

Independent Review of the Ethical Standards Framework in Wales

Richard Penn
Independent Consultant

July 2021

Table of contents

1.	Executive summary	3
2.	Background and methodology	10
3.	The current ethical standards framework for local government in Wales	15
4.	My findings	28
5.	Conclusions and recommendations	42

1 Executive summary

1.1 In March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the ethical standards framework for local government in Wales that was established by the Local Government Act 2000 and which has remained largely unchanged to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework. I was commissioned to undertake this review with the aim to report to Welsh Government Ministers by the end of June 2021. The intention is for any agreed changes to be made ahead of the local government elections in May 2022.

1.2 The review was to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff;
- consideration of the current sanctions and whether they are still appropriate.

1.3 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome and met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

1.4 The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

1.5 The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and viewed by many as far superior to that currently used in English local government. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations being significantly reduced. The outcome of this first phase of the review builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. The already high ethical standards in Welsh local government would be further enhanced as a result.

1.6 My key findings and recommendations for change are detailed in Section 5 of this report and are summarised below:

- ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.

- ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

- ***Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements***

The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision. However, I have proposed a number of amendments to the Code:

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.

- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately.

- **Increased use of local resolution of complaints**

The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

- **Restricted reporting orders**

The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask for amendments to the Appeal Tribunal

procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

- ***Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

- There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.
- ***An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

- ***Consideration of the current sanctions and whether they are still appropriate***

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, there is support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

- **Accessibility of the ethical standards framework**

The ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, a member of the public would have great difficulty in finding helpful information if they wished to complain, particularly if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. If the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

2 Background and methodology

- 2.1 At a meeting of the Partnership Council for Wales on 1 March 2021 the then Minister for Housing and Local Government discussed a range of issues connected to the implementation of the Local Government and Elections (Wales) Act 2021. One of the issues discussed was her intention to commission an independent review of the ethical standards framework. Council Leaders agreed this was timely in light of the changes to the framework set out in the Act and the time which has elapsed since the framework was first established.
- 2.2 The ethical standards framework in Wales was established by the Local Government Act 2000 and has remained largely unchanged, though there have been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016. The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.
- 2.3 The Local Government and Elections (Wales) Act 2021 which received Royal Assent on 20 January 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. There are a number of provisions which are fundamental to greater transparency and openness between local Councils and communities, and the Act includes measures to combat bullying and harassment amongst elected members and Council staff.
- 2.4 Since the framework was established the Welsh Government has continuously set out its commitment to equality and diversity, including through the making of the Well-being of Future Generations Act 2015. Most recently the Government has published the Gender Equality Review and is currently consulting on its new Race Equality Action Plan.
- 2.5 It is with this new legislation and policies in mind that Welsh Government concluded that the ethical standards framework needed to be reviewed to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework.
- 2.6 In taking this work forward it was seen to be essential to ensure that the local government family in Wales is fully involved in the review and informs the outcome. This should include, but not exclusively, local government members (Principal and Community Councils), monitoring officers, standards committees, heads of democratic services, the Welsh Local Government Association (WLGA), Lawyers in Local Government, One Voice Wales, Society of Local Council Clerks, the Public Services Ombudsman for Wales and citizens/representative organisations. This involvement needed to be demonstrated as part of the outcome of this work.

2.7 The following were the key components of delivery:

- an audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could / should be made to the current arrangements.
- consideration of the role of standards committees, including their role in relation to Community Councils and whether the establishment of sub-committees has any impact on the process of supporting Community Councils and dealing with complaints.
- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and authorities' approach to addressing concerns.
- consideration of the current sanctions and whether they are still appropriate.

2.8 The review will take place in two phases:

- The first phase involved engagement with partners to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase was to be a roadmap for building on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published will also be explored as part of this work.
- Phase two of the work will focus on working with partners and stakeholders to deliver the necessary changes.

2.9 I am a former Chief Executive of two major local authorities in England, and amongst the other posts that I have held since returning home to Wales I was the first NAW Commissioner for Standards from 2000 to 2012.

- 2.10 I welcomed the opportunity lead this review and to collect the widest possible evidence about the strengths and weakness of the current ethical standards framework from those involved in the operation of the framework, how it might be improved and how the requirements of the recent legislation will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 2.11 I was required to produce a report on the review with my findings, conclusions and any relevant recommendations.
- 2.12 I was referred initially to a range of documents in the public domain and in the course of my review I received a large number of other relevant documents, most of which are in the public domain but a number of which were submissions by individual consultees.
- 2.13 My investigation has included a review of all of these documents together with interviews with a wide range of stakeholders involved in the operation of the ethical standards framework in Wales.
- 2.14 I met with:

Welsh Government officials

Deputy Director, Local Government Democracy Division

Head of Democracy, Diversity and Remuneration Branch

Former Head of the Ethics and Regulations Team

Policy lead, Ethical Standards Framework

Head of Local Government Partnerships Policy

Local Government Partnerships Policy - Community Councils & Regulation

Head of Fire & Rescue Services Branch, Community Safety Division

Head of Landscape & Outdoor Recreation, Economy, Skills and Natural Resources

Head of Welsh Tribunals Unit

Welsh Local Government Association

Head of Policy (Improvement and Governance)

Policy and Improvement Officer (Democratic Services)

