

MEETING	STANDARDS COMMITTEE
DATE	9 FEBRUARY 2010
SUBJECT	DRAFT GUIDELINES ON THE CODE OF CONDUCT
PURPOSE	AGREE ON THE COMMITTEE'S RESPONSE TO THE OMBUDSMAN'S DRAFT GUIDELINES.
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1. In November, 2009 the Public Services Ombudsman for Wales issued draft guidelines on the Code of Conduct. The Guidelines are out for consultation with the closing date of 12 February, 2010.
2. A copy of the guidelines was sent to the Committee members and they are requested to bring the document with them to the Committee.
3. A copy of the guidelines was also sent to all Council members inviting their observations, and any observations received will be reported to the Committee.
4. In the appendix there is a draft for the Committee to consider.

RECOMMENDATION

5. The Committee is requested to discuss the Guidelines and the draft response and agree on a reply to be sent to the Ombudsman on the Council's behalf.

THE CODE OF CONDUCT - GUIDANCE FROM
THE PUBLIC SERVICES OMBUDSMAN FOR WALES.
RESPONSE FROM GWYNEDD COUNCIL'S STANDARDS COMMITTEE.

1. We welcome the proposal to publish Guidelines on the Code of Conduct. We believe that the Guidelines will assist councillors to understand the Code and to understand the circumstances when the Ombudsman will consider that the Code has been breached. With this in view, it will be advantageous for the Guidelines not only to provide an interpretation of the clauses in the Code, but also to provide examples to show situations when a member will be adhering to the Code or be in breach of the Code. Generally, more examples would be beneficial in the Guidelines in order to explain the Code.
2. The observations noted below refer to the same paragraph numbers used as headings in the consultation document.
3. **The Principles** - The principles are not part of the exemplary Code, however, some councils including Gwynedd Council have adopted them as part of their Code of Conduct. In doing so, they become part of the Code for the authority and become open to investigation by the Ombudsman.

(Note that Section 51(iv)(c) of the Local Government Act 2000 provides specifically that local authorities can include in their Code of Conduct any additional provision to the exemplary code, provided that the provision is consistent with the exemplary code).

4. **Deciding when the Code of Conduct applies to you** - It would be advantageous to also include to whom the Code of Conduct applies in order to obtain clarity regarding the position of co-opted members with voting rights.
5. It would be advantageous to also include a company director in the example list as there is a duty upon them to act for the benefit of the company.
6. **Treating others with respect (para. 4(b))** - This is one of the paragraphs in the Code that attracts most attention and it is important that the guidelines on this are completely clear and unambiguous. We ask the Ombudsman to further consider his guidance on personal attacks. The second paragraph of the Guidelines states as follows: "avoid personal attacks". The fourth paragraph states as follows: "individuals should not be subject to unreasonable or excessive personal attack". There is an element of contradiction here and clear guidance should be obtained regarding whether or not a personal attack is acceptable, regardless of its nature and who is subject to it. It would be beneficial for this part of the Guidelines to deal also with observations published in the press or on websites, compared to those expressed from the floor of the Chamber or in conversations. It would be beneficial to obtain

guidance on whether or not circumstances make any observations a material consideration, e.g. is there a difference between the observations made during a heated debate in the Chamber and those where time has been taken to create and write them prior to publication. There is also a need to differentiate between observations on functional qualities and observations that constitute a personal attack on an individual's character.

7. **Bullying and intimidation (para. 4.(c)).** - It could possibly be beneficial to draw the attention of councillors to this part of the Guidelines which refers to the fact that they, by virtue of their posts, are in a powerful position where they can influence others and care should always be taken that they do not create the impression that they misuse that influence. This is particularly true in relation to the authority's officers where the councillors who constitute the Council are their employers.
8. **Compromising the impartiality of officers of the authority (para. 4(d)).** - Would it be beneficial also to include something regarding not encouraging officers to act in contravention of the Council's guidelines and policies?
9. **Disclosing confidential information (para. 5.(a)).** - The circumstances outlined in the third and fourth bullet points are not part of the Code of Conduct for Wales (in contrast to England).

Despite the fact that disclosing confidential information in order to obtain professional advice would be acceptable to the majority of people, there is much more ambiguity relating to disclosures "in the public interest". As this condition is not part of the Code in Wales, we question whether or not it is required in the Guidelines at all. Balancing public interest is a difficult task and the Guidelines open the door for members to believe that they are entitled to disclose confidential information when they are not permitted to do so in reality.

