

Committee :	STANDARDS COMMITTEE
Date:	10 March 2018
Title	The Functions of the Standards Committee
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Purpose:	To present information regarding the Standards Committee's Functions

1. Background

1.1 The Local Government Act 2000 established a new 'ethical framework' for county councils and town and community councils in Wales. At the centre of this framework is the duty on each authority to adopt a code of conduct for its members, and for each member to undertake to abide by that code when accepting their position.

1.2 The duty was also introduced on each county council to establish a standards committee to promote and maintain high standards of conduct both amongst members of the council and the members of the town and community councils within its area. New duties and powers were also given to monitoring officers and to the Public Services Ombudsman for Wales.

1.3 The Act places certain duties and gives certain powers to a standards committees:

- Assisting the councillors and co-opted members to follow the Members' Code of Conduct
- Advising the authority regarding adopting or amending the Members' Code of Conduct
- Monitoring the implementation of the Members' Code of Conduct
- Advising, training or arranging training for councillors and co-opted members on matters relating to the Code of Conduct
- Determining complaints referred to it by the Public Services Ombudsman for Wales that members have breached the Code of Conduct
- Considering applications made by members for dispensations to allow them to participate in discussions despite them having a prejudicial interest under the Code
- Considering complaints referred to it under Gwynedd Council's local resolution procedure

- Overseeing the Gwynedd Council Members Gifts and Hospitality Policy (local, non-statutory)

1.4 There is a duty on all sixty four town and community councils to adopt the Code of Conduct, and for each member to undertake to abide by its provisions when accepting their office. Therefore, although the Standards Committee is one of Gwynedd Council's committees, its responsibilities extend to exercising the above functions (apart from the last two) in respect of all the town and community councillors in Gwynedd as well as the members of Gwynedd Council. This is reflected in the statutory requirement for each standards committee to include at least one 'Community Committee Member', who is an individual who is a member of a town or community council (but not also a county councillor)

1.5 In this report we will look in more detail at some of the Committee's functions

2. Deciding on applications for dispensations

2.1 The Code of Conduct provides that a member should not take part in a meeting if he/she has a 'prejudicial interest' in the matter being discussed. The member must leave the meeting whilst the matter is discussed but also must not try to influence the decision in any way.

2.2 A member however has the right to ask the Standards Committee for permission to take part despite the existence of the prejudicial interest. This permission is called a 'dispensation'.

2.3 The Standards Committee has the right to grant a dispensation if the member's situation comes within one of the particular circumstances listed in the relevant regulations. However it is a matter for the Committee to decide whether it is appropriate to do so in the circumstances. It can grant a member a dispensation that allows him/her the right to take a full part by speaking or voting, or to speak only. It can grant a general dispensation or one that is specific to a particular meeting.

2.4 In coming to its decision, the committee must take into account the public interest, bearing in mind that the purpose of the code in this context is to maintain the public's faith in the way the council makes its decisions. The Ombudsman in his guidance on the code explains that:

"The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority."

3. Deciding on complaints against members

3.1 The 2000 Act gives a standards committee the power to decide on complaints that members have breached the code of conduct and to impose sanctions if they have done so. The committee's functions form part of a wider statutory investigation

process and can only therefore consider complaints if they have been referred to it as part of that process.

3.2 The only way of making a formal complaint that a member has breached the code is by submitting it to the Ombudsman. Any individual can submit a complaint.

3.3 The Ombudsman will assess each complaint (along with any additional information) and decide whether or not he should investigate by using a 'two-stage' test:

- 1) Is there direct evidence that the Code has been breached?
- 2) Is an investigation or referral to the standards committee or The Adjudication Panel for Wales required in the public interest? (the 'public interest test')

(According to the Ombudsman in his Annual Report, of the 248 complaints closed in 2016/17 the majority (184) were closed under the 'Closed after initial consideration' category)

