committee is to make a determination based on the failures to comply with the Code of Conduct set out in the Investigation Report and any additional or alternative breaches of the Code that may come to light during the hearing shall not be taken into account in reaching a decision.
- 8.2 The Committee shall invite the Investigating Officer to make representations regarding the alleged breaches of the Code of Conduct by the Member, as set out in the Investigation Report, having regard to the findings of fact or agreed facts.
- 8.3 The Member should then be invited to respond to the representations from the Investigating Officer and give reasons why he or she has not failed to follow the Code of Conduct.
- 8.4 The Committee may, at any time, question anyone involved on any point they raise in their representations.
- 8.5 The Member should be invited to make any final relevant points.
- 8.6 The Committee will then ask all those present to leave the room and will retire in private to consider its decision. The Committee Services Officer and Legal Adviser will remain to take notes and give legal advice respectively.
- 8.7 Once a decision has been reached and the meeting reconvened, the Chairman will announce the Committee's decision as to whether or not the Member has breached the Code of Conduct
- 8.8 If the Committee decides that there is no evidence of any failure to comply with the Code of Conduct and no further action needs to be taken, the Member will be informed at this point. In this case, the Committee may also consider whether it should make any general recommendations to the Council (or community council, as the case may be).

9. Stage 4 – If the Member has failed to comply with the Code

- 9.1 If the Committee finds that a failure to comply with the Code of Conduct has occurred, the Committee will invite the Ombudsman/Investigating Officer whether in his/her opinion the breach of the Code is such that the Committee should impose any sanction and, if so, what the appropriate sanction should be.

- 9.2 The Committee will then invite the Member to respond and to make representations as to what action the Committee should take, including any mitigating factors.
- 9.3 The Committee may question the Ombudsman/Investigating Officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 9.4 The Committee will then adjourn to and retire in private to consider whether the failure to comply with the Code of Conduct warrants no action, a censure, or a suspension of the Member, before announcing its decision.
- 9.5 In coming to its decision, the Committee must determine one of the following:-
- (a) That the Member has failed to comply with the Code of Conduct but that no action needs to be taken; or
 - (b) That the Member has failed to comply with the Code of Conduct and should be censured; or
 - (c) That the Member has failed to comply with the Code of Conduct and should be suspended or partially suspended for a period not exceeding 6 months or, if shorter, for the remainder of that person's term of office .

10. Decision of the Committee.

- 10.1 The decision of the Committee may be taken by a simple majority of votes cast, with the Chairman having a second and casting vote, in the case of equality of voting. The decision will record whether it was unanimous or taken by a majority.
- 10.2 Once the Committee has reached a decision, the meeting shall be reconvened and the Chairman will announce the Committee's decision. The decision will be recorded in the Minutes of the meeting by the Committee Services Officer and the Legal Adviser/Monitoring Officer will, in consultation with the Chairman, prepare a written record of the Committee's decision, setting out the relevant findings of fact and the reasons for the decision.
- 10.3 The Committee may also consider whether or not it should make any recommendations to the Council (or community council, as the case may be) with a view to promoting high standards of conduct among Members.
- 10.4 Where a document refers to evidence that has been heard in private, only a summary of the document will be entered in the Minutes, with such material omitted as the Committee may direct.

11. Procedure after the Committee determination.

- 11.1 As soon as possible after the hearing, the written decision of the Committee will be sent to the Member, the person who made any allegation which gave rise to the investigation (if known) and the Ombudsman. Where the Standards Committee has made its determination pursuant to arrangements with the monitoring officer or Standards Committee of another relevant authority, notice of the decision must also be sent to the Standards Committee of that authority

11.2 If the Committee impose a period of suspension or partial suspension, then that period of suspension or partial suspension will commence on the day after the expiry of 21 days from receiving the written notification of the Committee's determination (in order to allow for any appeal to the Adjudication Panel for Wales, as set out below). If an appeal is lodged, then any such sanction, if upheld, will not commence until the day after the final determination of the appeal process.

11.3 Within 14 days after the expiry of the time allowed to lodge a notice of appeal (i.e. 14 days after the 21 day appeal period), or upon receipt of notification of the conclusion of an appeal process, the Committee must cause to be produced a Report on the outcome of the investigation and send a copy to the Ombudsman, the Monitoring Officer, the Member and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.