One Voice Wales

Chief Executive

Deputy Chief Executive and Resources Manager

Society of Local Councils Clerks

Wales Policy Liaison Officer

Public Services Ombudsman for Wales

Ombudsman

Director of Policy, Legal and Governance

Adjudication Panel for Wales

APW President

Monitoring Officers

Monitoring Officer of Caerphilly County Borough Council

Monitoring Officer of Cardiff Council

Monitoring Officer of Ceredigion County Council

Monitoring Officer of Conwy County Borough Council

Monitoring Officer of Denbighshire County Council

Monitoring Officer of Flintshire County Council

Monitoring Officer of Gwynedd Council

Monitoring Officer of Monmouthshire County Council

Monitoring Officer of Powys County Council

Monitoring Officer of Rhondda Cynon Taf County Borough Council (written submission)

Monitoring Officer of Vale of Glamorgan Council

Monitoring Officer of Wrexham County Borough Council

Meeting of Monitoring Officers Group

Fire and Rescue Authorities

Monitoring Officer of South Wales Fire and Rescue Authority

National Park Authorities

Monitoring Officer of Pembrokeshire Coast National Park Authority

Chairs of Standards Committees

Mid and North Wales Forum for Chairs of Standards Committees

Chair of Cardiff Standards Committee

Chair of Rhondda Cynon Taff Standards Committee

Chair of Vale of Glamorgan Standards Committee

Chair of Mid and West Wales Fire and Rescue Authority Standards Committee

2.15 I thank all those that I interviewed as part of this review for their willingness to share with me openly and comprehensively their experience and their professional observations, opinions and conclusions about the operation of the ethical standards framework in Wales, and what needs to change to ensure that the framework is fit for purpose.

3 The current ethical standards framework for local government in Wales

- 3.1 Part III of the Local Government Act 2000 (the 2000 Act) sets out an ethical standards framework for local government in Wales. It created a power for the National Assembly for Wales to issue a Model Code of Conduct to apply to members and co-opted members of all relevant authorities in Wales (a county/county borough council; community council; fire and rescue authority; and a national park authority). This power was transferred to Welsh Ministers by the Government of Wales Act 2006. In 2008 (as amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.
- 3.2 **The Model Code of Conduct** sets out what is required of all elected members in respect of appropriate standards of conduct in public office. For example, the Code requires members to show respect and consideration for others and not to use bullying behaviour or to harass any person. Councillors must act objectively and in the public interest, having regard to the advice of officers, and they must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent or unless required by law to do so.
- 3.2.1 The Local Government Act 2000 empowered the National Assembly to issue principles which those elected to relevant authorities must have regard to when undertaking their role. The Code of Conduct is based on these principles which are designed to promote the highest possible standards of conduct. These principles draw on the 7 Principles of Public Life which were set out in the Nolan Report 'Standards of Conduct in Local Government in England, Scotland and Wales'. Three more principles were added to these: '*a duty to uphold the law*', '*proper stewardship of the Council's resources*' and '*equality and respect for others*'. The current principles were set out in a statutory instrument (1. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166))
- 3.2.2 Members elected to relevant authorities give generously of their time and commitment for the benefit of their communities. The 10 principles provide a framework for channelling that commitment in a way which will reflect well on the Councillor and their authority, and give the local community confidence in the way that the authority is governed.
- 3.2.3 The individual sections of the Code of Conduct are designed to support the implementation of the 10 Principles of Public Life as detailed below.

1. *Selflessness*

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on, or to avoid a disadvantage for, themselves or to improperly confer an advantage or disadvantage on others.

2. *Honesty*

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

3. Integrity and propriety

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

4. Duty to uphold the law

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

5. Stewardship

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

6. Objectivity in decision-making

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

7. Equality and respect

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

8. Openness

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

9. Accountability

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

10. Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

3.2.4 The Principles are not part of the Model Code of Conduct and failure to comply with the Principles is not of itself indicative of a breach of the Code. However, it is likely that, for example, a failure to adhere to the Principle concerning 'equality and respect' would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

3.2.5 All relevant authorities in Wales were required to adopt the Code in its Model form in its entirety, but could make additions to the Code provided these were consistent with the Model Code. This was intended to give certainty both to elected members and to the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for those elected members who serve on more than one authority and for the general public.

3.2.6 All elected members, when they sign the Declaration of Acceptance of Office, confirm that they will comply with their Council's Code of Conduct. It is the member's personal responsibility to ensure that they understand their obligations under the Code and act in a way which shows that they are committed to meeting the high standards of conduct that are expected of them as a member. Ultimately, as a member, they are responsible for the decisions they take and can be held to account for them. However, this does not imply that they can take decisions which breach the Code or which are contrary to advice simply because the decision is theirs to take.

3.2.7 The Public Services Ombudsman for Wales has issued very helpful guidance to assist Councillors in deciding when the Code of Conduct applies to them:

- Conduct in public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply when he or she is acting as an elected member or acting as a representative of the Council. However, as there may be circumstances in which a member's behaviour in private life can impact on the reputation and integrity of the Council, some of the provisions of the Code apply at all times. When reaching a decision as to whether the Code applies at a particular time the Ombudsman has regard to the particular circumstances and the nature of the conduct at that time.

- When does the Code apply?
 - whenever a member acts in an official capacity, including whenever they are conducting the business of their authority or acting, claiming to act, or give the impression that they are acting, in their official capacity as a member or as a representative of their authority.
 - at any time, if the member conducts themselves in a manner which could reasonably be regarded as bringing their office or their authority into disrepute or if they use or attempt to use their position to gain an advantage or avoid a disadvantage for themselves or any other person or if they misuse their authority's resources.

