

Report



Standards Committee

Part 1

Date: 11th November 2021

Subject Review of Ethical Standards Framework

Purpose To inform Committee about the outcome of the review of the Ethical Standards Framework and the recommendations set out in the final review Report.

Author Head of Law and Regulation

Ward General

Summary The Welsh Government and WLGA commissioned an independent review of the Ethical Standards Framework, to assess whether it remained fit for purpose, in readiness for the May 2022 local council elections. The review was carried out by Richard Penn between April and July 2021. The review took into account the new legislative requirements set out in the Local Government and Elections (Wales) Act 2021 and the current equality and diversity policy context.

The final Report has now been published and concludes that the current arrangements remain fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct. In particular, the report recommends that the current duties could be strengthened by specific reference to the requirements of the Equality Act and that the financial threshold for declarations of gifts and hospitality should be prescribed in the Code, to provide a consistent approach. The review also recommends that the Code should expressly exclude the need to disclose Councillors' home addresses in the public register of members' interests, on the grounds of security. It is also recommended that the Code should require Councillors to self-report to the Ombudsman if they are guilty of any criminal behaviour.

The Minister for Finance and Local Government will now consider those recommendations, with a view to changing the Model Code of Conduct prior to the elections in May 2022. The new Code will then need to be formally adopted by the Council and all community councils. The recommendation is that all new declarations of acceptance of office by newly elected councillors should include an obligation to undertake mandatory Code of conduct training as well as to abide by the provisions of the Code.

In the longer term, there are recommendations to review the wider Ethical Framework by granting increased powers for the Ombudsman to refer complaints for local investigation and resolution. These wider changes will be the subject of further consultation in due course, as they would have significant implications for Standards Committee and Monitoring Officers. The suggestion is that all complaints should be referred for local resolution first before being considered by the Ombudsman and that the Ombudsman will have greater powers to refer some of the less serious complaints back to the Monitoring Officer for local investigation and reporting to Standards Committees. The powers of Standards Committees would also be extended to include the power to require members

to apologise and undertake further training. This would represent a significant change to the previous regulatory framework, where all complaints had to be investigated and referred by the Ombudsman, before Standards Committee could impose any sanctions.

Proposal To note the Report and recommendations of the review.

Action by Head of Law and Regulation

Timetable Immediate

Signed

Background

1. The Ethical Standards Framework for Wales was established by Part 3 of the Local Government Act 2000 to promote and maintain high standards of ethical conduct by members and officers of relevant authorities in Wales.
2. The Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'). These are included in the Model Code of Conduct for elected members, which provides a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.
3. The Welsh Government and WLGA commissioned an independent review of the Ethical Standards Framework, to assess whether it remained fit for purpose, in readiness for the May 2022 local council elections. The review was carried out by Richard Penn between April and July 2021. The review took into account the new legislative requirements set out in the Local Government and Elections (Wales) Act 2021 and the current equality and diversity policy context.
4. The final Report has now been finalised and published. The key question was how ethical standards in local government in Wales could be enhanced, and on a practical point how the number of complaints can be reduced? This involved a review of the members Code of Conduct, the regulatory framework and whether the existing sanctions were sufficient, the role of Standards Committees and support and training for members. In conducting the review, Richard Penn engaged extensively with various stakeholder groups, including Monitoring officers, elected members, the Ombudsman and the Adjudication Panel for Wales.
5. The general consensus of opinion was that the Welsh framework continued to operate better than the English model. 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, concerns were expressed about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. It was considered that 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 would reduce the number of low level complaints that are made and the need for formal investigations.
6. The review report concluded that the current Members Code of Conduct remains fit for purpose and does not require major revision. However, the report recommends a number of possible improvements:-
 - (a) *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 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 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.***

Most councils have a financial threshold for registration of £25 (as in Newport), although Standards Committee have produced guidance which recommends against the acceptance of any gift and hospitality, whatever the value, if that could place a member under any perceived obligation or create an impression of improper influence. Including the prescribed financial limit in the Code would ensure a consistency of approach and would be supported.

- (b) *The law requiring the publication of the home addresses of Councillors has changed under the new legislation and Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. **It is proposed that members should not be required to disclose their home addresses in the public register** 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'*

Newport has redacted that information at a local level for a number of years, on the grounds of the sensitive nature of the personal information and to ensure the personal security of Councillors. Therefore, the proposal to expressly exclude this requirement under the Code is supported.

