

# Document Pack



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**MONDAY, 11 SEPTEMBER 2023**

**TO: ALL MEMBERS OF THE STANDARDS COMMITTEE**

I HEREBY SUMMON YOU TO ATTEND A MEETING OF THE **STANDARDS COMMITTEE** WHICH WILL BE HELD IN THE **CHAMBER, COUNTY HALL, CARMARTHEN. SA31 1JP AND REMOTELY AT 2.00 PM ON MONDAY, 18TH SEPTEMBER, 2023** FOR THE TRANSACTION OF THE BUSINESS OUTLINED ON THE ATTACHED AGENDA

*Wendy Walters*

**CHIEF EXECUTIVE**

<b>Democratic Officer:</b>	<b>Janine Owen</b>
<b>Telephone (direct line):</b>	<b>01267 224030</b>
<b>E-Mail:</b>	<b>JanineOwen@carmarthenshire.gov.uk</b>

This is a multi-location meeting. Committee members can attend in person at the venue detailed above or remotely via the Zoom link which is provided separately.

The meeting can be viewed on the Authority's website via the following link:-  
<https://carmarthenshire.public-i.tv/core/portal/home>

Wendy Walters Prif Weithredwr, *Chief Executive*,  
Neuadd y Sir, Caerfyrddin. SA31 1JP  
*County Hall, Carmarthen. SA31 1JP*

## **STANDARDS COMMITTEE**

**9 MEMBERS**

### **MEMBERSHIP: 9 MEMBERS**

#### **Independent Members (5)**

1. Mrs Mary Dodd
2. Ms Caryl Davies
3. Mrs Daphne Evans
4. Mrs Julie James
5. Mr Frank Phillips

#### **Community Committee Member (1)**

1. Town Councillor Phillip Rogers

#### **Elected Members of the County Council (3)**

1. Councillor Betsan Jones
2. Councillor Rob James
3. Councillor Gareth Thomas

# AGENDA

1. APOLOGIES FOR ABSENCE.
2. DECLARATIONS OF PERSONAL INTEREST.
3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE:-
  - 3.1 12TH JUNE 2023 5 - 10
  - 3.2 6TH JULY 2023 11 - 16
4. ACTIONS UPDATE 17 - 22
5. CODE OF CONDUCT TRAINING 2023 23 - 26
6. CODE OF CONDUCT DATA 2022-2023 27 - 36
7. GROUP LEADERS DUTY: STATUTORY GUIDANCE 37 - 202
8. PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL REPORT 203 - 344
9. A NEW TRIBUNAL SYSTEM FOR WALES: WHITE PAPER 345 - 528
10. RECENT DECISIONS BY THE ADJUDICATION PANEL FOR WALES 529 - 604
11. ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.

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## STANDARDS COMMITTEE

**MONDAY, 12 JUNE 2023**

**PRESENT:** M. Dodd (Chair)(Ph);

**Independent Members:**

C. Davies (R), D. Evans (Ph), J. James, (Ph), F. Phillips (R);

**Community Member:**

Councillor P. Rogers (Ph);

**Councillors:**

R. James (R), B.W. Jones (R);

**Also Present:**

L.R. Jones, Head of Administration and Law (Ph);

R. Edgecombe, Legal Services Manager (Ph);

E. Evans, Principal Democratic Services Officer (Ph);

S. Hendy, Member Support Officer (R);

M.S. Davies, Democratic Services Officer (Ph).

[Ph = physical attendance at County Hall. R = remote attendance via Zoom]

**Chamber, County Hall, Carmarthen and remotely: 10.00 am - 12.00 pm**

**1. APOLOGIES FOR ABSENCE**

An apology for absence was received from Councillor G.B. Thomas.

**2. DECLARATIONS OF PERSONAL INTEREST**

Councillor Rob James	5 – Political Group Leaders Duties under the Local Government and Elections (Wales) Act 2021;	Labour Group Leader and author of Group Leader's report.
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**3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE:**

**3.1. 14TH FEBRUARY 2023**

Members thanked the Democratic Services Officers for the accuracy of the minutes appertaining to the recent hearings.

**UNANIMOUSLY RESOLVED** that the minutes of the meeting of the Standards Committee held on 14th February, 2023 be signed as a correct record.

Note: These minutes are subject to confirmation at the next meeting.

### 3.2. 3RD APRIL 2023

**UNANIMOUSLY RESOLVED** that the minutes of the meeting of the Standards Committee held on 3<sup>rd</sup> April, 2023 be signed as a correct record.

#### 4. ACTIONS UPDATE

The Committee considered an action log setting out the various completed and ongoing actions that had arisen since its meeting on December 12th 2022.

**UNANIMOUSLY RESOLVED** that the actions update be received and that completed actions be deleted from the log once reported to the Committee.

#### 5. POLITICAL GROUP LEADERS DUTIES UNDER THE LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

(NOTE: Councillor R. James, having earlier declared an interest in this item, was not in attendance during the consideration of, and voting on, this item.)

In accordance with the requirements of the Local Government and Elections (Wales) Act 2021 the Committee considered whether reports received from the Leaders of the Council's three political Groups complied with their duties under the 2021 Act to:

- take reasonable steps to promote and maintain high standards of conduct by the members of their group and;
- co-operate with the Council's Standards Committee in the exercise of the Standards Committee's functions.

Disappointment was expressed with regard to the percentage of members of the Plaid Cymru and Independent Groups who had attended Code of Conduct training which the Chair agreed to convey to the Group Leaders. The importance of attending such sessions, both for newly elected and returning councillors, was emphasised. The Labour Group's monitoring of councillors' social media accounts to ensure that all posts on personal and professional pages met the standards expected was welcomed.

**UNANIMOUSLY RESOLVED** to accept that the reports submitted by the Group Leaders complied with their duties under the Local Government and Elections (Wales) Act 2021.

#### 6. REVIEW OF WHISTLEBLOWING POLICY

The Committee considered a report wherein it was stated that officers had reviewed the Council's Whistleblowing Policy and, save for changes made to update the names and contact details of individuals, no other changes were considered necessary as there had been no developments in legislation, case law or guidance which necessitated any amendment.

It was noted that during the period 1st April 2022 to 31st March 2023 a total of 3 whistleblowing complaints had been received all of which had been investigated, and the investigations concluded. One whistleblowing complaint received in 2021/2022 had been carried over into the period covered by this report. The investigation of this complaint had also been concluded.

Note: These minutes are subject to confirmation at the next meeting.

**UNANIMOUSLY RESOLVED that the updated Council's Whistleblowing Policy be approved.**

**7. ANNUAL REPORT TO FULL COUNCIL**

The Committee considered its draft 2022/23 Annual Report which detailed the work it had undertaken during that period. If approved it would be presented to the Council at its July meeting in accordance with the Local Government and Elections (Wales) Act 2021.

With reference to minute 5 above it was noted that Group Leaders would be invited to provide feedback on the template they were provided with to complete their respective reports. It was suggested that the matter could be raised at the next Group Leaders meeting. The Committee was advised that the matter was also scheduled for further consideration at the December meeting and included in the proposed Forward Work Plan [minute 10 below refers].

**UNANIMOUSLY RESOLVED that the draft Standards Committee Annual Report 2022/23 be adopted and presented to Council.**

**8. WELSH GOVERNMENT CONSULTATION ON THE RECOMMENDATIONS OF THE INDEPENDENT REVIEW OF THE ETHICAL STANDARDS FRAMEWORK (PENN REPORT)**

The Committee considered a Welsh Government consultation document detailing its proposed responses to the recommendations contained within the Penn report which had been produced following a review of the current Ethical Standards Framework for local government established under the provisions of the Local Government Act 2000. Much of the consultation document, which the Committee was invited to formulate its own responses to, related to the role and operation of the Adjudication Panel for Wales (APW).

In response to a comment relating to the threshold for declarations of any gift, hospitality, material benefit or advantage [Recommendation 1] the Committee was informed that the Council's current Code of Conduct for Members and Co-opted Members stipulated that within 28 days of receiving any gift, hospitality, material benefit or advantage above a value of £25, written notification had to be provided to the Monitoring Officer of the existence and nature of that gift, hospitality, material benefit or advantage.

The Committee supported the recommendation that training on the Code of Conduct [Recommendation 7] should be mandatory for all members of principal councils and community councils including councillors elected for a successive term. The view was expressed that this might lead to a reduction in the number of cases referred to the Ombudsman and thereafter Standards Committees.

Members agreed to forward any further comments individually to the Legal Services Manager in order that he could formulate a response to the Consultation Document on behalf of the Committee prior to the deadline of 23<sup>rd</sup> June 2023.

Note: These minutes are subject to confirmation at the next meeting.

**UNANIMOUSLY RESOLVED** that the Welsh Government's proposed responses to the recommendations contained within the Penn report be endorsed.

## **9. REVIEW OF DISCIPLINARY HEARING PROCEDURES**

Further to minute 6 of the meeting held on the 13<sup>th</sup> June 2022 the Committee was invited to consider whether, in light of its recent experiences in hearing two cases received from the Ombudsman, it wished to make any changes to the formal procedure adopted at the aforementioned meeting for the conduct of disciplinary proceedings against councillors.

The Legal Services Manager suggested the following changes that the Committee might wish to consider:

- Merging the initial consideration hearing and pre-hearing review to shorten the overall length of the proceedings (Sections 2 and 5 of the procedures);
- Amending the procedures to reflect that the Councillor may be legally represented;
- Amending Section 7 to make it clear that final hearings would usually be heard in public;
- Amending section 10 of the procedures to provide for questions to be put to the Ombudsman's investigating officer (where that officer was not also a witness in the case);
- Including a general statement that the procedure was intended to provide justice and fairness both for the councillor who was subject for the investigation, any other parties involved and that it was also intended to fulfil the wider public interest of having an open and fair adjudication process;
- Including a general statement that the Committee may revise the procedure in any case having regard to the public interest and the need for a proportionate adjudication process.

Members were supportive of the changes suggested particularly the need to shorten the length of the proceedings for all parties involved, including the Standards Committee itself, and agreeing pre-set dates at the outset where possible. Whilst the view was expressed that it would be preferable if all parties involved in a hearing were able to attend in person rather than remotely this was not mandatory under current legislation.

The Legal Services Manager was thanked for his assistance and direction during the recent hearings.

**UNANIMOUSLY RESOLVED** that the suggestions outlined above be endorsed and incorporated in a revised Disciplinary Hearing Procedures document for consideration at the meeting scheduled for 18<sup>th</sup> September 2023.

## **10. FORWARD WORK PLAN**

The Committee considered a draft Forward Work Programme [FWP] for 2023/24 which identified the key reports it should expect to receive at its scheduled quarterly meetings. It was noted that the FWP did not include reference to such

Note: These minutes are subject to confirmation at the next meeting.



matters as dispensations and disciplinary reports as it was not possible to predict when these would appear on the agenda of a meeting, if at all.

Reference was made to the fact that dispensation requests from councillors frequently appeared on the Committee's agendas and it was suggested that a note be added to the FWP to highlight this.

In response to a query the Legal Services Manger agreed to include a report on the Local Resolution Policy for informal complaints about councillors on the FWP for the December meeting.

**UNANIMOUSLY RESOLVED that the draft 2023/24 Forward Work Programme be adopted subject to the inclusion of the matters raised above and the draft revised Disciplinary Hearing Procedures referred to in minute 9.**

**11. ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972**

There were no items of urgent business.

\_\_\_\_\_  
**CHAIR**

\_\_\_\_\_  
**DATE**

Note: These minutes are subject to confirmation at the next meeting.

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## STANDARDS COMMITTEE

THURSDAY, 6 JULY 2023

**PRESENT:** M. Dodd (Chair)

**Independent Members:**

C. Davies

D. Evans

J. James

F. Phillips

**Community Member:-**

Councillor P. Rogers

**Councillors:**

B.W. Jones

G.B. Thomas

**Also Present (Virtually):**

R. Edgecombe, Legal Services Manager

M.S. Davies, Democratic Services Officer

A. Eynon, Principal Translator

R. Morris, Members Support Officer

K. Thomas, Democratic Services Officer

**Virtual Meeting - 1.30 - 2.12 pm**

**1. APOLOGIES FOR ABSENCE.**

There were no apologies for absence.

**2. DECLARATIONS OF PERSONAL INTEREST.**

There were no declarations of personal interest.

**3. DISPENSATION APPLICATION BY COUNCILLOR BETHAN CHARLES DAVIES**

The Committee considered an application submitted by Councillor Bethan Charles Davies for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak and vote in relation to council business at meetings of LLanwrda Community Council regarding the proposals to erect electricity pylons from the Nant Mithil Energy Park to the grid connection in Carmarthenshire as part of the Bute Energy Towy Usk Grid connection scheme.

It was reported that Councillor Charles Davies would have a personal and prejudicial interest in such business as she, and close personal associates of hers, would be affected by the proposals put forward by Bute Energy.

It was reported that a dispensation was sought by Councillor Charles Davies by virtue of Regulation 2(2)(d) – the nature of the member's interest was such that

Note: These minutes are subject to confirmation at the next meeting.

the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business and Regulation 2(2)(e) – the interest is common to the member and significant proportion of the public.

The committee was advised that if it was minded to grant Councillor Charles Davies' request, it would also need to determine the duration of that dispensation.

Following a discussion it was

**UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2(2)(d) and (e) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to Councillor Bethan Charles Davies to speak only, but NOT vote, on council business at meetings of Llanwrda Community Council regarding electricity pylons from Nant Mithil Energy Park to a grid connection in Carmarthenshire and the dispensation be valid until the end of the current electoral term.**

#### **4. DISPENSATION APPLICATION BY COUNCILLOR JOHN MACLAUGHLAND**

The Committee considered an application submitted by Councillor John Maclaughland for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak only in relation to council business at meetings of Kidwelly Town Council Community Council regarding the Princess Gwenllian Centre in Kidwelly.

It was reported that Councillor Maclaughland would have a personal and prejudicial interest in such business as he was a trustee of the Centre.

It was reported that whilst Councillor Maclaughland had not specified upon which grounds the dispensation was being sought it was suggested that regulations 2(2)(d) and 2(2)(f) would be appropriate in this case ie:-

Regulation 2(2)(d) – the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business.

Regulation 2(2)(f) – the participation of the member in the business to which the interest relates is justified by the members particular role or expertise.

The committee was advised that if it was minded to grant Councillor Maclaughland's request it would also need to determine the duration of that dispensation.

Following a discussion it was

**UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2(2)(d) and (f) of the Standards Committees (Grant of**

Note: These minutes are subject to confirmation at the next meeting.

**Dispensation) (Wales) Regulations 2001 to Councillor John Maclaughland to speak only on council business at meetings of Kidwelly Town Council regarding the Princess Gwenllian Centre and the dispensation be valid until the end of the current electoral term.**

## **5. DISPENSATION APPLICATION BY COUNCILLOR NEIL LEWIS**

The Committee considered an application submitted by County Councillor Neil Lewis for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak, vote, make written representations and exercise executive powers in relation to council business at meetings of Carmarthenshire County Council regarding renewable energy, electric vehicles, energy efficiency and decarbonisation.

It was reported that Councillor Lewis would have a personal and prejudicial interest in such business as he had a personal involvement in several organisations operating in those fields within the County.

It was reported that while a dispensation was sought by Councillor Lewis by virtue of Regulation 2(2)(a-g), as detailed within the report, it did not appear that grounds 2(2) (a)(b)(c) and (e) were applicable in this case. With regard to the request to exercise executive powers, the Committee noted that, as Councillor Lewis was not a member of the Council's Cabinet, he had no executive functions to exercise.

The Committee was advised that if it was minded to grant Councillor Lewis' request it would also need to determine the duration of that dispensation.

The Committee having regard to Councillor Lewis' positions as a Manager and Non-Executive Director of businesses involved in the energy sector, considered that whilst it would be pertinent to grant dispensation to speak and make written representations, dispensation to vote should not be granted given his involvement within the energy sector.

Following a discussion, it was

**UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2(2)(d)(f) and (g) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to County Councillor Neil Lewis to speak and make written representations, but NOT vote, in relation to council business at meetings of Carmarthenshire County Council regarding renewable energy, electric vehicles, energy efficiency and decarbonisation and the dispensation be valid until the end of the current electoral term.**

## **6. DISPENSATION APPLICATION BY COUNCILLOR WENDY HERON**

The Committee considered an application submitted by Councillor Wendy Heron for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak and vote in relation to

Note: These minutes are subject to confirmation at the next meeting.

council business at meetings of Henllanfallteg Community Council regarding the provision of a sewerage solution for the community hall, pub and several homes within the village.

It was reported that Councillor Heron would have a personal and prejudicial interest in such business as she was a trustee of the village hall.

It was reported that a dispensation was sought by Councillor Heron by virtue of Regulation 2(2)(d)(e)(f) and (h) ie:-

- Regulation 2(2)(d) – the nature of the member’s interest is such that the member’s participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority’s business.
- Regulation 2(2) (e) – the interest is common to the member and a significant proportion of the public.
- Regulation 2(2)(f) – the participation of the member in the business to which the interest relates is justified by the members particular role or expertise
- Regulation 2(2)(h) – the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business.

The committee was advised that whilst Councillor Heron had also sought dispensation by virtue of Regulation 2(2)(c) relating to political balance, that was not applicable in this case. Additionally, Regulation 2(2)(e) was not applicable as it did not affect a significant proportion of the public.

If the Committee was minded to grant Councillor Heron’s request, it would also need to determine the duration of that dispensation.

The Committee in considering the request, commented on the reference within Councillor Heron’s application to the potential for the Community Council to not be quorate when the above matter was being discussed and, should such a circumstance arise, she be granted dispensation to also vote.

The Committee having regard to the above, considered that without further supporting evidence relating to quoracy, it would be unable to accede to the request to grant dispensation to vote should such a circumstance arise. However, being mindful that the meeting to which Councillor Heron sought dispensation was to be held in July 2023, it was suggested that any dispensation granted could be up to the end of July thereby enabling Councillor Heron to submit a further dispensation application at a later stage and to also provide clarification within that application on the quorate situation at the Community Council’s meetings.

Following a discussion it was

Note: These minutes are subject to confirmation at the next meeting.

**UNANIMOUSLY RESOLVED** that dispensation be granted under Regulations 2(2)(d)(f) and (h) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to Councillor Wendy Heron to speak, but NOT vote on council business at meetings of Henllanfallteg Community Council regarding the provision of a sewerage solution for the community hall, pub and several homes within the village, and the dispensation be valid until the end of July 2023.

7. **ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.**

There were no items of urgent business.

\_\_\_\_\_  
**CHAIR**

\_\_\_\_\_  
**DATE**

Note: These minutes are subject to confirmation at the next meeting.

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## STANDARDS COMMITTEE

18<sup>th</sup> SEPTEMBER 2023

### ACTIONS UPDATE

**Purpose:**

To appraise the Committee of actions taken in response to decisions made

**To consider and comment on the following issues:**

To scrutinise the progress made in relation to actions, requests or referrals recorded during previous meetings of the Committee.

**Reasons:**

To enable members to monitoring performance in relation to their agreed actions

**CABINET MEMBER PORTFOLIO HOLDER: Not Applicable**

**Directorate**

**Name of Head of Service:**

Linda Rees Jones

**Designations:**

Head of Administration and Law

**Tel Nos.**

01267 224012

[LRJones@carmarthenshire.gov.uk](mailto:LRJones@carmarthenshire.gov.uk)

**Report Author:**

Robert Edgecombe

**Legal Services Manager**

01267 224018

[rjedgeco@carmarthenshire.gov.uk](mailto:rjedgeco@carmarthenshire.gov.uk)

# EXECUTIVE SUMMARY

## STANDARDS COMMITTEE 18<sup>th</sup> SEPTEMBER 2023

### ACTIONS UPDATE

During the committee meeting on the 12<sup>th</sup> December 2022 the committee requested that a log of agreed actions arising from meetings of the committee be developed and be presented at future meetings of the committee.

The attached action log sets out the various completed and ongoing actions that have arisen since that meeting.

That the actions are colour coded according to their status

Green = completed  
Yellow = ongoing  
Red = overdue

DETAILED REPORT ATTACHED ?

YES:

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: LRJones

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET MEMBER PORTFOLIO HOLDER AWARE/CONSULTED**

N/A

**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

There are none.

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Reference	Meeting Date	ACTION	PROGRESS	Officer	Status
DPSC-201/1	12/12/22	Create an action log recording actions agreed at Standards committee meetings and present at each quarterly committee meeting	Log created and included on agenda for March 2022 meeting	R J Edgecombe	Completed
DPSC-201/2	12/12/22	Write to Group leaders setting out the committee's requirements regarding compliance with the Group Leaders duty in the Local Government and Elections Act	Letter sent to Group Leaders 03/02/2023	R J Edgecombe	Completed
DPSC-205/1	07/03/23	Carry out annual data gathering exercise with Town and Community Councils to include additional questions and to be completed via SnapSurvey. Deadline for presentation of results 18/09/2023	Exercise completed and report scheduled for	R J Edgecombe	ongoing
DPSC-205/2	07/03/23	Arrange 2 Code of Conduct Training sessions for Town and Community Councils in June/July 2023. One session to be during office hours and 1 session in early evening	Sessions held in June and July 2023	R J Edgecombe	Completed
DPSC-0000	11/04/23	Include agenda item on developing a Forward Work Plan on the June Agenda	Included in the agenda for June meeting	RJEdgecombe	Completed
DPSC-212/1	12/06/23	Update Forward Work Plan with items relating to Dispensation Requests, Disciplinary Referrals and Informal Resolution Protocol and recirculate to members for approval	Revised Plan circulated 03/07/2023.	RJEdgecombe	Completed
DPSC-212/2	12/06/23	Finalise response to Penn Report consultation and sent to Welsh Government	Response sent to Welsh Government on 20th June 2023	RJEdgecombe	Completed
DPSC-212/3	12/06/23	Produce report to Committee at its December 2023 meeting regarding the Informal Resolution Protocol		RJEdgecombe	Ongoing
DPSC-212/4	12/06/23	Finalise annual report and sent it to DSU for inclusion on Full Council agenda.	Report sent to DSU 21st June 2023	RJEdgecombe	Completed

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## STANDARDS COMMITTEE

18<sup>TH</sup> SEPTEMBER 2023

### CODE OF CONDUCT TRAINING 2023

**Purpose:** To note the training provided and identify any actions arising

**To consider and comment on the following issues:**

What further actions (if any) need to be taken

**Reasons:**

The provision of Code of Conduct training to Town and Community councillors is one of the functions of the Committee

**CABINET MEMBER PORTFOLIO HOLDER:** Not Applicable

**Directorate**

**Name of Head of Service:**

Linda Rees Jones

**Designations:**

Head of Administration and Law

**Tel Nos.**

01267 224012

[LRJones@carmarthenshire.gov.uk](mailto:LRJones@carmarthenshire.gov.uk)

**Report Author:**

Robert Edgecombe

**Legal Services Manager**

01267 224018

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**EXECUTIVE SUMMARY**  
**STANDARDS COMMITTEE**  
**18<sup>TH</sup> SEPTEMBER 2023**

**CODE OF CONDUCT TRAINING 2023**

In line with the decision of the committee at its meeting in March 2023 two code of conduct training sessions were arranged for Town and Community Councillors on

12/06/2023 – 2pm

24/07/2023 – 6pm

It had been intended that both sessions be hybrid in nature, but due to building works in County Hall the July event ultimately had to be held online only. Only a very small number of persons had originally arranged to attend the July session in person and these subsequently attended online instead.

On the 12<sup>th</sup> June 2023 only 5 people attended in person at County Hall and 44 remotely. The online July session was attended by 39 persons.

A copy of the training materials and a link to a recording of the July session were sent to all Councils on the 14<sup>th</sup> August 2023.

Overall, the number of attendees is slightly lower than previous years, although a number of Councils indicated that they had already arranged separate code training for their members with One Voice Wales and other providers.

This years' experience again calls into question the cost/benefit of holding the sessions in-person in County Hall, particularly given the significant burden that holding hybrid events place on Democratic Services staff.

Correctly identifying individuals who attend sessions remotely can be a challenge and consideration may need to be given to taking a formal roll-call at next year's events.

**DETAILED REPORT ATTACHED ?**

NO



## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: LRJones

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET MEMBER PORTFOLIO HOLDER AWARE/CONSULTED**

N/A

**Section 100D Local Government Act, 1972 – Access to Information List of Background Papers used in the preparation of this report:**

There are none.

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## STANDARDS COMMITTEE

18<sup>th</sup> SEPTEMBER 2023

### CODE OF CONDUCT DATA 2022-2023

**Purpose:**

To note the Code of Conduct Data gathered in respect of Town and Community Councils and determine what steps (if any) should be taken as a result.

**To consider and comment on the following issues:**

To consider whether the data demonstrates good levels of code of conduct compliance

**Reasons:**

This forms part of the functions of the committee

**CABINET MEMBER PORTFOLIO HOLDER: Not Applicable**

**Directorate**

**Name of Head of Service:**

Linda Rees Jones

**Designations:**

Head of Administration and Law

**Tel Nos.**

01267 224012

[LRJones@carmarthenshire.gov.uk](mailto:LRJones@carmarthenshire.gov.uk)

**Report Author:**

Robert Edgecombe

**Legal Services Manager**

01267 224018

[rjedgeco@carmarthenshire.gov.uk](mailto:rjedgeco@carmarthenshire.gov.uk)

# EXECUTIVE SUMMARY

## STANDARDS COMMITTEE 18<sup>TH</sup> SEPTEMBER 2023

### CODE OF CONDUCT DATA 2022-2023

During the committee meeting on the 7<sup>th</sup> March 2023 the committee resolved to undertake a further code of conduct data gathering exercise, with a view to the results being reported on the 18<sup>th</sup> September 2023. In addition to the usual questions regarding declarations of interest and code of conduct training, Councils were also asked additional questions regarding their compliance with legislative requirements relating to the provision of training plans for their members, pursuant to the Local Government and Elections (Wales) Act 2021.

For the first time Councils were asked to directly complete an online snap survey rather than provide a written response to the questions.

The survey was sent to all councils in early May 2023 with a deadline of the 1<sup>st</sup> July for responses. Response rates were monitored by officers and a reminder sent to Councils in June 2023. This was followed up by telephone calls to those Councils who had not completed the survey by the end of July.

At the time of preparing this report 58 out of 72 Councils had responded. This represents a decrease (from 67) compared to last year.

The results of the snap survey are annexed to this report along with comparative data for the previous year.

Overall the survey suggests that there is still generally good compliance with the code by Town and Community Councillors. Levels of concluded code complaints are low and the vast majority of councils are recording declarations of interest during the year.

Disappointingly only half of Councils appear to have adopted a training plan as required by the Local Government and Elections (Wales) Act 2021.

**DETAILED REPORT ATTACHED ?**

YES:

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

<b>CABINET MEMBER PORTFOLIO HOLDER(S) AWARE/CONSULTED</b>	<b>N/A</b>
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**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

There are none.