- where a member acts as a representative of their Council on another relevant authority, or any other body, they must, when acting for that other authority, comply with their Council's Code of Conduct. When nominated by their Council as a trustee of a charity they are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission.
- if a member is acting as a representative of his or her Council on another body, for example on an event committee, which does not have a Code of Conduct relating to its members, the member must comply with their Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.
- if a member refers to them self as Councillor, the Code will apply. This applies in conversation, in writing, or in the use of electronic media. There has been a significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter. If the member refers to their role as a Councillor in any way or comments that they make are clearly related to that role then the Code will apply to any comments that are made there. Even if the member does not refer to their role as a Councillor, the comments may have the effect of bringing their office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code. The Welsh Local Government Association has produced useful guidance on social media entitled 'Social Media: A Guide for Councillors'. The guidance aims to provide members with a clearer idea about how they can use social media, the possible pitfalls and how to avoid them.
- if a member is suspended from office for any reason, they must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while they are suspended.

3.3 The ethical standards framework in Wales is intended to promote high standards of conduct by Councillors. The **Standards Committees** of principal councils established under section 53 of the 2000 Act have a key role in this regard. They are made up of independent lay members together with elected members of the authority with an independent member as Chair.

3.3.1 The 'general functions' of a Standards Committee are:

- promoting and maintaining high standards of conduct by members of the authority;

and

- assisting members to observe the Code of Conduct adopted by the Council

3.3.2 A Standards Committee also has the following 'specific functions':

- advising the authority on the adoption or revision of a Code of Conduct;

- monitoring the operation of the Code of Conduct;

and

- advising, training or arranging training for members on matters relating to the Code of conduct.

3.3.3 Under other provisions of the 2000 Act, Standards Committees also consider applications by members for dispensation to participate in business for which they have a prejudicial interest. They consider and adjudicate on alleged breaches of the Code of Conduct following investigation by the Public Services Ombudsman or, less often, the relevant Monitoring Officer. Although there has been a tendency for some Committees to see the latter as their key role, their primary focus should be on proactive measures to support members of their Council to maintain appropriate standards of conduct and thereby avoid breaches of the Code. Standards Committees do this through a variety of means, such as working with political group leaders, attending and monitoring Council meetings and reporting annually to Councils on their activities and the standards of conduct within the authority.

3.3.4 The Standards Committee of a principal Council also exercises the above functions in respect of members of Town and Community Councils in its area. However, subject to consultation with those Councils in its area, a sub-committee may be established to undertake all the functions of a Standards Committee in relation to Community Councils. Standards Committees of principal Councils are required to assist members and co-opted members of Community Councils in their area to observe the Code of Conduct, and to arrange for advice and training to be provided. Whilst Community Councillors do not act on decision-making bodies such as Planning Committees they are called upon to take decisions on the allocation of funding from the Council's precept and to offer guidance, drawing on valuable local knowledge, to the County Council about the impact of planning applications. It is imperative that Community Council members are fully aware of the Code of Conduct and its implications for their decision-making and whether they should be involved in making a decision.

3.3.5 When a case is referred to a Standards Committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. Hearings are normally conducted in public unless there are valid reasons for not doing so to promote public confidence in standards in public life. Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke,

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

3.3.6 A member subject to a sanction may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a Standards Committee

3.4 **The Public Services Ombudsman** for Wales has powers to investigate allegations that individual Councillors in Wales have failed to comply with their Council's Member Code of Conduct. A complaint about a failure to comply with the Code of Conduct must be made direct to the Ombudsman, who will decide whether it is appropriate to investigate the matter.

3.4.1 Where the Ombudsman considers a complaint warrants investigation, the investigation will usually be undertaken by the Ombudsman. However, the Ombudsman has powers to refer complaints to the appropriate local authority Monitoring Officer for investigation and determination by the local Standards Committee. The Ombudsman may refer a report on the outcome of an investigation by his office to the relevant Standards Committee or, generally in more serious cases, the Adjudication Panel for Wales.

3.4.2 The Public Services Ombudsman for Wales investigates complaints that members of relevant authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code the Ombudsman uses a two-stage test:

- the first stage is to establish whether there is direct evidence that a breach of the Code actually took place. The level of proof that is required is 'on the balance of probabilities'
- if that first evidential stage is met, at the second stage the Ombudsman considers whether an investigation or a referral to a Standards Committees or the Adjudication Panel for Wales is required 'in the public interest'. Public interest factors include:
 - the seriousness of the breach
 - whether the member deliberately sought personal gain for themselves or another person at the public expense
 - whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
 - whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
 - whether there is evidence of previous similar behaviour on the part of the member

- whether the investigation or referral to a Standards Committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a Standards Committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (the Ombudsman takes account of the outcomes of previous cases considered by Standards Committees across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a Standards Committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

3.4.3 These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case. The Ombudsman has a wide discretion as to whether to begin or continue an investigation. He has revised the two-stage test adopted by his predecessor in order to provide greater clarity on how he will usually exercise his discretion and to secure a degree of consistency and certainty in the decisions that he reaches.

3.4.4 When the Ombudsman has investigated a complaint he may refer the matter to a relevant Standards Committee or to the Adjudication Panel for Wales for determination. This will depend on the nature of and individual circumstances of the alleged breach. When issuing his report the Ombudsman reflects on and analyses the evidence gathered and draws his conclusions as to whether it is likely that a breach of the Code has occurred. However, the authority and responsibility to make a determination of breach rests solely with a Standards Committee or the Adjudication Panel for Wales.