- (c) *A 'person' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct and 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.***

This is a technical amendment, which would not change the substance of the Code.

- (d) *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. **Therefore, it is recommended that 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.***

This proposal simply reflects the extended equalities and diversity agenda and is, again supported.

- (e) *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. It is proposed that **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***

This is something that the Standards Committee have considered previously and the WLGA guidance has been specifically publicised. A specific reference to the use of social media in the Code itself would help in reinforcing the message and identifying the potential breaches that can occur. Therefore, this proposal is again supported.

- (f) *Paragraph 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 **it is recommended that the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct***

This is supported, as it should be the responsibility of the individuals concerned to self-report any criminal behaviour, rather than any other member. This would avoid any obligation on the part of political Group leaders to report any of their group members, in accordance with their new duties.

7. The review report also contains some other recommendations for strengthening and improving the current Ethical Framework:

(a) Mandatory training on the Code of Conduct for all members of principal councils and community councils

The report recommends that 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.

It is already Council policy that all members should undertake Mandatory Code of Conduct training, but including this undertaking in their Declarations of Acceptance of office would reinforce the requirement.

(b) 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. 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. Therefore, the review report recommends that 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. This would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

This is consistent with the current approach to seeking an early resolution of complaints at a local level.

(c) 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 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.

Although this is broadly welcome, it would represent a significant change to the previous regulatory framework, where all complaints had to be investigated and referred by the Ombudsman, before Standards Committee could impose any sanctions. If there is to be greater investigation and determination at a local level, then this will significantly increase the work of the Monitoring Officer, Deputy Monitoring Officer and Standards Committee.

(d) Changes to the powers and processes of the Adjudication Panel for Wales

The review report sets out a number of proposed changes to the procedures for Adjudication Panel hearings, with restricted reporting orders and anonymity for witnesses in sensitive cases, and extended rules on disclosure of documents. There are also proposed amendment to appeals tribunal proceedings, although there is no proposed change to the requirement for Standards Committee to reconsider any appeal decision that changed or overturned their determination. The permission to appeal process will also be tightened-up. The Panel have also requested additional sentencing powers to impose more varied sanctions. It is also suggested that the process could be simplified for Interim case tribunals to impose an interim suspension pending full hearing, where cases could result in a disqualification.

8. The review also considered 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. The report concluded that 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.
9. The report identifies 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.
10. It is suggested 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 to encourage consistency of approach and the adoption of best practice across Wales.
11. The Ombudsman 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.

12. 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 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
13. The Minister for Finance and Local Government will now consider those recommendations, with a view to changing the Model Code of Conduct prior to the elections in May 2022. The new Code will then need to be formally adopted by the Council and all community councils. The recommendation is that all new declarations of acceptance of office by newly elected councillors should include an obligation to undertake mandatory Code of conduct training as well as to abide by the provisions of the Code.
14. In the longer term, there are recommendations to review the wider Ethical Framework by granting increased powers for the Ombudsman to refer complaints for local investigation and resolution. These wider changes will be the subject of further consultation in due course, as they would have significant implications for Standards Committee and Monitoring Officers.

Financial Summary (Capital and Revenue)

15. There are no financial implications.

Links to Council Policies and Priorities

16. The Nolan principles, which underpin the ethical standards framework enshrined in the Council's corporate and well-being objectives.

Proposed Action

17. To note the report and the recommendations of the review

Comments of Chief Financial Officer

There are no financial implications.

Comments of Monitoring Officer

Included in the report.

Comments of Head of People and Business Change

There are no specific staffing implications or policy implications.

Fairness and Equality Impact Assessment:

The principles of fairness and equality are embodied within the Members Code of Conduct and the Ethical Framework. No FEIA is required, as the report is for information purposes only.

Background Papers

The full review report can be found at:

<https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fgov.wales%2Flocal-government-ethical-standards-framework-review&data=04%7C01%7CBethan.Boyd%40gov.wales%7Cc14a3756e2684c0fa47408d98d6f411e%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637696331229865545%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6lk1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=yThktDLzIXNzRWY1UrTzraoSevgcrum4PWqvaTd%2B%2BLg%3D&reserved=0>

Dated: 4th November 2021