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Q1	Q2	Q3	Q4	Q5	Q6	Q7	WebPage
Town and Community Council:	For the period 1st April 2022 to 31st March 2023, how	For the period 1st April 2022 to 31st March 2023 did any ...	Has your Council adopted a training plan for its members ...	Has the training plan been published on your Council's we...	Does the training plan require members to undertake code ...	Has the training plan been implemented and members receiv...	
Cyngor Cymuned Cynwyl Elfed	2	No	Yes	Yes	Yes	Yes	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Abergwili Community Council	2	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanddawddog	3	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Trelecj a'r Betws	3	Yes	Yes	Yes	Yes	Yes	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llangnog Community Council	3	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanfihangel Rhos y Corn Community Council	4	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
LLANGADOG COMMUNITY COUNCIL	4	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
St Ishmael Community Council	11	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Tref Caerfyrddin	17	Yes	Yes	Yes	Yes	Yes	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llandeilo Town Council	18	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llansteffan and Llanybri Community Council	31	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cwarter Bach Community Council	33	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Pembrey and Burry Port Town Council	63	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanelli Rural Council	64	Yes	Yes	Yes	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Pendine Community Council	1	No	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
LLANGELER	21	No	Yes	No	Yes	Yes	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llanegwad Community Council	2	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Trimsaran Community Council	3	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanfynydd	3	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanddarog Community Council	3	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Manordeilo and Salem Community Council	12	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanarthne Community Council	22	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Kidwelly	29	Yes	Yes	No	Yes	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Gorsias	19	No	Yes	Yes	No	Yes	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llanddowror and Llaniloe Community Council	2	Yes	Yes	Yes	No	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llandyfaelog	26	Yes	Yes	Yes	No	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanelli Town Council	51	Yes	Yes	Yes	No	Yes	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Cilycwm	10	No	Yes	Yes	Yes	Not sure	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Betws Community Council	9	Yes	Yes	Yes	Yes	Not sure	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Llansadwrn	30	No	Yes	Yes	Yes	Not sure	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Cyngor Cymuned Dyffryn Cennen	20	No	Yes	Yes	Yes	No	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Cyngor Cymuned Llangathen	2	Yes	Yes	Yes	Yes	No	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llanedi Community Council	6	Yes	Yes	Yes	Yes	No	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
MEIDRIM	17	Yes	Yes	Yes	Yes	No	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Pontyberem Community Council	6	No	Yes	No	Yes	No	<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Llanwrda	12	No	Yes	No	Yes	No	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
CASTELLNEWYDD EMLYN	16	No	Yes	No	No	No	<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Whitland Town Council	0	No	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Cilymaenllwyd	1	No	No				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llanycrwys	2	No	No				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llanfair ar y Bryn	2	No	No				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
LLANYBYDDER COMMUNITY COUNCIL	4	No	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Pencarreg	5	No	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llangynin Community Council	5	No	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Llangydeyrn	21	No	No				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llanboidy Community Council	2	Not sure	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Henllanfallteg Community Council	0	Yes	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llangennech Community Council	1	Yes	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Newchurch & Werthyr Community Council	3	Yes	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Bronwydd Community Council	5	Yes	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
St Clears Town Council	26	Yes	No				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Llangain Community Council	0	No	Not sure				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Cymuned Cenarth	2	No	Not sure				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Llanfihangel Aberbythych	3	No	Not sure				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
TALYLLYCHAU	5	No	Not sure				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Cynwyl Gaeo Community Council	0	Yes	Not sure				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>
Cyngor Bro Llanllwni	2	Yes	Not sure				<a href="http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/">http://www.sirgar.llyw.cymru/cartref/cyngor-a-democratiaeth/ymgyngori-a-pherfformiad/diolch/</a>
Myddfai Community Council	3	Yes	Not sure				<a href="http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/">http://www.carmarthenshire.gov.wales/home/council-democracy/consultation-performance/thank-you/</a>

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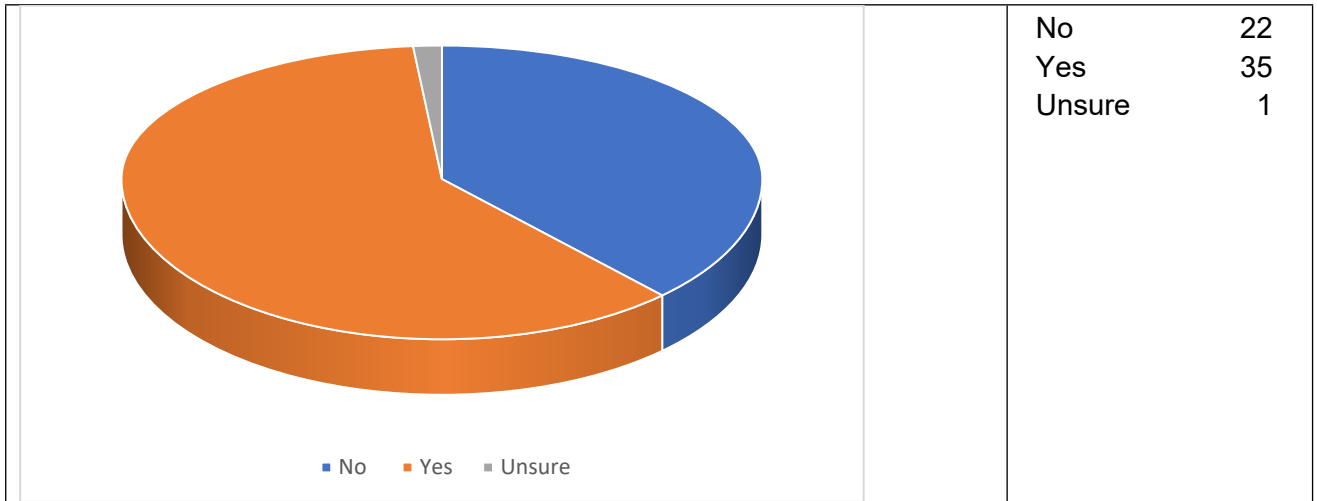


## Code Data Questions 2023

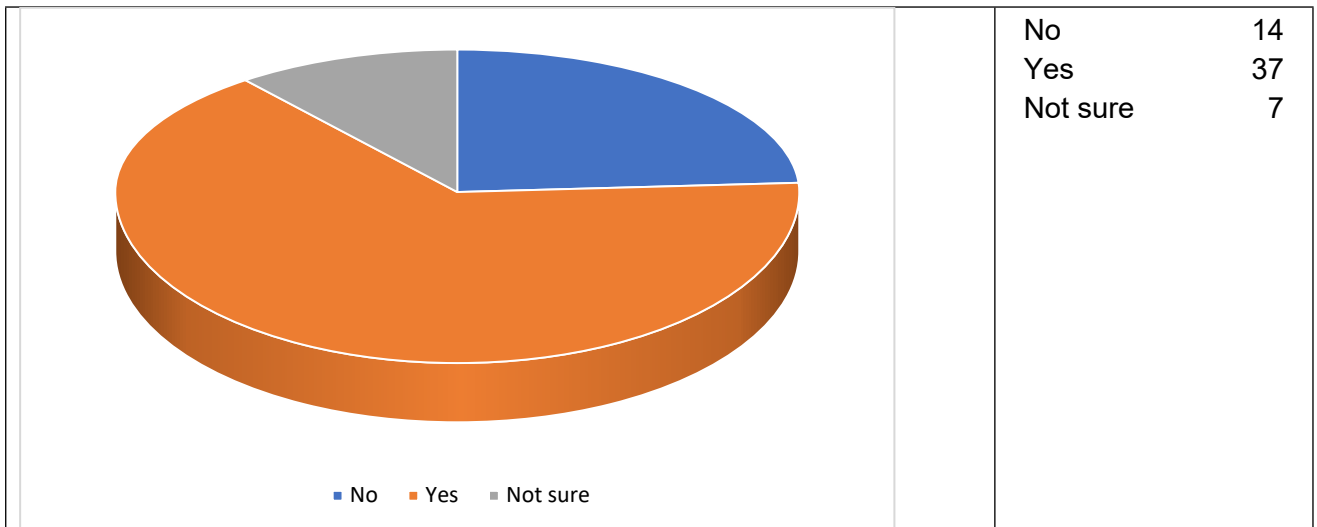
### 1. For the period 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023, how many declarations of interest were recorded by your authority under the member's code?

Cynwyl Gaeo Community Council	0	Pontyberem Community Council	6
Llangain Community Council	0	Llanedi Community Council	6
Henllanfallteg Community Council	0	Betws Community Council	9
Whitland Town Council	0	Cyngor Cymuned Cilycwm	10
Cyngor Cymuned Cilymaenllwyd	1	St Ishmael Community Council	11
Pendine Community Council	1	Cyngor Cymuned Llanwrda	12
llangennech community council	1	Manordeilo And Salem Community Council	12
Cyngor Bro Llanllwni	2	Castell Newydd Emlyn	16
Llanddowror and Llanmiloe Community Council	2	Meidrim	17
Llanegwad Community Council	2	Cyngor Tref Caerfyrddin	17
Llanboidy Community Council	2	Llandeilo Town Council	18
Abergwili Community Council	2	Cyngor Cymuned Gorlas	19
Cyngor Cymuned Cenarth	2	Cyngor Cymuned Dyffryn Cennen	20
Cyngor Cymuned Cynwyl Elfed	2	Llangeler	21
Llanycrws	2	Cyngor Cymuned Llangyndeyrn	21
Llanfair ar y Bryn	2	Llanarthne Community Council	22
Cyngor Cymuned Llangathen	2	Llandyfaelog	26
Trimsaran Community Council	3	St Clears Town Council	26
Llanddawddog	3	Kidwelly	29
Newchurch & Merthyr Community Council	3	Cyngor Cymuned Llansadwrn	30
Llanfynydd	3	Llansteffan and Llanybri Community Council	31
Trelecj a'r Betws	3	Cwarter Bach Community Council	33
Llangynog Community Council	3	Llanelli Town Council	51
Myddfai Community Council	3	Pembrey and Burry Port Town Council	63
Llanfihangel Aberbythych	3	Llanelli Rural Council	64
Llanddarog Community Council	3		
Llanfihangel Rhos y Corn Community Council	4		
Llangadog Community Council	4		
Llanybydder Community Council	4		
Pencarreg	5		
Talylychau	5		
Llangynin Community Council	5		
Bronwydd Community Council	5		

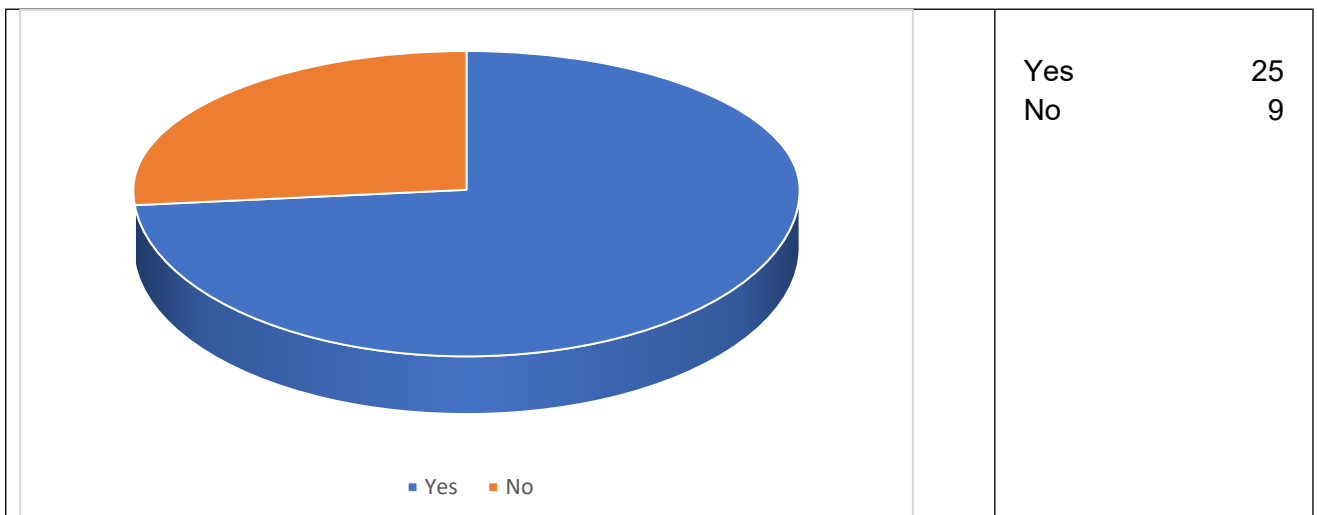
2. For the period 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023 did any of the members and/or clerk receive training on the code of conduct (answer would be YES, NO or NOT KNOWN)



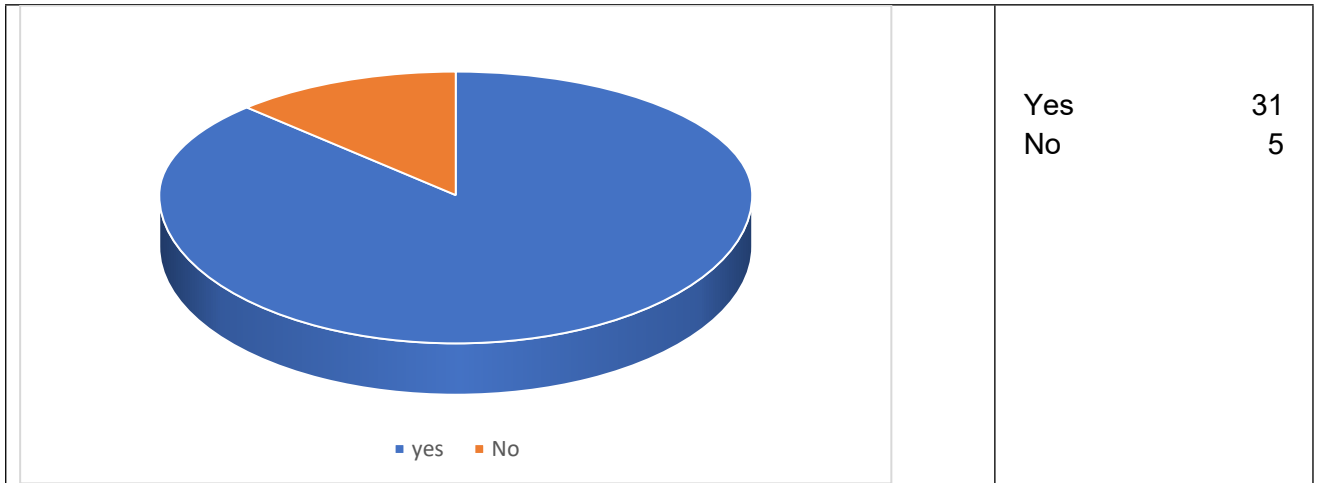
3. Has your Council adopted a training plan for its members as required by the Local Government and elections (Wales) Act 2021 (answer would be YES, NO or NOT KNOWN)



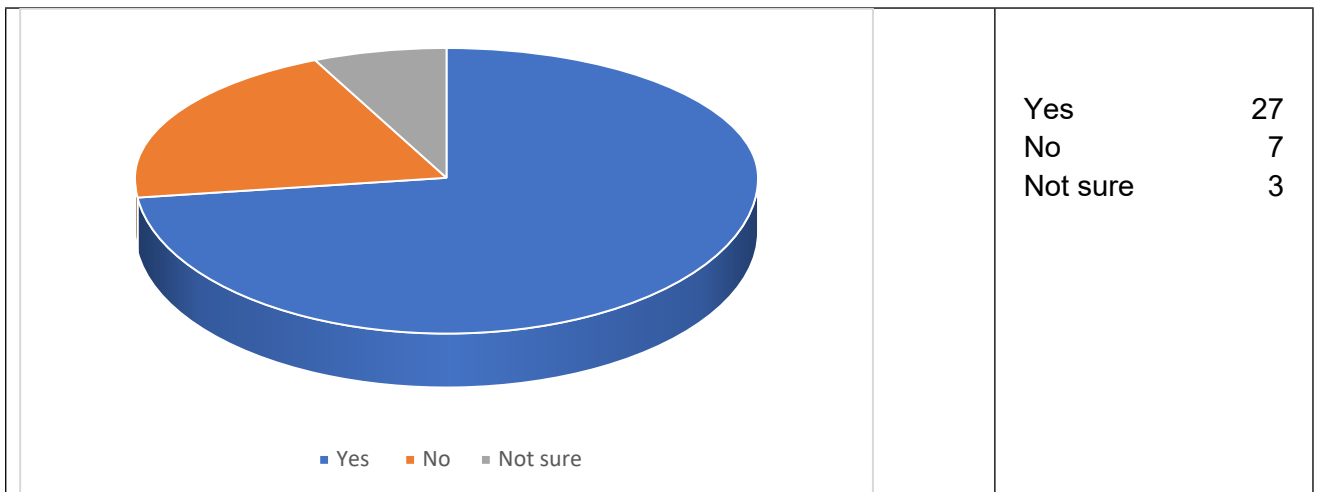
4. If the Answer to Q.3 is YES, has the training plan been published on your Council's website (answer would be YES, NO or the Council has no website)



5. If the Answer to Q.3 is YES, does the training plan require members to undertake code of conduct training (answer would be YES or NO)



6. If the answer to Q.3 is YES, has the training plan been implemented and members received training in accordance with it? (answer would be YES , NO or NOT KNOWN)



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## STANDARDS COMMITTEE

18<sup>TH</sup> SEPTEMBER 2023

### GROUP LEADERS DUTY: STATUTORY GUIDANCE

**Purpose:**

To note the terms of the Guidance and agree an approach to the performance of the committee's function

**To consider and comment on the following issues:**

How the Committee wishes to perform its role in light of the provisions of the guidance

**Reasons:**

The Guidance gives a clear indication of the approach the committee should take

**CABINET MEMBER PORTFOLIO HOLDER: Not Applicable**

**Directorate**

**Name of Head of Service:**

Linda Rees Jones

**Designations:**

Head of Administration and Law

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# EXECUTIVE SUMMARY

## STANDARDS COMMITTEE 18<sup>TH</sup> SEPTEMBER 2023

### GROUP LEADERS DUTY: STATUTORY GUIDANCE

In the June 2023 the Welsh Government published statutory guidance in relation to the operation of the Group Leaders duty under the Local Government and Elections (Wales) Act 2021.

The scope of the guidance goes beyond just the Group Leaders duty – the relevant provisions can be found in Part 2 of the guidance in sections 4.0 to 7.0. A copy of the full guidance is attached.

New key points contained in the guidance include

1. Para 4.36 – the committee should meet with political group leaders at the start of each Council year to agree
  - (a) How group leaders and the standards committee will work together to ensure appropriate standards of behaviour;
  - (b) Frequency of meetings between group leaders and the standards committee throughout the year;
  - (c) The threshold which the standards committee will use to establish whether it is content that political group leaders have complied with the duties of the 2021 Act;
  - (d) The mechanism for political group leaders to provide reports to the standards committee about the actions they have taken to comply with the duties within the 2021 Act.
2. Para 5.10 - The regular review of the Council's approach on gifts and hospitality and the use of thresholds. These matters should also be addressed in the committee's annual report.
3. Para 7.4 – reporting in the committee annual report on the number of cases considered under the local resolution process
4. Para 7.8 – sharing the committee's annual report with the Ombudsman and Town and Community Councils.

DETAILED REPORT ATTACHED ?

YES

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

<b>CABINET MEMBER PORTFOLIO HOLDER(S) AWARE/CONSULTED</b>	<b>N/A</b>
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**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

There are none.

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Llywodraeth Cymru  
Welsh Government

# **Statutory and Non-Statutory Guidance for Principal Councils in Wales – supporting provisions within the Local Government Act 2000, the Local Government (Wales) Measure 2011 and the Local Government and Elections (Wales) Act 2021 (WG23-23)**

**June 2023**

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## **Part 1 - About this guidance**

### **Purpose of this guidance**

This guidance is consolidated statutory guidance intended to support principal councils meet requirements under the Local Government Act 2000, the Local Government (Wales) Measure 2011 and the Local Government and Elections (Wales) Act 2021.

### **Navigating this guidance**

This guidance consists of 4 parts as set out below:

Part 1 – About this guidance

Part 2 – Guidance for elected members’ support, training and development

Part 3 – Guidance on public participation strategies and petition schemes

Part 4 – Guidance on constitutions, executives, scrutiny, governance and audit committees and conducting meetings

### **Terminology**

For the purposes of this guidance the terms Principal Council and Local Authority are to be considered to mean County Council or County Borough Council.

## **Part 2 – Guidance for elected members’ support, training and development**

### **1.0 Timing of Council Meetings Statutory Guidance**

#### **Status of this Guidance**

1.1 This is statutory Guidance made under Section 6 of the Local Government (Wales) Measure 2011 (the Measure). By virtue of section 6 (2) of the Measure, local authorities must have regard to this guidance in respect of the times and intervals at which meetings of a local authority are held. The relevant meetings in the context of this guidance are meetings of the full council and any committee or sub-committee of the council.

#### **Purpose**

1.2 Part 1 of the Measure contains provisions related to the strengthening of local democracy. More specifically, this guidance deals with “promoting and supporting membership of local authorities” and section 6 relates to the timing of meetings.

1.3 The times at which the meetings of a council take place is of considerable significance as it can affect the extent to which individuals may contemplate standing for election. It is also important to provide for flexibility to support the changing needs of councillors when they are elected so that diversity can be maintained. This is an area for concern as it may impact on the diversity of membership of the council and thus impact on the council’s ability to make decisions which are informed by and reflect the diversity of people living in the council area. Decision making informed by insight from people of all ages and backgrounds is likely to be more balanced and have more focus on sustainable and long term solutions which balance the needs of different people in keeping with the principles set out in the Well-being of Future Generations (Wales) Act 2015.

1.4 For example, whilst the requirement to provide the facility for multi-location meetings for members who wish to join meetings remotely (see section 47 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act)) should overcome some concerns, many people will find attending, sometimes lengthy meetings, in the day is incompatible with their paid employment and certain times of day are challenging for people with caring responsibilities such as young children. Therefore, for the purposes of this guidance the timing of meetings also includes their frequency and length.

## **Reviewing existing arrangements**

- 1.5 Only members of council executives are considered to be “full-time” councillors and this is reflected in the levels of payments they are entitled to for their special responsibilities. By contrast, non-executive members are considered to undertake the equivalent of a part-time role, which will, in many cases, need to be fitted around whatever other commitments councillors may have.
- 1.6 For many prospective and serving councillors in full-time employment, the extent to which their employers are supportive of their new commitment is a vital concern. Although employment legislation entitles councillors to time off for public duties, operating that in practice may be more difficult (see Section 50 of the Employment Rights Act 1996 (1996 c18)).
- 1.7 The timing, length and frequency of meetings is the most problematic issue in this respect. Other duties may be fulfilled at times which suit the individual but a meeting is at a set time and (subject to any arrangements made for remote attendance) at a set venue.
- 1.8 It is neither practical nor desirable for the Welsh Government to prescribe the times, length and frequency of meetings of the full council, its committees and sub-committees as these are matters for each council to consider in individual circumstances. However, it is important that councils do not simply continue to hold their meetings at the same time, in the same way as they have always done, simply out of inertia. What may have been tradition or an arrangement which suited the previous cohort of councillors will not necessarily serve the interests of the current one. It is recommended that meetings should be held of a length and at times, intervals and locations which are convenient to its members, having regard to equality and diversity issues. Also, regardless of whether meetings are fully on-line, multi-location or in person, agendas should provide for suitable breaks as this not only promotes a more effective meeting but is essential for members’ and officers’ health and well-being.
- 1.9 Therefore, all local authorities should review the times, frequency and length of meetings at least once in every term, preferably shortly after the new council is elected. However, it would be prudent to consider an increase in this frequency to accommodate changes in circumstances that may accrue during that period.
- 1.10 Councils should survey their members, at least once shortly after each election, to assess their preferences and should be committed to act on the conclusions. The survey should be carried out at such time as it will be of most benefit to

incoming members but no later than six months following ordinary elections. It will then be for each authority to decide on the regularity of such surveys.

1.11 Issues to be taken into account in conducting a survey could include:

- Whether daytime or evening meetings are preferred;
- Whether meetings are to be in person, fully online or multi-location;
- The preferred meeting length;
- Whether particular times cause difficulties for councillors with particular characteristics, such as age, gender, religion, having caring responsibilities or being in employment.

1.12 When considering the results of the survey, councils will need to balance a range of responses and while committed to flexibility it may not be possible to accommodate every individuals' circumstances at all meetings. In these circumstances councils should also consider whether there may be advantages to rotating meeting times due to an impossibility of meeting all of their members needs all of the time. Any such arrangements will, of course, need to be clearly publicised for the benefit of interested members of the public.

## **2.0 Training, Development and Support for Local Authority Members Statutory Guidance**

### **Status of this Guidance**

- 2.1 This is statutory guidance made under Section 7(4) of the Local Government (Wales) Measure 2011 (the Measure), a local authority (a county or county borough council in Wales) must have regard to it.
- 2.2 Section 38 of the Local Government Act 2000, as amended by section 45 of the Local Government and Elections (Wales) Act 2021. A local authority (a county or county borough council in Wales), elected mayor or an executive leader must have regard to it; and Section 71 of the Government of Wales Act 2006.

### **Purpose**

- 2.3 Part 1 of the Measure contains provisions intended to strengthen local democracy. Chapter 1 of that Part concerns the support provided to members of a local authority and section 7 within that chapter provides for the training and development of these members. This guidance relates to matters local authorities must take into account in securing reasonable training and development opportunities for its members as required under section 7 of the Measure.

### **What the Measure requires**

- 2.4 Section 7 requires local authorities to secure the provision of reasonable training and development opportunities for its members. Each member should also have the opportunity to have a review of their training and development needs on an annual basis. However, it should be noted that these provisions do not apply to the executive leader of an authority which operates a leader and cabinet executive.
- 2.5 Should a member decide to have an annual review of their training and development needs, the authority must ensure that the review includes an opportunity for an interview with someone who they consider to be “suitably qualified” to advise about the training and development needs of a member.
- 2.6 In relation to these functions, a local authority is under an obligation to have regard to guidance issued by Welsh Ministers.

### **Reasonable Training and Development Opportunities**

- 2.7 The Measure does not define what constitutes reasonable training and development opportunities for the purposes of section 7. The Welsh Government recommends that local authorities provide opportunities for what is essential for a local authority member to perform their role effectively.
- 2.8 The role of councillors is constantly evolving as legislation changes, for example, the Local Government and Elections (Wales) Act 2021 (the 2021 Act) brings in provision enabling executive members to job share executive posts and for there to be assistants to the executive, it amended the remit of Governance and Audit Committees and placed new duties on councils to encourage the public to participate in decision making. Likewise the social and environmental context in which councillors undertake their roles is constantly changing, new developments in social media, structural change in the way the public services are organised and the way councils interact with individuals and communities.
- 2.9 Therefore, it is essential that councils do not have a static view of what constitutes reasonable training and development needs for the purposes of section 7 of the Measure. The definition should be one which is regularly and frequently kept under review, most likely by the democratic services committee, to ensure it reflects legislative changes and the needs of members identified through their annual reviews. It is not sufficient to offer a package of training to a member immediately on their election and take a position that is sufficient to support them for the whole of their term.
- 2.10 Subjects for an on-going training programme of member development should, but not exclusively, include:
- Induction - An introduction to the work of a local authority and its relationship with key bodies and the role of those bodies. Councils should plan a comprehensive induction programme for new councillors for delivery shortly after ordinary elections and also for new members elected at a by election;
  - Training on the role and functions of the executive, the council and its officers;
  - An overview of the council's constitution, including the operation of meetings, how to raise questions with the leader and executive, access to information and research support;
  - Training for the chairs of committees including effective chairing skills;
  - Training on specific roles members may undertake such as governors or representatives on health boards, fire and rescue authorities or national parks including a short brief on the purpose of the role and the member's responsibilities in keeping the council apprised of developments on the body they are representing the council on, the level of decision making that is



delegated to them and how they may access assistance to support them in the role;

- Training on the role of the councillor as a local member, the delegation of functions to ward members and councillor calls for action;
- Training on public engagement, the council's strategy to encourage participation in local decision making and the role members can play in engaging communities;
- Specific training for councillors carrying out certain regulatory or quasi-judicial roles (training for councillors sitting on planning or licensing committees, for example);
- Specific training for councillors carrying out roles relating to the operations of the council. Governance and Audit, Democratic Services and Standards Committee members might be seen as in particular need;
- Training on the operation of overview and scrutiny and its relationship with the council executive;
- Training on rights and responsibilities under the Equality Act 2010 and more broadly the Social Model of Disability;
- Training on ICT, including how to participate in multi-location meetings and how the use of ICT can support the councillor's work;
- Training on the effective use of social media and the opportunities for better engagement between councillors and the communities they serve. Also the risk of councillors being victimised or harassed by opponents or campaigners overstepping the bounds of reasonable debate;
- Training on wellbeing and safety, including ways of keeping safe when undertaking their role;
- Councillor induction should include training on the expected standards under their authority's Code of Conduct, emphasising the issues that arise as a result of application of the Code in the context of social media. It should also include the role of the Public Services Ombudsman for Wales (PSOW) in handling the complaints about breaches of the Code. Refresher of that training should also form a part of the ongoing programme of member development;
- Training on councillors' corporate parenting responsibilities;
- Regular briefings and updates on changes in the law, policy and other issues that impact on the role of the elected member such as the economy;
- Training on equality and diversity (EDI), and the council's responsibilities in respect of the wellbeing of future generations (WFG);
- Training on keeping safe when working alone, including when visiting others.

2.11 Training can also be carried out using a variety of formats – traditional classroom-style teaching is one option, as is more bespoke coaching and mentoring of individual members. Training and development opportunities might also be 'designed' in to council business to make learning opportunities more practically relevant, for example, a briefing on a technical issue as part of preparation for a

scrutiny meeting. Training can be sourced and delivered in-house, in collaboration with other councils, or with the support of external individuals or organisations.

- 2.12 Training is a process, not an event. Councils could put together a member development strategy, which should reflect the need to keep councillors' skills refreshed and updated. This should incorporate the opportunity for organising briefings for councillors on emerging areas of law and policy. In producing such a strategy councils should consider any guidance including any charters or councillor development frameworks, developed by the WLGA and resources and guidance issued by the PSOW.
- 2.13 Training in the above areas need not be exclusively delivered. Training which combines one or more of the above areas is not discouraged. It is recommended that each member has their own personal development plan which is reviewed on a regular basis. This could be used to inform the annual review of a local authority member's training and development needs as required under the Measure.
- 2.14 It is recommended that the Democratic Services Committee (DSC) has overall responsibility for deciding what should be regarded as reasonable training and development opportunities as part of its function of providing support to members to carry out their functions. In addition to the list above the DSC may consider adding some policy areas for which training is considered essential, such as planning or licensing. It may also consider how it could maximise the opportunities within the council's membership and that of other councils to provide for peer support and mentoring, shadowing and opportunities to observe meetings and other activities.
- 2.15 The agreed, training and development opportunities could be contained within a published development strategy which should include how the development will be provided and the process for commissioning external training and development. The Welsh Local Government Association's Charter for Member Support and Development ("the Charter") could be used for guidance purposes by local authorities in developing their strategies. Local authorities may wish to consider the requirements to achieve the Charter when developing their strategies and programmes.

