

## REPORT OF MONITORING OFFICER

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### **SUBJECT: LOCAL RESOLUTION PROTOCOL**

#### Purpose of Report

Members are requested to adopt a Local Resolution Protocol intended to deal with any low-level complaint made by a Member against a fellow Member.

#### Introduction

The Welsh Government's White Paper 'Promoting Local Democracy' indicated that the Welsh Government wished to see Local Resolution Processes adopted by local authorities (including National Park Authorities) across Wales to establish an informal local process to deal with Member-on-Member complaints. This would mean that low level complaints could be resolved locally without the need for a full and potentially costly investigation by the Ombudsman.

Notwithstanding the contents of the White Paper, the Minister indicated in January 2013 that he believed that there was scope for a more local approach to the resolution of low-level complaints, without immediately resorting to the full and potentially costly investigatory role of the Public Services Ombudsman for Wales, in some circumstances. Carl Sargeant AM, the then Minister for Local Government and Communities, requested feedback from local authorities in Wales confirming their timescales for introducing a Local Resolution Protocol. Furthermore, he stated that he intended to remove paragraph 6(1)(c) of the Model Code of Conduct that places an obligation on Members to report potential breaches of the Code to the Ombudsman.

#### The Public Services Ombudsman for Wales

In the most recent revision of the Public Services Ombudsman for Wales' Guidance on the Code of Conduct for Members of Local Authorities there is an expectation that local authorities throughout Wales will implement a Local Resolution Protocol to deal with low level complaints which are made by a Member against a fellow Member.

The Ombudsman indicates that the following would fall within this category:

- “(i) Failure to show respect and consideration for others contrary to paragraph 4(b) of the Code.
- (ii) Duty not to make vexatious, malicious or frivolous complaints against other Members under paragraph 6(1)(b) of the Code.”

Complaints of this type are expressly mentioned by the Ombudsman although other breaches of the Code may also be regarded as low level complaints.

The Ombudsman sets out the advantages of dealing with such low level complaints as follows:

- (i) It will speed up the complaints process.
- (ii) It will avoid unnecessary escalation of the situation which might impact on personal relationships within the Authority and damage the Authority's reputation.
- (iii) It will avoid unnecessary formal complaints and the involvement of the Ombudsman, whose resources could be devoted to the investigation of more serious complaints.

#### Background information

Approximately one third of complaints referred to the Ombudsman emanate from Members complaining about other Members. Most of these complaints constitute relatively low-level behavioural issues typically arising from political debates often within authority meetings. The experience of authorities involved in the presentation at the recent Standards Conference where Local Resolution Protocols have been adopted is that they have been effective albeit, thankfully, rarely used.

To date, 14 Councils and National Park Authorities have introduced some form of Local Resolution Protocol and 11 further Authorities are currently developing models. The model adopted by some comprises a relatively formal procedure and involves the Standards Committee. Conversely, the model adopted by others involves adoption of a Local Resolution Protocol which incorporates a procedure for dealing with complaints via Group Leaders and will only involve participation by an Independent Member of the Standards Committee if the matter cannot be resolved at the first stage. This is not appropriate for this Authority as it does not have Group Leaders.

In order to facilitate the requirement to adopt a Local Resolution Protocol a draft protocol is attached (Appendix 1) based on one that has already been approved by the Ombudsman.

The Members of the Standards Committee have had sight of the draft and support it.

#### Reason for Recommendation

To address the recommendation of the Public Services Ombudsman for Wales and Welsh Government to adopt a Local Resolution Protocol for dealing with low level Member-on-Member complaints.

#### Financial considerations

The proposal recommended has no immediate budgetary implications.

### Legal considerations

By virtue of the Local Government Act 2000 Members are required to comply with the Authority's Code of Conduct for Members. The Code is supplemented by guidance issued from time to time by the Public Services Ombudsman for Wales who is encouraging adoption of an informal Local Resolution Protocol to deal with low level complaints. Members' compliance with the proposed protocol is voluntary; Members will still be at liberty to complain directly to the Ombudsman.

### Human Rights/Equality issues

In the event that a complaint involved either equality or issues or potential breaches of Human Rights they may not be suitable for consideration under the procedure proposed and this would be considered by the Monitoring Officer when the complaint is raised.

### Risk considerations

There are some risks in relation to public perception of the good governance of the Authority, if the recommendations from the Minister and the Ombudsman are not followed, together with potential difficulty with the Annual Statements.

