

REPORT OF MONITORING OFFICER

SUBJECT:

REPORT ON THE REVISED GUIDANCE TO MEMBERS ON THE CODE OF CONDUCT PUBLISHED BY THE PUBLIC SERVICE OMBUDSMAN FOR WALES

- 1 An updated Guidance to the Members Code of Conduct, published by the Public Service Ombudsman for Wales in March 2015. This is available electronically on the Ombudsman-wales website, following the link at the top of the guidance/policies page - hyperlink http://www.ombudsman-wales.org.uk/~media/Files/CodeofConductguidance_E/Code%20of%20Conduct%20CCBC%20%20NPA%20%20reissued%20March%202015%20English.ashx
- 2 His new updated guide is in a somewhat different format to that of its predecessor, in that the dialogue is set out more clearly and is supported by a number of examples that he has used to “bring life” to his Guidance by way of examples of cases from the past. I appreciate that because of the pressures of time, and particularly at this current time, all Members of the Authority may not have had the time to carefully consider all the examples that he gives. What is recommended by myself is that when individual Members do have a quieter period that they look at some of these case studies and consider them carefully. A short consideration of some of them will reveal how easy it is for situations to arise in which Members can find themselves in some significant difficulties. One suggestion that I make is that the Standards Committee consider some of the case studies and that these form the basis for part of the annual Members training session that I normally deliver to Members of the Authority. In my consideration of the report I have considered some of the examples provide good case study scenarios.
- 3 An interesting development to the revised guide is the introduction by the PSOW of his explanation, which starts on page 6 of the Guide, as to how he goes about investigating serious complaints that have been made to him which alleged that Members have breached the Code of Conduct. He uses what is called the “two-stage test”.

Stage 1 is when he seeks to establish if there is any direct evidence that a breach actually took place. He adopts the level of proof that is required on the “balance of probabilities” which is the test applied in the civil courts. I.e. is it more likely than not

Stage 2 if he is satisfied that the evidential test as being met. He then considers the position and the evidence to decide whether an investigation, or a referral to a Standards Committee or the Adjudication Panel for Wales is required in the public interest.

The public interest factors that he refers to are not exhaustive and can 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 were such that a member has misused a position of trust/authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victims ethnic or written, 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, i.e. have they got “form” to put it in the vernacular.
- Whether referral of the investigation to a Standards Committee of the Authority or the Adjudication Panel is required to maintain public confidence in elected or appointed members in Wales
- whether investigational/referral to a Standards Committee or the Adjudication Panel Wales is a proportionate response. “Namely, whether it is likely that a breach would lead to a sanction being applied to the Member; and whether the use of the resources in carrying out an investigation or hearing by a Standards Committee or the Adjudication Panel would be regarded as excessive when weighed against any likely sanction.

It is this latter factor, which often causes some confusion and further explanation for the process can be found by referring to his website, which sets out in two very clear articles what happens next, when the matters are referred to him.

- 4 One further interesting development of the last few years has been the local Dispute Resolution process, which is designed to deal with Member on Member complaint. In the past there had been literally floods of these complaints, usually at about election time, many of which were motivated on a tit-for-tat basis or for political advantage. As opposed to the Standards regime in England, the Public Services Ombudsman for Wales felt that such complaints could best be dealt with through a straightforward local dispute resolution process. This is now being adopted by all the local authorities in Wales and is designed to bring to a head, rather quickly any such disputes. The Public Services Ombudsman has indicated that he will not be very interested in such allegations and that they will be, almost inevitably, be referred for local determination. He has expressed a view, quite frankly, that he has far greater and weightier matters to resolve. However he has also been clear that this does not mean that Members should not feel the need to take action where there has been inappropriate behaviour by another Member. He is resolute that standards will be upheld but on those occasions, when such action is taken, Members will need to realise it will inevitably be under the local dispute resolution process. If it cannot be sorted out informally, then it may be referred to the Standards Committee.

Recommendation :

That the members note the updated guidance and their preference for the focus of the case studies for the Annual Members Training.