

## **Schedule 2**

### **Chapter 3 - Duty to arrange, and respond to, a panel performance assessment**

#### **Introduction**

- 3.1 This chapter of guidance is about the requirements relating to panel performance assessment within the Local Government and Elections (Wales) Act 2021 (“the Act”). The guidance here reflects the minimum requirements for panel performance assessment as set out in the Act, recognising that councils will wish to develop the detail of their own approach.
- 3.2 The duties in relation to panel performance assessment will come into force from the start of the next local government electoral cycle, in May 2022.
- 3.3 The intention is that the performance and governance provisions in the Act will be underpinned by a sector-led, co-ordinated approach to improvement and support. The findings and recommendations of the panel performance assessment provide an external perspective and should be used to inform and identify areas where sector-led support might be valuable. This will apply in the case of individual councils and should also inform the development and provision of any proposed improvement support nationally.
- 3.4 This chapter of guidance should be read by a council to support the discharge of its duties to arrange a panel performance assessment and to publish and respond to a panel performance assessment report. This chapter may also be read by panel members to guide them in carrying out a panel performance assessment. Panel members may also refer to the guidance on self-assessment to understand how councils are required to discharge their duties on self-assessment as this may usefully inform their approach to the panel assessment.

#### **Duty of principal council to arrange panel performance assessment**

- 3.5 The Act requires a council to make arrangements for an independent panel, appointed by the council, to assess the extent to which the council is meeting the performance requirements – a panel performance assessment. The performance requirements are defined as the extent to which a council:-
  - is exercising its functions effectively;
  - is using its resources economically, efficiently and effectively; and
  - has effective governance in place for securing the above.
- 3.6 This guidance sets out the purpose of the panel assessment; proposes the stages involved in an assessment; covers matters relating to the timing of a panel assessment; describes minimum requirements and considerations when appointing a panel; and outlines the arrangements for responding to a panel performance assessment report.

- 3.7 In considering how a council exercises its panel performance assessment duties a council should take into account the Welsh Language Standards and any relevant compliance notice issued by the Welsh Language Commissioner.
- 3.8 Councils may of course commission support similar to a panel performance assessment for a number of other purposes, such as peer reviews on specific services or on particular themes or issues. These are all part of the council's improvement journey, and can complement but not replace the corporate, organisational level, statutory panel performance assessment required by the Act.

### **Purpose of panel performance assessment**

- 3.9 A panel performance assessment is just one component of a sector-led approach to performance, governance and improvement. An effective panel performance assessment can inform the council's improvement journey, building on the annual self-assessment, supporting it to look to the future through a different lens. The panel assessment should provide different perspectives; some independent, objective external challenge; and an opportunity to test thinking with impartial expert peers.
- 3.10 The panel performance assessment will assess, as the council does through self-assessment, the extent to which the council is meeting the performance requirements. It is not about checklists, it is not a form of inspection, and it is not an audit. It is about supporting the council to achieve its aspirations through developing and deepening its understanding about how it is operating, and how it can ensure it is able to offer effective services for the long term.
- 3.11 The panel are not responsible for holding the council to account, but should offer an external view of how the council is operating. This does not replace auditors, inspectors, or regulators' assurance role. This is about supporting councils to understand how they can improve the extent to which they are meeting the performance requirements.
- 3.12 It is for the council to determine how to make the most effective use of the panel performance assessment, and ensure its findings are used alongside other sources in determining its approach to corporate performance, governance and improvement.
- 3.13 Panel performance assessment is part of a culture where councils are open to and embrace challenge, whether presented from within the authority or, in this case, externally. The assessment should be seen as challenging, but constructive, an effective and proportionate approach to continuously learning how to make the council stronger.
- 3.14 Research has shown the potential value to a council in seeking a peer perspective, such as that which a panel performance assessment will provide,



at a corporate, organisational level.<sup>9</sup> For example, it has been found that such a peer perspective can confirm the council's own understanding of what is needed and add strength to the case for change, as well as supporting or encouraging both organisational and behaviour change.

### **Approach to panel performance assessment**

3.15 Each individual council will wish to, and should be free to, determine its own approach to engaging with panel performance assessments (within the broad parameters set out by the Act).