3.4 If the Ombudsman conducts an investigation, he can come to one of three conclusions:

- a) If he concludes that there is no evidence to suggest that the Code has been breached, he will discontinue his investigation
- b) If the evidence suggests that there has been a breach, the Ombudsman can decide in certain circumstances that further steps are not appropriate
- c) Where the Ombudsman finds that a complaint is justified and it is also considered to be in the public interest to do so, he may refer it either to the Standards Committee of the relevant authority, or to the Adjudication Panel for Wales to decide on the matter

3.5 If he refers the complaint to the Standards Committee, the Ombudsman will present a written report describing his investigation and the reasons for his conclusions. The committee's duty is to consider the report and to come to a decision on the complaint, and there is a statutory process that must be followed. There are two possible stages:

- (1) A meeting to decide, on the basis of the written report alone, either -
 - (a) that there is no evidence of a failure to abide by the code (and this will bring the matter to an end); or
 - (b) that a hearing should be held to consider the complaint and the member will be given an opportunity to make representations to the committee.

3.6 The accused member, and the Ombudsman's investigator may attend the hearing, which will be held in public. The exact procedures at the hearing are a matter for the committee and this committee has developed such a procedure.

3.7 The Committee after hearing the case must decide:

- (a) That there is no evidence that the member has breached the Code of Conduct;
- (b) That the member has breached the Code but that no further steps should be taken;
- (c) That the member has breached the Code and should be reprimanded;
- (ch) That the member has breached the Code and should be suspended (in full or partially) from being a member of eth authority for a period of up to 6 months.

3.8 Rather than investigate the complaint himself, the Ombudsman can refer the matter for investigation by the Monitoring Officer. If so, the procedure will be the same but it will be the Monitoring Officer who presents his report to the committee.

3.9 The member will have the right to appeal against the committee's decision to the Adjudication Panel for Wales, which will:

- (a) Uphold the sanction imposed, or
- (b) Refer the matter back to the committee with a recommendation that a different sanction be imposed, or
- (c) Overturn the finding that the member has breached the code of conduct

3.10 As noted above, the Ombudsman refer his report directly to the Adjudication Panel rather than the committee. The Panel has the power to impose greater sanctions and can suspend a member for up to a year or can disqualify him/her from being a member of any relevant authority for up to 5 years.

4. The Local Resolution Procedure

4.1 Although the procedure described above is the only way a formal complaint against a member, Gwynedd Council has adopted a local resolution procedure, in which the Standards Committee has a role

4.2 The Council has adopted two documents that are relevant to the procedure. These are the Member-Officer Protocol, which promotes effective co-operation between members and officers within the council, and the Gwynedd Standard, which promotes and maintains a high standards of conduct amongst members of the Council.

4.3 The purpose of the procedure is to ensure that there is a way to deal quickly and efficiently with any allegation that a member has breached the Protocol or the Standard. Therefore it is members or officers of the Council who can submit a complaint.

4.4 The procedure in summary, is as follows:

- A complaint must be presented to the Monitoring Officer
- Step 1 – the Monitoring Officer will refer the complaint to the Deputy Monitoring Officer or the Senior Solicitor, who will advise the complainant whether the complaint falls to be considered under the procedure or whether it should be referred to the Ombudsman.
- If the complaint wishes to proceed with the complaint it can either be referred for a conciliation meeting (Stage 2) or to a hearing of the Standards Committee (Stage 3).
- Stage 2- a meeting between the complainant and the accused member, the Leader of the relevant political group and the Chief Executive and/or the Monitoring Officer
- Step 3 – a hearing before the Standards Committee. The complainant and the accused member will be entitled to appear before the committee. The committee can come to one of three conclusions::-
 - a. That there is no basis to the complaint
 - b. To uphold the complaint, but that no further action should be taken
 - c. To uphold the complaint and to reprimand the member

4.5 The committee may also make recommendations to the Council with regard to changing any procedures or to take any further steps

4.6 No publicity is given to the parties unless it is decided to uphold the complaint. The public and press will be excluded from the hearing before the committee.

4.7 Nothing in this procedure affects an individual's right to refer the complaint to the Ombudsman.

5. Recommendation

5.1 The committee is asked to note the information