

**Response of the Public Services Ombudsman for Wales
to the Welsh Government's consultation
on the Local Government Act 2000 – Part III,
Conduct of Local Government Members**

1. As Public Services Ombudsman for Wales, I have two roles. The first is to investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. The second is to consider complaints alleging that members of local authorities have broken their Code of Conduct. It is in the light of my experience in the latter role that I am responding to this consultation.
2. I have on a number of occasions expressed my concern about certain aspects of the current local government ethical framework. In general terms, I very much welcome the amendments being proposed within the consultation document. However, I do have some specific comments to make in relation to the individual questions in the consultation document, which are as follows:

Question 1. Are any further amendments required to the Model Code to give practical effect to the provisions of the 2013 Act?

I note, and welcome, the proposed clarification that all personal interests, not just those financial and other interests, fall within the category mentioned in paragraph 10(2)(a) and should be entered in the register of members' interests.

However, from the perspective of my office and, indeed, good governance practice, I would suggest that the exemption for members of community councils should be removed. Having interests recorded clearly within a register makes conflicts, actual and potential, transparent in advance of meetings (and would also aid the clerk to the council in relation to ensuring the proper conduct of meetings).

Question 2. Do you agree that whilst the obligation on members to report potential breaches of the Code to the Ombudsman is removed, the obligation to report such breaches to the relevant monitoring officer should be retained

Yes. From my perspective, the intention in relation to removing the obligation to report potential breaches to me as Ombudsman, was to facilitate the local resolution approach (which I strongly support).

It is important that there remains an obligation on members to report potential breaches of the Code, doing so directly to the monitoring officer removes what is currently a circuitous route of breaches being reported to me as Ombudsman and then me referring low level complaints to monitoring officers for consideration at local level. I see no difficulty in circumstances of monitoring officers referring up a member's complaint to me where: (a) it is considered to be too serious to be considered at local level; or (b) for whatever reason, it has not been possible to resolve the complaint at local level

Question 3. Do you agree that the omission of paragraph 10(2)(b) appropriately addresses the difficulties experienced in applying this aspect of the Code in practice?

Yes. From my perspective, the removal of paragraph 10(2)(b) is helpful, particularly as it resolves the potential conflict with section 25 of the Localism Act 2011.

Question 4. Are any further amendments required to facilitate the establishment and operation of a joint standards committee?

I cannot think of any further amendments required. I take the opportunity to state that I welcome the proposal to enable the establishment of joint standards committees. Such an arrangement will, I believe, overcome problems sometimes encountered by local authorities in forming suitably 'independent' committees. This will offer greater flexibility to deal with cases and, in particular, could help overcome problems of conflicts of interest which can often occur. In all, I believe this arrangement will strengthen public confidence in high standards of conduct within local democracy.

Question 5. Do you agree that it is unnecessary to increase the maximum permissible number of members of a joint committee?

Yes. It is my view that increasing the number of members of a joint committee beyond 9 members would negatively affect the effective and efficient operation and conduct of committee meetings and that they would become unwieldy.

Question 6. Are there any unanticipated consequences arising from the proposed change to the term of office of local authority members of standards committees (if yes, please comment below)?

No, I do not foresee any difficulties arising from the proposed change.

Question 7. Do the proposed changes appropriately and sufficiently address the problems that have arisen from the publication of misconduct reports prior to standards committee hearings?

Yes. In the interest of fairness, I am of the view that the papers should remain private until the final determination has been made. However, I think it needs to be made clear that papers should be made public following that determination.

In addition, I have in the past been concerned that standards committee hearings have been held in private when there has been no good reason to do so. I would welcome a provision to also make clear that in order to promote confidence in standards in public life that the presumption should be for standard committee hearings to be heard in public; good reason should be demonstrated for all or part of a hearing to be held in private. This is consistent with the way that justice is administered.

Question 8. Do these proposals make adequate and appropriate provision for the referral of misconduct reports to another authority's standards committee?

Yes, these proposals will address the circumstances that can sometimes occur where a standards committee believes that it has an issue of a conflict of interest.

Question 9. Do you agree that a period of suspension imposed by a standards committee should not extend beyond the end of a member's term of office?

Yes and, in particular, this proposal will bring standards committees in line with the Adjudication Panel for Wales's powers and case law.

Question 10. Do you agree that the proposed procedure for an application for permission to appeal a standards committee determination is appropriate?

Yes. My experience of the arrangements as they currently stand is that occasionally the public purse has suffered unnecessarily as a result of costs arising from hearings in circumstances where there was no prospect of the member winning the appeal.

Question 11. Do you agree that the proposed procedure for the referral of a dispensation application to another authority's standards committee is appropriate?

Yes, this appears to be appropriate because it would resolve any practical problems which may arise when applications need urgent consideration and it would resolve any difficulties which may arise as a result of conflicts of interest.

Question 12. Do you agree that it is appropriate to provide a general dispensation category in the Regulations?

It would be important that such a dispensation would not affect public confidence in the democratic decision making process; it is my view that this should be available only in exceptional circumstances whereby there is no other means of accommodating the member concerned.

I would suggest that if that a provision is included, then there should be a time limit for such dispensations with a requirement for these to be regularly reviewed by the relevant standards committee.

Question 13. Do you agree these amendments are appropriate?

In relation to the 'Other Amendments' I do not foresee any problems with the changes proposed.

Public Services Ombudsman for Wales
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