3.16 Although it will ultimately be for the council and the panel to determine, we would expect a panel performance assessment to encompass three broad stages; Preparation, Assessment and Follow Up.

#### **Stage 1 - Preparation**

This stage is council-led and is likely to include:-

- **Scoping the requirements** of the panel performance assessment. The council may wish to work with partners to do this, and consider any particular challenges that have been highlighted in their self-assessment or in recent audit, inspection or regulator reports. This will help to identify the skills and expertise required from the panel to maximise the impact of the assessment.
- **Identifying and commissioning a panel** to undertake the assessment.
- **Establishing the terms of reference** for the panel performance assessment and, once in place, agreeing the terms of reference with the chair of the panel. This will also provide an opportunity to discuss expectations and approach to the assessment.
- **Sharing relevant information** with the panel to set the context for the assessment.
- **Making practical arrangements** as required by the panel to enable them to effectively conduct the assessment.

#### **Stage 2 – Assessment**

This stage is largely led by the panel and is likely to include:-

- **Desk-based review by the panel** to inform their initial thinking and decisions on the areas they wish to focus on during the assessment.

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<sup>9</sup> see Downe, J., Bottrill, I. and Martin, S. (February 2017) *'Rising to the challenge: an independent evaluation of the LGA's corporate peer challenge programme'*. Cardiff Business School: Centre for Local & Regional Government Research.

- **Discussions between the panel** and elected members, officers and other stakeholders about areas within the scope of the assessment.<sup>10</sup>
- **Verbal presentation of main findings by the panel.**

### Stage 3 - Follow up

This stage should include:-

- The panel sending their **final report** to the council.
- The council **considering its response** to the panel assessment, including the **actions it intends to take following the learning** from the assessment.
- The council **involving** its **governance and audit committee** and considering any recommendations the committee makes on its response to the panel performance assessment.

### Timing

3.17 The duty to arrange a panel performance assessment at least once during an electoral cycle means an assessment should take place in the period between ordinary elections of councillors to the council. A council may choose to commission more than one panel assessment in an electoral cycle, but it is not a requirement of the legislation.

3.18 It is for the council to choose the time during the electoral cycle when panel performance assessment is likely to be of most value to the council. The council should consider how the panel performance assessment can be best timed to align with other aspects of its corporate governance approach and other service specific inspections or assessments. The council may also wish to reflect on the timing of any reviews by the Future Generations Commissioner and examinations by the Auditor General for Wales, so that maximum value is achieved from the panel performance assessment. The council may wish to seek advice from inspectorates, regulators or Audit Wales on this point.

3.19 The only requirement on timing is that arrangements must enable the council to publish a panel performance assessment report at least six months before the date of the next ordinary election. Councils will wish to consider timing in relation to the code of recommended practice on local authority publicity, and not leave it too late in the cycle to enable a panel assessment to be commissioned and concluded.

3.20 Councils could, in theory, commission a panel performance assessment near the start of an electoral cycle and the next assessment near the end of the next electoral cycle. This could mean a gap of nine years between panel

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<sup>10</sup> Panels should gather and use intelligence to reflect the experience of and impact on [people from different protected groups](#) and those experiencing [socio-economic disadvantage](#)

performance assessments. However, this approach would be discouraged as it could well call into question how a council is effectively exercising its functions in relation to its performance and governance.

### **Preparation in advance of assessment**

3.21 A council should not feel it has to 'prove' anything to the panel and as such preparation in advance of a panel assessment should not be overly onerous. However, it is recognised a panel performance assessment will require some administrative resource to support the panel with practical arrangements, such as arranging meetings and focus groups, and facilities for the panel to use if appropriate.

3.22 The panel will also wish to see key documents as part of their assessment which will require officer time to collate, but it is not envisaged this will involve the preparation of any new reports, as there should already be a range of information (including the self-assessment report) available.

### **Appointing a panel**

3.23 The council is responsible for identifying panel assessors, commissioning the panel to undertake the assessment, and meeting any associated costs.

3.24 Selection of panel members will be key to ensuring an effective and meaningful, assessment. The council should ensure the panel has a range of practical experience, knowledge and perspectives, has integrity, objectivity and assurance that its findings will be trusted by the council. The council should also consider the importance of diversity when appointing the panel.