3.5 **Local Resolution Process**

Most principal councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there are a number of Community Councils that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code of Conduct or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Ombudsman about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

3.5.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

3.6 **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent tribunal established under Part III of the Local Government Act 2000 that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

3.6.1 The Adjudication Panel for Wales has two statutory functions in relation to breaches of the Code of Conduct:

- to form Case or Interim Case Tribunals to consider references from the Public Service Ombudsman for Wales following his investigation of allegations that a member has failed to comply with their authority's Code of Conduct;

and

- to consider appeals from members against the decisions of local authority standards committees that they have breached the Code of Conduct in Appeal Tribunals.

3.6.2 The Adjudication Panel for Wales' procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended);

and

- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

3.6.3 The Adjudication Panel for Wales operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the Panel are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the Adjudication Panel for Wales clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Panel. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

3.6.4 Anyone wishing to respond to a reference from the Public Services Ombudsman for Wales or to make an application for permission to appeal to the Adjudication Panel for Wales must complete and send the relevant form to the Panel. At an Adjudication Panel for Wales Hearing the Panel is composed of a legally qualified chairperson and two lay members. Legally qualified members can also sit as a lay member. Panel Hearings are normally held in public and take place close to the authority area. The Adjudication Panel for Wales publishes its decisions on its website. Decisions of Case Tribunals can be appealed on limited grounds to the High Court, and permission to appeal to the High Court must first be sought from the High Court.

3.6.5 When the Public Services Ombudsman refers a case to the Adjudication Panel for Wales its role is to determine whether a member has breached the Code and whether a sanction should be imposed. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

3.6.6 Where either a Standards Committee or the Panel suspends or partly suspends a member or co-opted member that member is still subject to the Code of Conduct, in particular the provisions set out in paragraphs 6(1)(a) (*'bringing the office of member or authority into disrepute'*) and paragraph 7 (*'improperly using the position of member'*).

3.7 The role of the **Monitoring Officer** of a principal council

The Monitoring Officer is an officer employed by the County or County Borough Council. Among many other things they advise and assist County Councillors. Monitoring Officers may offer some training and advice to Community Councils in their area. The Monitoring Officer has a significant role in the local resolution process outlined earlier and they will also work closely in advising the Council's Standards Committee.

3.8 The role of the **Clerk** of a Community Council

The Clerk has a complex role and advises Community Councillors on relevant legislation, including matters relating to the Code of Conduct and on the Council's Standing Orders. The Clerk will work closely with the Chair to ensure that appropriate procedures are followed at meetings and that all necessary information is available to Councillors so that they may make informed decisions. Clerks may approach their relevant County or County Borough Council's Monitoring Officer for advice and support.

3.8.1 The Clerk is an employee of the Council and is not required to abide by the Code of Conduct. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Public Services Ombudsman for Wales cannot consider complaints regarding the performance of the Clerk as this is a matter for the Council as the Clerk's employer.

3.9 **Complaints to the Public Services Ombudsman for Wales**

3.9.1 In 2019/20 the Public Services Ombudsman received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

	2019/20	2018/19
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	231	282

3.9.2 This decrease in 2019/20 related almost wholly to the reduction in complaints made by or against members of Community Councils. The Ombudsman found this encouraging and suggested in his Annual Report for 2019/20 that standards of conduct of members of

these bodies may be improving and/or that the local resolution of issues may be taking place with good effect. Nevertheless, he is still receiving complaints in respect of a small number of Community Councils which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues. When I spoke with him he exemplified this by referring to one complaint he had received that one member of a Community Council had been clicking his biro aggressively at another member. 18% of the Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. The Ombudsman has, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

- 3.9.3 In 2019/20 135 of the 231 complaints considered by the Public Services Ombudsman for Wales concerned Community Councillors, a welcome 18% reduction from the 190 complaints about Community Councillors considered by the Ombudsman in 2018/19. However, whilst the Ombudsman hoped that this was a sign that standards of conduct in Community Councils in particular was improving, and although the Ombudsman's Annual Report for 2020/21 is not yet published, when I spoke with him he gave me advance notice of a 47% rise in the number of complaints he received in 2020/21. He also told me that the early indications are that there will be a further significant increase in the current year (2021/22). He expressed concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view mandatory training of all Councillors combined with increased local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
- 3.9.4 As in previous years, the majority of the Code of Conduct complaints received during 2019/20 related to matters of '*promotion of equality and respect*' (49%) and '*disclosure and registration of interests*' (17%). The Ombudsman expressed concern that these themes continue to dominate and that there has been a year on year increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of principal councils/County and County Borough Councils or Community Councils. He considers that members could benefit from training or refresher training on these subjects although his impression from investigations is that many members of Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.
- 3.9.5 The Ombudsman's view, endorsed by all of those I met with during my review, is that Code of Conduct training is essential to becoming a 'good Councillor', and that members should undertake this training as soon as they become elected/co-opted and that there should be regular refreshment on the provisions and requirements of the Code of Conduct. There is currently no statutory obligation for members of Community Councils to complete such training although they are required to comply with the Code.
- 3.9.6 In 2019/20, 202 or approximately 86% of all Code of Conduct complaints were closed after assessment against the Public Services Ombudsman's two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%). The remaining complaints taken forward to

investigation represented the most serious of the complaints received.

3.9.7 During the Ombudsman's investigation, evidence gathered is reviewed to assess whether it remains in the public interest to continue the investigation. Where it appears that investigating a matter is no longer in the public interest, the decision is made by the Ombudsman to discontinue that investigation. Sometimes the investigation finds no evidence of a breach. Finally, when an investigation is concluded, the Ombudsman can determine that '*no action needs to be taken*' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour may be suggestive of a breach of the Code and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned. The Ombudsman made one or the other of these above determinations in 85% of the Code of Conduct investigations in 2019/20.

