

Guidance on the Code of Conduct for Local Authority Members

Public Interest Test

- 1) Whilst the local resolution processes within county or county borough councils appear to have had the effect of resolving many of the low level member versus member code of conduct complaints within those bodies, the Ombudsman remains concerned about the number of frivolous, trivial and vexatious complaints being received from community and town council members. It is proposed that we introduce a further public interest test when deciding whether to investigate a complaint or whether to continue an investigation of a breach of the Code to the stage of referring the matter to the Adjudication Panel for Wales.
- 2) The attached paper outlines the proposed new test and we would be grateful to receive any feedback prior to incorporating it into the Ombudsman's revised Guidance on the Code of Conduct for Local Authority Members in the new year.
- 3) It would be helpful to receive any feedback from monitoring officers on:
 - how PSOW's system of referring member versus member cases for local resolution is working; and
 - how beneficial monitoring officers consider the system of offering cases which the Ombudsman considers are unlikely to attract a sanction for local investigation. Take up on this has been fairly low (1 case during 2013/14 and 4 cases so far this year).
- 4) Also, following the Ombudsman's recent appearance before the National Assembly for Wales's Finance Committee it has made the following recommendation to the Ombudsman:

"The Committee recommends that the Ombudsman increase his liaison with the local government sector to ensure that complaints between politicians at local authority and community council level are resolved locally, wherever possible. The Ombudsman should publish a policy to make it clear what action he may take against those politicians who breach their code of conduct by making vexatious complaints."

It would also therefore be helpful if monitoring officers could give their views on this proposal.

Katrin Shaw
Investigation Manager & Legal Adviser

Public Interest Test

It is my role as Public Services Ombudsman to investigate complaints that members of local 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 to the stage of referring the matter to the Adjudication Panel for Wales ("the Adjudication Panel) or a standards committee my office has for a number of years applied the following two stage test.

The first test which has been applied is to establish whether there is evidence that a breach of the Code actually took place. The second test is whether the breach alleged would be likely to lead to a sanction. When exercising my discretion to investigate or to refer a matter for further consideration account is taken of previous cases considered by standards committees across Wales cases are decided accordingly.

Since taking up office I have become increasingly concerned about the number low level complaints my office is receiving. Whilst the local resolution processes within county or county borough councils appears to have had the effect of resolving many of the low level member versus member complaints within those bodies, I remain concerned about the number of frivolous, trivial and vexatious complaints I am receiving from community and town council members.

I have therefore decided to expand upon the two stage test and also consider whether an investigation or a referral to the Adjudication Panel or a standards committee is required in the public interest.

When applying the public interest test I consider each of the following public interest factors set out below. These factors are not exhaustive, and not all may be relevant in every case. The weight to be attached to each of these factors, and the factors identified, will also vary according to the facts and merits of each case.

- the seriousness of the breach, for example, has the member brought their authority seriously into disrepute? The more serious the breach the more likely investigation and referral for further hearing is required.
- has the member deliberately sought personal gain for himself or another person at the public expense? If there is evidence of this I am likely to investigate and refer the matter for further hearing.
- are the circumstances of the breach such that a member has misused a position of trust or authority and caused harm to a person? If there is evidence of this I am likely to investigate and refer the matter for further hearing.

- was the breach 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? If a member's conduct is motivated by any form of discrimination I am likely to investigate and refer the matter for further hearing.
- is there evidence of previous similar behaviour on the part of the member? If so and the matter complained about is serious enough I am likely to investigate and refer the matter for further hearing.
- is the breach such that an investigation or referral to the Adjudication Panel for Wales or a standards committee is required to maintain public confidence in elected members in Wales? If so I am likely to investigate and if evidence of a serious breach is found refer the matter for further hearing.
- is investigation or referral to the Adjudication Panel for Wales or a standards committee a proportionate response? namely, would the cost of an investigation or hearing by the Adjudication Panel for Wales or a standards committee be regarded as excessive when weighed against any likely sanction?

My role is to investigate serious cases in order to maintain public confidence in standards in public life. If I am not satisfied that an investigation or referral to the Adjudication Panel or standards committee is proportionate in the circumstances I will decline to investigate or if, having started any investigation this becomes apparent, I will close my investigation.

Nick Bennett
Ombudsman