### Compliance

The proposal complies with Corporate Objective 4: The National Park Authority is recognised as meeting good practice standards in terms of governance, providing value for money and listening to the views of residents, visitors and partners.

It also complies with Park purposes and/or policy and/or corporate objectives and/or Welsh Government requirements/expectations.

### Welsh Language statement

The report has no implications for the Authority's Welsh Language Scheme.

## **RECOMMENDATION**

**To adopt the Local Resolution Protocol attached at Appendix 1 to this report.**

### Background documents

Welsh Government White Paper "*Promoting Local Democracy*"  
Public Services Ombudsman for Wales Guidance on the Code of Conduct for Members of Local Authorities

*(For further information, contact Mr John Parsons, Monitoring Officer, on extension 4904 or by e-mailing [johnp@pembrokeshirecoast.org.uk](mailto:johnp@pembrokeshirecoast.org.uk))*

*Author: John Parsons, Monitoring Officer*

*Consultees: Tegryn Jones, Chief Executive and Janet Evans, Administration and Democratic Services Manager*

## **MEMBERS' LOCAL RESOLUTION PROTOCOL**

### Introduction

This Protocol is NOT intended to replace the Members' Code of Conduct; rather it is intended to sit alongside the Code. It provides a mechanism for the Authority to deal with inappropriate behaviour by a Member against another Member (which may not reach the threshold for an Ombudsman's investigation) to be dealt with internally by the Authority informally, promptly and proportionately.

### General Principles

- To promote high standards of conduct and behaviour as a means of strengthening respect and trust among Members.
- Members will avoid personal confrontation in any public forum, especially at Committee meetings and through the media.
- Member discipline will become the cornerstone of self-regulation, with the Chairman taking responsibility for Members' commitment to the Local Resolution Protocol.
- These commitments will not stifle legitimate areas of debate or scrutiny or expressions of opinion.
- Members will make all reasonable attempts to resolve disputes through agreed internal processes subject to their obligations under the Members' Code of Conduct.
- Referral to external regulators will become a last resort, subject to Members' obligations under the Members' Code of Conduct.
- Members will commit to training and development in support of this Protocol.

### Working to avoid problems

To minimise the number of instances of alleged breaches, Members commit to attending relevant Member training events – in particular those relating to the Members' Code of Conduct or probity, public service ethics and governance courses within the scope of their role.

### Role of Chairman

A complaint by a Member relating to the inappropriate behaviour of another Member will initially be referred to the Monitoring Officer.

Upon receiving a complaint, the Monitoring Officer will promptly refer the matter to the Chairman. It is the role of the Chairman, in consultation with the Monitoring Officer, to take responsibility for addressing the complaint and ensuring that the complaint is heard promptly and fairly with the aim of maintaining good order and

discipline among Members in their behaviour towards each other. The treatment of an allegation of any breach of discipline should be informal and resolved through face to face meetings. The Chairman will need to retain some records but the process will not be “document heavy”. The emphasis should be on training, education, mediation and conciliation.

When appropriate, a sanction such as removal from a Committee or an outside body may be used. In extreme cases, or after persistent breaches, the matter can be referred to either the Authority’s Standards Committee or the Public Services Ombudsman for Wales.

Where the complaint relates to the Chairman, the Deputy Chairman shall consider the complaint.

### Time Scales

This will follow the flowchart below.

### Persistent Breaches

In the case of persistent breaches, or areas where the Chairman has concerns that the conduct of an individual Member or Members is damaging to relations between Members or to the reputation of the Authority, then the Chairman will meet with the Chief Executive and the Monitoring Officer to agree a way forward. Consideration will be given to referring the matter to the Public Services Ombudsman for Wales, by the Chairman, for persistent low level breaches.

### Standards Committee

The Standards Committee could be involved in two different ways:

- To review any sanction imposed by the Chairman, or
- To hear an allegation against inappropriate behaviour by a Member that the Chairman considers too serious to be dealt with by him/herself.

### Notes

All meetings will be private.

Any documentation, attendance notes, file notes or advisory notes passing between the Chairman, the Members concerned and/or the Members of the Standards Committee shall remain private and confidential.

This protocol will be reviewed by May 2015.

# MEMBER AGAINST MEMBER COMPLAINTS FLOWCHART