3.9.8 In cases which cannot be concluded in this manner or which point to serious breaches of the Code, it is necessary for the Ombudsman to refer the case to a relevant local Standards Committee or to the Adjudication Panel for Wales for consideration. In 2019/20 5 referrals were made, 2% of all the Code of Conduct complaints that were closed, compared to 8 or 3% in 2018/19. In 2019/20 these referrals were:

- 4 referrals to Standards Committees
- 1 referral to the Adjudication Panel for Wales

3.9.9 The Adjudication Panel for Wales or the relevant local Standards Committee considers the evidence, together with any defence put forward by the member concerned. It then determines whether a breach of the Code has occurred and if so, what penalty, if any, should be imposed.

3.9.10 The 4 referrals to Standards Committees in 2019/20 concerned behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct indicating bullying behaviour towards an employee of a contractor of the authority. When the 2019/20 Annual Report was published, the Adjudication Panel for Wales was considering an appeal on the issue of sanction only in that case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. When the 2019/20 Annual Report was published, these two referrals were awaiting determination.

3.9.11 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing their authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

3.9.12 Between 2016/17 and 2018/19, the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 88% of referrals by the Ombudsman. In 2019/20 Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by the Ombudsman. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice the Ombudsman's investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

3.9.13 As is clear from these statistics above, the Public Services Ombudsman for Wales makes referrals to a Standards Committee or the Adjudication Panel for Wales only in a very small number of cases, and he does not believe that the case referrals are indicative of a wider decline in member conduct in Welsh local government. Nevertheless, the outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them. Even when the Ombudsman does not refer a case, the investigation is used as an opportunity to promote good practice, and the members investigated are reminded of their obligations under the Code and, where relevant, further training or engagement with the authority to prevent further possible breaches is proposed. Members are also sometimes made aware that the matter could be taken into consideration in the event of any future complaints of a similar nature. The Ombudsman is clear in his report that it is important that innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned should be deployed.

4 My findings

4.1 In the course of my review I have met with most of those individuals and organisations that are involved in the operation of the ethical standards framework in Wales. The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and a large number of those that I consulted proposed that '*if it ain't broke don't fix it*'. Many respondents commented that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being significantly reduced, and that the already high ethical standards in Welsh local government could be further enhanced.

4.2 The Model Code of Conduct

4.2.1 Clear, relevant, and proportionate Codes of Conduct are central to maintaining ethical standards in public life. Codes of Conduct were identified by the Committee on Standards in Public Life in its first report in 1995 as one of the essential 'strands' in promoting and maintaining ethical standards in public life, at a time when many public sector organisations did not have them. Codes of Conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

4.2.2 The power to issue a Code of Conduct was transferred to Welsh Ministers by the Government of Wales Act 2006, and in 2008 (amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt. In Wales, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a Councillor behaves in a way that could '*reasonably be regarded as bringing [their] office or [their] authority into disrepute*'. This includes any time a Councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. As noted earlier, the Public Services Ombudsman for Wales has also issued guidance of the application of the Code of Conduct to social media use.

4.2.3 I was required as part of this review to conduct an audit of the Codes of Conduct adopted by all the relevant authorities in Wales against the Model Code to identify any local variances and to consider whether the ten 'principles' of conduct are still relevant and whether the Model Code of Conduct needs updating. This would include identification of areas where improvements could/should be made. The Monitoring Officers of all

principal councils, National Parks Authorities, and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a County Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half of local authorities also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

- 4.2.4 Paragraph 17 of the Model Code requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's monitoring officer, or in relation to a Community Council, to the authority's 'proper officer' of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations but a number of authorities have specified a threshold beyond which there must be a declaration. This ranges from £21 to £100 and there is agreement that the threshold should be specified in the Code to ensure consistency across Wales.
- 4.2.5 I was also required to explore options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Local Government and Elections (Wales) Act 2021 to stop Councillors' addresses being published. As I understand it, the law requiring the publication of the home addresses of Councillors was changed in the Local Government and Elections (Wales) Act 2021 so Councils will no longer do this from May 2022. This is for the safety and privacy of members, and reflects the fact that email or phone is now a more usual way of contacting members. However, Regulations issued under the Local Government Act 2000 still require members to include their home address in the Council's Register of Interests so the legislation is not in alignment. There is agreement that the Code of Conduct should not require Councillors to disclose their home address to declare the home address, and that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'

- 4.2.6 The Public Services Ombudsman has raised an issue in relation to the definition of 'person', a term frequently used in the Model Code of Conduct. A 'person' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Ombudsman has had to rely on the definition in the Interpretation Act 1978 which is 'a body of persons corporate or unincorporate'. The Ombudsman has been challenged when he has tried to use his powers to obtain information from a company or a charity and he has to threaten and or use powers to formally bring criminal proceedings and or contempt proceedings under current legislation for failing to cooperate with the investigation by the Ombudsman. So a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

4.2.7 Paragraph 4a of the Model Code of Conduct requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

There is concern that this provision does not include all protected characteristics, and the view from consultees is that even though no problems have resulted as yet from the narrow coverage of this provision it should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