3.25 To ensure independence panel members must have sufficient detachment from the council to reach impartial, objective conclusions about how the council is meeting the performance requirements. For example no one who is, or has recently been (within the last two years), a member or officer of the council being assessed should be considered for appointment to the panel. A panel member should not be conflicted (in so far as a reasonable third party would regard a panel member as conflicted) in offering an assessment of how the council is meeting the performance requirements.

3.26 To be most effective the panel should be peer-led. It should have a mix of experienced senior officers, councillors and others who work with local government including from the wider public and other sectors, who can command the confidence of the council and ensure councils get the most appropriate challenge, support and constructive recommendations. Panel members can also have experience of Wales or further afield.

3.27 Whilst it is important that a proportion of the panel have a good understanding of the complexity of working in a political environment and the impact that this can have on organisational culture and priorities, it is equally important that those with experience of other sectors and working with local government are able to bring these valuable insights to the work of a panel.

3.28 It would be expected that any assessment panel commissioned under the council's duties contained in the Act should include as a minimum:-

- An independent panel chair – not currently serving in an official or political capacity within local government
- A peer from the wider public, private or voluntary sectors
- A serving local government senior officer, likely to be equivalent to chief executive or director, from outside the council to be assessed
- A senior elected member, from outside the council to be assessed

3.29 The council may choose to appoint other additional members of the panel as they see fit, for example officers at other levels, more partner representatives or other external experts. The council may also wish to assign an officer to work with the panel for the duration of the assessment, to provide administrative support and co-ordinate activity across the authority.

### **The panel's role in carrying out a panel performance assessment**

3.30 The panel, acting jointly, is required to assess the extent to which the council is meeting the performance requirements, that is, the extent to which:-

- it is exercising its functions effectively;
- it is using its resources economically, efficiently and effectively;
- its governance is effective for securing the above.

3.31 In this way the panel is building on, and complementing, the self-assessments already undertaken by the council. The panel may find it helpful to refer to the guidance on self-assessment to guide their approach to undertaking the panel assessment. The panel's focus should be on looking at the current situation, and over a sufficient previous period to get a meaningful picture of the position in the council and any trends. The panel will be considering how capable the council is to respond to the changing environment in which it operates, and should be guided in its work by using the ways of working set out in the Well-being of Future Generations Act.<sup>11</sup>

3.32 The panel may also find it helpful to consider the activities common to the corporate governance of public bodies as set out in the statutory guidance on the Well-being of Future Generations (Wales) Act 2015<sup>12</sup>:-

- Corporate planning
- Financial planning
- Workforce planning (people)
- Procurement

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<sup>11</sup> See [Chapter 1](#) for full details of the ways of working

<sup>12</sup> [Well-being of Future Generations Act Guidance](#)

- Assets
- Risk management
- Performance Management

3.33 Using this as a framework should guide the panel in understanding whether the council is governing itself effectively in order to maximise its contribution to the well-being goals.<sup>13</sup>

3.34 This is a corporate, organisational assessment, designed to consider the extent to which the council is meeting the performance requirements and its capability to deliver effective outcomes. The panel should not be seeking to undertake deep dives or in-depth service reviews, although a panel may draw on the findings of other peer reviews or in-depth service reviews in reaching their conclusions. The panel should not be looking to audit / check the councils own self-assessments, although the approach a council takes to self-assessment may inform a panel's view on the effectiveness of its governance arrangements.

3.35 In carrying out a panel performance assessment in respect of a council, a panel must consult the following about the extent to which the council is meeting the performance requirements:

- local people;
- other persons carrying on a business in the council's area;
- the staff of the council;
- and every trade union which is recognised (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) by the council.

3.36 While this is the minimum required by the legislation, the panel may choose to consult or involve others as it determines relevant to its assessment of how the council is meeting the performance requirements.<sup>14</sup> The panel may, for example, seek to consult other partners involved in collaborative working with the council, as well as audit, inspection or regulatory bodies.

3.37 It is for the panel to consider how it might wish to consult in order to effectively contribute to the panel assessment process, for example utilising existing engagement mechanisms, web-based surveys, questionnaires etc. These should be designed to be representative of the relevant population (e.g. local people, or staff). It is for the council to make the necessary arrangements to facilitate the consultation.