- 2.16 Every local authority member, other than an executive leader, must be offered the opportunity to have their training and development needs reviewed on an annual basis. It is recommended that much of the training and development needs of local authority members is identified by such reviews.
- 2.17 The review must include an opportunity for a pre-planned interview between the member and a suitably qualified person (see below). The interview could include a review of the training and development received by the member over the last year (or appropriate period if the local authority member has only been recently elected).
- 2.18 Local authorities may wish to consider detailing the outcome of the interview in an agreed plan which sets out training and development needs, if any, identified for the year ahead. It is recommended that this personal development plan is provided for the member and signed by both member and reviewer. This is a private document which is not expected to be published by the authority or member, although a member is free to publicise in his or her annual report any training and development undertaken if he or she so wishes.
- 2.19 Good practise suggests councils should adopt role descriptions to ensure that all members have a full understanding of the expectations placed upon them. The descriptions can then be used as a guide to the skills required by the relevant member. The WLGA's competency framework sets out the expected skills and knowledge across a range of councillor roles ([WLGA Councillor Development \(Competency\) Framework](#)).
- 2.20 The annual review can then be an assessment of training and development needs to support the councillor in their role. A local authority may wish to consider making it clear to members that the review is not a performance review or an assessment of how well or how badly a member has conducted their duties. Ensuring members feel supported to undertake their role and can ask for training and development is integral to engendering a relationship of trust between backbench members, the executive and officers.
- 2.21 Councils could consider the drafting of a personal development plan for each councillor, arising from the statutory interview discussed above. Collated (and anonymised), these individual plans could then form the basis of a corporate member development strategy.

### **Suitably Qualified**

- 2.22 It is for the local authority to determine who could be considered a suitably qualified person to conduct interviews with local authority members to discuss their training and development needs as part of their annual review. This responsibility could be allocated to the DSC within the authority. In most cases, this may not be a question of naming individuals, but of describing a post or office holder, (see below). It would probably be neither suitable nor desirable for a single person to be made responsible for conducting all interviews.
- 2.23 It is also possible for group leaders to conduct interviews with their members or interviews to be conducted by the leader and the executive members. Both these practices are perfectly acceptable methods of complying with the requirements of the Measure.
- 2.24 Authorities may prefer, however, to divest the duty with their human resources officers. If this is the preferred option, local authorities may consider making the Head of Democratic Services (HDS) responsible for co-operating with human resources officers for this part of their work. If the chief executive was selected as a suitably qualified person to conduct an interview it would not be expected that they would work under the supervision of the HDS.
- 2.25 Some authorities may prefer to hire external consultants or peers to conduct interviews, which is also acceptable. Local authorities are encouraged to appoint a Member Development Champion from amongst its councillors.
- 2.26 It is recommended that there should be no surprises in the system and that individual members know who they can expect to conduct their interview. Local authorities may wish to consider including an option in their arrangements for members to make a request to the HDS to arrange for a different person to conduct their interview if there is good reason for so doing.
- 2.27 Finally, authorities must ensure that anyone conducting an interview must themselves have received suitable training in how to do this and are advised to liaise with the WLGA to ensure the provision of this. Therefore, even if the authority has chosen to allocate the duty of conducting reviews to a post, rather than an individual, that post holder should have received the necessary training before conducting reviews.

## **Executive Leader of the Local Authority**

2.28 Section 7 of the Measure does not apply to the executive leader (or elected mayor) of an authority. However, there may, of course, be occasions where the leader wishes to receive training or development and there is no suggestion that, by excluding them from the provisions of the Measure, they should not be able to receive training, nor, indeed, an annual review or an interview with a suitably qualified person.

### **On-going Training, Development and Support for Members**

2.29 The annual review should not be seen as the only point in the year when a discussion is held with a member about their training, development, support and well-being. It should also not be seen by the member as the only opportunity available to them to proactively consider their own development and training needs or other forms of support. Increasingly, councillors are subjected to significant personal demands as a consequence of their work. Representing local people is a privilege but with it comes challenges which, at their most extreme, pose challenges to the mental and physical health of elected representatives.

2.30 Councils have a general responsibility to develop an awareness and an understanding of the constraints under which councillors operate, and to ensure that the support arrangements put in place for councillors reflect these needs. This could be done alongside work carried out by political parties, and national sector bodies.

2.31 Councils should take every opportunity to support the well-being and personal safety of councillors and their families and should note carefully legislation which requires councils to provide councillors with an office contact address, both electronic and postal, (section 43 of the 2021 Act) to ensure members' privacy and that of their families is preserved and protected. This is critical to member's well-being and encouraging and supporting a diversity of membership which reflects the diversity in the council's area.

2.32 The Welsh Government considers the protection of members addresses should be a priority for councils to support their members' well-being and promote diversity of membership. Therefore, the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022 amend sections 100G (4) of the Local Government Act 1972 and the Regulation 12 (1) of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 to remove the requirement to make the register of members addresses and the register of members of the executive addresses available for public inspection.

- 2.33 It is, of course, important that the public are aware of the interests members may have or hold, in particular where those interests could influence the decisions they may be involved in making in their role or roles on the council. Therefore, Part 4, paragraph 15 of the Model Code of Conduct requires members to register personal interests in the authority's register of members interests falling within a category mentioned in paragraph 10(2)(a), by providing written notification to the members' authority's monitoring officer. This includes any land and property in the authority's area in which members have a beneficial interest (or a licence to occupy for more than 28 days).
- 2.34 The Welsh Government is therefore mindful of the need to protect members' safety and welfare, whilst ensuring all relevant interests are captured and openness and transparency is maintained. However, it is the view of the Welsh Government that while members have an obligation to declare interests and not to participate in or influence council business, there is no requirement for members to include their full primary address (or any other address) when registering beneficial interests in land in the authority's area. It would be sufficient for members to state that they own a property in the authority's area (for example identifying the road or ward), in order to discharge their duties under paragraph 15 of the Code.
- 2.35 In addition, councils are reminded, under paragraph 16 of the Model Code, members, with their agreement, need not include information relating to any of the members' personal interests that is deemed sensitive information. In the code, "sensitive information" means the availability of the information for inspection by the public creates, or is likely to create, a serious risk that the member or a person who lives with the member may be subjected to violence or intimidation.
- 2.36 Councils and councillors have a role in supporting the presence of an open, accountable and respectful political culture in local areas. Despite this, councils will need to be aware of the risks that come with high profile public service. Councillors may at times be at physical risk of harm – particularly where they are associated with unpopular or controversial decisions or issues. Councils must seek to understand where and how such risks emerge, and to work closely with local police and other community safety partners to – where necessary – put in place protective arrangements for councillors, as proactively as possible.
- 2.37 Councils are required to put arrangements in place for supporting councillors on family absences but there may be times when a member is in need of targeted, unplanned support for example:

- Where councillors are the subject of attacks on social media which go beyond acceptable political discourse. As far as possible, councillors should be supported to use social media to be more accessible to their constituents, but safe and reliable avenues need to be available to them to highlight such attacks, and for the council to support police action where appropriate. Legally there is a principle that councillors are expected to have “thicker skins”, but this should not limit the extent of informal support and advice that councillors should be given under these circumstances. Political parties may provide advice to councillors on the effective and safe use of social media, but councils should be aware of the comparative vulnerability of councillors who might be members of smaller parties, or acting as independents, and who therefore might not benefit from this support;
- Where councillors have chronic health conditions and/or are disabled, and councils should consider the support from the perspective of the social model of disability and remove barriers that may be disabling councillors with impairments;
- Where their circumstances make them less able to engage with their roles and duties, for example caring responsibilities. These may require temporary or permanent accommodations therefore councils should consider councillors’ wider support needs in respect of their personal commitments;
- Where councillors have other commitments (including professional commitments), or operate under other restrictions, which may limit temporarily or permanently their ability to attend meetings or to otherwise engage in the life of the council.

2.38 Political groups may put in place arrangements for peer mentoring and support, for example, ‘buddying’ newly elected councillors with colleagues returning to office. This is an important element of training and support for many members. However, councillors unaffiliated to a political group (or part of a small, or geographically-specific, political group) may have particular needs, and councils can consider how these can be met in such a way that does not disadvantage other members.

2.39 A council culture where member well-being, learning and development is valued and nurtured amongst elected members could be considered an important element of a council being able to meet its duties in sections 89 and 90 of the 2021 Act to keep its performance under review and consult the public on performance. The active involvement of all members will be important to demonstrating these duties are being met and members must be receptive to training and development to support them in this role and the council must be receptive to the importance of doing so.

## **3.0 Research Support and Services for Councillors Statutory Guidance**

### **Status of this Guidance**

- 3.1 This is statutory guidance issued under section 8(1A) of the Local Government (Wales) Measure 2011. This section enables the Welsh Ministers to issue guidance to which a local authority must have regard when exercising its functions in respect of providing the head of democratic services (HDS) with the staff, accommodation and other resources which are, in its opinion, sufficient for the HDS to discharge their functions.

### **Purpose of this Guidance**

- 3.2 Councillors who are part of the executive or assistants to it have the benefit of working closely with officers of the council and have ready access to information and professional support. In order to undertake their roles effectively all elected members should be able to access a range of information and support. It is anticipated this will mainly focus on signposting individual members to existing sources of information or available training for example, brief prepared for scrutiny committee meetings or how to use research, statistical or legislative websites. It may also include targeted support for groups of members for example, leading a task and finish group investigation or support for individual members to research issues impacting on their communities where they are taking forward a councillor call for action under section 21A of the Local Government Act 2000, they have been delegated functions under section 56 of the 2011 Measure or with which they are involved through their role on the council, for example as chair of a committee.
- 3.3 The democratic services committee should consider the provision of this kind of support to elected members as part of its considerations as to what constitutes sufficient resources for the HDS to discharge their functions. The case for resources for this support should form part of the DSC's budget considerations and discussions with the council. It is anticipated that the DSC will begin this process by identifying the baseline of support which is already available to members, then work with members to identify how this support and its parameters could be developed over time. The council should set out what steps it will take to improve research services to members where appropriate, with actions and timelines and communicate this to members.



## **Support for Research**

- 3.4 It is for the DSC to advise on the nature and level of support for research by elected members that would be suitable for their council and the level of resources that the HDS might require to provide a sufficient set of services in this regard. This guidance sets out the sorts of services the DSC should consider when making its deliberations.
- 3.5 The proportionate use of research support by councillors is an important part of ensuring local democracy is functioning effectively. It is also important to ensure that members do not get frustrated by feeling they are not able to access or have available to them the support they need to make a difference to their local community or undertake a role they have been asked to do on behalf of the council effectively.
- 3.6 Councils should, through their democratic services committee, put in place a protocol or other set of rules governing how councillors should expect to be able to access and use research services, to ensure that it is accessible to all councillors and that it is used equitably and proportionately. This should dovetail with the democratic services committee's oversight of the overall resourcing available for democratic services in an authority.
- 3.7 The aim should be to provide support to assist backbench councillors and their staff to work with constituents, scrutinise legislation, develop policy, undertake any roles they may be asked to do on behalf of the council and undertake effective overview and scrutiny. Research may be related to a specific issue or issues that have a more general impact on the work of elected members across the council but would usually be connected to the delivery of the council's priorities or the scrutiny of their delivery. It should work in harmony with and not be expected to duplicate the support members might be provided by virtue of their membership of a political group, for example where political assistants have been appointed (section 9 of the Local Government and Housing Act 1989). Research provided to councillors through this part of the guidance should not be politically motivated or compromise officers' political neutrality.

## **Research Support and Services**

- 3.8 Examples of research support and services include:
- Collating and distributing background papers to assist councillors to better understand forthcoming key decisions including analysis of complex data and

information which may be provided as background papers for council meetings such as the budget discussion;

- Preparing and sharing regularly management information, including performance management shared as a part of formal assessments either by performance panels or Audit Wales;
- Preparing and sharing demographic information, and information on the use of services by local people;
- Responding to councillors' requests for research on specific topics to be undertaken either by council officers or an external source. Councils should set out clear processes and procedures to ensure councillors have access to this kind of research but also that they understand the requirement for its judicious use within the budget and other resourcing parameters set by the council;
- Signposting of members to useful sources of information they can access on the issue in which they have an interest;
- Circulation of calendars of events held by local and national organisations which may be of interest to members and help inform their knowledge of particular issues.

3.9 The service should not be solely reactive, the proactive provision of timely briefings on new policies, changes in the law or other matters that could impact on the work of members should form part of the service. These briefings should be published and made available to the public as they will be of wider interest and can form part of the Council's strategy for meeting its duties under sections 39 to 41 of the Local Government and Elections (Wales) Act 2021 to encourage local people to participate in decision making and the publication of a participation strategy.

3.10 However, it is also important the DSC and HDS should consult and involve members to shape and regularly review the usefulness and effectiveness of the support provided.

## **Benefits**

3.11 The benefits of pro-active research support for councillors are:

- It means that councillors are better able to engage with the business of the authority in an informed, proactive manner;
- Different officers do not have to deal with requests for information and duplication is reduced;
- There is less demand for the bringing of reports to committees (particularly scrutiny committees) for information, or to note, because there are systematic

methods to share research with councillors through other means thus freeing up committee time and resources;

- The products and outcomes of research can be shared equitably, rather than through one-to-one councillor-officer conversations which privileges those more capable in “navigating” the authority and its officer structures.

### **Support in accessing information**

3.12 Councils should adopt a proactive and permissive approach in how they engage with councillors’ information needs. Councillors cannot always know what information they need to know, and as such may not be in a position to frame requests in a way that captures these needs succinctly. In particular, councils should recognise that it is not optimal for councillors to be expected to make FOI requests of their own authority, and should put in place arrangements to ensure that they can access this – and other – information in an expedited manner.

3.13 As such councils should:

- Frame councillor access to information procedure rules expansively – with a presumption in favour of the release of information to councillors unless a clear public policy reason exists not to;
- Proactively provide councillors with management information and other data to ensure that they are kept informed about the business of the authority. Councils could produce an information bulletin or digest for councillors on a regular basis – subject to resources as suggested above;
- Engage with members to better understand how and where their roles will require that they access certain information sources, and support them to gain that access. This may include negotiation with partners, and others who may hold information relevant to councillors’ roles;
- Ensure mechanisms are in place to protect personal data in line with appropriate legislation.

3.14 As far as possible councils should specify publicly why a matter is exempt from publication or from discussion in a public forum – ideally providing more information than just the description given in Schedule 12A of the Local Government Act 1972.

3.15 Equally, councillors should be made aware that councils are frequently under legal obligations to others with regard to maintaining the confidentiality of certain information – in particular, commercial information and personal information – and such releases could open up the council to challenge.

## **4.0 Statutory Guidance on duties of leaders of political groups in relation to standards of conduct**

### **Status of this Guidance**

4.1 This is statutory guidance issued under section 52A of Local Government Act 2000 (the 2000 Act) inserted by section 62 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

### **Purpose of this Guidance**

4.2 This guidance sets out how leaders of political groups in principal councils should meet their duties contained in section 52A of the Local Government Act 2000 (“the 2000 Act”), inserted by section 62, of the 2021 Act, which relates to the promotion and maintenance of high standards of conduct by the members of the group.

4.3 This guidance is designed to support leaders of political groups understand and discharge their duties in relation to high standards of conduct, whilst recognising that they will wish to and should be encouraged to develop their own approach in line with their wider statutory obligations, local circumstances, and best practice. However, the basic principles set out in the guidance should apply to all.

4.4 This guidance specifically addresses the following duties:-

#### **Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group**

4.5 Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

#### **Duty to co-operate with the council’s standards committee (and any sub-committee) in the exercise of the standards committee’s functions**

4.6 Section 52A(1)(b) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must co-operate with the council’s standards committee (and any sub-committee of the committee) in the exercise of the standards committee’s functions.

4.7 This guidance refers specifically to these duties on a leader of a political group, and sets out the expectations on how they will perform these duties. All of the duties apply from 5 May 2022.

4.8 There are other provisions within Part 3 of the 2000 Act relating to standards committees, inserted by sections 62 and 63 of the 2021 Act. These aspects of the 2021 Act are also described in this guidance.

4.9 This guidance is set out as follows:-

- Policy context within which the duties are set and the purpose of the duties;
- Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group;
- Duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions.

## **Policy context and purpose of the duties set out in section 52A of the Local Government Act 2000**

### **Policy context**

4.10 Part 3 of the 2000 Act established a statutory framework to promote and maintain high standards of ethical conduct by members and employees of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), community council, fire and rescue authority, a national park authority and a Corporate Joint Committee.

4.11 The framework consists of the ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'), set out below:

- Selflessness;
- Honesty;
- Integrity and propriety;
- Duty to uphold the law;
- Stewardship;
- Objectivity in decision-making;
- Equality and respect;
- Openness;
- Accountability;
- Leadership.

4.12 These are included in the statutory Model Code of Conduct ("the Code")(as required under section 50 of the 2000 Act), which lays down 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 guides members on the declaration and registration of interests.

All elected members must familiarise themselves with and give a written undertaking to observe the Code before they can take up office. As the Code may from time to time be updated members must familiarise themselves with any changes with which they are required to observe.

- 4.13 Building on the existing arrangements, section 62 of the 2021 Act inserts a new section 52A into the 2000 Act which places a duty on leaders of political groups within a principal council to promote and maintain high standards of conduct by members of their group. Group leaders are required to co-operate with the council's standards committee in the exercise of its general and specific functions for promoting high standards (see below).
- 4.14 Subsection (3) amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the 2021 Act to promote and maintain high standards of conduct by members of their group. A standards committee must also provide advice or provide or arrange training for group leaders on the new duty.

### **Purpose of the standards of conduct provisions**

- 4.15 The ethical standards framework in Wales aims to promote the observance of consistent standards of conduct by local government members. High ethical standards underpin and maintain public confidence in democratic governance and the decision making process. For any organisation to be effective it must respect diversity in all its forms and treat everyone with the respect they would expect for themselves. Engendering a culture within a principal council which embraces high standards of conduct, requires both local leadership and all elected members to accept responsibility and accountability for their actions both individually and collectively.
- 4.16 The standards of conduct provisions in the 2021 Act complement the existing statutory ethical framework and support the Code of Conduct process. The provisions are designed to ensure leaders of political groups in principal councils, supported by standards committees, promote and maintain high standards of conduct by the members of their group.

### **The wider environment in which the standards of conduct duties operate**

- 4.17 The standards of conduct provisions contained in the 2021 Act support the Welsh Government's wider commitment to equality and diversity in public life. Action has been taken through the Diversity in Democracy Programme to tackle the barriers which prevent individuals' active participation in local democracy. Within local government, and through the Welsh Local Government Association

(WLGA), there has been a commitment to Diversity in Democracy, including councils signing Diverse Council declarations which seek, amongst other actions, to ensure councils 'demonstrate an open and welcoming culture to all'. Furthermore, the WLGA, working with the Local Government Association (LGA), Northern Ireland Local Government association (NILGA) and the Scottish body, COSLA, has been promoting the Civility in Public Life programme, which seeks to promote civil, constructive and respectful political discourse.

4.18 The Anti Racist Wales Action Plan sets out a series of goals and actions designed to improve the outcomes for black, Asian and minority ethnic people in Wales. It includes a number of goals and actions for local government relating to its leadership and representation role. It recognises that a more diverse elected representation is good for decision making and likely to lead to decisions which better reflect society as a whole. This in turn contributes to greater public confidence.

### **Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group**

#### **Introduction**

4.19 This is statutory guidance issued under section 52A of the Local Government Act 2000 (the 2000 Act) as amended by section 62 of the Local Government and Elections Act 2021 (the 2021 Act). This section of the guidance should be read by a leader of a political group in a principal council to support the discharge of their duties in section 52A of the 2000 Act, to take reasonable steps to promote and maintain high standards of conduct by the members of the group. The guidance here reflects the minimum requirements, recognising that leaders are best placed to build on this to develop the detail of their own approach, and work together to share best practice across political groups and with standards committees.

#### **Definition of political groups and group leaders**

4.20 Section 52A(3) of the 2000 Act enables the Welsh Ministers to make provision in regulations about the circumstances in which (a) members of a county council or county borough council in Wales are to be treated as constituting a political group; (b) a member of a political group is to be treated as a leader of the group.

4.21 The Local Government (Committees and Political Groups) Regulations 1990, made under the Local Government and Housing Act 1989, currently governs the position in this respect, until such time as regulations passed under 52A(3) of the 2000 Act are made.

4.22 Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

4.23 The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility and accountability. However, they do have a role in taking reasonable steps in maintaining high standards, setting an example, using their influence to support a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues of alleged non-compliance as soon as they arise.

4.24 Reasonable steps the group leader *may* undertake include:

- demonstrating personal commitment to and attending and participating in relevant development or training around equalities and standards, including on the Code of Conduct;
- actively encouraging group members to attend relevant development or training around equalities and standards including in relation to the Code of Conduct;
- ensuring nominees to a committee have received the recommended training for participating on that committee;
- promoting modelling civility and respect within group communications and meetings and in formal council meetings;
- supporting informal resolution procedures in the council, and working with the standards committee and monitoring officers to achieve local resolution;
- encouraging a culture within the group which supports high standards of conduct and integrity;
- attend a meeting of the council's standards committee if requested to participate in discussions on Code of Conduct issues;
- drive forward work to implement any recommendations from the standards committee about improving standards;
- work with the standards committee to proactively identify, consider and tackle patterns of inappropriate behaviour;
- work together with other group leaders, within reason, to collectively support high standards of conduct within the council and where any issues identified involve more than one political group.

4.25 As set out above, the purpose of the new duties is to build on and support a culture which is proactive, acts on and does not tolerate inappropriate behaviour. The Guidance from the Public Services Ombudsman for Wales for members on the Code of Conduct provides advice on the Code and its requirements. It includes examples of cases considered by the Ombudsman and decisions reached by local standards committees and the Adjudication Panel for Wales



which demonstrate behaviours which are unreasonable or inappropriate. Leaders of political groups and all members, including independent members, should have regard to the Ombudsman's Guidance, which can be accessed on the [Ombudsman's website](#).

- 4.26 The importance of attendance at training on the Code of Conduct has been highlighted by the Ombudsman and was raised under the independent review of the Ethical Standards Framework and Model Code of Conduct carried out by Richard Penn. Leaders of political groups should actively encourage all members in their group to read the Ombudsman's Guidance and any local guidance issued by the monitoring officer or standards committee and to take up any offer of training. They should also work constructively with standards committees and monitoring officers to identify the training requirements for themselves and for their group members.
- 4.27 It is essential that relationships with members are established which encourage them to raise issues with the group leader. The group leader has a significant role to play in creating a culture of trust and mutual respect in their group. Where issues arise, the importance of resolving low-level complaints at a local level has been raised by the Ombudsman and the independent Review of the Framework. Typically, these complaints are about alleged failures to show respect and consideration for others and the making of frivolous and low-level complaints. The group leader should be pivotal in preventing the escalation of these complaints to the stage where more formal interventions become necessary. Leaders of political groups should have informal discussions with members who may be showing early signs of inappropriate behaviour to 'nip this in the bud' before it becomes problematic or in danger of breaching the Code. This may include suggesting and requesting appropriate training or refresher training for the members concerned, asking for social media posts they have made to be removed, and requesting they apologise where appropriate.
- 4.28 A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code (see the Ombudsman's Guidance).
- 4.29 Political group leaders will want to ensure they are able to evidence the steps they have taken to help create an environment in which members demonstrate appropriate standards of behaviour, undertake appropriate training and address, with members, instances where standards of behaviour falls short of that expected. It is a matter for individual group leaders how they choose to evidence their compliance with this guidance, but it may include notes of meetings, copies of correspondence, audits of member training on issues such as equality and the Code of Conduct and action taken to address any gaps in that training.

4.30 A political group's internal disciplinary procedures remain a matter for that group or any associated political party's own rules on discipline. However, it is expected that the group leader will take reasonable steps to promote and maintain high standards of conduct by members within group communications and meetings as well as their 'public' conduct outside of the group setting.

## **Duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions**

### **Introduction**

4.31 This section of guidance is issued under section 52A of the Local Government Act 2000 (the 2000 Act) as amended by section 62 of the Local Government and Elections Act 2021 (the 2021 Act). It is about the duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions within section 52A of the 2000 Act.

4.32 The duties came into force on 5 May 2022.

### **Duty**

4.33 Section 52A(1)(b) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

### **Role of leader of political group**

4.34 It is essential the leaders of a political group co-operate, and ensure the members within their group co-operate, with the monitoring officer and standards committee when an issue is referred to the standards committee.

4.35 Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group leaders should also report compliance with their duty to the standards committee. This can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Group leaders should also report any serious concerns about members' behaviour which have not been remedied by informal actions, in line with the requirement in the Code of Conduct to report such breaches.

4.36 At the beginning of each council year Political group leaders should meet with the standards committee to agree the following:

- How group leaders and the standards committee will work together to ensure appropriate standards of behaviour;
- Frequency of meetings between group leaders and the standards committee throughout the year;
- The threshold which the standards committee will use to establish whether it is content that political group leaders have complied with the duties of the 2021 Act;
- The mechanism for political group leaders to provide reports to the standards committee about the actions they have taken to comply with the duties within the 2021 Act.

4.37 If a member is found by the standards committee to be in breach of the Code of Conduct and is disciplined by the committee, the leader of the political group must support the action, in order to maintain the high standards of conduct expected in public life and the Code. Group leaders should observe the Ombudsman's Guidance and the Sanctions Guidance issued by the President of the Adjudication Panel for Wales, which can be accessed on the [Adjudication Panel's website](#).

## **5.0 Statutory Guidance on the Functions of Standards Committees**

### **Status of this guidance**

5.1 This guidance is issued under section 54(7) of the Local Government Act 2000 (the 2000 Act) inserted by section 63 of Local Government and Elections (Wales) Act (the 2021 Act).

5.2 The duties came into force on 5 May 2022.

### **Purpose of this guidance**

5.3 Local standards committees play an important role in supporting members, individually and collectively, to develop and maintain a culture which embraces high standards of conduct.

5.4 A principal council is required by section 53 of the 2000 Act to establish a standards committee.

5.5 The general functions of a standards committee under section 54(1) of the 2000 Act are to promote and maintain high standards of conduct by members and co-opted members of a “relevant authority” and to assist them to observe the members Code of Conduct.

5.6 In addition, a standards committee also has specific functions under section 54(2) of the 2000 Act, namely to:

- advise the authority on the adoption or revision of a Code of Conduct;
- monitor the operation of the Code of Conduct; and
- provide advice or provide or arrange training on the Code of Conduct for members of the authority.

5.7 Section 56(1) of the 2000 Act provides that a principal council’s standards committee (or a sub-committee established for the purpose) also exercises these functions in relation to members of community councils in its area. Principal council standards committees should play a proactive role in promoting and supporting high standards of conduct in the town and community councils in their area, for example, by visiting them, working together to share good practice and identifying training opportunities.

5.8 Monitoring officers work closely with standards committees and support them in providing day-to-day advice to members on conduct matters.

5.9 A principal council may arrange for its standards committee to exercise such other functions as it considers appropriate, for example, monitoring the operation of corporate maladministration complaint procedures.

5.10 An important aspect of governance arrangements is the approach taken to gifts and hospitality. While there has been some support for a Wales wide approach we consider this is a matter to be dealt with by individual councils. We would expect standards committees to regularly review the approach taken in respect of gifts and hospitality and the use of thresholds. We would recommend this to be a matter included in standards committees annual reports. In addition it is considered this is a matter which would be routinely discussed at regular meetings of Monitoring Officers across Wales.

## **6.0 Duty of a standards committee to monitor group leaders' compliance with the duties, and provision of advice and training**

### **Status of this guidance**

6.1. This guidance is issued under section 54 of the Local Government Act 2000 (the 2000 Act) as amended by 62(3) of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

### **Purpose**

6.2. Section 62(3) of the 2021 Act amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the duty imposed on them by the 2021 Act to promote and maintain high standards of conduct by members of their group. As noted above, a council's political group leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. The standards committee should then consider each report and provide feedback to the group leaders.

6.3. A standards committee must also provide advice and training or arrange to train group leaders on the new duty. At the start of each administration this should take place within six months of the election and be reviewed at least annually.

6.4. As set out earlier in this guidance the standards committee should meet with group leaders at the beginning of each council year to agree a number of issues, including the frequency of meetings between political group leaders and the standards committee through the year to discuss compliance with the duties covered by this guidance, annual reporting processes and issues arising from the analysis of complaints in respect of standards of behaviour.

## **7.0 Duty of standards committee to make annual report**

### **Status of this guidance**

7.1. This guidance is issued under section 54(7) of the Local Government Act 2000 (“the 2000 Act”).

### **Purpose**

7.2. Section 63 of the 2021 Act inserts section 56B into the 2000 Act which places a requirement on standards committees in each “relevant authority” to make an annual report to the authority concerned. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.

7.3. As a minimum, the report must:

- describe how the committee has discharged its functions during the preceding financial year;
- confirm the operation of a local protocol for the resolution of complaints and provide an assessment of its impact. Where no local protocol has been adopted, the standards committees must consider whether the adoption of such a protocol would support its functions in relation to promoting high standards of ethical conduct;
- include an analysis of complaints. This analysis must include information about the number of councillors who have been the subject of a complaint which has been upheld, and whether they have or have not attended a training session on the Code of Conduct prior to or after the complaint was received;
- include a summary of reports and recommendations made or referred to the committee by the Public Services Ombudsman for Wales relating to the investigation of alleged breaches of the member Code of Conduct, and any subsequent action taken by the committee;
- include a summary of notices given to the committee by the Adjudication Panel for Wales, relating to the Panel’s decisions on possible breaches of the member Code of Conduct;
- describe the advice it has provided on training for all members and how that has been implemented; in the case of a principal council set out how it has worked with the town and community councils in its area to promote and maintain high standards of conduct amongst town and community councillors; and
- in the case of a principal council, include the committee’s assessment of how political group leaders have complied with the new duty under section 52A(1) of the 2000 Act (inserted by section 62 of the 2021 Act) to promote high

standards of conduct, including the advice the standards committee has provided and the training it has suggested.