4.2.8 It is clear that there is the potential for breaches of the Code of Conduct resulting from the extensive and increasing use being made by elected members of a range of social media. The Welsh Local Government Association has produced useful guidance on social media in *'Social Media: A Guide for Councillors'*. The guidance provides members with advice about how to use social media, the possible pitfalls and how to avoid them. It reminds members that whenever something is posted on social media it becomes a publication, and is effectively made a broadcast in the public domain that is subject to both the Code of Conduct and to various laws. The WLGA guidance reminds members that the Code of Conduct applies to members whenever they are *'Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority'*, and the Code applies if a member conducts them self *'in a manner which could reasonably be regarded as bringing your office or your authority into disrepute'*. If a member can be identified as a Councillor when using social media, either by the account name or how they are described or by what they comment on and how they comment, the requirements of the Code of Conduct apply. If a member says something that could be regarded as bringing their office or authority into disrepute the Code applies even if the member is not apparently acting in an official capacity or does not identify him or herself as a member. The Ombudsman's guidance states that:

'Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute', and in the same way that you are required to act in Council meetings or in your communities you should:

- show respect for others - do not use social media to be rude or disrespectful
- not disclose confidential information about people or the Council
- not bully or intimidate others - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- not try to secure a benefit for yourself or a disadvantage for others

- abide by the law on equality - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010, even as a joke or *'tongue in cheek'*

This helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.

4.2.9 Criminal convictions

6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. It states:

(You must) 'report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty)'

In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened until the Monitoring Officer's DBS checks have identified convictions or the matter has been reported in the press. The Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

4.3 Training for Councillors

4.3.1 Without exception, every individual or organisational representative that I met in the course of this review expressed the view that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. As was demonstrated in the audit of the Codes of Conduct adopted by all the relevant authorities mandatory training on the Code of Conduct is already a requirement of more than half of the principal councils so this would not be a controversial development for members of principal councils. However, although all members of Community Councils are currently required under the 2004 Order to be bound by the Code of Conduct it may be seen as a matter of controversy for them to be required also commit to training without due notice so advice that this is the case could be provided to all those considering standing for

election. Alternatively, it may be easier to amend the Code of Conduct to require those subject to the Code to undergo appropriate training on the Code.

4.3.2 If initial and refresher training on the Code is made mandatory there will need to be consideration of how that training can be resourced and delivered. At the moment many Monitoring Officers provide training on the Code of Conduct not only to their own members but also to members of Community Councils in the area. Some of the larger Community Councils arrange the training themselves, often using the training materials developed by One Voice Wales on the Code of Conduct and wider governance matters. Sometimes One Voice Wales provides the training direct but this has resource implications particularly for the smaller Community Councils.

4.4 **Standards Committees and Independent Chairs**

4.4.1 I met with a number of Independent Chairs of Standards Committees and also attended a meeting of the North Wales Forum for Chairs of Standards Committees in the course of this review. I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Community Councils in their area. In a number of authorities the Independent Members of the Committee attend meetings not only of their own Council but also meetings of the Community Councils in their area, recording their assessment of the meeting generally and the conduct of members specifically and feeding this assessment back to the Clerk and Chair of the Community Council. They stand ready to intervene if necessary to assist the Council and its Clerk to deal with challenging and inappropriate behaviour by members of that Council and, in one case, the Independent Chair monitors the situation in particularly problematic Community Councils in his or her area and intervenes to 'police' the behavior of the members involved.

4.4.2 There needs to be a consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the local situation for the principal authority concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

4.4.3 The Local Government and Elections (Wales) Act 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. The Act includes a number of provisions which are fundamental to greater transparency and

openness between local Councils and communities, as well as measures to combat bullying and harassment amongst elected members and Council staff. These provisions include:

- a new duty on leaders of political groups in principal councils to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- a requirement for the group leader(s) to co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct across the Council
- new functions for Standards Committees to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties
- a requirement for the Standards Committee to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards. This report at the end of each financial year should describe how the Committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the Council. The Council will be obliged to consider the report within three months of its receipt. This new duty will help to ensure that all Standards Committees adopt good practice and that standards issues are considered regularly (at least annually) by all Council members.
- a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include provision of training on the Code of Conduct at appropriate intervals.

4.4.4 There is seen to be a need for initial training of members of Standards Committee members, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The initial training should be refreshed immediately prior to a case being heard as well.

4.4.5 There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and that the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently would encourage consistency of approach and the adoption of best practice across Wales.

4.4.6 The Public Services Ombudsman for Wales accepts that there is a need for more references back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to *'nip things in the bud'* at a local level.

4.4.7 I was asked as part of my review to consider whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of its Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

4.5 **Community Councils**

4.5.1 There is agreement by all those that I met in the course of the review that local resolution combined with the mandatory training of all members has the potential to provide a means for resolving many issues locally before they get out of hand, and to prevent low-level complaints and 'grumbles' about fellow members turning into formal complaints to the Ombudsman that he either has to deal with or refer back for local consideration. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime must remain in place to deal with instances of serious misconduct.

4.5.2 Many of those I have spoken with expressed serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Community Councils. In particular, conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some Councils to retain members and Council officers. Less serious, but nonetheless disruptive behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of Council business. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Community Councils that have given rise to a disproportionate number of complaints in the past. His approach is that bullying and harassment, or lack of respect will simply not be tolerated. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and

inappropriate behaviour, including advice on formulating an effective complaint. This guidance for members of Community Councils emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration.