Should the Ombudsman believe that public interest is something he would address when dealing with a complaint under this paragraph, should it not be a matter that goes to the root of any sanction or mitigating factor, rather than the original question of whether or not the Code was breached?

We believe that it would be particularly beneficial to include information that the authority has deemed exempt under the Local Government Act 1972 in this part as an example of confidential information.

10. **Preventing access to information (para. 5.(b)).** - It is believed that the guidance of the Information Commissioner notes that an individual member is subject to the provisions of the Freedom of Information Act 2000 and we suggest that the Guidelines should reflect the guidance of the Commissioner so as to avoid confusion. The paragraph as it is at present is very indefinite.
11. **Disrepute (para. 6.1(a)).** - Would it possibly be better for the Guidelines in paragraph 12 to appear in the part of the document that deals with paragraph 12?

12. **Reaching decisions objectively (para.8).** - As the Guidelines deals with the distinction between predisposition and predetermination (despite the fact that predetermination is not part of the Code, but rather a principle of law), it could possibly be beneficial to include guidance regarding what a member should do in a position of predetermination, i.e. withdrawing from the room and not participating in a decision.

Possibly, an example would be beneficial to explain the distinction between them.

13. **Personal Interests (para. 10),** - Number 10, namely any land in which a member has a licence on it for more than 28 days has been omitted from the list.

The interpretation of paragraph 10(2)(b) is strict and is likely to lead to situations where a local member cannot argue over contentious issues within his/her ward. In our opinion, this is contrary to the principle of democracy and to the purpose of having members to represent specific regions. We ask for the guidance to be reconsidered and restricted only to a situation where a member is in a decision making position on behalf of the authority, i.e. under delegated powers.

If the Ombudsman believes that this is not the correct guidance to provide, then we believe that examples should be provided so that it is clear to members the type of issues that are likely to be ones where there is local influence and the circumstances under which it is likely to be contrary to the interests of the authority in its entirety. For example, would considering school closures be included under this heading should the authority have a strategy for the reorganisation of schools and what would be the position of a member in the nearby ward which is likely to receive the children from the closed school? We consider this clause to be one that will be very difficult for members to adhere to.

14. **Who is a member of your family or close associate.** - The first paragraph provides a very broad definition of "family". However, "family" does not appear anywhere in the Code of Conduct, therefore we do not believe that the definition is beneficial.

We believe instead that it would be beneficial to include a "relative" in the list of people with a close connection. The list also includes "someone whom you know through general social contacts". This is very broad and in rural communities this will include a large number of people. We believe that clearer guidance is needed regarding where the Ombudsman is likely to draw a line between someone whom is an acquaintance and someone whom crosses the threshold to be a "close associate" in the sense of the Code. We would suggest that the relationship would have to be something more than being an acquaintance, for example, being a member of the same organisation, and it would have to include regular social involvement.

It would be beneficial to include a note explaining that it is the member's own personal responsibility to conclude whether or not he/she has an interest; however, advice can be sought from the Monitoring Officer.

15. **Prejudicial interests (para. 12).** - It would be advantageous to note something regarding paragraph 12(iii) which notes that exemptions are not relevant to situations of approval, consent, licence, approval or registration. Examples of what is considered to be licensing or regulatory issues would be advantageous.
16. **Exempt categories of business.** - It would be worthwhile to receive an explanation of the position of school governors who have been nominated by the authority to the governing body. It is assumed that they are included within the exemptions even if the business deals specifically with the school.
17. **What to do when you have a prejudicial interest?** - Generally, there is too much emphasis on when a member can speak in comparison to his/her duty to withdraw from the discussion. For example, there is reference to not seeking to "improperly influence", however, the code refers to not "influencing a decision" as this is exactly what the code prohibits. It can lead to a misunderstanding on the part of a member, leading him/her to believe that he/she is entitled to influence the decision in writing. We note that the examples where a member has a "private right" are few and far between and we believe that the draft guidelines once again reflect the situation in England, rather than in Wales. We believe that this guidance should be much more robust regarding withdrawing from the discussion and not seeking to influence the decision.
18. **Gifts and hospitality (para. 17).** - The guidelines note that a gift that was not accepted (but which was offered) does not have to be registered. Some authorities, such as Gwynedd Council, have adopted a Code of Conduct that notes that every such offer must be registered, regardless of whether or not the gift was accepted.