- 7.4. The committee may also wish to report on the number of cases considered under local resolution processes. This would help to capture data on an “all Wales” basis, on matters which do not reach the Public Services Ombudsman for Wales.
- 7.5. Approaches to the management and monitoring of gifts and hospitality are often sensitive matters. It is recommended the approach to this is reviewed and agreed within individual principal councils and that the regular review of thresholds for declaration of gifts, hospitality, material benefit or advantage, are included in standards committee’s annual report. This will assist in terms of transparency of the arrangements.
- 7.6. The requirement to make an annual report is intended to ensure there is a regular and consistent approach to the reporting and consideration of standards of conduct by members of relevant authorities in Wales. This is intended to promote local ownership and collective responsibility by members for ensuring high standards of conduct within their authority. To this end, section 56B places an obligation on a relevant authority to consider the report and any recommendations made by its standards committee within three months of its receipt. The authority’s consideration of a report will be a matter of public record through the published minutes of the meeting.
- 7.7. The standards committee should consider whether there are improvements that can be made to strengthen the standards of behaviour of members. This may include recommendations to the full council and town and community councils in its area about matters such as mandating training in equalities and the model code of conduct.
- 7.8. It would be good practice for standards committees to share their Annual Reports with the Public Services Ombudsman for Wales and town and community councils.



## **Part 3 – Guidance on public participation strategies and petition schemes**

### **1.0 Statutory Guidance on Public Participation Strategies**

#### **Status of this Guidance**

- 1.1 This is statutory guidance made under section 44 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act). A principal council (a county or county borough council in Wales), must have regard to it.

#### **Purpose of this Guidance**

- 1.2 This guidance is to support councils in the preparation and maintenance of their public participation strategies which aim to support and encourage decision making, which is informed by, understands and reflects the diversity of the communities in the council area.

#### **Policy intent**

- 1.3 Public participation is essential to ensuring the needs and aspirations of communities are at the heart of local decision making. Councils must demonstrate they recognise and value the contribution of local people in identifying, shaping and evaluating the services they and their families rely upon as part of their democratic decision-making processes. This is central to the ethos of the Well-being of Future Generations (Wales) Act 2015 (the 2015 Act) and sections 39 to 41 of the 2021 Act are intended to work in harmony with the pursuit of councils' well-being goals and complement the five ways of working set out in the 2015 Act.
- 1.4 This is because the 'participation duty' in the 2021 Act relates specifically to participation in the democratic processes of the council, recognising the democratic dimension of councils which is specific and integral to their constitution. Its focus is on maintaining the participation, trust and interest of the public in democracy in the years between elections. Also, if this trust interest can be grown, supported and built upon in the years between elections, there is the opportunity to further build on this and encourage higher levels of voter registration and turnout at election time.
- 1.5 The aim of the public participation strategy is therefore to set out the arrangements the council intends to put in place to embed and deliver a culture of partnership with the public. To build this culture of partnership and for the

public to have confidence in the council's commitment to encourage and act on their views, the participation strategy must be developed with all diverse communities within the council area.

- 1.6 The 2021 Act does not provide a definition of participation but for the purposes of this guidance and the preparation of the public participation strategy 'participation' should be interpreted as an all-encompassing term for activities or methods which inform, engage, consult, involve or use co-development or co-production between council and the public. It should also be interpreted as participation of everyone no matter their age, protected characteristic or characteristics or socio-economic background. The council's public participation strategy should be clear how it will enable participation for everyone including by reference to the social model of disability.

### **What the 2021 Act requires**

- 1.7 The 2021 Act places a duty on principal councils (a county or county borough council in Wales) to encourage local people to participate in their decision making. This includes where councils are making decisions in partnership with another principal council or in conjunction with another individual or body such as a local health board. This is set out in section 39 of the 2021 Act and is specifically intended to encourage public participation in the democratic processes of the council as a bridge with the public's direct engagement with councillors.
- 1.8 Section 40 of the Act then requires a principal council to prepare and publish a public participation strategy setting out how it will encourage local people to participate in its decision making. These strategies **must** include (section 40(2):
- a) ways of promoting awareness among local people of the principal council's functions;
  - b) ways of promoting awareness among local people of how to become a member of the principal council, and what membership entails;
  - c) ways of facilitating access for local people to information about decisions made, or to be made, by the principal council;
  - d) ways of promoting and facilitating processes by which local people may make representations to the principal council about a decision before, and after, it is made;
  - e) arrangements made, or to be made, for the purpose of the council's duty in section 62 of the Local Government (Wales) Measure 2011 (bringing views of the public to attention of overview and scrutiny committees);
  - f) ways of promoting awareness among members of the principal council of the benefits of using social media to communicate with local people.

- 1.9 The strategy **may** also address how a principal council proposes to comply with a duty imposed by any enactment. This enables the council to set out in one place how it will address a variety of duties to eliminate any duplication and to make it easier for the public to understand the many different ways in which the council is encouraging participation across the range of its activities.
- 1.10 In developing its public participation strategy councils must consult people who live, work or study in the council's area and anyone else it thinks appropriate. Section 41 of the 2021 Act requires a council's first strategy made under this section to be published as soon as reasonably practicable after the local government elections in May 2022.
- 1.11 There are many ways of involving, engaging and interacting with individuals and groups of individuals within communities for example, formal consultations, focus groups, public meetings and citizens juries. No one mechanism is the key to developing a partnership approach between members of the public and the council which serves them, and councils will need to consider which approaches are best matched to different aspects of the strategy and the different communities they must engage.
- 1.12 A public participation strategy must go beyond relying solely on traditional requests for feedback on pre-determined plans and establish a relationship with communities built on trust, a commitment to listen to all voices and for those voices to be heard and to work together with the community to explore and resolve issues of concern, promote and recognise achievements and face new challenges together. The public participation strategy must set out how this will be achieved.
- 1.13 Section 41 then enables the council to determine the frequency of the subsequent reviews of its strategy but it must consult with people who live, work or study in the council's area and anyone else it thinks appropriate when undertaking a review. The revised or new version of the strategy must be published as soon as possible after the review.

### **Preparing the strategy**

- 1.14 In preparing the strategy the council should be clear about those it is required to consult with under section 41 of the 2021 Act on its purpose. The purpose is to set out **HOW** the council will achieve the requirements set out in section 39 of the Act.
- 1.15 Each of the requirements cannot be met solely through formal consultation, although formal consultation may be one of the pathways for participation, demonstrating that the requirements are being met will involve setting out a

basket of measures. For example, demonstrating the council is meeting the requirement relating to ways of promoting and facilitating processes by which local people may make representations to the council about a decision, before, and after it is made could include formal consultation processes but could also include how to make representations to your ward member, how to submit questions to the council leader, how to submit evidence to scrutiny committees, how to become a member of a citizens' panel or a co-production forum, systematic publication of council, cabinet and committee forward work plans and agendas and so on.

- 1.16 Whilst meeting the requirement relating to promoting awareness among local people of how to become a member of the principal council and what membership entails could include youth councils and youth cabinets, outreach in local communities and opportunities for shadowing elected members, promotion of how to attend council meetings, podcasts and webcasts about the work of elected members and so on.
- 1.17 The development of the strategy should be informed by discussions and involvement of the public as to its purpose and what participation pathways would best enable them and support them to engage in local decision making. The approach to the development of the strategy and the routes for participation it sets out must go beyond this, focusing on a partnership approach with those impacted by decisions made and services provided by the council.
- 1.18 An effective approach to public participation cannot be achieved without investment. It is essential as part of any baseline assessment the current level of resource allocated to engaging with the public is identified with an explanation of what those resources deliver.
- 1.19 The requirement to develop a public participation strategy should not be seen as an indication that councils are not already engaging with the public. Many councils will already have a number of mechanisms in place aimed at helping the council to understand the views of the public it serves. Councils should use the strategy to build on the strengths it already has in this area, while developing new ways of working within a wider partnership approach to demonstrate its commitment to public participation.
- 1.20 Councils should have regard to their statutory duties in respect of equalities, Welsh language and the Well-being of Future Generations (Wales) Act 2015 when preparing their strategy. Councils should also be aware that a well-rounded public participation strategy is integral to demonstrating it is meeting its duties under section 89 of the 2021 Act to keep its performance and governance under review and its duties under section 90 to consult local people on performance.

## **Baseline assessment**

1.21 An important part of any strategy is being clear about the starting point. In the case of a public participation strategy it is necessary to understand what is already in place, what works well and where the gaps are. It is essential there is an understanding of the demographics within the local authority area. A local authority should conduct a baseline assessment as part of its preparation for developing a public participation strategy.

1.22 Key issues which should be considered as part of this assessment are the demographic profile of the local authority, the existing level and nature of community engagement and the current approach to public participation. The following questions, while not exhaustive, may be useful in establishing the baseline assessment:

- What is the local authority's demographic profile?
- What community networks already exist and under what circumstances does the local authority engage with them?
- What community leaders and local issues champions has the local authority identified, developed and maintained relationships with?
- What mechanisms currently exist for members of the community to put forward ideas to the council for consideration? How is this communicated to the public?
- How does the local authority act upon complaints received and how does the public know whether changes have been made to services / processes as a result? Information published by the PSOW about levels of complaints for councils is a rich source of information;
- What resources are dedicated to community engagement / involvement? What has changed as a result?
- How does the public contribute to the scrutiny of the council's work?

1.23 The baseline assessment will help the local authority to focus on its strengths while developing a holistic, public-centred strategy.

1.24 In advance of drafting a strategy the council should consider the requirement placed on it through sections 39, 40 and 41 of the 2021 Act alongside the baseline assessment. This will provide an opportunity to identify key issues which will be important in developing the strategy, the timelines for action and the potential for investment to support both the development of, and implementation of the strategy.

## **Designing effective public participation**

1.25 Building on good practice and working with the public, councils can move from traditional approaches and design more collaborative, tailored and imaginative participation. Strategies should explain the approach and guiding principles the council has adopted. There are many approaches a council could follow in the development of its strategy and the following is intended to set out a high level approach of the key steps:

### **Design**

- Set out clearly the purpose of the strategy and the intended outcomes;
- Identify and set out the process for development such as public and stakeholder engagement and how this will be inclusive and extensive;
- Involve a wide range of staff across the council to bring together an understanding of existing interactions with the public, understand good practice and generate ideas;
- Ensure the design fulfils the statutory requirements relating to the Well-being of Future Generations (Wales) Act 2015, equalities and Welsh language and considers the social model of disability and responsibilities in relation to children's rights;
- Set out how it will be ensured that the council executive and the council provide leadership for the development and implementation of the strategy;
- Set out how ward councillors will be involved in championing and leading the development process in their communities.

### **Development**

- Map existing participation pathways, existing strengths and weaknesses, identify gaps;
- Identify opportunities where digital could add value or provide new opportunities;
- Use the development process to create participation, harness democratic involvement, both inside the council and with the public, and build it into involvement in decision making;
- Road test proposals in communities;
- Benchmark proposals with other councils;
- Identify on-going resource needs to implement and evaluate the strategy.

### **Evaluation and Revision**

- Develop and use evaluation measures;
- Set timeframes for evaluation and revision.

1.26 This should not be approached as a sequential process. It should be noted that the above are interrelated, iterative tasks, not a step-by-step template.

### **Promoting awareness**

1.27 Effective public participation relies on there being a range of information available to the public which includes information about the following:

- the role of the council;
- how the council is structured;
- who represents them on the council and what has their contribution been;
- How decisions are made;
- How decisions are scrutinised;
- Key contacts within the council for general and specific issues;
- Short, Medium and Long term plans;
- Financial aspects of the Council;
- Information about council service or activities complaints and trends in terms of complaints as well as actions / changes made as a result;
- Key contact points.

1.28 The above is not an exhaustive list, there are many other examples of information which should be easily accessible to the public. It is however important that the public help define what they consider to be important to them as opposed to an approach which solely relies on the council determining what it thinks is important to people.

1.29 Much of the above information should be included in the council's constitution and constitution guide which it is required to prepare, publish and keep up to date by section 37 of the Local Government Act 2000. Separate guidance has been published about constitutions and the constitution guide.

1.30 The council's public participation strategy should include how it will improve the way it promotes awareness for example by:

- Improving the relevant sections of the council's website;
- Ensuring the council's forward plan supports public engagement by being accessible, timely and user friendly;
- Ensuring information for potential councillors is available and fit for purpose;
- Communicating through council publications, local media and social media, taking steps to use languages such as BSL and Braille;
- Information and support for schools;

- How individuals can submit positive comments to the council and the arrangements for making complaints about services or activities, including the role of the PSOW;
- Staff from across the council being involved in its design, development, review and revision so that all interactions with the public can be harnessed;
- Staff training and development on good practice engagement, encouragement to see the participation strategy as a living document with continuous opportunity for improvement;
- How it will measure progress in terms of public participation; and
- Providing information to individuals interested in standing to be a councillor.

### **Reviewing, revising and replacing the strategy**

1.31 Encouraging and implementing measures to encourage public participation is a challenging aspect of council business. It is expected that as participation levels increase, the new partnership approach between the council and individuals and communities will present more ways of working together which may necessitate amendments to the strategy, which should be developed in conjunction with the public.

1.32 The council must review its public participation strategy as soon as possible following each ordinary election, but may review its strategy at any other time. When reviewing the strategy the council must consult local people, and others it considers have an interest in the strategy. Following a review, the council may revise its strategy, or replace it with a new strategy.

1.33 The council must publish the revised or new strategy as soon as possible setting out the changes and the rationale for those changes.

1.34 However, the public participation strategy should not be viewed as a static 'document', only reviewed and revised to a pre-determined timetable. It should be viewed as an opportunity to constantly learn and develop and a process should be in place to ensure learning and good practice can be captured and harnessed in between 'formal' reviews.

### **Matters to consider**

#### **Bringing together and joining up existing pathways for participation under the umbrella of the strategy**

1.35 Principal councils already have numerous ways of enabling people and communities to get involved with their policy development and service delivery



and the way in which this informs the democratic processes of the council. . However, the participation strategy can add value to existing pathways by clearly identifying them, signposting them and recognising them as potential multi-use pathways that could enrich areas of the council's work which they may not previously have been designed to interact or connect with.

Examples of existing participation pathways include:

- Interactions generated through engagement with the guide to the constitution published under section 37 of the Local Government Act 2000, as amended by section 45 of the Local Government and Elections (Wales) Act 2021;
- Arrangements to support the delegation of functions to individual ward councillors under section 56 of the Local Government (Wales) Measure 2011;
- How the publication of future meeting dates of council, committee and scrutiny meetings and their forward work programmes support the public's knowledge of council business and therefore ability to engage with and participate in it;
- How policies relating to the co-option of members to council committees can support and enhance diversity of perspective;
- How arrangements for fulfilling the statutory duty in section 62 of the Local Government (Wales) Measure 2011 to take the views of the public into account work in harmony with and support the duty in section 39 of the 2021 Act;
- How arrangements for the public to make complaints and submit complements to the council can be interactive and include feedback on changes or actions that result (this should form part of the Governance and Audit Committee's function to review and assess the effectiveness of the council's ability to handle complaints effectively);
- How existing statutory participation pathways will be integrated within the strategy, such as those relating to equalities, future generations and planning;
- How the council's policies on the broadcasting of council meetings, including archiving, as required by section 46 of the 2021 Act support the public's awareness and therefore ability to engage with council decision making;
- Ensuring the work and engagement elected members undertake in their wards is recognised and incorporated into participation strategy;
- Connecting the enabling of members' annual reports under section 5 of the Local Government (Wales) Measure 2011 as a means of promoting awareness of the council's functions and the role of elected members;
- The Council's petition scheme and petitions submitted under it as required by section 42 of the 2021 Act;
- The council's duty under section 90 of the 2021 Act to consult local people on performance;
- Schools' engagement programmes and work to ensure young people are registered and made aware of their voting rights;

- Youth councils and youth cabinets;
- Focus groups and citizens' panels.

1.36 One of the functions of the role of the participation strategy is to coherently set out how these pathways contribute to and enable the public to participate in decision making. It should identify the added value of approaching participation in a holistic rather than piecemeal way. Mapping of existing pathways is also important to identify both gaps and potential connections which could strengthen the participation networks.

### **Making the best use of digital**

1.37 Technology has advanced significantly during the last decade and there are many tools that, if used appropriately can help bring democracy closer to the public. It offers new ways of engaging, which can address previous limitations, rather than simply recreating traditional offline participation online. The use of digital services and communication across Wales varies, however, developing and maintaining the participation strategy provides the opportunity for councils to work together and share experience and learning as to what works. A participation strategy must set out the ways in which the council and the public can exploit the use of digital to maximise opportunities for effective participation.

1.38 The Covid-19 pandemic resulted in an increased awareness and use of digital, however these are technologies which present challenges in terms of training and awareness and a wide range of skills are needed to properly embrace digital participation. Councils should consider the cost benefits of investment in digital to promote engagement, including the investment in staff training and expertise required to make effective use of the opportunities digital presents. This is likely to mean taking a medium to longer term horizon for the realisation of benefits.

1.39 Participation strategies must include ways of promoting awareness amongst members of the principal council of the benefits of using social media to communicate with local people. This should be co-ordinated with the work of the Democratic Service Committees and its development of a member development strategy. Annual training reviews with individual members can be used to identify specific training needs but the participation strategy should set out how members will be involved in campaigns the council might run or support and how collective efforts of members can be harnessed on social media to promote and enable public participation. Separate guidance has been issued on member support, training and development and councils are reminded of their duties to ensure the well-being of their members is protected and, in particular, members are also provided with high quality training and information to deal with the challenges social media can bring in relation to threats and harm to personal well-being.

- 1.40 Digital is both a benefit and a barrier to diversity of participation and councils should be mindful of this when considering their approach to digital participation. Online channels can accommodate large volumes of participation thus allowing people with work, caring or other commitments to take their time to make their contribution at a time that suits them. However, it also has the potential to exclude some communities and people with protected characteristics from being able to participate in a way which is suitable or comfortable for them and so a mix of participation pathways should always be available.
- 1.41 This is because while digital communication offers significant benefits and opportunities to facilitate participation, the way it is implemented has the potential to exclude individuals. There are many reasons for this including physical and mental health conditions, accessibility of technology, lack of digital skills and socio-economic factors. Therefore, participation strategies must identify how the council will address these and other risks and ensure inclusivity.
- 1.42 Digital advances are likely to be a constant theme in society and it will be important for councils to enable staff to engage in exploration of new ways of working in a way that staff feel supported to try new ways of engaging. This will require appropriate safeguards to be put in place and the strategy should identify how any exploration will take place, how the public will be involved and how it will approach identifying and implementing safeguards.

### **Ensuring Equality and Diversity**

- 1.43 This Welsh Government is committed to increasing diversity across all aspects of public life. This includes tackling the barriers which prevent individuals' active participation in local democracy and provision of local services.
- 1.44 Equality and diversity are fundamental to effective public participation. The public participation strategy must set out how the council will ensure the widest possible range of views from the public inform council business. This will require councils to go beyond what many describe as 'the usual suspects'.
- 1.45 Leadership and culture within councils is key to a successful partnership approach to participation. The baseline assessment councils conduct will assist in identifying existing routes to communication and engagement, while providing an opportunity to identify key communication gaps and opportunities to explore how the more hard to reach groups can be encouraged to participate. The use of representative groups, community leaders, ward councillors and charities can all provide important information about community networks. The involvement of such groups should be welcomed and form a key component of any public participation strategy.

- 1.46 The Equality Act 2010 provides a legal framework for protection against direct and indirect discrimination for people with protected characteristics. These include age, sex, disability and religion. Councils must ensure its strategy sets out how it will advance equality of opportunity through the establishing and maintaining relationships with individuals and groups with protected characteristics.
- 1.47 In respect of disability, the Welsh Government is committed to the Social Model of Disability. This is an important approach, which goes beyond the Equality Act 2010 and broadens the focus on disability by recognising that what makes someone disabled is not their medical condition, but the attitudes and structures of society which present barriers. This is a key distinction and the removal of societal and attitudinal barriers must form part of the public participation strategy.
- 1.48 There are many ways in which barriers, often not intentional, can present in normal council business. An example would be where there are time limits on contributions to be made at meetings. The conditions some people experience may not be in a position to put forward their views within that time frame and as a result feel frustrated and not heard. This is a simple example of a self-imposed council barrier to participation, there will be others which could be explored further with those effected.

### **Local Authority Meetings**

- 1.49 Much of a council's work is undertaken through meetings both at full council and committees. There are a number of challenges councils face when determining the arrangements for these meetings including the timing of the meetings, opportunities for the public to attend and contribute and communication of the impact on communities and individuals as a result of the decisions made. While the majority of these meetings are open to the public, it is recognised that not everyone will be able to attend in person. It is therefore important that information about the items to be considered, the evidence base which will underpin discussions and the outcome is readily available to the public. The public participation strategy should be clear about the communication arrangements around all council meetings. Separate guidance about multi-location meetings has been published.
- 1.50 The 2021 Act requires principal councils to broadcast meetings of the full council live as they happen. This development will allow the public to follow the proceedings of the full council in real time from wherever they are, hear the contribution of their local representatives and understand the issues raised in respect of agenda items. The council is also required to make the broadcast available electronically for a reasonable period after the meeting. This should be

available for at least six months following the meeting. This should not be seen as a prohibition on councils to the broadcast of other meetings of the council. This is the first step in respect of broadcasting and the Welsh Government intends to extend this requirement to a number of other council committee meetings in the future. As part of its strategy councils should explore the views of the public about which of the council's committees they consider should be broadcast. This will require councils to ensure the public are clear about the nature and scope of each of its committees and sub committees.

## **Influencing decisions**

1.51 A principal council must set out in its strategy how it will support people to express their views on decisions before and after they are taken. This could include, for example:

- Setting out arrangements for contacting a local councillor, or a relevant cabinet member or senior officer, to make representations directly – and how those representations will be responded to;
- Setting out how representations can be made at relevant meetings;
- Holding local meetings to discuss the issues with local people;
- Including mechanisms for individuals to identify issues for consideration through scrutiny (for example, through arrangements to support the public to suggest topics for scrutiny or opportunities to take part in the scrutiny process);
- Opportunities to make their views known via the council's website or social media channels, these should include opportunities for individuals to speak with 'real people' where appropriate rather than simply relying on automated responses or interaction.

## **Ensuring impact**

1.52 The expected impact of participation should be integral to design, delivery and monitoring. Councils should consider impact in terms of:

- Inviting participation when thinking is still at a formative stage;
- Providing information that allows for informed consideration;
- Giving adequate time for consideration and response;
- Giving 'real' consideration to the results of participation before a decision is taken;
- Councils should set out how participation will influence the council's decision making, how the executive and relevant committees will be involved and what processes will be put in place.

1.53 Transparency should also be a key feature of these processes as should feedback to those participating about what the impact of their involvement has been. Feedback processes are integral to this so that people can understand and trust that their views were considered seriously and appropriately even though the outcome may not reflect or entirely reflect what they may have hoped for.

1.54 The strategy should therefore set out how this feedback cycle will operate in practice.

### **Approval and Review**

1.55 The strategy should set out the arrangements for approval and review within the council and what the proposed review cycle will be. As noted above, it should also set out that the strategy is a living document and to that end processes for on-going review and improvement should also be set out, as well as 'formal' full review periods and processes. The strategy should also set out how it will be evaluated and how the council will incorporate learning from its self and panel assessments conducted under Part 6 of the 2021 Act into any resulting new or revised participation strategy.

## **2.0 Statutory Guidance on Petitions**

### **Status of this Guidance**

2.1 This is statutory guidance made under section 44 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

### **Purpose of this Guidance**

2.2 This guidance is to support councils in the preparation and maintenance of petition schemes aimed at enabling communities to explore support for specific issues to inform council deliberations.

### **What the Act requires**

2.3 Section 42 of the 2021 Act requires principal councils to make and publish a petition scheme setting out how the council intends to handle and respond to petitions including electronic petitions.

2.4 The petition scheme must as a minimum set out:

- a) how a petition may be submitted to the council;
- b) how and by when the council will acknowledge receipt of a petition;
- c) the steps the council may take in response to a petition received by it;
- d) the circumstances (if any) in which the council may take no further action in response to a petition;
- e) how and by when the council will make available its response to a petition to the person who submitted the petition and to the public.

2.5 A principal council must review its petition scheme from time to time and, if the council considers it appropriate, revise the scheme.

2.6 If a principal council revises or replaces a petition scheme, it must publish the revised or new scheme.

### **Designing a petition scheme**

2.7 A petition scheme should not be considered as the sole method of receiving public views on matters. Its design and parameters should be set in the context of the council's public participation strategy and informed by the other participation pathways available to members of the public. Therefore, as part of a suite of pathways used as part of the council's wider public participation strategy, it can be a powerful tool in gauging support for specific courses of

action.

- 2.8 Well designed and resourced petition systems, working in conjunction and harmony with other participation pathways can have a range of benefits for the public and councils. For example, petitions enable communities to quickly highlight the issues which are of the most concern to them to the council, they can add weight to representations made by ward councillors on their behalf and provide a focus for community discussion. In turn, councils gain valuable insight into the concerns of their communities and can then support communities in addressing these issues.
- 2.9 Petitions should not be considered as a nuisance or threat and should be considered as a good opportunity to hear the views of the public, whether in support or not of something the council may be considering or intending to do.
- 2.10 Councils should, when designing petition schemes, think about the process from the point of view of petitioners, including understanding what petitioners might think “success” will look like at different stages in the process, and how the process can be made as transparent and streamlined as possible.
- 2.11 Councils should have regard to their statutory duties in respect of equalities, Welsh language and the Well-being of Future Generations (Wales) Act 2015 when preparing their petition scheme.
- 2.12 Petition schemes should be developed not just to ensure a fair and robust process but also to provide a helpful and positive experience for those people who take the time to submit and promote petitions. This is likely to involve consideration of the following issues:
- A clear explanation of the matters about which the council will accept petitions, including the criteria for making a decision to accept or reject a petition;
  - How and where advice will be given to petitioners to enable them to engage productively with the process, including measures in place for disabled people and individuals with long term health conditions and neurodiversity;
  - A clear understanding of the different stages in the petitions scheme, with an explanation of what thresholds will be used to determine the transition from one stage to another;
  - How petitions fit in with other opportunities for the public to be involved – and signposting to other opportunities, either as complementary to a petition or instead of it, including connecting the potential petitioner with their ward councillor;
  - The correct body to consider a given petition. It is right for petitions to be heard by a variety of different bodies, although the default is likely to be full Council



unless it is seen as especially useful for the petition to be heard by a committee that focuses specifically on the subject matter of the petition itself;

- Petition schemes will need to consider where petitions are considered in scrutiny committees. These committees have no power to act on petitions but could (for example) adopt petitioners' arguments as formal recommendations;
- The rights of petitioners to speak in meetings, and how this engages with wider public speaking rights, and rights to make deputations;
- How and within what timeframe the council will provide feedback to the petitioner on the success or otherwise of their petition.

2.13 Councils are encouraged to explore what would constitute good practice around the framework for petition schemes set out in this guidance. For example, what might be an appropriate signature threshold for the consideration of a petition and how and when this threshold would be kept under review. This would support a balance between local discretion based on the size of the council, the nature of the scheme and its relationship to other participation pathways in the council and consistency for the members of the public who may be engaged with multiple councils or move from one council area to another.

## **Part 4 – Guidance on constitutions, executives, scrutiny, governance and audit committees and conducting meetings**

### **1.0 Statutory Guidance on Constitutions**

#### **Status of this Guidance**

- 1.1 This is statutory guidance issued under section 38 of the Local Government Act 2000, as amended by section 45 of the Local Government and Elections (Wales) Act 2021. A local authority (a county or county borough council in Wales), elected mayor or an executive leader must have regard to it. This guidance replaces previous guidance relating to constitutions issued under this section in 2006.

#### **Purpose of this Guidance**

- 1.2 This guidance is to support councils in the preparation and maintenance of their constitutions.

#### **Developing a Constitution**

- 1.3 Under Section 37 of the Local Government Act 2000, each council operating executive arrangements is required to prepare, keep up to date and publish electronically a document known as the council's 'constitution'. This must include a copy of their standing orders, code of conduct and other information the council considers appropriate.
- 1.4 The Welsh Ministers issued separate guidance on Modular Constitutions for Welsh councils in 2001. This is regularly updated by Lawyers in Local Government and the WLGA and remains a valuable resource for local authorities.

#### **Content of the Constitution**

- 1.5 Councils should ensure their constitution is easy to use and understand. It will also be supplemented by a constitution guide (see The Constitution Guide below). Councils should in particular make sure parts of the constitution which deal with related issues are cross-referenced. In considering their constitution, councils should have regard to their statutory duties in relation to the Welsh language, the Well-being of Future Generations (Wales) Act 2015, equalities, including the public sector socio economic duty, and also that they are now required to publish their constitutions electronically.

1.6 The constitution must include:

- Such information as the Welsh Ministers may direct, this currently includes information with respect to the discharge of all the council's functions as directed by the Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2023 made under section 37(1)(a) (annexed to this guidance);
- A copy of the authority's standing orders;
- A copy of the authority's code of conduct for members (including co-opted members); and
- Such other information as the authority considers appropriate.