4.6 Local resolution of complaints

4.6.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

4.6.2 Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. This provides guidance relevant to Town and Community Councils in formulating and operating such protocols. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

4.7 The Public Services Ombudsman for Wales

4.7.1 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which Town and Community Councillors operate. Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the

operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of Standards Committees and the Adjudication Panel for Wales. The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

4.7.2 Section 69 of the 2000 Act empowers the Public Services Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority's Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman's attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by Standards Committees and the Adjudication Panel for Wales when exercising their respective functions.

4.7.3 The two-stage Public Interest Test

The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman's discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of Town and Community Councils. The Ombudsman has continued to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The Ombudsman considers that the involvement of Standards Committees in applying the two-stage test is impractical, not least as it may be perceived as prejudicing the later consideration of any report of a subsequent investigation that has been referred back to a Committee. It would probably also require primary legislation to make this a function of a Standards Committee or some other person or body. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by Monitoring Officers. However, Monitoring Officers raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively. There is also a reluctance on the part of Monitoring Officers to be involved in the investigation of complaints against members of their own authorities for understandable reasons.

- 4.7.4 A number of consultees expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken, and the validity of the two-stage test was also questioned. The first stage of the test was considered to be objective and based on reasonably clear criteria. However, the second stage 'public interest' test was considered to be subjective and based mainly on the Ombudsman's opinion. It was suggested that the 'public interest' test should be applied by a wider 'audience' appointed for the purpose, such as the Standards Committee of the principal council for the area. There was also concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. The exercise of the Ombudsman's discretion more towards referral than at present would be welcome.
- 4.7.5 There is a concern that the investigations undertaken by the Ombudsman take too long, linked to a concern that the power to suspend the member concerned whilst the investigation is being carried out is not being exercised by the Adjudication Panel for Wales though a referral by the Ombudsman. This can mean that a member facing serious allegations of a criminal nature may still be able to act as a Councillor with potential implications for the safeguarding of members of the public, other Councillors and employees of the local authority. The Ombudsman responded to the concerns about the length of some investigations by pointing to the unavoidable delays resulting from the unavailability of witnesses and the need to gather evidence that had not been included as part of the initial complaint. He also reiterated his concern that too much of his organisation's time and limited resources is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation.

4.8 The Adjudication Panel for Wales

- 4.8.1 The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the practices that apply to the Panel. The Panel is a creature of statute created by the Local Government Act 2000 but since devolution the underpinning of the Panel's powers and processes result from a mixture of the LGA 2000 and a variety of Welsh Regulations, particularly The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and The Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (both amended). The Regulations were drafted by the Welsh Government, and it would be for Welsh Government to deliver any policy amendments. In addition, 'practice directions' need the approval of the First Minister and while it is for the President of the Panel to set out new procedures or changes for Appeal Tribunals, the First Minister must agree any changes. Presidential Guidance is a matter for President but it is not legally binding.

4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel's work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

4.8.4 Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally. This is seen to avoid delay with the Panel procedure and allow both the accused member and the Tribunal to obtain additional evidence easily.

4.8.5 Appeal Tribunal procedure

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. Service should be by first class post with deemed service rules in place and Panel should be given the express ability to anonymise witnesses. There is a grey area on the subject of witness summons – Case Tribunals expressly have the power to do this through the relevant Regulations but the Regulations for Appeal Tribunals say that the Panel President determines this with the consent of the First Minister. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

4.8.6 Case Tribunal procedure

The Panel President considers that the Regulations are outdated in several respects. Service should be by first class post with deemed service rules in place, the ability to anonymise witnesses is required, and there is a Regulation that says Hearings can only be postponed with seven days notice given to the accused member. The ability to have part public and part private hearings is not expressly permitted currently.

4.8.7 Permission to appeal procedure

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well – it only allows delegation of her power to another legal member if she is absent whereas she would prefer to have discretion about delegation, such as when the accused member is known to her, it requires her to make a decision within 21 days with an extension of time if further information is required but it is not clear from when the new deadline applies, and does not give the Public Services Ombudsman any opportunity to make submissions to the Panel. A Hearing is possible if there are special circumstances, but no extension of time is given to effectively allow this. The President proposes minor amendments to make the process more balanced and sensible.

4.8.8 Sentencing powers

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or

- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

Monitoring Officers have confirmed that they would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

4.8.9 Interim Case Tribunals

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high. This view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The fact is that the Ombudsman has never applied for such a Hearing. The process is lengthy and the LGA 2000 does not explain sufficiently what is required to deal with such hearings. The intention in the Act appears to be to allow an accused member to be suspended for six months (it is unclear whether this is one term of suspension or if it can be renewed on application) while the Ombudsman investigates if that Councillor through their role was interfering with the investigation or if for some other reason it was necessary to suspend on an interim basis. The issue has arisen several times where Councillors are being prosecuted for historic sex offences and there is a strong feeling from Monitoring Officers and Standards Committees that it is inappropriate to continue to remunerate a Councillor who is facing such charges, and that his or her continued activities as a Councillor could endanger members of the public, other Councillors or members of staff. A member who is charged with criminal offences is innocent until proven guilty, and in order for the Ombudsman to make an interim referral there would need to be strong evidence that it is in the public interest for a suspension to be imposed, particularly if the offences are historical. This could be met if, for example, there is evidence that the member represents a risk to the public at large or to a particular group in the locality. A neutral act of suspension akin to the practice in employment matters pending hearings taking place would provide some assurance to the public and to local authorities on the risk that the member concerned could reoffend or misuse their position/standing in the local community whilst being investigated or awaiting criminal trial. In addition, an Interim Case Tribunal would follow the same process as a full Case Tribunal, which means it would take at least three months to have a Hearing, and the Hearing would require a full Panel which would then present difficulties in constituting a new Panel for the final Hearing. There is no assistance in the legislation about how to manage such Hearings and 'public interest' is not defined. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with

the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

- a) if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b) and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*
- and*
- c) and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5 Conclusions and recommendations

5.1 I welcomed the opportunity to lead this review and to collect the widest possible evidence

from those involved in the operation of the ethical standards framework about strengths and weakness of the current framework, how it might be improved and how the requirements of the recent legislation as it relates to ethical standards will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

5.2 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome. This involvement needed to be demonstrated as part of the outcome of this work. I have met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

5.3 The first phase of the review involved engagement with those individuals and representatives of organisations to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published have also been considered.