11.4 Upon receipt of the Report of the Committee, the Monitoring Officer must, for a period of 21 days, publish the Report on the Council web site, make copies available for public inspection and not later than 7 days after the Report is received from the Committee give public notice, by advertisement, that copies of the Report are available and specify the date (being a date not more than 7 days after public notice is first given) from which the period of 21 days will begin. If the matter involves a Community Councillor, a copy of the Report will be sent to the Clerk of that Community Council.

12. Orders for Costs and Expenses

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

13. Appeals

13.1 Where the Committee decides that a Member has failed to comply with the Code of Conduct, the Member may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The appeal process is in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 as amended.

13.2 A Member wishing to appeal against the determination of a Standards Committee will 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 the Standards Committee on entirely frivolous or spurious grounds

13.2 The application for permission to appeal must be instigated by giving notice in writing within 21 days of receiving notification of the Committee's determination to the President of the Adjudication Panel for Wales,

13.3 The application for permission to appeal must specify:

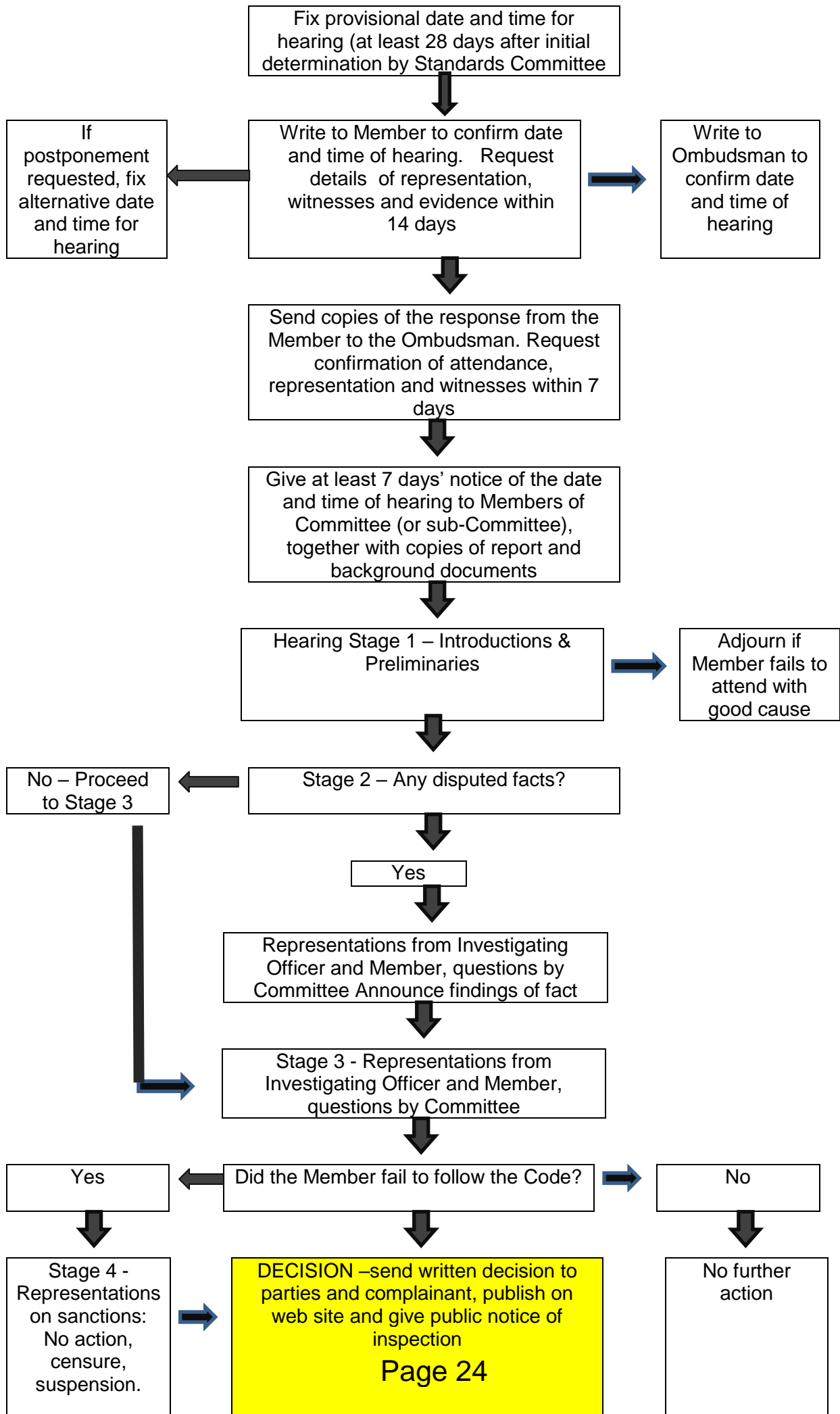
- (a) The grounds for appeal; and
- (b) Whether or not the person giving notice of appeal consents to the appeal being conducted by way of written representations.