1.7 The Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2023 provides that a constitution must specify the roles of the full council. The arrangements for the discharge of non-executive functions should be a statement of who or which body within the council is responsible for the discharge of non-executive functions, (as described in the Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2007 made under Section 13(3)(a) of the Local Government Act 2000) together with a description of the role of the full council. The constitution must be clear as to how decisions are taken, who takes them, which decisions are delegated and to whom and how the decision to delegate is made. Decisions involving significant and/or controversial matters must not be delegated to officers.

1.8 There is considerable scope for local choice and diversity in the content of the constitution and the way in which it operates. Many of the matters to be included in the constitution may also be included in an authority's standing orders.

1.9 There will be other matters governing the conduct of the authority's affairs which will not be included in standing orders, executive arrangements, the arrangements for the discharge of non-executive functions, the code of conduct for members or the code of conduct for officers. Councils may, if they choose, include any of these other matters in their constitution.

1.10 For example, a council should include a description of locally developed protocols governing the relationships between the executive, other councillors and officers. The constitution should be clear these relationships must be constructive and respectful at all times. Also, as well as enabling informal routes for disagreements between members to be addressed, the constitution should provide routes for officers to seek informal resolution of difficulties in relationships with members without the need to escalate to formal processes. The code of conduct for officers should make clear that that code of conduct is incorporated into the officers' contract of employment. It should also be clear that, once informal routes have been exhausted, statutory processes must be followed in

relation to any disciplinary action relating to officers falling within the remit of the Local Authorities (Wales) Standing Order Regulations 2006.

1.11 Other matters councils should consider including and / or taking into account in their constitutions include:

- The need for a “preamble” (or introduction) to the constitution, setting out the important principles that underpin the constitution’s contents and recognising the council’s broader obligations to local democracy and local people;
- The relationship between Articles of the constitution and more detailed rules of procedure (if this is the structure that a Council chooses to use to organise its constitution);
- The way in which informal discussions between members and officers inform and influence formal decision-making at the council;
- The way the council makes decisions in partnership with other councils and other bodies, in particular through public service boards, regional partnership boards, corporate joint committees, and any joint committee established under the Local Government Act 1972;
- How the council will appoint members to national park authorities and fire and rescue authorities and how those members will update the council on their work;
- The working arrangements and relationship with community and town councils in the council’s area;
- Rules of procedure which relate to high profile issues – for example, the full council procedure rules, including the arrangements in place for the electronic broadcasting of those meetings and the archiving and retention of the broadcasts;
- Financial procedure rules;
- Details on arrangements relating to public participation in relation to duties included in sections 39 to 41 of the Local Government and Elections (Wales) Act 2021;
- The arrangements for dealing with complaints including interaction with the PSOW;
- The needs of equality, diversity and inclusion and the statutory duties related to these and the Welsh language. This relates not only to ensuring that constitutional documents are themselves accessible, but that rules and procedures take account of the needs of people with a wide range of needs. For example, parts of the constitution that relate to the public’s right to be involved in decision-making should take account of these needs;
- Councils’ duties relating to the Well-being of Future Generations (Wales) Act 2015. Councils’ overall legal obligations under this Act are well understood, but it also has implications, for example, through the ways of working, for how

councils make formal decisions, and how scrutiny and oversight systems operate;

- The way the council will fulfil its obligations under the UK General Data Protection Registration (UKGDPR) when dealing with personal information.

1.12 Importantly, the constitution should be drafted as a flexible document. For example, it should not be necessary to produce a revised constitution every time an ad-hoc committee or sub-committee is appointed to undertake a particular task. However, this needs to be balanced against the need for a constitution to be detailed enough so that anyone who has dealings with the council can use it to determine who is responsible for the matter with which they are concerned.

### **Availability of the Constitution**

1.13 The Act requires that copies of the constitution are published electronically and available at the council's principal office for inspection at all reasonable times. Members of the public should be able to take away copies of the constitution for free or charge representing no more than the cost of providing the copy a reasonable fee. It is also recommended that local authorities should make copies of the constitution available more widely, for example at all their offices, libraries, community buildings etc.

### **Review and Revisions to the Constitution**

1.14 The council's constitution should be kept up to date at all times. Councils should review the constitution regularly to make sure it continues to be fit for purpose, with these reviews being led by councillors, and supported by the council's monitoring officer in consultation with the head of democratic services.

1.15 In considering their arrangements for the ongoing review and revision of their constitution councils should consider:

- Whether the council constitution will permit the monitoring officer to make "minor" amendments and what constitutes a minor amendment, for example the updating of a reference to legislation. Full reviews and major amendments must be agreed at full Council. Councils may wish to systematise this process, by linking it more formally to the annual general meeting to ensure that the constitution is kept under regular review;
- Arrangements for councillor "ownership" (that is, a clear sense that councillors are responsible for making sure that the constitution is of a high quality). This matter of ownership is important. Ownership must be held by full council; but detailed work can be led by a named committee. Whichever formal space is designated it is important that councillors have regular opportunities to reflect on the strength of the governance framework, of which the constitution forms a central part.

- 1.16 An individual councillor may propose additions, amendments, suspensions or withdrawals to the council's constitution, but in doing so would have to declare any interest they have before obtaining a decision of the full council. Any proposal should also be accompanied by advice from the Monitoring Officer to full Council (or any committee or member considering potential changes).
- 1.17 All proposed changes, unless previously agreed as being 'minor' have to be debated by the full council and require a majority vote of those members voting to be accepted.
- 1.18 Any changes the council has resolved to make will come into immediate effect unless the decision specifies otherwise.
- 1.19 The published constitution should be amended within 5 working days of the making of a resolution to ensure the most up to date version of the constitution is always available.

**WELSH GOVERNMENT**

**The Local Government Act 2000 (Local Authority Constitution) (Wales)  
Direction 2023**

1. The Welsh Ministers, in exercise of the power given to them by sections 37(1)(a) of the Local Government Act 2000 (“the Act”), directs each county and county borough council (“local authority”) in Wales that the document which they must prepare and keep up to date in accordance with section 37(1) of the Act and referred to in that section as their constitution must contain the information specified in the Schedule.
2. This direction will have effect from to be confirmed.
3. The Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2001 is revoked.

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Minister for Finance and Local Government

## **The Schedule**

### **Specified Information**

1. A summary of the constitution.
2. The roles of members and (if applicable) of the elected mayor including:
  - 2.1 Their election and terms of office;
  - 2.2 The rights and duties of all members and (if applicable) of the elected Mayor, including the application of family absence for members.
3. The roles of the full council including:
  - 3.1 The functions and actions which are reserved to the full council; and
  - 3.2 The different types of council meeting and the rules governing the proceedings of those meetings, including the arrangements for multi-location meetings and for their electronic broadcast where this is required on a statutory basis or undertaken voluntarily.
4. The roles of the chairperson or presiding member of the council, and their respective deputies.
5. The roles of overview and scrutiny committees including:
  - 5.1 The terms of reference of each of the committees;
  - 5.2 The general and specific roles of each of the committees;
  - 5.3 The rules governing the proceedings of the committees; and
  - 5.4 The arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
6. The roles of the standards committee and of any sub-committee of that committee including:
  - 6.1 The membership of the committee and any sub-committee;
  - 6.2 The roles, functions, rights and duties of the committee and any sub-committee;



- 6.3 The rules governing the proceedings of the committee and any sub-committee; and
  - 6.4 The arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
7. The roles of any area committees including:
    - 7.1 The membership, terms of reference and functions of the committees;
    - 7.2 The rules governing the proceedings of the committees; and
    - 7.3 The arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
8. The roles of the governance and audit committee and of any sub- committee of that committee including:
    - 8.1 The membership of the committee and any sub-committee;
    - 8.2 The roles, functions, rights and duties of the committee and any sub-committee;
    - 8.3 The rules governing the proceedings of the committee and any sub-committee; and
    - 8.4 The arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
9. The roles of the Democratic Services Committee and of any sub-committee of that committee including:
    - 9.1 The membership of the committee and any sub-committee;
    - 9.2 The roles, functions, rights and duties of the committee and any sub-committee;
    - 9.3 The rules governing the proceedings of the committee and any sub-committee; and
    - 9.4 The arrangements in place for the consideration of and response to their reports by the full council and/or the executive.

10. In the case of a local authority which is operating executive arrangements as defined by section 10(1) of the Act the roles of the executive and of members of the executive including:
  - 10.1 The roles, functions, rights and duties of members of the executive and assistants to the executive, including the maximum number of assistants that may be appointed;
  - 10.2 The roles, functions, rights and duties of any elected mayor and any deputy mayor;
  - 10.3 The allocation of responsibility for the exercise of social services functions including responsibility for looked after children;
  - 10.4 The process for the appointment and removal of members of the executive and assistants to the executive;
  - 10.5 The rules governing the proceedings of the executive, including the arrangements for multi-location meetings;
  - 10.6 The arrangements for determining and managing the job sharing of executive posts, including the executive leader in relation to managing, and the manner in which this will be considered when allocating seats on committees which include a seat for members of the executive, such as the governance and audit committee and the democratic services committee, to which the political balance rules apply. In the case of the executive leader, the arrangements must set out how an election for executive leader will be undertaken where one or more of the potential office holders seeking that office are seeking it on the basis of job sharing arrangements.
11. Particulars of any arrangements for the discharge of any functions by individual members, another local authority, including corporate joint committees, or for the exercise of any functions jointly with another local authority including:
  - 11.1 The nature of the arrangements and the functions to which they apply;
  - 11.2 The membership of any joint committees and sub-committees;
  - 11.3 The rules governing the proceedings of any joint committees and sub-committees; and
  - 11.4 Details of any contracting out arrangements.
12. The roles of officers of the local authority including:

- 12.1 The management structure of the local authority;
  - 12.2 The functions of the chief executive, the monitoring officer, the head of democratic services and the chief finance officer (section 151 officer);
  - 12.3 The code of conduct for officers;
  - 12.4 The arrangements for recruitment, appointment, remuneration, dismissal and disciplinary action in relation to officers, including officers covered by the Local Authorities (Wales) Standing Order Regulations 2006 and the council's pay policy statement;
  - 12.5 Details of delegations of functions to officers; and
  - 12.6 Protocols for managing constructive and respectful relationships between officers and members, including informal and formal processes for handling disputes and complaints.
13. The principles and processes for efficient, transparent and accountable decision making within the council and access to information about decision making including rules of procedure for decision making and access to information in respect of the full council, its committees and sub-committees, the executive, overview and scrutiny committees and officers.
  14. The confidential reporting procedure with references to the authority's codes of conduct for members and employees respectively.
  15. The rules and regulations governing finance, contractual and legal matters including:
    - 15.1 Audit procedures;
    - 15.2 Contracts and procurement rules and procedures including authentication of documents; and
    - 15.3 The rules governing legal proceedings by and against the local authority.
  16. The arrangements to fulfil the duties under sections 91, 92 and 93 of the Local Government and Elections (Wales) Act 2021 to report on the council's performance and to arrange and respond to a panel assessment.
  17. The rules and procedures for review and revision of the constitution.

18. Provisions for the suspension and interpretation of the constitution and elements of it.
19. The statutory derivations of all of the provisions of the constitution (i.e. the powers and duties under which they are made).

## **2.0 The Constitution Guide Statutory Guidance**

### **Status of this Guidance**

- 2.1 This statutory guidance is issued under section 38 of the Local Government Act 2000. A local authority (a county or county borough council in Wales), elected mayor or an executive leader must have regard to it.

### **Purpose of this Guidance**

- 2.2 This guidance accompanies the requirement set out in section 38 of the Local Government Act 2000, as amended by section 45 of the Local Government and Elections (Wales) Act 2021. This section requires councils to publish electronically and keep up to date a guide which explains in ordinary language the content of their constitution.

### **What is the Guide?**

- 2.3 Councils must produce and publish a guide to their constitution. A guide to the constitution is not the same thing as a guide setting out how the council works, although there is likely to be some overlap, nor is it an annotated index of the constitution itself. Councils are likely to already hold material on their website explaining key aspects of their operation, which could be used to form this guide.

### **Consultation and matters to be taken into consideration when preparing the guide**

- 2.4 How to prepare an effective constitution guide should form part of the council's strategy on encouraging public participation in decision making by the council prepared under sections 40 and 41 of the Local Government and Elections (Wales) Act 2021. Councils could speak to local people, and to voluntary organisations representing local people, to understand what it would be most helpful to put in the constitution guide.
- 2.5 Councils should also have regard to their statutory duties in respect of equalities, Welsh language and the Well-being of Future Generations (Wales) Act 2015 when preparing their constitution guide. Councils should involve and consult a wide range of people and groups from diverse backgrounds before publishing the final guide.
- 2.6 An effective constitution guide will be one that understands the different interactions local people are likely to have with the council, and with local democratic systems, and which focusses in more detail on those interactions. It

may bear some similarity with some of the introductory information on councils' websites describing how the council operates.

2.7 For example, a guide could provide particular detail on:

- The rights of the public to access information about the council (including the right to inspect accounts, and other formal documents);
- Rights of access to meetings, and public speaking rights; and
- Arrangements for petitions.

The Welsh Local Government Association and Lawyers in Local Government have produced a model guide to the constitution which councils may find helpful.

## **3.0 The Exercise of Functions by Councillors Statutory Guidance**

### **Status of this Guidance**

3.1 This is statutory guidance made under Section 56 of the Local Government (Wales) Measure 2011 (the Measure). This replaces previous guidance issued on this matter.

### **Purpose of this Guidance**

3.2 This is statutory guidance issued in accordance with section 56(6) of the Measure to which the county or county borough council or senior executive member of the local authority must have regard in making arrangements under section 56.

3.3 Powers under section 56 are optional in nature but those councils that decide to use them may have regard to this guidance to assist them.

3.4 By giving more autonomy to elected members in their local area, section 56 enhances councillors' ability to resolve issues and problems on behalf of their residents.

### **Introduction**

3.5 The Measure includes powers for councillors to help them tackle issues and resolve problems in their local ward.

3.6 Section 56 enables councils to make arrangements for functions to be exercised by individual councillors to allow them to make decisions at an electoral ward level that may result in improvements in their local areas.

3.7 Arrangements under this section provide for a non-executive member to exercise those functions in relation to the electoral ward for which the member has been elected, or to exercise functions in relation to their official membership of an outside body.

3.8 This guidance seeks to outline potential positive benefits from delegating functions to elected members both within their role as ward members and as the council's official representative on outside bodies. The aim is to support elected members in being the voice of their community within the council and the voice of the council in their community.

### **What the Measure says about exercise of functions by councillors**

- 3.9 Section 56 gives powers to local authorities to formally delegate powers to individual councillors to carry out any function of the authority. With regard to the range of functions that may be exercised by non-executive councillors, section 56 allows local authorities flexibility to develop arrangements which may best suit their individual preferences. This includes enabling local authorities to delegate both executive functions and other council functions to non-executive councillors.
- 3.10 Section 56(1) provides that the senior executive member of a local authority may make arrangements for a non-executive member of the authority to exercise a function of the local authority which is the responsibility of the executive. Section 56(2) provides that a local authority may make arrangements for a non-executive member of the authority to exercise any other function of the authority.
- 3.11 However, councils will need to be mindful that section 56(3) stipulates that local authorities may only delegate functions to non-executive members –
- (i) in relation to the electoral ward for which the non-executive member is elected, or
  - (ii) in relation to the non-executive member's official membership of a body other than the local authority.

### **Purpose and objectives of section 56**

- 3.12 The intent behind the provision is to provide councils with a wider range of opportunities to make effective use of elected members' representational role, this could now also be considered in conjunction with the duties placed upon councils in sections 39 to 41 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) to encourage local people to participate in decision making.
- 3.13 It could also be a way of supporting elected member training and development. For example, councils may wish to use the provision as a means to create developmental 'on-the-job' learning initiatives for non-executive members in instances where they may be utilised as council representative on outside bodies such as local health boards, housing associations, voluntary organisations, trusts or agencies. Such 'learning by doing' would be a chance to further councillors' skills and knowledge in a given area and broaden the council's overall pool of experienced elected members.
- 3.14 For those outside bodies where more than one member is appointed, councils may wish to delegate functions in a way which empowers non-executive members on occasions where the executive member may be absent.
- 3.15 In these instances, it would be important for the council to ensure those non-executive councillors to whom functions had been delegated receive the support



and developmental opportunities necessary for them to successfully fulfil their role.

3.16 As a means to provide the necessary transparency and accountability for delegated functions, section 100EA of the Local Government Act 1972 (as amended by section 57 of the Measure) provides the Welsh Ministers with powers to make regulations to require councils to publicly record decisions made under section 56 of the Measure. This is in order to give the public information about the work undertaken by councillors within their wards. The Welsh Ministers have not exercised this power however councils are encouraged to publish these decisions as a matter of good practice. Councils may also wish to publish delegated decisions of councillors as part of their annual review process.

3.17 Although section 56 gives broad powers to delegate any local authority function to an individual member, there are obviously some functions that will be more appropriate than others. It would not be appropriate to delegate powers which are specified as specifically not to be exercised by the executive or not to be exercised solely by the executive in the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 as these functions are intended to be exercised by the membership of the council as a whole or one of its committees. Also it would not be appropriate to delegate functions requiring a council wide strategic approach such as social care. But, delegated powers could be used to allow councillors to play a more active role in a wide range of policy areas.

3.18 For example, functions that could be delegated may include:

- Powers to effect repairs or improvements to streets. This could include road calming measures or street lighting;
- Powers to develop and oversee youth activities within the area of an electoral ward.

### **Factors to consider when delegating powers**

3.19 When considering whether or not to delegate functions to non-executive members, councils may wish to give thought to the following issues in relation to members:

- What value can be added by delegating powers? What specific local problems will be able to be tackled as a result?
- Would councillors need additional support such as legal advice in the discharge of delegated functions?
- How will members be supported if their decisions are challenged, for example, by judicial review?

- How will councillors publicly record decisions made using their new powers?
- Integrating the learning and participation generated through the delegation in to wider initiatives and strategies including statutory ones to strengthen them; and
- How the delegations support the council in meeting statutory duties in relation to equalities, Welsh language, the Well-being of Future Generations (Wales) Act 2015 and the duty to encourage participation in the 2021 Act.

3.20 For officers, in supporting elected members discharge delegated functions, things to think about include:

- Working more closely with councillors to develop their knowledge and skills;
- Providing advice and reports to ensure delegated powers are used effectively and in accordance with duties placed upon the council, including advice on statutory duties such as those contained in the Well-being of Future Generations Act (Wales) 2015, the Welsh Language (Wales) Measure 2011 and the Equality Act 2010;
- Will members need legal advice and support to discharge the delegated functions?
- How will members be supported if their decisions are challenged, for example, by judicial review?
- How will the decisions made by councillors with delegated functions be officially recorded?
- Implementing decisions that are made under delegated powers;
- Developing processes to appropriately record decisions made by a councillor under these powers.

### **Some practical considerations**

3.21 Practically speaking, most local authorities will probably wish to amend their constitutions to put in place arrangements for delegating powers to councillors. Councils may wish to utilise existing procedures used to delegate powers to cabinet members when developing frameworks for delegating functions to non-executive members. In particular, any decisions made by non-executive members using delegated functions should be subject to the same call-in procedures as relate to executive functions more generally. Further options councils may wish to adopt include:

- Establishing enabling powers in their constitution for the purpose of delegating powers to non-executive members to be used as and when needed; and
- Using delegated powers to tackle specific area based issues in response to local challenges.

3.22 It is for councils to decide the extent and means by which they wish to use the powers under section 56. It is advised that councils should develop a protocol to define when and under what conditions a function will be delegated to a non-executive member. Also, that the training, development and support the councillor might require to undertake the role is considered as part of their annual training review. When making arrangements to delegate powers, councils should take into account the need to avoid the possibility of allegations of favouring councillors of a particular political persuasion. In multi-member wards, local authorities should make the same arrangements for delegated functions including any associated budgetary arrangements to apply to each elected member or to none.

### **Multi-member Wards**

3.23 The powers in the Measure relate to individual councillors but local authorities may need to put arrangements in place to ensure that delegated powers are used jointly by all members representing a particular ward especially if those members are from different political parties.

3.24 If functions are delegated to councillors within the same ward, councils may wish to produce guidance and support aimed at ensuring decisions undertaken in wards are co-ordinated and complementary in improving outcomes for local people.

### **Links with Councillor Calls for Action (CCfA)**

3.25 Where councils have decided to take advantage of the powers under section 56, they will find that there are some close links with CCfA. Members exercising delegated powers may find that they have more opportunities to resolve issues locally without having recourse to CCfA. CCfAs on particular issues may encourage councils to use section 56 to delegate powers to members to resolve those issues locally.

## **4.0 Council Executives Statutory Guidance**

### **Status of this Guidance**

4.1 This guidance is statutory guidance issued under section 38 of the Local Government Act 2000 and a county or county borough council, elected mayor or executive leader must have regard to it. This section was amended by section 59 of the Local Government and Elections (Wales) Act 2021 to provide for Welsh Ministers to issue guidance under section 38 which ‘may among other things, include provision designed to encourage good practice in relation to equality and diversity (within the meaning of section 8(2) of the Equality Act 2006).’

### **Purpose of this Guidance**

4.2 The purpose of this guidance is to require the executive leader of a council to take into account diversity when appointing their cabinet. The aim is to support and encourage decision making in the executive which understands and reflects the diversity of the communities in the council area.

4.3 This guidance also requires council executives to take a proactive, positive and constructive approach to its interactions with scrutiny in the council.

### **Diversity in Cabinets**

4.4 When establishing their cabinet the executive leader or elected mayor must have regard to statutory duties relating to equalities and the Welsh language. This includes consideration of the protected characteristics set out in the Equalities Act 2010, including the public sector duty to have due regard to the need to reduce the inequalities of outcome resulting from socio-economic disadvantage.

4.5 The leader or mayor must consider how their appointments to the cabinet reflect and support the diversity of the communities in the council area and as far as possible try to reflect this diversity. This is to ensure decision making in the executive is informed by a wide range of perspectives and experiences. The Local Government and Elections (Wales) Act 2021 (the “2021 Act”) provides executive leaders with opportunities to increase the diversity in their cabinet through the use of job sharing arrangements and/or the appointment of assistants to the executive.

4.6 When appointing two or more members to a job sharing arrangement the leader must not make the cabinet role covered by the job sharing arrangement of such a size that it could not reasonably be undertaken by a single cabinet member working on their own. The workload of the role must not increase simply because two or more members will now be undertaking it. The purpose is to support

diversity, including through succession planning, to enable members to genuinely share the role.

### **Job Sharing Executive Leaders and Executive Members**

- 4.7 Section 58 of the 2021 Act amends the Local Government Act 2000 to require councils with executive arrangements to make provision enabling two or more councillors to share office on that executive, including the office of leader of the executive. It is envisaged, that the most likely scenario in the case of the leader of an executive, is that two or more members would mutually make an arrangement to stand for election as executive leader on the basis of a job-sharing arrangement. The executive procedures and council procedures must provide for this.
- 4.8 In the case of executive members, it is for the executive leader to determine appointments to the executive based on the arrangements set out and agreed in the council's constitution. The constitution must set out the parameters for the operation of job-sharing arrangements in the executive. The number of executive posts (including that of executive leader) that can be filled on a job-sharing basis is limited to three by the 2000 Act. This is to ensure that in councils with a smaller number of members there are still sufficient members to provide proper scrutiny of the executive.
- 4.9 When making appointments on a job-sharing basis the executive leader should consider matters including how:
- This could increase the diversity in the executive to best reflect the diversity in the council's area;
  - Job-sharing members will be supported to ensure they can maintain a reasonable work life balance; and
  - Those arrangements may offer opportunities for succession planning in the executive.
- 4.10 The terms of the job-sharing arrangements should be clear and agreed in advance. Members of the job sharing arrangement, their cabinet colleagues, other elected members and officers will need to understand how the responsibilities of the cabinet role subject to the job sharing arrangement are to be discharged. Job-sharing arrangements should not be used solely as a means of increasing the number of executive members or to create roles for job-sharing members which equate to workloads greater than if the cabinet position was held by an individual member. However, one member of the arrangement focusing on some aspects of the role and another member focusing on others enables skills and knowledge to be utilised to best effect.

- 4.11 In the case of both job-sharing executive leaders and job-sharing executive members, the two or more members in the job-sharing arrangement are to be treated as one member when attending a meeting in their capacity as members of the executive for voting purposes and for the purposes of determining whether a meeting is quorate. The exception is where one member of a job sharing arrangement makes a declaration of interest and has to recuse themselves from the meeting and voting, the other member or members of the arrangement may remain and exercise the vote ascribed to the job share arrangement.
- 4.12 Should two or more of the members in a job-sharing arrangement attend a meeting in their capacity as executive members they should both be recorded as having attended the meeting and they both may speak at the meeting. However, should the meeting require a vote to be cast, they must decide between them in advance who will cast their vote and inform the chair of the meeting. There is then a careful balance to be struck between pre-determination and proper preparation for the meeting amongst the job-sharers which should include an exploration on their position, what questions they may have on the matter and what further information they might wish to see, in the same way that it would be expected they would manage all aspects of their job-sharing arrangements to ensure continuity and consistency of approach between themselves.
- 4.13 If one member of a job-sharing arrangement attends a meeting in their capacity as a member of the executive and the meeting requires a vote then the attending member must cast their vote taking into account preparatory discussions with their job-sharing partners.
- 4.14 Where a member of a job-sharing arrangement casts a vote at a meeting they have attended which is subsequently identified as contrary to any preparatory discussions between job-sharing partners, unless the contradiction is attributable to debate and discussion in the meeting, then that vote may be treated as invalid for the purpose of decision making, as the vote is allocated to the job-sharing arrangement and not to the individual member of that arrangement who has attended the meeting.
- 4.15 It will be for each council to determine the appropriate course of action at that point, based on the specific circumstances, to ensure integrity of decision making is maintained. Councils should explain the significance of this aspect of job-sharing clearly to any members participating in executive job-sharing arrangements in advance and it should form part of induction and training for executive members.
- 4.16 As noted above, councils and job-sharing members should recognise that the successful operation of job-sharing arrangements will require the establishment of effective working arrangements from the outset and high levels of trust

between the job-sharing members. The working arrangements should include how disputes between job-sharers will be resolved.

- 4.17 Councils will need to consider how they communicate the position in respect of job-share arrangements to external organisations to which job-sharing members are appointed in their capacity as an executive member.
- 4.18 Councils must consider the implications for political balance requirements for those committees which are subject to political balance requirements and on which a job-sharing member of the executive may sit i.e. the Governance and Audit Committee and the Democratic Services Committee. This will require consideration where a job-sharing arrangement consists of members from more than one political group or a political group or groups and an unaffiliated member or members (where an unaffiliated member is a member not registered with the proper officer as being a member of a political group for the purposes of sections 15 to 17 of the Local Government and Housing Act 1989).
- 4.19 The treatment of job-sharing partners as if they were one member for the purposes of voting and quorums for meetings they attend as executive members does not extend to meetings they attend in their roles as members of the council.

### **Assistants to the Executive**

- 4.20 Section 57 of the 2021 Act amends the 2000 Act to provide for the appointment of assistants to the executive. The aim is to support diversity by enabling members who might not be in a position to take up a full time executive role because of personal or other circumstances to have the opportunity to learn and develop. Whilst not members of the executive, assistants can attend and speak at executive meetings or at committees of the executive and could bring valuable diversity and insight into discussions.
- 4.21 The Council's constitution, which must be agreed by the full council, and its executive arrangements must include provision as to the number of assistants to the executive that may be appointed, their term of office and their responsibilities. Again, there should be a clear purpose to the appointment of assistants to the executive, and these appointments should not be used solely as a means of increasing the number of members able to make a contribution to the running of the executive.
- 4.22 The 2000 Act (as amended) provides that neither the chair nor the vice-chair of the council nor the presiding member, or deputy presiding member can be appointed as assistants to the executive.

4.23 Whilst assistants to the executive are not members of the executive, they are treated as if they are members of the executive for the purposes of the allocation of seats on scrutiny committees where neither members of the executive nor assistants to the executive can be members. Likewise, the committees which are able to include one member of the executive, the Governance and Audit Committee, the Democratic Services Committee and the Standards Committee, can only have a member of the executive OR an assistant to the executive as part of their membership (Schedule 6, to the Local Government and Elections (Wales) Act 2021 and The Local Government and Elections (Wales) Act 2021 Consequential Amendments (Job-Sharing and Assistants to the Executive) Regulations 2022).

### **Scrutiny and Call-ins**

4.24 Cabinets should recognise the importance of effective scrutiny for the good governance of the council overall and reflect this in their constitutions. They should respond promptly and constructively to requests from scrutiny for information, attendance at meetings and other reasonable requests.

4.25 Executives should note that Section 65 of the Local Government and Elections (Wales) Act 2021 amended section 22(10) of the Local Government Act 2000 which provides Welsh Ministers with a power to make regulations which include provision for or in connection with requiring prescribed information about prescribed decisions made in connection with the discharge of functions which are the responsibility of a local authority executive to be made available to members of the public or members of the authority to include an overview and scrutiny committee of the authority or a sub-committee of such a committee. This is intended to convey the seriousness which Welsh Ministers attach to effective co-operation and information sharing between the executive and scrutiny and its place at the heart of the good and effective governance of the council.

4.26 Cabinets should set the tone for organisational commitment to effective scrutiny by ensuring there is parity of esteem between scrutiny and the executive and encouraging scrutiny to operate in a cross party constructive manner.

4.27 Cabinets should respond promptly and respectfully to recommendations from scrutiny explaining whether the recommendation will be accepted or rejected, the reasons for these decisions and what actions will be taken. Cabinets should publish their response electronically and the response should be available to the public except for matters exempt from publication.