5.4 The following were required as key components of delivery:

- *An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances*
- *An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements*
- *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.*
- *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.*
- *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the*

approach to addressing concerns.

- *Consideration of the current sanctions and whether they are still appropriate*

5.5 This first stage of the review has covered each of these issues and my findings and recommendations for change below relate to the key components of delivery:

5.5.1 ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

I conducted an audit of the Codes of Conduct adopted by all the required authorities against the Model Code of Conduct to identify any local variances and to consider whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This included identification of areas where improvements could/should be made. The Monitoring Officers of all principal councils, National Parks Authorities and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a county Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half also have a mandatory training requirement again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

5.5.2 ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

All of those I met as part of this review consider that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales.

However, there are concerns by the Public Services Ombudsman and Monitoring Officers about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code of Conduct for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being

significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

5.5.3 Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.

The consensus is that the current framework is fit for purpose, works well in practice and a number of those that I consulted proposed that *'if it ain't broke don't fix it'*. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate - and superior to the Code of Conduct used in English local government - and not in need of major revision.

However, I have proposed a number of amendments to the Model Code of Conduct in respect of:

- Paragraph 17 of the Model Code that requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's Monitoring Officer, or in relation to a Community Council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations and a number of authorities have specified a threshold beyond which there must be a declaration. The threshold should be specified in the Code to ensure consistency across Wales.
- The law requiring the publication of the home addresses of Councillors has changed recently so Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. There is agreement that the Code of Conduct should not require Councillors to disclose their home address, and it is proposed that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'
- A *'person'* is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Public Services Ombudsman has had to rely in conducting his investigations on the definition in the Interpretation Act 1978 which is *'a body of persons corporate or unincorporate'*. This has caused problems, and it is considered that a clear definition of what is meant by a *'person'* on the face of the legislation or in the Model Code would be beneficial.
- There is concern that the provision in Paragraph 4a of the Model Code of Conduct which requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

does not include all protected characteristics. This provision should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

- The potential for breaches of the Code of Conduct as a result of the extensive and increasing use being made by elected members of a range of social media is a matter of concern. The helpful guidance on the use of social media by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened and the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

Every individual or organizational representative that I met proposed that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. The Local Government and Elections (Wales) Act 2021 includes a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include training on the Code of Conduct at appropriate intervals. If initial and refresher training on the Code is made mandatory for all councillors there

will need to be consideration of how that training can be resourced and delivered.

- **Increased use of local resolution of complaints**

Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. Members may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal authority's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Consideration should be given to whether the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

There is concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman has had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. Greater use of the Ombudsman's discretion for referral than is the case at present would be welcomed by Monitoring Officers and Chairs of Standards Committees. The Ombudsman is sympathetic to the view expressed by some of those I spoke with that his investigations take too much time and that too often quite serious complaints are simply not dealt with. He has expressed his concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the processes that apply to the work Panel.

- **Restricted reporting orders**

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically. The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well and proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are limited and the President would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England. The Public Services Ombudsman and Monitoring Officers have confirmed their support for this.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high, and this view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a

test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

a. if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;

b. and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;

and

c. and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5.5.4 Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.

I was struck by the variation in the way that Standards Committees in Wales see their remit and at the different roles played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs

seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Town and Community Councils in their area. There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, but accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

The Local Government and Elections (Wales) Act 2021 includes a number of provisions that will have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.

There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently that would encourage consistency of approach and the adoption of best practice across Wales.

The Public Services Ombudsman for Wales accepts that there is a need for more reference back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to '*nip things in the bud*' at a local level.

I reviewed whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of the Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Town and Community Councils that have given rise to a disproportionate number of complaints in the past, and guidance prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and inappropriate behaviour. This is an issue that may be mitigated to some extent by a requirement for mandatory training of councillors and greater use of local resolution procedures, but it is a serious problem that will continue to need to be monitored and addressed where necessary by local Standards Committees and Monitoring Officers

5.5.5 *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.*

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

5.5.6 *Consideration of the current sanctions and whether they are still appropriate*

Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

A member subject to a sanction by a Standards Committee may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination.

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, the Public Services Ombudsman and Monitoring Officers confirmed their support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

5.5.7 Accessibility of the ethical standards framework

Although this was not an issue raised by any of those that I consulted there is nevertheless a concern that the ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, based on my own experience of searching principal Council websites as well as the Welsh Government website for information about the Code of Conduct, or the work of Standards Committees or how to complain about the conduct of a councillor, a member of the public would have great difficulty in finding helpful information if they wished to complain. And of course not every member of the public has internet access, and some members of the public have particular difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group' such as the traveler community or because of language problems. I have no practical recommendation about how this should be addressed but if the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

- 5.6 The second phase of the review will focus on working with partners and stakeholders to deliver any changes to the ethical standards framework that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

Richard Penn

Independent Consultant

July 2021