3.38 The panel will also utilise a range of other internal and external sources, ensuring a broad evidence base to inform conclusions on the extent to which the council is meeting the performance requirements and recommendations on how to improve. Suggestions of sources which could inform the

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<sup>13</sup> See [Chapter 1](#) for full definitions of the goals.

<sup>14</sup> Panels should gather and use intelligence to reflect the experience of and impact on [people from different protected groups](#) and those experiencing [socio-economic disadvantage](#)



assessment are included in the guidance to councils on conducting self-assessments.

3.39 Councils will need to consider how long they will need to engage a panel for, and agree this with the panel, to ensure there is sufficient time for the three broad stages set out in paragraph 3.16.

3.40 The assessment is likely to include the following key steps for the panel, although it will be for the panel to determine and agree its approach:-

- A scoping meeting.
- Desk based research.
- Meetings with political leaders, senior officers; and discussion groups, including with staff and partners, local people, unions and representatives of local businesses.
- Analysis of findings and agreement to conclusions.
- Presentation of key findings.
- Preparation of the panel's report to the council setting out their conclusions.

### **Panel assessment report**

3.41 Following the conclusion of a panel assessment, a panel must make a report setting out:-

- its conclusions as to the extent to which the council is meeting the performance requirements;
- any actions the panel recommends that the council could take in order to increase the extent to which it meets the performance requirements.

3.42 It is for the panel to determine the form and content of this report, although it would be expected that it would reflect the key principles of openness and transparency, and accessibility for the public and all councillors. The report must be the judgements and recommendations of the panel acting jointly.

3.43 The panel chair should discuss their conclusions and recommendations with the council leader and chief executive, and any others the council wish to involve (for example leaders of the opposition and political groups, and chairs of scrutiny committees), to ensure that the richness of the learning from the assessment is properly conveyed.

3.44 The panel must send the report as soon as is reasonably practicable after it has been prepared to:-

- The council
- The Auditor General for Wales
- Her Majesty's Chief Inspector of Education and Training in Wales
- The Welsh Ministers<sup>15</sup>

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<sup>15</sup> This includes Care Inspectorate Wales

### **Publication of panel assessment report**

3.45 It is the responsibility of the council, not the panel, to publish the panel report. As soon as reasonably practicable after receiving the report from the panel, the council must:-

- make the report available to the council's governance and audit committee; and
- publish the report.<sup>16</sup>

### **Responding to the panel assessment report**

3.46 The council must prepare a response to the panel performance assessment report. In its response, the council is required to state:-

- the extent to which it accepts the conclusions in the report;
- the extent to which the council intends to follow any recommendations contained in the report; and
- any actions it proposes to take to increase the extent to which it meets the performance requirements.

3.47 The conclusions and recommendations from the assessment should be used to guide the council in identifying actions it will take to increase the extent to which it is meeting the performance requirements. The report should highlight areas where self and sector-led support might be valuable. It may also reiterate something that the council is already aware of and add weight to the case for change, and / or indicate where it would be beneficial to involve others as appropriate.

3.48 In responding, a council should apply the Well-being of Future Generations (Wales) Act 2015 and formulate its response according to the five ways of working. This should apply to both *what* the council intends to do and *how* it intends to do it. Involving others in formulating its response would be the mark of a forward thinking council.

3.49 A council should also reflect on a panel performance assessment when undertaking its next self-assessment, to see whether the learning from the panel assessment has been put into action.

### **Involving the governance and audit committee**

3.50 The council must make a draft of its response to the panel performance assessment available to its governance and audit committee, which must then review the draft response and may make recommendations for changes to the response to the panel assessment.

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<sup>16</sup> Electronically on the council's website see s171(2) of the Local Government and Elections (Wales) Act 2021.

3.51 If the council does not make a change recommended by the governance and audit committee, it must set out in the final response the recommendation and the reasons why it did not make the change.

**Publication of the response to the panel assessment report**

3.52 As soon as reasonably practicable after finalising the response, the council must publish<sup>17</sup> the response and send the response to:

- The members of the panel
- The Auditor General for Wales
- Her Majesty's Chief Inspector of Education and Training in Wales
- The Welsh Ministers<sup>18</sup>

3.53 The response to a panel assessment report must be published at least four months before the next ordinary election of councillors to the council is due to take place.