4.28 Cabinets should be open to the need for appropriate use of call-ins and respond in a prompt and constructive manner to such requests. Cabinets should support



the design of effective and proportionate call in rules which do not make call-ins overly difficult or impossible.

4.29 Leaders and cabinets should also be respectful and mindful of the role of statutory officers such as the chief executive, the monitoring officer and the section 151 officer and their appointment by and role in serving the council as a whole. In exercising their functions, leaders and cabinets must remain within the parameters of the statutory framework and the council's own constitution. They must respect the role council officers play in advising them of these parameters and the interaction of this role with the scrutiny process and decisions required either by statute or the council's constitution to be taken by the full council.

## **5.0 Political Assistants Non Statutory Guidance**

### **Status of the guidance**

5.1 This is non-statutory guidance on the appointment of political assistants to political groups.

### **Purpose of this guidance**

5.2 The purpose of this guidance is to explain provisions in the Local Government and Housing Act 1989 relating to the appointment of political assistants and to encourage councils to be open and transparent regarding the role and activities of the political assistants they employ.

### **Political Assistants**

5.3 Local authority political assistants are local government employees who undertake research and provide administrative support for the main political groups within an authority.

5.4 The existence of these posts allows a separation of professional officer and political roles and can enable the provision of advice to councillors that local authority officers are prevented from providing.

5.5 [Part I of the Local Government and Housing Act 1989](#) sets out the framework regulating the appointment and conduct of political assistants.

5.6 Under section 2 of the 1989 Act, the post of political assistant in a local authority is politically restricted. This means that, like other politically restricted posts, the post-holder cannot stand for election, act as an election agent or sub-agent, be an officer of a political party, manage a party or branch of a party, and cannot canvass on behalf of a political party or candidate for election.

5.7 Political assistants are, however, permitted to speak to the public with the intention of affecting support for a political party, but their actions must not give the impression that they are acting as the representative of the political party.

5.8 Political assistants are also able to publish or cause to be published written work or other material intended to affect public support for a political party, but they must not give the impression that the publication is authorised by the political party.

5.9 These rules were adopted to address concerns about political impartiality, conflict of interest and the use of taxpayer funds for political purposes in councils.

Further details on the restrictions in place can be found in the [Local Government Officers \(Political Restrictions\) Regulations 1990](#).

5.10 The restrictions take the form of terms and conditions that are deemed to be incorporated into those officers' terms of appointment and conditions of employment. The restrictions applicable to all holders of politically restricted posts are set out in [Part I of the Schedule](#) to the Regulations. [Part II of Schedule](#) provides for further terms and conditions for political assistants.

## **Appointments**

5.11 Under [section 9 of the Local Government and Housing Act 1989](#), a local authority may appoint up to 3 assistants for political groups subject to stringent conditions and safeguards.

5.12 The 3 largest political groups in each authority qualify for a political assistant if the membership of the group consists of at least 10% of the membership of the authority. The exception is where only one political group accounts for at least 10% of the membership, in which case the next biggest group also qualifies.

5.13 No appointments can be made until posts have been established for all qualifying groups, however, only one post can be appointed to a political party.

5.14 Under [section 7 of the Local Government and Housing Act 1989](#) employees of a local authority must be appointed on merit. Section 9 provides an exception to this principle. The appointment of each political assistant is down to the political group each post (political assistant) is to represent. The appointee can take account of the candidate's political activities during the selection process, although the posts are 'politically restricted' (as described above).

5.15 Once appointed line management responsibility for political assistants should be assigned to one of the authority's senior officers. However, in practice, political assistants' day to day work will be determined and managed by the relevant political group and its political group leader. Authorities should therefore consider how any conflicts or disputes will be resolved, perhaps through the development and agreement of a protocol.

## **Remuneration and contracts**

5.16 It is for the authority to determine the salary payable, however, it is expected that local authorities show restraint and allow pay increases in a proportionate manner in line with wider local government pay.

[The Local Government \(Assistants for Political Groups\) \(Remuneration\) \(Wales\) \(Amendment\) Order 2019 \(legislation.gov.uk\)](#) sets the maximum level of potential pay that political assistants can be paid.

5.17 Under [section 9\(4\)\(b\) of the Local Government and Housing Act 1989](#) the maximum salary set by regulations is a full-time equivalent figure so it is not possible to pay an annual salary at an hourly rate for part-time hours if this would breach the maximum amount stipulated if the political assistant were to work full-time.

5.18 The contract of employment must terminate at or before the annual council meeting following the first elections after the person was appointed. However, this does not prevent the post holder being reappointed for a further term. The local authority cannot delegate any functions to an assistant, and no other authority officer can be required to work under the direction of an assistant (other than in respect of secretarial or clerical services).

### **Openness and transparency**

5.19 Each local authority is under a duty to draw-up and regularly update a list of posts which are politically restricted and political assistants are expected to comply with the officer code of conduct of their authority.

5.20 Local authorities should consider publishing the details below as best practice:

- The total number of political assistants it employs;
- The political group each assistant serves;
- The number of councillors in each political group; and
- The number of hours per week for which each political group's assistant is employed.

## **6.0 Arrangements for Securing Effective Overview and Scrutiny Statutory Guidance**

### **Status of this Guidance**

6.1 This guidance is statutory guidance issued under section 38 of the Local Government Act 2000. A county or county borough council, elected mayor or an executive leader must have regard to it. It replaces previous guidance issued in 2012.

### **Purpose of this Guidance**

6.2 The purpose of this guidance is to ensure councils have effective scrutiny arrangements and that procedures are in place to regularly review and seek to improve the effectiveness of those arrangements.

### **Policy Intent**

6.3 Overview and scrutiny is an essential element of the political and general governance of the council. The council and executive culture should be open to and supportive of scrutiny and scrutiny should be provided with staff and resources to enable it to effectively undertake its functions, including holding the council executive to account.

6.4 It is recognised that difficult decisions will always have to be made in relation to council finances but the overriding principle should be that investment in scrutiny also contributes to better services for local people by providing another channel for people to be involved in the decisions that affect them and driving a culture of learning and improvement across the council as whole. This principle should be considered in light of sections 39 to 41 of the Local Government and Elections Act 2021 (the 2021 Act) in terms of the duty to encourage local people to participate on decision making and prepare a strategy on encouraging participation and the duty on a principal council to keep its performance under review, including the conduct of its self and panel assessments and consulting local people as part of that duty as required by sections 89 and 90 of the 2021 Act.

6.5 Effective scrutiny of collaborative arrangements with other councils such as joint committees and corporate joint committees and cross public service partnership arrangements - such as public service boards must be viewed as essential in ensuring that those arrangements are democratically accountable to local people.

## **Processes and Relationships**

- 6.6 To achieve the policy intent scrutiny should not sit aside from other processes which form part of the council's governance system. Arrangements for overview and scrutiny should be set out clearly in the council's constitution and constitution guide required by section 37 of the Local Government Act 2000.
- 6.7 Scrutiny should be an integral part of the council's self-assessment under Part 6 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) and should also be considered when the council arranges its panel assessment.
- 6.8 The role scrutiny plays in involving local people to participate in decision making under section 39 of the 2021 Act should be set out in the strategy the council must prepare and consult upon in sections 40 and 41.
- 6.9 Scrutiny chairs should have good working relationships with each other and regularly discuss approaches to scrutiny and learn from the work of other scrutiny committees within the council and in other councils. Scrutiny chairs should also establish good working relationships with the chair of the governance and audit committee and the standards committee, as well as the chair or presiding member of the council and the chairs of other committees. They should also foster good working relationships with internal and external auditors and with regulators.
- 6.10 The effectiveness of scrutiny is in part dependent on mutual respect between those charged with scrutiny of the executive and the executive itself. Chairs should therefore develop constructive working relationships with the council's executive in particular, the leader, cabinet members, chief executive and senior officials. The council's executive are required to reciprocate this approach to constructive working under statutory guidance also issued under section 38 of the Local Government Act 2000.

## **Effective Working**

- 6.11 All scrutiny committees should adopt the most effective ways of working to ensure they are able to fulfil their role. This may include:
- The consideration of matters as part of a multi-item committee agenda. Here, councils should ensure the number of items on a single agenda does not make it difficult for members to consider the matter in question in depth;
  - The consideration of matters at a single-item committee agenda. This provides more flexibility around approach, involving panels of witnesses, and potentially

some public participation. One off “challenge panels” can be a proportionate and effective way to dig into a topic;

- Task and finish groups. “Task and finish” groups are small, informal groups of members, commissioned by a committee to investigate a topic and to report back. Task and finish groups are not subject to rules about the meeting of committees, because they are informal bodies;
- The convening of a short task and finish group. A group that meets only a couple of times over a few weeks will be able to tackle a narrow, defined subject. It is likely to be possible for a review to be commissioned, and then to report back to the next meeting of the same committee; and
- The convening of a longer task and finish group. The “traditional” task and finish group model is for a body that meets multiple times over several month, building a comprehensive evidence base.

6.12 The commissioning of task and finish groups, where it happens, should involve the agreement of a scope, setting out the terms of reference of the group and the timescale for carrying out its work.

6.13 Task and finish groups can meet either in private, or in public. When they have completed their work, task and finish groups should submit a report and recommendations to the committee that has commissioned them. This should also include some record of the proceedings of the group (including information on where, and from whom, evidence has been gathered), particularly if the group has met in private. The committee can then decide to adopt the recommendations, submitting them to the council’s executive or another body for a response.

6.14 All ways of working demand careful planning. Councils should, in programming work, consider in some detail the scope of a topic and how it should be considered so as to maximise its impact. In some cases this may involve councillors’ meetings beforehand, either in private or in public, to discuss questioning strategy, or otherwise meeting to plan scrutiny work. Resourcing arrangements for scrutiny should take into account the necessity for officer support for this planning activity.

## **Resourcing and Information**

6.15 To be effective scrutiny must be resourced and have access to officers dedicated to supporting scrutiny committees to plan, manage and execute their work programmes. Officers not directly supporting scrutiny should be mindful that their employment is with the council and not the executive, they should therefore

provide scrutiny committees with support and information in a constructive and timely manner to assist their work. This may sometimes present challenges for officers but members of scrutiny committees and members of the executive should also be mindful of these conflicts and these matters should be considered when protocols are developed governing the relationships between officers and members for inclusion in the council's constitution.

6.16 Section 65 of the Local Government and Elections (Wales) Act 2021 amended section 22(10) of the Local Government Act 2000 which provides Welsh Ministers with a power to make regulations which include provision for or in connection with requiring prescribed information about prescribed decisions made in connection with the discharge of functions which are the responsibility of a local authority executive to be made available to members of the public or members of the authority to include an overview and scrutiny committee of the authority or a sub-committee of such a committee. This is intended to convey the seriousness which Welsh Ministers attach to effective co-operation and information sharing between the executive and scrutiny and its place at the heart of the good and effective governance of the council.

### **Reviewing Scrutiny**

6.17 Effective scrutiny is itself open to regular review and arrangements should be put in place for this to take place as part of the council's self-assessment processes. Peer review is also a good way to review effectiveness and learn from the experience of other scrutineers.



## **7.0 Appointment of Persons to Chair Overview and Scrutiny Committees Statutory Guidance**

### **Status of this Guidance**

7.1 This is statutory guidance made under Section 75 of the Local Government (Wales) Measure 2011 (the Measure). This guidance replaces previous guidance issued under this section in relation to the appointment of persons to chair overview and scrutiny committees in 2012.

### **Purpose of this guidance**

7.2 To provide guidance to councils on the appointment of persons to chair overview and scrutiny committees.

### **Introduction**

7.3 Part 6 of the Measure deals with overview and scrutiny, including, from sections 66 to 75, provisions relating to the appointment of chairs of overview and scrutiny committees (scrutiny committees). The policy intent is to ensure overview and scrutiny is not dominated by the political groups on the executive of the council, and can act independently.

### **What the Measure requires**

7.4 Local authorities must include within their standing orders arrangements for the appointment of the chairs of their scrutiny committees which are in line with the following;

**(i) Council with no political groups declared**

Each scrutiny committee elects its own chair.

**(ii) Council with only one declared political group**

Each scrutiny committee elects its own chair.

**(iii) Council has two political groups but only one scrutiny committee**

The scrutiny committee elects its own chair. If, however, one of the groups (A) is represented in the council executive but the other (B) is not, that other group (B) must be left to appoint the chair.

**(iv) Council with two or more political groups and multiple scrutiny committees**

If there is more than one political group on the executive they can only be allocated as many chairs as is proportionate to their combined share of the council's total membership. This should be rounded down if it does not equate a whole number. It is then for the political groups on the executive to decide on the distribution of the executive's allocation of chairs between themselves.

The rest of the scrutiny chairs are the "property" of those groups not represented in the executive. If there is only one such group, they are entitled to all the remaining chairs. If there is more than one non-executive group, each gets a share of the chairs in proportion to their membership, rounding down to the nearest whole number, including zero. For example:

Number of members of council = 60  
Number in executive groups(s) = 26  
Number of scrutiny chairs = 5  
Number for executive groups = 2  
Number of chairs remaining = 3  
Number of non-executive group(s) = 3  
Size of non-executive group C = 16  
Size of non-executive group D = 6  
Size of non-executive group E = 2  
Entitlement to scrutiny chairs of C = 2  
Entitlement of scrutiny chairs of D = 1  
Entitlement of scrutiny chairs of E = 0

Should there be any unallocated chairs following this calculation, then the chair is to be appointed by the members of that committee(s).

If all political groups in an authority are represented in the executive and the rounding down process results in unallocated chairs, any such chairs are also to be appointed by the members of those committees.

#### **(v) Council where political group refuses to take allocation of chairs**

Where a political group declines to take its allotment of chairs, none of those chairs can be allocated to an executive group. The vacant positions are to be offered to the other political groups in proportion to their size. In the example above, if A refused their 2 chairs, the opposition groups would be entitled to appoint the chairs of 5 committees and the allocations should be C = 3, D = 1, E = 1. If C refused their 2 chairs, the other groups would be entitled to one each. If D refused its single chair that would go to E, as group C has already had its allocation rounded up to give it 2.

In a council where there is only one non-executive group and this group is declining its chairs, or in a council where there are other non-executive groups but each of them declines to take the vacant chairs, it is left to each scrutiny committee to elect its own chair from any of its membership.

**(vi) Political make-up of the executive changes**

If a political group leaves or joins the executive, the exercise of allocation of chairs begins again in accord with the provisions described above.

**(vii) Filling casual vacancies**

Should a scrutiny chair be vacated for some reason, the chair should normally be allocated to the same political group as the outgoing chair. If, however, the chair has been elected by the committee itself, then the committee should appoint the new chair.

**(viii) Council wishes to operate different allocation system**

A council may decide to abandon the processes outlined above, but only if it wishes to bring about an allocation of scrutiny chairs which is more favourable to the non-executive groups than would be produced by the prescribed procedures. For this to happen, a majority within each political group must support the alternative proposal, and the proposal must be approved by a resolution of the full council, with a majority of members of every political group voting in favour of the resolution.

**(ix) Appointment of vice-chairs**

The allocation of any committee vice-chairs is a matter for each authority to decide upon.

Welsh Ministers may make regulations in relation to the allocation of chairs and also issue directions. At the time of issuing this guidance there are no plans to do either.

**Guidance**

- 7.5 The provisions of sections 66 onwards provide little room for manoeuvre. Councils' standing orders should set a timetable for the appointment processes to be completed.
- 7.6 Where a situation arises where the allocation procedures outlined in this guidance appear inadequate to deal with a particular situation, councils should first consult

their legal advisers for an opinion. Welsh Government officials may be contacted for advice by those legal advisers if necessary.

- 7.7 The spirit of the legislation is clear. It reflects a policy position in favour of scrutiny being, as far as possible, independent from the leadership of a council.

## **8.0 Co-opted Members of Overview and Scrutiny Committees**

### **Statutory Guidance**

#### **Status of this Guidance**

8.1 This is statutory guidance made under Section 76 of the Local Government (Wales) Measure 2011 (the Measure). It relates to the co-option of persons that are not members of local authorities onto their overview and scrutiny committees in accordance with section 21 of the Local Government Act 2000. This guidance replaces previous guidance issued in 2012.

#### **Purpose of this Guidance**

8.2 The purpose of this guidance is to provide a framework for councils to consider when appointing co-opted members to overview and scrutiny committees. In particular it requires councils to have regard to how co-option could bring a wide range of different skills and increased diversity to overview and scrutiny committees.

#### **Policy Intent**

8.3 Co-option of members to overview and scrutiny committees who are not councillors is a way to build a more diverse membership. It can provide a way to support broader public participation in local democracy and should form part of the council's strategy on encouraging participation as required by section 40 of the Local Government and Elections (Wales) Act 2021.

8.4 In making arrangements for co-option, councils might:

- Think about the needs of under-represented groups, and the barriers that might otherwise exist for such groups to engage with the business of the authority;
- Consider co-option alongside other methods of assuring public participation such as inviting people with valuable perspectives and experience to engage as witnesses or technical advisers as co-option may not always be the best way to garner the views and experience of some people.

8.5 Co-opted members on committees can significantly strengthen their effectiveness by bringing different perspectives. Whilst co-option is only one method by which the views of stakeholders can help shape the work of scrutiny committees, it is considered by the Welsh Government to be an important tool in achieving 'buy-in' from representative groups and individuals that may otherwise be disengaged from local decision-making processes. Co-option can serve to strengthen Members' community leadership role through the provision of alternative perspectives and the facilitation of stronger area-based networks and contacts.

- 8.6 The Welsh Government considers that including a broader range of specialists, community representatives and service-users in scrutiny exercises is advantageous, and that proactively engaging co-optees in scrutiny activity, enables elected members to send powerful messages about involving people and partners through their own structures and practice.
- 8.7 In recognition of the rich impact multi-perspective scrutiny can have in driving improvement, panels have been established to scrutinise the work of Public Service Boards whose membership span sectoral, organisational and geographic boundaries. To date these panels have included co-optees from voluntary organisations, local health boards, community health councils, police and crime panels, Natural Resources Wales, and local business forums who have been working alongside elected members to improve local services. When appointing co-optees from partner public bodies, individuals should be from a non-executive function within their organisation, where possible, to avoid any conflict of interest.
- 8.8 Some of the important benefits accruing from these arrangements have been the cross-transference of learning and the breaking down of organisational fragmentation in addressing 'wicked issues'. These practices have indicated that partnership working and co-option may be seen as processes that increase local democratic input and integration across different parts of the public sector.

### **Deciding when to co-opt**

- 8.9 Any appointment of co-optees should be informed by scrutiny forward work plans and what outcomes elected members are seeking to achieve as the result of planned scrutiny exercises. Councils are advised to think carefully about the use of co-option as a means to develop partner relations or improved public connections that may add significant value to the work of scrutiny committees.
- 8.10 In all instances where co-option is being considered, care should be taken to ensure that co-option is in fact the best way for some individuals or groups of interest to be involved in the work of scrutiny committees. Groups of interest should include protected characteristics equality groups in recognition of the value these perspectives can add to the work of local authority scrutiny committees. In some circumstances it may be more appropriate for stakeholders to act as 'expert advisors' of a task and finish group or to be included as an invitee at scrutiny committee meetings. For example, some vulnerable groups or service users may feel intimidated by the formality of full committee meetings and may wish to submit written or oral evidence in support of a scrutiny review. The nature of stakeholder involvement in scrutiny work will need to be established on a case by case basis.

8.11 Also, organisations who are financially supported by partner agencies may feel reluctant to challenge the performance of funding providers in a public arena. Steps should be taken to minimise the risk of co-optees experiencing conflicts of interest as a result of being involved in scrutiny work.

### **Identifying potential co-opted members**

8.12 Councils may wish to think about employing several strategies to identify co-optees that are likely to enrich scrutiny activity.

For example, councils may wish to:

- Approach town and community councils in the area to nominate representatives for co-option on to committees;
- Advertise in the local press;
- Utilise social networking sites;
- Approach wider 'sectoral organisations' such as the voluntary sector or local business forums for co-optee nomination; and
- Invite former co-optees with specific interest or expertise, to attend scrutiny meetings in an 'advisory capacity' when there are relevant items on the agenda.

8.13 Councils may also wish to develop an application form for groups or individuals to complete to express an interest in becoming a co-optee. Such forms could be made available from the scrutiny web pages of local authorities or advertised in the local press. Again, consideration should be given to protected characteristic equality groups.

### **Recruiting co-opted members**

8.14 Councils will need to ensure that recruitment processes in relation to co-optees, whether this be on an individual or representational basis, are inclusive and fair so as to encourage people with a wide diversity of knowledge, skills and experience to participate in scrutiny activity.

8.15 To assist committees in recruiting co-optees it is suggested that councils consider developing outline role descriptions for co-opted members. These would help to clarify the expectations of both committees and potential co-opted members. Some councils have also found it helpful when selecting a co-opted member when more than one application has been received to identify competencies against which an application for a position is evaluated.

8.16 However, as a general rule it is suggested that committees should ensure co-opted members are able to:

- (i) represent the interests of the population that receive services provided by or commissioned by public service providers;

And/or,

- (ii) contribute expert knowledge or skills that will lead to a rigorous and objective scrutiny of the issues under review;

And/or,

- (iii) live or work in the county or county borough area.

8.17 Councils should have a protocol to govern co-option to scrutiny committees, to provide consistency and transparency on these issues. The protocol should form part of scrutiny's rules of procedure.

#### **Scrutiny Committees: Number of co-opted members**

8.18 In recognition of the democratic mandate of councillors it is recommended that the number of co-opted members on a scrutiny committee should not exceed a third of the total membership of the committee.

8.19 It is suggested however, that approaches to co-option be informed by an appreciation of what the co-optee will be able to contribute to the issue under consideration rather than a narrow focus on numbers of co-opted members.

8.20 Such an approach will help committees decide whether or not the participation of co-opted members remains relevant to its work priorities or whether there is need to refresh co-opted membership from time to time.

#### **Sub-Committees: number of co-opted members**

8.21 In recognition of the varied ways in which sub-committees operate, it is recommended that no limit be placed on the number of co-opted members that may participate in a sub-committee.

8.22 However, it is considered that it should be the case that co-opted members should not comprise the whole membership of the sub-committee.

#### **Types of appointment for co-opted Members**



8.23 As previously highlighted, scrutiny committees have a wide range of options available to them with regard to appointing co-opted members.

In their recruitment processes councils may specify that the appointment of a co-opted member is to be:

- i) For the life of the committee;
- ii) Until such time as it decides to terminate the appointment; or
- iii) For the purpose of a particular review or performance monitoring exercise.

8.24 It is advised that successful applicants be required to sign a statement of appointment that will include terms governing appropriate conduct. Specifically, on accepting office, co-opted members should be required to declare that they will observe the Code of Conduct for Members in the particular council's constitution which covers, among other matters, treating others with respect, not disclosing confidential information and disclosing relevant personal interests.

8.25 To ensure that co-opted members are provided with the information and skills necessary to fully participate in scrutiny activity, it is recommended that councils take steps to provide co-optees with appropriate induction training in addition to other training and developmental opportunities.

### **Voting rights and Code of Conduct**

8.26 The Measure does not afford co-opted members of scrutiny committees with any voting rights. Consequently, they are therefore not bound by statute to comply with the Code of Conduct for Elected members as provided for by Part 3 of the Local Government Act 2000. However, co-opted members should be encouraged to abide by the principles set out in the code and conduct themselves to the highest standards of ethical behaviour. There are other statutory co-optees whose roles attract voting rights. These include: those members co-opted under the provisions of paragraph 8 to Schedule 1 to the Local Government Act 2000, the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009. Any members co-opted under these provisions are required by law to comply with the Code of Conduct.

## **9.0 ‘Call in’ Arrangements in relation to Overview and Scrutiny Committees Statutory Guidance**

### **Status of this guidance**

9.1 This guidance is statutory guidance issued under section 38 of the Local Government Act 2000. A county or county borough council elected mayor or an executive leader must have regard to it. This guidance replaces any previous guidance issued on this matter.

### **Purpose of this guidance**

9.2 The purpose of this guidance is to set out matters local authorities should take in to account when making their arrangements under section 21 of the Local Government Act 2000 in relation to the powers of overview and scrutiny committees to review and scrutinise decisions made, including those not yet implemented by the executive and make recommendations for those decisions to be reconsidered. The process commonly referred to as ‘call in’.

### **Policy Intent**

9.3 The call in process is an important part of the political governance of the council. The rules of procedure a council sets out in relation to call in should strike a balance between enabling open and transparent overview and scrutiny of decisions and preventing deliberate filibustering of the council’s operation. For these reasons, councils should ensure that clear and consistent call-in rules form a part of their constitutions.

### **Guidance**

9.4 Call-ins should not be regarded as a regular tool for scrutiny and they should not by default become a means of compensating for deficiencies elsewhere in scrutiny procedures. The more constructive approach is to put in place procedures which facilitate more, proportionate, pre-decision scrutiny.

Call-in rules should make reference to:

- The kinds of decision which will be subject to call-in. These will usually be key decisions, set out in the executive’s forward plan;
- The number of councillors who need to request a call-in for it to be valid;
- Any other limits to call-in requests – for example, a need for a decision to cover two or more electoral divisions in order to be valid;
- Process requirements, for example, the need to fill in a form stating reasons for the call-in, which would then be published. In general councils should ensure that call-in requests do not need to satisfy too many bureaucratic

requirements, and that they ensure that call-ins can happen where politicians recognise a pressing need for a decision to be reconsidered;

- The timescale, after a decision is made, within which a valid call-in request might be made and accepted;
- The arrangements for organising a meeting of an overview and scrutiny committee once a valid call-in request is received;
- Arrangements for how such a meeting is carried out. This may include a right for a councillor or councillors requesting a call-in to set out their reasons for doing so;
- The recommendations that the scrutiny committee can make. These might be to take no further action (allowing the decision to be immediately implemented) or to make recommendations to the executive that the decision should be amended, or withdrawn entirely;
- Arrangements for the executive to provide a response to the scrutiny committee.

9.5 Call-in rules should not be designed to make call-ins essentially impossible (for example, by requiring that two members of a scrutiny committee request a call-in where political balance requires that only one member of each committee is a member of the opposition). For this reason, councils should review their call-in rules following elections to ensure that they still allow for the proportionate use of this power.

## **10.0 Councillor Calls for Action Statutory Guidance**

### **Status of this Guidance**

10.1 This is statutory guidance made under Section 21A(3) of the Local Government Act 2000 (the 2000 Act). This guidance replaces previous guidance on this matter issued in 2012.

### **Purpose of this Guidance**

10.2 This is statutory guidance issued under section 21A(3) of the 2000 Act (as amended by section 63 of the Local Government (Wales) Measure 2011 (the 2011 Measure)), to which a member of an authority must have regard in considering whether to make a call for action. Councillor calls for action (CCfAs) enable local councillors and their electors to ensure a response from their council leadership to issues of local importance. CCfAs should be regarded as one of a series of tools elected members have at their disposal to resolve local issues and make a positive difference in their community.

### **Introduction**

10.3 Section 63 of the 2011 Measure amends Section 21A of the Local Government Act 2000 to enable any councillor of a principal council in Wales to refer a matter to an overview and scrutiny committee which relates to the discharge of any of the functions of the council or which affects all or part of the electoral area which the councillor represents.

10.4 This provision pre-dates the Well-being of Future Generations (Wales) Act 2015, but reflects its principles that outcomes such as improved health, educational attainment and employment should be co-produced through the joint efforts of service users, service providers and others. CCfAs can offer a valuable form of community intelligence which can contribute to developing and delivering a shared vision for the locality. The CCfA should be understood as a means of “last resort” in a broad sense, with issues being raised at a scrutiny committee after other avenues have been explored. As such, the process should make it easier for issues that would benefit from scrutiny consideration to be identified, and for those issues which are best dealt with through other means to be signposted accordingly. It might be helpful to identify research support for members considering a CCfA to either ensure it is the appropriate course of action or to build a well evidenced case to enable effective scrutiny and consideration.

10.5 Therefore, for CCfA to act effectively as an improvement tool, discussions about how to put CCfA procedures in place should focus less on process and more on outcomes. Since it is likely that the types of issues that would make for a CCfA

would be cross-cutting and multi-agency in nature, thought should be given to the types of things that may constitute a satisfactory 'resolution' for councillors and by extension, local communities.

### **Purpose and objectives of the CCfA**

10.6 The CCfA provisions should be seen in the wider context of strengthening local democracy and widening participation in local decision making. They should be considered in the context of duties placed on the council in sections 39 to 41 of the Local Government and Elections (Wales) Act 2021 relating to encouraging local people to participate in decision making.

10.7 As such, CCfA should not be regarded solely as a 'scrutiny' process. Instead Councils should consider it within the context of making improvements more generally to a wider range of council functions aimed at supporting participatory democratic activity. This includes support for members in their constituency roles as well as activities such as complaints, and consultation processes that capture public experience and opinion.

10.8 This guidance is not about providing authorities with a prescriptive 'instruction manual' as to how councils must set about putting CCfAs in practice. Instead, it provides a series of considerations and analysis to those authorities that recognise the value of identifying and acting upon the local knowledge that elected members can channel and who wish to use CCfA.

### **Legislative context**

10.9 The purpose is to ensure that executive arrangements by a local authority enable any member of the council to refer to an overview and scrutiny committee a "local government matter" which falls within the committee's remit. A referral in this way will ensure that the matter is included in the agenda and discussed at the committee. However, in making such a referral the member must have regard to any guidance issued by the Welsh Ministers.