- 13.4 The application for permission to appeal will be decided by the President of the Adjudication Panel for Wales or a member of the panel nominated by the president of the Adjudication Panel to exercise this function. Unless the president or the person nominated considers that special circumstances render a hearing desirable, the decision on whether to grant permission to appeal is to be made in the absence of the parties. In reaching a decision on whether to grant permission to appeal, the president of the Adjudication Panel for Wales or the nominated panel member must have regard to whether the appeal or part of it has a reasonable prospect of success.
- 13.5 The President of the Adjudication Panel for Wales or the nominated panel member must decide whether to grant permission to appeal and give notice of the decision no more than 21 days after receipt of the application for permission to appeal, or where further information has been requested, no more than 14 days after the end of the period specified for providing that information.
- 13.6 The President of the Adjudication Panel for Wales or the nominated panel member must notify the decision to:
- (a) the person seeking permission to appeal;
 - (b) the Ombudsman; and
 - (c) the Standards Committee which made the determination that is the subject of the application for permission to appeal.
- 13.7 If permission to appeal is refused the notice must also include the reasons for that decision.
- 13.8 If permission to appeal is granted, the President of the Adjudication Panel for Wales or the nominated panel member must refer the matter to an Appeals Tribunal

14. Referral Back from the Adjudication Panel

- 14.1 In circumstances where there is a referral back to Standards Committee from the Adjudication Panel for Wales with a recommendation that a different sanction should be imposed, the Committee shall meet as soon as reasonably practicable to consider the recommendations of the Appeals Tribunal and shall determine whether to uphold its original determination or accept the recommendation.
- 14.2 As soon as possible after meeting to reconsider its determination, the written decision of the Committee will be sent to the Member, the person who made any allegation which gave rise to the investigation (if known), the Ombudsman and the President of the Adjudication Panel for Wales.

FLOW-CHART FOR FULL HEARINGS



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STANDARDS COMMITTEE – 20TH JANUARY 2022

PUBLIC INTEREST TEST – EXEMPTION FROM DISCLOSURE OF DOCUMENTS SCHEDULE 12A (PARAGRAPHS 12 & 18C) LOCAL GOVERNMENT ACT 1972

**SUBJECT: REFERRAL OF AN INVESTIGATION REPORT BY THE PUBLIC
SERVICES OMBUDSMAN FOR WALES OF A COMPLAINT**

REPORT BY: HEAD OF LEGAL SERVICES AND MONITORING OFFICER

I have considered grounds for exemption of information to be presented to the Committee and make the following recommendations to the Proper Officer:-

EXEMPTIONS APPLYING TO THE REPORT:

Paragraphs 12 - Information relating to a particular individual(s) and 18C – the deliberations of the Standards Committee.

FACTORS IN FAVOUR OF DISCLOSURE:

There is a public interest in the way in which the Council deals with member issues.

PREJUDICE WHICH WOULD RESULT IF THE INFORMATION WERE DISCLOSED:

The report contains detailed information regarding personal information which affects a particular individual/s and the affairs of that individual/s. The Standards Committee needs to consider the investigation report and covering report in private at this stage.

MY VIEW ON THE PUBLIC INTEREST TEST IS AS FOLLOWS:

That paragraphs 12 and 18C should apply. My view on the Public Interest Test is that whilst there is a need to ensure transparency and accountability for decisions taken in relation to member issues, this must be balanced against the fact that these matters have not yet been concluded at this stage and this outweighs the need for the information to be made public.

The information is not affected by any other statutory provision, which requires the information to be publicly registered. The information contains personal data of staff members which is protected by the Data Protection Act 1998.

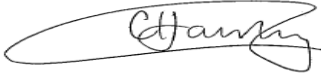
On that basis I feel that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.

RECOMMENDED DECISION ON EXEMPTION FROM DISCLOSURE:

On that basis I feel that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, and that the report should be exempt.

Signed:  **Dated:** 10th January 2022
Post: Head of Legal Services & Monitoring Officer

I accept recommendation made above.

Signed:  **Date:** 11th January 2022
Proper Officer

Agenda Item 7

By virtue of paragraph(s) 12, 18c of Part 1 of Schedule 12A of the Local Government Act 1972.

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