10.10 If the overview and scrutiny committee receives a referral from a member who is not on the committee, it can choose to do any of the things that it might normally do with a new item. These include: reviewing and scrutinising decisions and actions, and making reports and recommendations.

In deciding whether to do any of these things, the committee may "have regard to" two particular points:

- (i) anything that the member may have already done in relation to the matter, particularly if they have been empowered to do so by the council under section 56 of the 2011 Measure,

And;

- (ii) representations made by the elected member as to why the committee should take the matter up. If the committee decides not to take the matter up, it must explain the reasons why to the member. However, if the committee chooses to conduct some work on the issue, it must make sure that the elected member has a copy of any reports or recommendations that it makes in relation to it.

10.11 Subsection (12) of section 21A of the 2000 Act defines 'local government matter' in relation to a member of a local authority in Wales as a matter which is not an excluded matter and which –

- a) relates to the discharge of any function of the authority, or
- b) affects all or part of the electoral area for which the member is elected or any person who lives or works in that area.

10.12 Subsection (13) of section 21A of the 2000 Act defines what is meant by an excluded matter in subsection (12). It is described as any matter which is-

- a) a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 (local authority scrutiny of crime and disorder matters), or
- b) a matter of any description specified in an order made by the Welsh Ministers for the purposes of this section.

10.13 It can be seen that subsection (12)(b) allows for a broad range of issues that may be referred to an overview and scrutiny committee by a local authority member. As such, local authorities will need to ensure that implementation of CCfA is sufficiently responsive and wide ranging.

10.14 For example, it may be the case that a CCfA identifies a cross-cutting issue such as access to local dental services which could necessitate the scrutiny committee considering engagement with public service partners. In these instances CCfA can be used to develop closer links between councils and external partners.

10.15 When deciding upon whether or not to address an issue raised by CCfA at a scrutiny committee meeting, committees may find it helpful to use criteria for referral.

10.16 In considering how to respond to a CCfA, committees have a wide range of options available to them. They could, for example, call members and officers to attend a meeting and answer questions, instigate a review of policy, or, depending on the nature of the CCfA, make reports or recommendations to the decision making body of the relevant partner(s). Committees should think about the levels of formality that would be most appropriate in addressing issues in a way that helps facilitate positive outcomes.

10.17 Regarding how best to make use of the resources available to them, scrutiny committees should also assess how the problem may fit with existing programmes of work. CCfAs that can be considered as a complementary part of a scrutiny committee's forward work programme should similarly themed or related topics already have been included. In these instances, taking into account the steps councillors will already have taken in trying to resolve a community issue CCfAs can be considered as providing an evidence base to inform the committee's next steps.

### **Defining 'resolution'**

10.18 The concept of resolution is arguably the issue at the centre of CCfA, i.e. ensuring that CCfA actually helps councillors to resolve intractable issues. The purpose of CCfA is to provide resolution where other techniques might not be able to do so, so the first step is to try to see if the issue has been or can be resolved through other means. This should be central to a council's procedures for raising and addressing CCfAs. As highlighted earlier, the deployment of a CCfA should be regarded as a last resort after other avenues have proved unsatisfactory. Consequently, the successful operation of CCfA will be reliant on the effectiveness of existing mechanisms in place aimed at supporting councillors in their constituency role.

10.19 Due to the potential cross-cutting and intractable nature of the social problems likely to be raised under CCfA, it is probable that there be no 'quick fix' of the issue under discussion. Therefore, in order for CCfA to make any headway in addressing local issues, it is advisable that councils should seek to make processes sufficiently adjustable so not to limit openness or exploratory discussion.

10.20 In practical terms it may help if local authority procedures specified that the councillor raising an issue articulates what they would regard as a successful outcome or resolution at the beginning of the CCfA process. Such outcomes could be revised by an appropriate scrutiny committee following initial enquiry. These initial objectives could act as the indicator of success against which the progress of a CCfA could be considered.

10.21 Before a CCfA is escalated to a full scrutiny committee meeting, councillors should first consider the following options in resolving a community issue:

- Informal discussions with officers or other councillors;
- Informal discussions with partner representatives;
- Referral of matters to other 'scrutiny bodies' or internal audit committees;
- Formal discussions with officers and councillors;
- Formal letters to Executive Members;
- Asking questions at Full Council;
- Submitting a motion to Full Council;
- Organising public meetings;
- Use of petitions;
- Making a complaint;
- Freedom of Information requests to other bodies;
- Communication with local MSs or MPs;
- Use of social media or email based campaigns.

10.22 In order for the CCfA to be effective in identifying and addressing public concern, the local authority's leadership together with senior officers within partner agencies will need to support the following principles:

- Appreciation of the role scrutiny can play as a driver of service improvement and its responsiveness to the needs of people in the area;
- Willingness to address unsatisfactory performance and a recognition of the need to resolve problems through discussion;
- Transparency in decision making processes and inclusion of the scrutiny process at all stages;
- Understanding, and a willingness to bolster the multi-faceted 'Community Leadership' role undertaken by members in their communities;
- Appreciation of the active part that service users and the wider community play in achieving improved outcomes.

10.23 Each issue attempted to be raised as a CCfA will have to be considered on its own merits. But it must be demonstrable that each issue raised as a CCfA has been given due and appropriate consideration even if it is then determined it does not meet the criteria the council has set.

10.24 Scrutiny committees often examine issues which are highly political in nature and this should not necessarily be viewed as a negative thing. Elected members



can use the power of political debate to give proper consideration and analysis to controversial issues and in many cases a councillor's local knowledge can result in significant investigatory impact in helping identify constructive ways forward.

### **Working with partners**

10.25 Success in dealing with CCfA issues that involve partners will usually involve those partners having been a part of the initial discussions leading to CCfA being established in a local authority. If partners have been part of those discussions it follows that it is more likely that they will be willing to work with scrutiny committees to resolve local issues.

10.26 Good management of partnership relations by scrutiny committees can be beneficial for both partners and elected members. Using CCfA, Scrutiny can play an important role in linking partners up across the spectrum of local policy making. Partnership scrutiny can assist integration as well as ensuring local needs and aspirations are represented in decision making processes.

### **Links to community safety issues**

10.27 The Police and Justice Act 2006 (the 2006 Act) provides for a CCfA mechanism to deal with community safety and crime and disorder matters. The 2006 Act requires that the designated Crime and Disorder Committee consider all crime and disorder matters including community safety CCfAs. However, it may be the case that a cross-cutting issue such as substance misuse which draws upon a wide range of agencies is raised as a CCfA and it is unclear which committee is best placed to consider it.

10.28 In these instances, councils will need to bear in mind that the most important consideration is for the issue to be discussed in its entirety rather than adopt a rigid structural approach which further fragments enquiry. It may be the case that scrutiny chairs adopt a pragmatic approach about which committee should address a CCfA which has both crime and disorder and other subject elements. For example, it might be the case that scrutiny committees invite additional scrutiny chairs to meetings where CCfAs are being considered as linked to their relevant areas of expertise.

### **Links with section 56 of the 2011 Measure (exercise of functions by councillors)**

10.29 It might be that where councils have chosen to take advantage of the power to delegate functions under section 56, there are close links with CCfA. It could be that members exercising delegated powers will have more opportunities to resolve issues locally without having recourse to CCfA. CCfAs on particular

issues may encourage councils to use section 56 to delegate powers to members to resolve those issues locally, further strengthening the council's responsiveness in improving local services.

## **11.0 Overview and Scrutiny Committees - Taking into account the views of the public**

### **Status of this guidance**

11.1 This is statutory guidance issued under section 62(4) and (5) of the Local Government (Wales) Measure 2011 (the Measure). A local authority and an overview and scrutiny committee must have regard to this guidance in complying with their obligations under section 62 'Taking into account the views of the public'. This guidance replaces previous guidance on this matter issued in 2012.

### **Purpose of this guidance**

11.2 The guidance is intended to provide practical advice to local authorities and overview and scrutiny committees as to how to comply with the requirements set out in section 62 of the Measure. This guidance relates to all overview and scrutiny committees and their sub-Committees, and to any joint overview and scrutiny committees and sub-Committees of joint overview and scrutiny committees (referred to in the legislation as "relevant overview and scrutiny committees").

### **Background**

11.3 Effective scrutiny is integral to helping people feel they are able to influence what goes on in their locality. Scrutiny has an important role in stimulating connections between different individuals and groups, and channelling community intelligence into the improvement processes of the council and its partners. In this respect, the scrutiny function can be regarded as helping to both build and represent democratic capacity. Before this can happen however, people need to know about their options to make their views known when they want to.

11.4 Engaging the public more deeply in scrutiny activity may be regarded as a hallmark of healthy democracy. Better communication about local decision-making processes and greater representative participation will help ensure more direct experiences of community life inform strategic thinking and operational practice. It is also an important element of the council being able to demonstrate it is complying with the duty in section 39 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) to encourage local people to participate in decision making. The arrangements for taking into account the views of the public in the scrutiny process should be set out in the strategy on encouraging participation required by section 40 of the 2021 Act.

11.5 Section 62 of the Local Government (Wales) Measure 2011 ("the Measure") places a requirement on local authorities to make arrangements that enable all

persons who live or work in the area to bring to the attention of the relevant overview and scrutiny committees their views on any matter under consideration by the committee.

11.6 Furthermore, section 62 provides that an overview and scrutiny committee must take into account any views brought to its attention in accordance with arrangements under this section.

### **Raising public awareness about scrutiny**

11.7 To enable the public to effectively engage with overview and scrutiny committees, the Welsh Government considers people should first be informed about their council's scrutiny function and programmes of planned work.

11.8 As such, overview and scrutiny committees are expected to make strong efforts to raise public awareness about their role and function, including how people and communities can help shape and contribute to the delivery of scrutiny committee forward work programmes (FWP). This should also be included and publicised in the council's strategy on encouraging participation required by section 40 of the 2021 Act.

11.9 Several principal councils have already developed good quality websites which inform members of the public about the way in which decisions are made by a local authority and how people may engage in the work of overview and scrutiny committees. This should also form part of the guide to the constitution required to be published electronically and kept up to date under section 37 of the Local Government Act 2000.

11.10 There should be clear reference to overview and scrutiny on the council's website with easy links to meeting schedules and documentation required by Part VA of the Local Government Act 1972. Local authorities should consider the list below which sets out some of the additional information that could be included on their scrutiny webpages:

- An accessible guide to the local authority's decision-making processes;
- An accessible guide to the local authority's scrutiny function;
- Overview and scrutiny committee FWPs;
- Copies of the annual report of overview and scrutiny committees;
- A list of criteria as to what would make a good scrutiny item;

- Forms by which members of the public can identify issues for scrutiny;
- Forms by which members of the public can put themselves forward to offer comments upon any item included for discussion on a relevant overview and scrutiny committee's FWP;
- Forms by which members of the public may nominate themselves to attend an overview and scrutiny committee to provide evidence, information, comment or views in relation to any topic being considered by such a committee. This will include directions as to how a member of the public may submit views related to Call-Ins;
- Forms by which members of the public may nominate themselves to participate as a co-opted member of an overview and scrutiny committee; and
- Details of Chairs and support staff of overview and scrutiny committees and how they may be contacted.

## **Public Engagement**

11.11 The Welsh Government considers public engagement in scrutiny is vital in improving the design and delivery of local services from a citizen-perspective. Input from a range of stakeholders can assist in understanding the complexities that often characterise social problems and scrutiny committees can play an important role in gathering necessary intelligence.

11.12 In formulating their arrangements for taking in to account the views of the public councils must have regard to their statutory duties in relation to equalities, including the public sector socio-economic duty and the Welsh language. Arrangements must facilitate and support the ability for people and communities from all backgrounds and protected characteristics to be able to engage constructively and easily with scrutiny.

11.13 It is recommended that local authorities develop internal mechanisms to better enable all members of the public engage in scrutiny activity. Such mechanisms should take accessibility into account and may include the following:

- Request that an item be placed on an agenda for consideration by an overview and scrutiny committee (providing this is of immediate relevance to a topic included on its FWP);
- Submit evidence (oral or written) to a planned or ongoing scrutiny review or investigation;
- Participate as a co-opted Member;
- Submit evidence (oral or written) relating to a Call-In of an Executive decision.

- 11.14 Arrangements may take the form of public speaking arrangements in some cases, or developing reports summarising written submissions in others. Committees should take the preferences of the member or member of the public concerned into account. It is recognised that safeguards may need to be built into processes to protect against committees being lobbied in potentially vexatious ways. Overview and scrutiny committees may still refuse public requests to include particular items on their agendas but in doing so should produce a clear rationale to account for their decision.
- 11.15 This rationale could link to criteria that committees will have developed in formulating their overview and scrutiny committees' FWPs. Committees should explain why they may refuse to consider a public request for scrutiny or to exclude particular information from their investigative work.
- 11.16 In managing the engagement process it may help a local authority to differentiate between public contributions to scrutiny which are unsolicited, such as a councillor call for action or an external request for an item to be placed on an agenda, and those which have been actively sought by an overview and scrutiny committee in support of a planned review or investigation.
- 11.17 In either case, any such arrangements made by local authorities should recognise the distinct timescales that direct different forms of scrutiny activity in order that public contributions can influence committee work programmes in an appropriate and timely manner.
- 11.18 It is recommended that arrangements are made to give careful consideration to ensuring the credibility and applicability of public contributions to the scrutiny process. This will ensure that the work of the relevant overview and scrutiny committees is informed by accurate and relevant evidence.
- 11.19 In order to manage the differing ways in which members of the public may engage with the work of scrutiny it is recommended that a series of protocols be developed to assist in the consistent application of practices. The aim of the protocols will be to manage public expectations in terms of setting out how any information submitted to relevant overview and scrutiny committees will be used and detailing how and when feedback will be provided. It is recommended that local authorities develop protocols to cover the following:
- Public speaking arrangements at Scrutiny Committee / Joint Overview and Scrutiny Committees (JOSC) meetings (to include Call-In);
  - Public involvement in Sub-Committee and / or Task & Finish Group Meetings;
  - Managing a request for scrutiny (including petitions);
  - Dealing with requests for public co-option.

## **Publication of forward work programmes**

11.20 The timely publication and regular updating of forward work programmes of overview and scrutiny committees is essential in facilitating meaningful engagement from the public in scrutiny. This should again be included in the council's strategy on encouraging participation in decision making published under section 40 of the 2021 Act.

11.21 It is expected that scrutiny committees publish details of their annual FWP on the council's webpages in a clearly signposted section of the website dedicated to scrutiny.

11.22 To encourage greater collaboration between local authorities in the undertaking of joint scrutiny, it is recommended that overview and scrutiny committees FWPs be published near the start of the municipal year. This will allow such committees to better co-ordinate planned activity with relevant councils and other public sector agencies.

11.23 In addition, in order to stimulate interest within existing community networks and representative groups, relevant overview and scrutiny committees should consider sending copies of their FWP to the following:

- Local voluntary sector organisations;
- Police and Crime Panels;
- Fire and Rescue Authorities;
- Youth Councils;
- National Parks;
- Town and Community Councils.

11.24 It is recommended that this take place at the start of the FWP period and make clear that the FWPs of overview and scrutiny committees are flexible and may change according to local priorities. In addition, local authorities may wish to consider containing information in the FWP about how members of the public may assist in developing and delivering overview and scrutiny committees' FWPs.

## **Public Engagement and Call-In**

11.25 In respect of decisions of a council's executive which have been called-in the local authority may wish to develop public speaking arrangements specifically for these occasions.

11.26 Where the subject matter under consideration is not confidential or exempt, such arrangements could recognise the time-limited nature of call-ins by giving the Chair discretion to allow public speakers to provide information and also respond to information presented during the course of discussion. The Chair may be given discretion to allow for multiple representations to be made at a Call-In meeting to allow for different public perspectives to inform the Committee's deliberations.

11.27 The Chair could also have the discretion to stop a speaker at any time in proceedings if in their view a speaker is making comments that are, or appear to be, defamatory, vexatious, discriminatory or offensive.

### **Engaging with the Third Sector**

11.28 The third sector in Wales has a wealth of specialist expertise and frontline experience in a wide range of areas and can provide means of entry for often disenfranchised people into local decision making.

11.29 For that reason the Welsh Government considers the voluntary sector has an important role to play in providing input to local government overview and scrutiny. Councils should develop protocols with County Voluntary Councils as an integral part of their arrangements in complying with section 62 of the Measure. These should include consideration of co-option, regular meetings between scrutiny chairs and voluntary sector representatives and use of voluntary sector networks as a means to inform and engage people of all ages and backgrounds in the work of scrutiny.

### **Taking the public's views into account**

11.30 An overview and scrutiny committee must take into account any views brought to its attention. In practice this will mean developing appropriate methods by which a member of the public may engage with the scrutiny process as considered above and pro-actively managing the overview and scrutiny committee's interface with written and oral submissions. Authorities will need to have in place methods to deal with requests for scrutiny and / or public oral or written submissions which are vexatious, discriminatory, inappropriate or unreasonable.

11.31 In the event a member of the public requests an issue for scrutiny, then it is recommended a report detailing their submission is considered at the next relevant overview and scrutiny committee meeting. Good practice would also suggest that the person who submitted the issue is invited to attend a meeting to present their views to elected members in person. However, attendance at formal overview and scrutiny committees may not be an attractive or appropriate proposition for some people and so arrangements could be made to ensure their views are nevertheless presented for consideration.



- 11.32 Regardless of whether or not an overview and scrutiny committee decides to further investigate a public request for scrutiny, it is recommended that the committee provide full feedback as to their decision to the person who submitted the original request, together with a rationale for the course of action adopted.
- 11.33 On those occasions where an overview and scrutiny committee receives a number of written submissions from the public in relation to a single topic under consideration, then it is recommended a summary report be presented to the relevant committees at the first appropriate opportunity.

## **12.0 Joint Overview and Scrutiny Committees Statutory Guidance**

### **Status of this Guidance**

12.1 This is statutory guidance under section 58(4) of the Local Government (Wales) Measure 2011 (the Measure). A local authority and a joint overview & scrutiny committee must have regard to this guidance in exercising or deciding any function conferred upon it. This guidance replaces previous guidance in relation to joint overview and scrutiny committees issued under this section in 2013.

### **Purpose of this Guidance**

12.2 The purpose of this guidance is to set out the key matters councils must take into consideration when establishing and operating joint overview and scrutiny committees (JOSCs).

### **Policy Intent**

12.3 The aim of section 58 of the Measure is to enable joint scrutiny of collaborative arrangements, such as corporate joint committees, and strengthen scrutiny arrangements through the promotion of collaboration and the sharing of scrutiny expertise. This could include wider public service matters. Section 66 of the Local Government and Elections (Wales) Act 2021 amends section 58 to enable Welsh Ministers to also prescribe the circumstances when two or more principal councils must form a joint scrutiny committee.

12.4 Enabling local authorities to establish JOSCs is intended to make it easier to scrutinise the delivery of providers whose services cover more than one county, or to examine issues which cut across geographical boundaries. The provision for joint scrutiny expands the options currently available to councils in undertaking wider public service scrutiny, and provides for a more flexible way of working to secure improved outcomes. In addition, joint scrutiny can facilitate opportunities to share learning and scrutiny capacity across local authorities. The harnessing of 'collective intelligence' through JOSCs is intended to lead to more effective forms of governance, and higher standards of democratic accountability.

### **What are the benefits of Joint Scrutiny?**

#### **For Scrutineers**

12.5 Where joint scrutiny exercises have taken place in Wales, participants have reported a number of benefits in having gained insight into, and knowledge from, other councils' scrutiny arrangements.

12.6 For example, it was found that councillors have been able to view issues from a wider perspective, leading to a more thorough exploration of the topics under consideration. Furthermore, the presence of different scrutiny chairs and support from alternative scrutiny officers has provided opportunities for cross-transference of learning and exchanges of good practice. Experiences of joint scrutiny have been found to stimulate members and officers to critically review and enhance their 'home' council's internal methods and ways of working, ultimately leading to a higher standard of scrutiny.

### **Benefits for Partners**

12.7 From a partnership perspective, the benefits of a joint scrutiny approach are in bringing a fresh eye to developments at all stages of the decision-making process. JOSCs have the ability to bring forward new sources of information that decision-makers may not have considered in the development of plans, policies and strategies.

12.8 Non-executive members have a wealth of local intelligence and are well-placed to evaluate whether partnership priorities and methods of delivery are meaningful to local communities. Many councillors are linked in to a range of social networks and community groups and are able to feed views into decision making processes. Furthermore, JOSCs can help reduce duplication of accountability and reporting mechanisms by adopting a co-ordinated approach to the issue under enquiry.

### **Selecting the right issue for Joint Overview & Scrutiny**

12.9 The effectiveness of a JOSC will be dependent on the reasons underpinning its establishment and the issue it intends to address. To secure the commitment and sustained interest of the principal councils involved, it follows that the topic chosen as the focus of a JOSC should be of relevance to all participants. The identification of a suitable topic for joint scrutiny will be dependent on effective forward work programme planning that seeks to consider issues of wider public interest, as well as those topics specific to a particular geographical area. Members and officers will need to be pro-active in exploring opportunities for joint scrutiny, checking to see whether there is compatibility in the forward work programmes of neighbouring or relevant authorities. Networking via regional and national scrutiny events, and the publication of forward work programmes will allow scrutiny practitioners to be more informed in this respect.

12.10 Some instances where a joint committee might be appropriate include:

- On-going monitoring of a joint service delivery mechanism;
- On-going review of a joint statutory partnership or other collaborative arrangement such as a corporate joint committee;

- Investigating a topic that may require a regional response (for example, waste management or sustainable development);
- Sharing scrutiny resources to investigate a similar topic of high interest or high importance to more than one authority (although not necessarily requiring a joint / multi-authority response).

### **Criteria for establishing a JOSC**

12.11 In deciding whether or not to establish a JOSC, the following questions should be considered:

1. Does the topic involve the work of a strategic partner or partnership body whose services cover more than one local authority area? For example, a JOSC may wish to focus upon the work of a transport provider, third sector organisation or a relevant social enterprise whose services cross authority boundaries;
2. Does the issue or service affect residents across more than one county area or concern a particular population's needs? A JOSC may wish to consider thematic topics such as climate change, fuel poverty, grass-fires or road safety; or it may wish to consider services connected to particular groups of interest such as young adults with physical disabilities, teenage mothers or vulnerable older people;
3. What form of JOSC could reasonably be resourced? Undertaking effective joint scrutiny is dependent on participating councils engaging in the building of relationships, and putting in place systems of working and administration. In order that JOSCs can provide significant added value, care must be taken to ensure that its objectives are proportionate to its resources.

### **The importance of scoping and project management**

12.12 Outline scoping should be undertaken to help determine whether or not to establish a JOSC. In identifying which partnership projects to progress and determining an appropriate methodology, practitioners should think carefully about whether examining a topic will result in added value or enhancement for each participant. In order to determine the likely success of joint work, it is strongly recommended that a project management approach be adopted to help ensure the objectives of joint scrutiny activity are delivered.

12.13 An informal feasibility study should be undertaken by likely participants in order that members and officers more specifically define areas of mutual interest, the type of scrutiny role intended to be undertaken, and the level of resource that could reasonably be dedicated to support a JOSC's effective functioning.

Preliminary work should also identify the likely risks associated with the scrutiny topic, and how it is intended that these be effectively managed.

## **Roles for Joint Overview & Scrutiny Committees**

12.14 Local authorities can use JOSCs in a flexible way to suit their needs. For example, councils have the option to establish JOSCs on an ad hoc basis which may be more appropriate for forms of pre-decision scrutiny or consultation exercises; or councils may decide to establish 'standing' JOSCs which may be more useful in monitoring services or decisions over the medium to long term.

## **Powers of Joint Overview & Scrutiny Committees**

12.15 The 2011 Measure enables Welsh Ministers to make regulations which will provide for JOSCs to have equivalent powers to other overview and scrutiny committees, as set out in existing legislation, and includes reviewing and scrutinising decisions of the Council's executive which have not yet been implemented ('call-in'). These regulations can be found here: [The Local Authorities \(Joint Overview and Scrutiny Committees\) \(Wales\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

12.16 JOSCs may make reports and recommendations about any matter, other than crime and disorder matters which are covered by separate legislation and guidance under sections 19 and 20 of the Police and Justice Act 2006. This guidance does not preclude councils from working together on crime and disorder issues.

12.17 Councils should make efforts to co-ordinate their forward work programmes to avoid duplication and help ensure scrutiny activities are complementary where appropriate. JOSCs could operate in an environment where there is scrutiny of particular issues or organisations at both a joint regional level and at a local level. Clarity of roles will be important to avoid duplication.

12.18 A JOSC is only able to exercise functions in relation to matters which are identified by the appointing authorities. It is therefore important that the local authorities participating in the joint committee are clear from the outset about its roles, responsibilities and terms of reference.

12.19 Under section 58(3)(b) JOSCs also have the option of establishing sub-committees in the same way as single authority overview & scrutiny committees. It is important to note that any sub-committee would discharge only those functions conferred on them by the JOSC.

12.20 This provision will enable JOSCs to operate in a more streamlined and flexible manner in achieving the aims and objectives of the 'parent' JOSC.

12.21 In practice, the reporting arrangements for JOSCs will be informed by the reasons underpinning the committee's establishment and the outcomes intended to be achieved. An important factor for JOSCs to consider when determining reporting arrangements is the need to develop constructive working relationships with the executive groups of service providers who are subject to scrutiny. Consequently, it is suggested that the chairs of JOSCs should meet regularly with an appropriate executive representative to discuss priorities, approaches and planned areas of work.

### **Joint Overview & Scrutiny Committees and Call-In**

12.22 With regard to call-in, JOSCs should be able to recommend that an executive decision made by one of the participating councils, made but not yet implemented, be reconsidered by the person(s) that made it or arrange for that decision to be exercised by the relevant Council.

12.23 However, in order to safeguard against potential abuse, councils should consider developing procedures where an executive decision of one of the participating councils of a JOSC may only be called-in by the JOSC if it is supported by an equal proportion of the participating Councils.

12.24 Whilst the above approach has been suggested to help ensure the integrity of the call-in function as it relates to JOSCs, this is ultimately a matter for councils to determine as part of their constitutional arrangements. In support of the development of such arrangements it is suggested that the number of members required to initiate a Call-In should, as a minimum, be set at half the total membership of the JOSC.

12.25 To illustrate, a worked example is set out in the following fictional scenario.

Councils A, B and C wish to work together to jointly commission services. A Joint Committee is subsequently established which is comprised of the executive members of each Council. A JOSC is also established to provide governance arrangements. The membership of the JOSC is comprised of non-executive Members from the three Councils.

A decision is subsequently made but not implemented by the executives of councils A, B and C. However, non-executive members from Council A consider that the decision made by the three executives may disadvantage Council A's local communities. Council A therefore wishes to call-in the decisions made by the three respective Councils.

In this instance, the JOSC could not call-in a decision made by the executive of Councils B or C unless the call-in procedure was supported by an equal number of members from Councils A, B and C.

The number of members able to call-in an executive decision of one of the participating Councils should be half of the JOSC's entire membership. That half must include equal numbers from each participating council. In the above example, should the total membership of the JOSC be twelve (four members from each Authority) then a call-in could only be made by two members from each Authority which would give six.

In the event that a JOSC would wish to call-in an executive decision made by Councils B and C, then it is advisable that each participating council undertake each call-in separately. That is not to say that two call-in processes could not run in parallel, only to recognise that any re-examination of an executive decision would have to take place on an individual basis within each participating council.

### **Appointing a Joint Committee**

12.26 In establishing a JOSC which is additional to a council's existing scrutiny committee(s), a report setting out its role, responsibilities, terms of reference and intended outcomes to be generated by the joint exercise should be considered by each of the participating authorities appropriate scrutiny committees (or sub-committees) before being endorsed by full council.

12.27 The appropriate scrutiny committees (or sub-committees) would be those whose terms of reference are most closely aligned to the issue intended to be considered by means of a JOSC. This would help to ensure that the non-executive members of each local authority are able to participate in the decision to establish a joint committee and to ensure that a JOSC would add value and would not duplicate existing work programmes.

12.28 With regard to the remit of JOSCs it should be remembered that existing legislation relating to sections 19 and 20 of the Police and Justice Act 2006, excludes any matter which could be considered by a Crime and Disorder Committee from the work programmes of all other scrutiny committees, sub-committees and JOSCs.

12.29 Local authorities will need to give careful consideration to who they appoint to sit on JOSCs. It might be helpful in some instances to appoint members who already sit on the scrutiny committee whose terms of reference most closely match the issue to be scrutinised or the terms of reference for the proposed JOSC. However, in wishing to draw on the expertise and knowledge base of a wider pool of non-executive members this might not be the most appropriate

course of action, and it will be for local authorities to decide which members should be appointed to which committee.

12.30 In order to ensure JOSCs represent fairly the interests of each local authority, an equal number of committee seats must be allocated to each of the participating councils. JOSCs are not required to be politically balanced themselves but each participating council should aim to ensure that the membership of the JOSC it puts forward reflects, as far as possible, the political balance in the council.

12.31 The representation from an authority may include co-opted members from that authority who are either statutory or who have been accorded voting rights under the Crime and Disorder (Overview & Scrutiny) Regulations 2009.

12.32 The JOSCs may also decide to co-opt members who would be in addition to the allocations from each council. With regard to co-option as it relates to a JOSC, the following conditions may help committees determine their approach to co-option:

(i) Where the parent council/committee has appointed co-opted members to sit on the JOSC, the number of co-opted members should not exceed the number of elected members that have been identified by the parent council/committee to sit on the JOSC;

(ii) The JOSC should have the ability to appoint co-opted members if there are none contained within the body of the committee's membership.

12.33 With regard to the size of JOSCs, good practice suggests that the maximum number of seats should be set at no more than 16 for effective functioning. However, this is ultimately a matter for local authorities to decide as it is dependent on the issue intended to be considered.

### **Chairing a Joint Overview & Scrutiny Committee**

12.34 The chair of a JOSC must be elected from the membership of the JOSC, and the election of the chair should take place at the first meeting of the Committee. JOSCs that are established on a long-term basis may decide to rotate chairs annually, or at some other interval, in order for each participating authority to have equal status, and to ensure that opportunities for member development are provided.

12.35 Where joint scrutiny exercises have taken place in Wales, it was found helpful to alternate the chairs amongst the participating local authorities. As such, councils may wish to give thought to allocating vice-chairs (if thought appropriate)



to the members of those authorities who are next scheduled to hold the position of chair. This would allow for a measure of continuity within joint arrangements and broaden the experience of participating members.

### **Officer Support for JOSCs**

12.36 Where a JOSC is established, it is suggested participating councils should share the costs associated with the undertaking of joint scrutiny exercises. This should cover arrangements for officer support and research, as well as administrative support and provision of meeting venues.

12.37 Each council may wish to offer different types of scrutiny officer support in respect of resourcing JOSCs. For example, some councils may wish to offer administrative support, and others research and advisory expertise. Consideration should be given to how the JOSC could most effectively achieve its scrutiny objectives and how the standard of scrutiny could be raised including through the collective learning of each authority.

12.38 In recognition that officer support for scrutiny varies across local authorities, it is likely that the scrutiny support officers of participating councils will need to liaise regularly to co-ordinate and project manage the work of JOSCs, and consider how to make best use of available resources. When deciding joint support arrangements, factors to consider include the scrutiny capacity available and how well the expertise and skill sets of officers' link to the topic(s) identified for joint scrutiny.

12.39 Regular meetings may help to overcome any difficulties in aligning different cultures, methodologies and supporting mechanisms for scrutiny and will help facilitate transfer of skills and learning. Participating scrutiny officers and chairs should nominate a JOSC officer co-ordinator from amongst themselves to ensure a clear point of contact available for those engaged in joint activity.

12.40 It is recommended that those supporting JOSCs put in place opportunities for reflection at key stages (for example, at mid-term points) within the life cycle of scrutiny reviews. This would help ensure that participating authorities are satisfied with the support arrangements and are finding them of benefit in meeting the objectives of the JOSC. Scrutiny support arrangements may include rotating meeting venues of JOSCs among the local authorities represented on the joint committee. However, it may also be the case that the committee chooses to meet at the authority which is geographically most central to minimise travel times for those involved.

### **Forward Planning**

12.41 In order to function effectively, JOSCs should formulate a forward plan to identify what issues the JOSC intends to focus upon during the course of the year or duration for which it is established.

12.42 The forward plan should provide a clear rationale as to the purpose of considering a particular topic, and to the methods by which it will be investigated. Attempts should be made to develop an outcome-focused forward plan rather than one which is process-orientated.

12.43 As JOSCs may be either ad hoc or standing, care will need to be taken to ensure that its forward plan corresponds with the committee's original purpose. For example, in the instance where several authorities may wish to form a JOSC to investigate a cross-cutting issue such as substance misuse, its forward plan should serve to act as the investigation's project plan since the investigation should have a clearly-defined start and finish.

12.44 Where a JOSC may have been formed to consider the work of a strategic partnership, its forward plan should be driven by evidence of community need and a sound understanding of the partnership's priorities, risks and financial pressures. In addition, the forward plans of JOSCs should be agreed in consultation with partners where possible.

12.45 JOSCs must also have regard to guidance relating to section 62 of the Measure which places a requirement on local authorities to engage with the public. The JOSC publishing its forward plan as soon as is reasonably possible in order that interested groups and individuals are able to provide comment and offer their views is integral to complying with this duty.

### **Appointing a sub-committee of a JOSC**

12.46 JOSCs are able to appoint sub-committees. This provision extends the range of options available to a JOSC in being able to effectively investigate and make recommendations for improvement as they relate to issues of public interest or concern.

12.47 As is the case with sub-committees appointed by single authority scrutiny committees, sub-committees of a JOSC can only exercise the functions conferred upon it by the 'parent' JOSC. In the interests of fairness and effective working, a sub-committee of a JOSC should, where possible, consist of equal numbers of representatives from each participating authority.

### **Ways of Working**

The following section is not statutory guidance but has been included as a way of working which JOSCs may wish to consider.

### **Task and Finish Groups**

12.48 Where elected members have been involved in task and finish groups of single authority scrutiny committees, they have reported a number of benefits from working in smaller, more structured teams. For example, members with differing levels of scrutiny experience and subject knowledge are able to gain confidence and motivation by working collaboratively with more experienced councillors and co-opted members. Similarly, task and finish group working can develop positive peer relations as a result of a members working collectively towards a common goal.

12.49 In the event that a JOSC may wish to establish a task and finish group to consider a particular issue in more depth, it is suggested that JOSCs limit the membership of a task and finish group to include any co-opted members the JOSC may wish to appoint.

12.50 Depending on the nature of issue under consideration, JOSC task and finish group investigations can either be 'light-touch' where recommendations can be identified at a relatively early stage and strictly time-limited, or a very intensive investigation involving a range of 'Expert Witnesses', site visits and the commissioning of supporting research as is currently the practice for the majority of overview and scrutiny committees.

12.51 It is often the case that task and finish groups have significant resource implications and for this reason it is suggested that a JOSC think carefully about the number of task and finish groups that can effectively be run and supported at any one time.

12.52 As a means of ensuring that a task and finish group of a JOSC fulfils its objectives, it is recommended that a project management approach be adopted. This should include developing a project brief for the task and finish group's work, a project plan and the production of highlight reports to the parent JOSC to ensure it is kept informed of the investigation's progress.

## **13.0 Democratic Services Committees Statutory Guidance**

### **Status of this Guidance**

13.1 This statutory guidance for Democratic Services Committees made under Sections 8 (1A) and 16 of the Local Government (Wales) Measure 2011 (the Measure). This guidance replaces previous guidance issued on this matter in 2012.

### **Purpose of this guidance**

13.2 This guidance is provided to assist principal councils in the effective running of their democratic services committees.

### **Introduction**

13.3 The Measure contains provisions related to the strengthening of local democracy including the requirement for principal councils to have a democratic services committee. The purpose of the committee is to ensure those councillors outside the executive leadership have the support and resources to fulfil their duties and play a full role in the operation of the local authority.

13.4 This is critical to good governance and enabling the council to demonstrate it is effectively supporting and resourcing scrutiny as part of its duties in sections 89 and 90 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) relating to keeping performance under review and consulting local people on performance. It is also critical to enable both scrutiny and elected members in their representational role to engage with the public thus contributing to meeting the duties set out in sections 39 to 41 of the 2021 Act in relation to encouraging local people to participate in decision making and participation strategies.

### **Head of Democratic Services**

13.5 Each county and county borough council is required to designate one of their officers as “Head of Democratic Services” (HDS) and provide that officer with sufficient support to do their job (section 8(1) of the Measure). Section 8(1A) enables the Welsh Ministers to issue statutory guidance to councils about the exercise of their function in relation to the provision of staff, accommodation and other resources which are, in the council’s opinion, sufficient to support the HDS in discharging their functions.

13.6 The person designated as HDS must be designated by the democratic services committee (section 11(1)(a) and must not be the council’s chief executive or chief finance officer, section 8(4) as amended by section 161 of the 2021 Act which removed the prohibition on a council designating the same officer monitoring

officer and head of democratic services. The same section of the 2021 Act amends section 43(2) of the Localism Act 2011 to include the head of democratic services in the definition of 'chief officer' for the purposes of pay policy statements.

13.7 The post of HDS is a politically restricted post within the meaning of the Local Government and Housing Act 1989 (section 21) and the designated officer is defined as a chief officer for the purposes of the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended. In these regulations, the HDS is provided the same 'statutory protection' in relation to disciplinary action as the council's chief executive, monitoring officer and chief finance officer (s151 officer). Underlining the important role they undertake in ensuring the good governance and democratic accountability of the council.

13.8 The HDS is able to delegate any of their functions to any of their staff (section 8(2)). The functions of the HDS are:

- a) to provide support and advice (but see note 1 below) to the authority in relation to its meetings;
  - to committees of the authority and the members of those committees;
  - to any joint committee which a local authority is responsible for organising and the members of that committee;
  - in relation to the functions of the authority's overview and scrutiny committee(s), to members of the authority, members of the executive and officers; -
  - to each member of the authority in carrying out the role of member of the authority (but see note 2 below);
- b) to promote the role of the authority's overview and scrutiny committee(s);
- c) to make reports and recommendations in respect of the number and grades of staff required to discharge democratic services functions and the appointment, organisation and proper management of those staff;
- d) any other functions prescribed by the Welsh Ministers.

#### [Notes

1. the function of providing advice about whether or how the authority's functions should be, or should have been, exercised, only applies to advice concerning the functions of the overview and scrutiny and democratic services committees;
2. in this case, advice to a member does not include advice in connection with their role as an executive member, and does not include advice about a matter being or to be considered at a meeting (other than a meeting of an overview and scrutiny or democratic services committee).]

13.9 The Measure enables Welsh Ministers to make regulations requiring local authorities to include within their standing orders provisions concerning the management of the staff provided to the HDS. For these purposes, “management of staff” does not include appointment, dismissal or disciplinary action (section 10).

### **Democratic Services Committees**

13.10 Each council must also establish a democratic services committee (DSC) to perform the following roles (section 11):

- carry out the local authority’s function of designating the HDS;
- keep under review the provision of staff, accommodation and other resources made available to the HDS, in order to ensure that it is adequate for the responsibilities of the post;
- make reports to the full council in relation to these matters.

Each DSC can decide how it carries out these functions.

13.11 The full council must appoint the members of the DSC, which must consist solely of councillors and cannot include more than one member of the executive or assistant to the executive. Any executive member must not be the council leader. The rules concerning allocation of seats to political groups apply to the DSC.

13.12 The council must also appoint the chair of the DSC, who must not be a member of any of the political groups represented in the executive. The exception to this is when a council has no opposition groups. In this case, any member of the DSC can be appointed as chair provided the member is not a member of the executive (section 14((1), (2) and (9)).

13.13 The DSC can appoint its own sub-committees and delegate functions to them (section 13). The DSC appoints the chair of any sub-committee (section 14(3)).

13.14 A DSC has the power to require the attendance of any members or officers of the council to answer questions and can invite anyone else it likes to do so also. If a member or officer is required to attend they must answer any questions unless the question is one which they would be entitled to refuse in a court (section 14(5) to (7)).

13.15 DSC meetings and sub-committees are to be open to the public as is normal in council meetings and subject to the same regime of accessibility in general (section 14(8)). The DSC must meet at least once a year (section 15(1)) and, additionally if the full council so decides or at least a third of the members of the DSC demands a meeting (section 15(2)). There is no limit on the maximum

number of meetings a DSC may hold. The onus lies on the chair to ensure that meetings are held when required (section 15(3)).

13.16 The DSC must have regard to guidance from the Welsh Ministers when exercising its functions (section 16(2)).

13.17 Any report presented to the DSC by the HDS must be considered by the DSC within three months. Similarly, any report made by the DSC must be considered by the full council within three months (sections 18 and 19). The procedures relating to the operation of the DSC should be included in the council's constitution.

## **Functions of the DSC**

### **Designating the Head of Democratic Services**

13.18 Only the DSC or a sub-committee of the DSC can designate the HDS. How this operates in practice will vary and a DSC can decide itself how it wishes to do this. However, the expectation is there would be discussion with the chief executive and relevant member(s) of the council executive, for example, to agree whether the post should be advertised externally, in which case the procedures for appointing staff described in the council's standing orders must be followed.

13.19 It would be a sensible arrangement for the DSC to be consulted on the advertising, interview and selection process, even though it would be the council, not the DSC, which would appoint as the employing body. The appointment could, however, be made subject to the DSC subsequently designating the selected person as HDS.

13.20 The person designated as HDS is not prevented from performing other roles within the authority. Just as the chief executive will have other duties to perform outside their statutory role, so too could the HDS. However, local authorities should take care to ensure that any other duties do not conflict with their HDS role and the DSC will need to be satisfied that the person designated has sufficient time to conduct his/her functions despite any other roles they may have.

### **Making Recommendations on the adequacy of the provision of staff, accommodation and other resources**

13.21 It is the function of the DSC to consider, and make recommendations as to, the adequacy of the provision of staff, accommodation and other resources for the exercise of the functions which fall to the HDS. The functions known in many local authorities as members' services, committee services and overview and scrutiny support would fall within the HDS responsibilities.

- 13.22 The HDS must present a report to the DSC describing what they feel to be a reasonable level of support for democratic services functions. The DSC, however, cannot make the final decision on these matters. It must submit its own report to the full council, arguing the case for necessary resource. It may well be that full council will modify or reject the DSC's report, in which case it could be advisable for the DSC to consider alternative proposals, which may involve a period of negotiation involving the HDS, Chief Finance Officer and the appropriate executive member.
- 13.23 In considering the DSC's recommendations the council should take into account the contribution the work of the HDS and the DSC make to the good governance and effective democratic accountability of the council, including the contribution this work makes to the council meeting its duties in sections 39 to 41 of the 2021 Act relating to the duty to encourage local people to participate in decision making and its strategy on public participation and its contribution to sections 89 and 90 of the 2021 Act to keep its performance under review and consult with local people on performance. Ensuring all members are adequately supported and trained, that scrutiny is adequately resourced and committees have access to high quality analysis and information is a cost of effective democracy. It is noted councils will have competing pressures for resources, including for essential front line and statutory services, careful consideration of cumulative impacts of resourcing erosion or reductions in relation to democratic services should therefore be part of considerations on the DSC Committee's report.
- 13.24 The final decision on resources will rest with full council but the Measure places the responsibility on the authority itself to ensure that the HDS is provided with sufficient staff, accommodation and other resources as are, in the council's opinion, sufficient to allow the HDSs functions to be discharged (section 8(1)(b)) and it must therefore fully explain any decision not in keeping with the recommendations of the DSC. See guidance on Research Support and Services for Councillors Statutory Guidance (Part 2, 3.0).



## **14.0 Governance and Audit Committees Statutory Guidance**

### **Status of this Guidance**

14.1 This is statutory guidance under section 85 of the Local Government (Wales) Measure 2011 (the Measure). It replaces any previous guidance issued under this section.

### **Purpose of this Guidance**

14.2 The purpose of this guidance is to set out the key matters councils must take into consideration when establishing and operating governance and audit committees.

### **Overview**

14.3 Councils must establish a Governance and Audit Committee. The committee has the following functions (s81, Local Government (Wales) Measure 2011):

- review and scrutinise the authority's financial affairs;
- make reports and recommendations in relation to the authority's financial affairs;
- review and assess the risk management, internal control, performance assessment and corporate governance arrangements of the authority;
- make reports and recommendations to the authority on the adequacy and effectiveness of those arrangements;
- review and assess the authority's ability to handle complaints effectively;
- make reports and recommendations in relation to the authority's ability to handle complaints effectively;
- oversee the authority's internal and external audit arrangements, and
- review the financial statements prepared by the authority.

14.4 The Welsh Government's view is that well-functioning governance and audit committees are critical to the effective governance of councils. They should be viewed positively by all council members as part of the improvement and governance system. They also have an important role to play in improving strategic planning and facilitating both scrutiny and constructive challenge within the structures of a council.

14.5 In addition to these statutory functions, a council can confer other functions on the committee which it deems suitable for it. Each governance and audit committee can decide how it wants to carry out its functions, but in doing so it must have regard to this guidance.

14.6 Detailed guidance on the operation of governance and audit committees has been produced by Chartered Institute of Public Finance and Accountancy

(CIPFA). In deciding how the Governance and Audit Committee will operate and how it will transact its key tasks, councils and committees themselves should consider the intersection between the formal role of this committee and the role of other bodies – in particular, the Democratic Services Committee (in respect of corporate governance) and the Overview and Scrutiny Committee(s) (in respect of financial oversight and review of strategic risks).

## **Membership**

- 14.7 The full council must have regard to this guidance when determining membership. Two thirds of the members of the committee are to be members of the council and one third must be a lay members. Only one member of the executive or assistant to the executive may sit on the committee, and that person must not be the leader (s82, Local Government (Wales) Measure 2011).
- 14.8 The chair of the committee is to be decided upon by the committee members themselves. However, the chair must be a lay member. The committee must also appoint a deputy chair who must not be a member of the council's executive or an assistant to the executive (section 81, subsections 5A, 5B and 5C of the Measure). All committee members, including lay members, have the right to vote on any issue considered by the committee. Lay members are therefore required by statute to comply with the council's code of conduct made under Part 3 of the Local Government Act 2000 and uphold the highest standards of ethical conduct.
- 14.9 The rules within section 15 et seq of the Local Government and Housing Act 1989 apply to governance and audit committees. The authority must however decide how many non-councillors should be appointed to the committee, and all members of the committee should display independence of thinking and unbiased attitudes, and must recognise and understand the value of the governance and audit function.
- 14.10 All new members will need to be provided with induction training. Although it is to be hoped that appointed councillors would have some relevant expertise, this cannot be guaranteed. What will be important, though, is to try and ensure that members do not have any other responsibilities which might conflict with their role on the governance and audit committee. That might be particularly the case in the choice of any executive member or assistant to the executive on the committee.
- 14.11 It may also mean that the members should not have too many other commitments, in general such as membership of other committees because of the significant commitment which being a member of the governance and audit committee implies. All members should receive adequate training and development.

14.12 The governance and audit committee should try and ensure it appoints a member as chair who will be strong and experienced enough to lead the questioning which the committee will have to perform.

14.13 Whatever recruitment method is employed, lay members should be independent from the council and have no business connection with it, although knowledge of how local government functions would be a definite advantage. In appointing lay members whose political allegiances are well known, local authorities should consider if this compromises the independence and perception of independence from the council a lay member should demonstrate. Councils should follow a public recruitment exercise, similar to that used to appoint members of standards committees, to recruit their lay members. It is recommended that a lay member should not be appointed for more than two full terms of a local authority.

### **Meetings and Proceedings**

14.14 As a committee of the council, the governance and audit committee is subject to normal arrangements of openness. Meetings should be held in public, agendas and reports should be published and available for inspection. The exception to this is where “exempt items” are being considered, which are chiefly matters which involve discussions concerning named individuals or commercial in confidence matters.

14.15 Any officer or member called to attend the governance and audit committee meeting must do so. They must answer any questions asked of them save ones which they could refuse to answer if they were in court. The committee can invite other persons to attend before it, but anyone else so invited to attend is under no compulsion to do so.

14.16 The committee must meet at least once a year and must also meet if the full council so decides, or if at least a third of the committee’s members require that a meeting be held. Beyond these stipulations, the committee can meet whenever it determines.

14.17 The Welsh Government suggests councils consider appropriate publications by relevant professional bodies such as CIPFA when establishing and reviewing their procedures for governance and audit committees.

### **Functions of a Governance and Audit committee**

#### **Reviewing the authority’s financial affairs**

14.18 Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of its financial affairs. Putting in place the governance and audit committee and providing it with the duty to keep the authority's financial affairs under review must be viewed as assisting in the fulfilment of this requirement.

14.19 This is an area which is given close attention by the authority's external auditors and ties in with the duty of the governance and audit committee to oversee the arrangements for internal and external audit, and also the need to monitor the internal control and risk management arrangements made by the authority.

14.20 Local authorities should make their own arrangements, in their constitution, to provide for clear demarcation between the role of the governance and audit committee and that of a relevant scrutiny committee. The governance and audit committee role should be more to seek assurance that the budgetary control systems (as an internal control) of the council are working, rather than the actual scrutiny of spend. This may serve as acceptable demarcation between the role of the governance and audit committee and that of an overview and scrutiny committee.

### **Risk management, internal control, performance assessment and corporate governance arrangements of the authority**

14.21 The attention to this matter should raise the profile of risk management as a necessary control tool within the authority as a whole. By providing regular review, the governance and audit committee forms a significant part of the authority's corporate governance system.

14.22 The authority should have a clear 'Statement of Purpose' for its governance and audit committee, ensuring the committee has a prime role in ensuring effective corporate governance is central to the organisation's procedures. As such, the governance and audit committee should review the Annual Governance Statement<sup>1</sup> and Corporate Governance Strategy. An effective and high profile governance and audit committee is critical to engendering public confidence that the authority has a solid approach to its financial and organisational propriety.

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<sup>1</sup> <sup>1</sup> An Annual Governance Statement is a document which sets out a council's arrangements for decision-making and governance. The AGS is the product of a review of council governance carried out by senior officers. There is no obligation on Welsh councils to prepare an Annual Governance Statement. As there is no legal obligation to produce an Annual Governance Statement, Welsh Government is not providing statutory guidance on this matter. However, councils will note the presence of the local government accounting standards. Councils could consider how the AGS can be used as a tool for broader corporate improvement; it can be used to evaluate strengths and weaknesses in the governance framework and, as part of an annual action plan, take forward agreed changes accordingly.

14.23 The governance and audit committee will need to report on the adequacy of the authority's risk management and internal control arrangements, and comment on their effectiveness. It will also follow up on risks identified by internal and external auditors and require reports as to action taken in response. This means the council must ensure the governance and audit committee is briefed on the contents and recommendations contained in auditor's reports and has access to them. It should also have access to reports from regulators where these have identified risks, failures in internal control or the corporate governance systems of the council. It would be good practice for all reports from auditors and regulators to be shared with the governance and audit committee as a matter of course.

14.24 In addition to these existing duties, the 2021 Act added a new duty to this group of duties which requires the governance and audit committee to review and assess and make reports of the effectiveness of the arrangements the council has put in place for the performance assessments it is required to complete under section 91 of the Local Government and Elections (Wales) Act 2021 in order to fulfil its duty to keep performance under review in section 89 of the 2021 Act. This is not intended to be a repeat of the performance assessment itself but consideration, for example, of the rigour and comprehensive nature of the process. Neither is it intended to duplicate the role of overview and scrutiny committees in holding the council's executive to account in relation to the performance management of the council's services.

14.25 The council must make a draft of its self-assessment report (and panel assessment report when published) available to its governance and audit committee. The committee must review the draft reports and may make recommendations for changes to the conclusions or action the council intends to take. If the council does not make a change recommended by the governance and audit committee, it must set out in the final self-assessment report (or response to a panel assessment report) the recommendation and the reasons why the council did not make the change.

### **Review and assess the authority's ability to handle complaints effectively**

14.25 The way in which an organisation manages its internal and external complaints process for service and organisational complaints (consideration of the complaints process for complaints made under the members' code of conduct is not a function of the Governance and Audit Committee) is an integral part of its corporate governance systems. It is vital that people, communities and other stakeholders have trust and confidence their complaints will be treated with due respect and gravity. It is also important that staff and others internal to the organisation have trust and confidence internal complaints are treated with similar respect.

14.26 The role of the governance and audit committee is not to consider whether individual complaints have been dealt with appropriately but to consider the effectiveness of the complaints process. For example, is the process accessible to everybody in the community, is the council giving proper consideration to its statutory duties in relation to equalities and Welsh language when handling complaints, is there internal learning built into the complaints process to improve systems and services going forward. The Welsh Government expectation is that councils provide the PSOW with an assessment of the arrangements in place for handling complaints and the effectiveness of its approach as part of its regular communication with the PSOW.

### **Internal and external auditors**

14.27 An effective governance and audit committee should provide the authority's chief finance officer with advice which can serve to bolster the work of internal and external auditors. The committee can ensure that audit reports are kept in the authority's mind, so timing of meetings might be planned so as to effectively follow-up auditors' recommendations.

14.28 The governance and audit committee will expect to input into the planning of internal audit priorities, approving the annual programme of audits and ensuring the internal auditors have the necessary resources to conduct their work effectively. They will want to meet with the Head of Internal Audit and receive their annual report.

14.29 The governance and audit committee should also receive the reports from the external auditors and follow up their recommendations during the year. The committee should have a role in agreeing the authority's response to the auditor's letters or reports as well as being able to meet with the external auditor.

14.30 In addition, the governance and audit committee should receive and consider reports from any regulators or inspectors. In respect of these, the authority will need to ensure there is no unnecessary duplication between the governance and audit committee and any overview and scrutiny committee in considering such reports.

### **Financial statements**

14.31 Before their approval by the authority, the governance and audit committee should consider and comment on the authority's certified draft financial statements. They will want to see to what extent the statements take cognisance of audit reports during the year, and changes in accounting policy and internal control mechanisms. The Committee should also review the external audit

statement and also seek assurance on the management of the council's financial affairs. Any concerns should be reported to the Council.

14.32 Governance and audit committees may approve the financial statements themselves where local authorities have delegated that power to them under regulation 10 of the Accounts and Audit Regulations (Wales) 2014 (as amended).

### **Governance and Audit Committee Reports and Recommendations**

14.33 Reports and recommendations by the governance and audit committee should be considered by full council in particular, as well as the executive. The processes for these considerations should be set out in the council's constitution.

## 15.0 Guidance on multi-location meetings

### Status of this guidance

- 15.1 This is statutory guidance issued under section 47 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

### Purpose

- 15.2 The overall purpose of the Welsh Government in amending the law to give relevant authorities powers and freedoms to convene meetings in this way is to achieve greater accessibility and improved public participation in local government. These powers are closely connected with the new requirement for principal councils to broadcast (by audio and/or video) certain meetings.
- 15.3 Multi-location meetings offer authorities the potential to update and transform the way they do business. It provides opportunities for authorities to become more flexible and efficient and also raise their profile in the local community and to bring their work directly into people's homes. Public access to multi-location meetings is likely to be significantly higher than the level of audiences of formal meetings when all were held physically – attendance levels during the pandemic bear this out. This heightened public awareness and involvement is to be welcomed – and further encouraged. In particular, authorities will need to think directly about the needs of the public as they design their arrangements and policies for multi-location meetings. While these meetings are still “meetings in public” rather than “public meetings” – by and large the public will be able to observe but not participate – they provide a crucial opportunity for accountability and transparency, and an accessible shop window for many public bodies.
- 15.4 This guidance is for principal councils, National Park Authorities, Fire and Rescue Authorities, and Port Health Authorities. This guidance does not cover the arrangement by other public bodies of their own formal meetings, or the organisation by public bodies (including councils) of public meetings or any other gathering. It also does not include the convening of formal meetings by corporate joint committees (CJCs) or community councils, which are covered in separate guidance.
- 15.5 This guidance is intended for:
- Participants in meetings convened by the authorities listed above;
  - Officers providing support to formal meetings in these authorities;
  - Officers with adjacent responsibilities – for example, those responsible for drafting and clearing reports, attending meetings to present reports to



members and officers with supervisory responsibilities on governance matters;

- Anyone with an interest in the way in which the business of these authorities is conducted.

15.6 Generally speaking the requirements for all relevant authorities is similar, although differences do exist – especially relating to the convening of multi-location meetings of local authority executives, (from paragraph 15.71).

15.7 Relevant authorities are required to “have regard to” the guidance. Where authorities are under an existing statutory obligation to carry out an act the guidance says that they “must” do something; where there is no such obligation but the guidance presents a suggestion on a possible course of action, the guidance says that a council “can” or “may” do something.

### **How this guidance was developed**

15.8 This guidance was developed between February and April 2021. It was drafted by the Centre for Governance and Scrutiny, Cardiff University and Public Governance Wales, who were commissioned by Welsh Government to speak to people with a stake and interest in this area and to develop the text as a result of these conversations.

15.9 This guidance will be reviewed periodically.

### **Definitions of words used in this guidance**

15.10 Generally, the words used in this guidance have the same meaning as they do in the 2021 Act.

15.11 A “relevant authority” is an organisation which is required to put in place arrangements for multi-location meetings. This covers principal councils, Fire and Rescue Authorities, National Parks Authorities and Port Health Authorities. It also includes joint committees of these bodies. The obligations of corporate joint committees (CJCs) and of community and town councils are covered in separate guidance.

15.12 A “meeting” is a formal meeting of a relevant authority convened in accordance with whatever the legal requirements are for such meetings. Formal meetings are usually those where formal decisions can be made; these meetings may need to be held in public and that notice is published beforehand that they are being held. This is not always the case as some meetings, or parts of meetings, are held in private due to confidentiality or exempt issues being discussed. When we talk about these meetings being “convened”, we mean the process involved in organising the meeting and setting and distributing an agenda and

reports.

15.13 A “multi-location meeting” is a meeting of a relevant authority whose participants are not all in the same physical place. In some places these are colloquially described as “remote” meetings. The 2021 Act does not refer to these meetings as “remote”, but that they are attended by “persons who are not in the same place”.

15.14 At least one participant may be joining the meeting by remote means. For example, this includes meetings of the type described below:

- Meetings of a committee where all participants are in the same physical location except one individual who joins from another location, with a physical public gallery being provided;
- Meetings of a committee where a roughly equal number of members are present in a physical space and joining through remote means; those joining through remote means may include the Chair;
- Meetings of a committee where all members are joining through remote means but nonetheless a physical public gallery has been made available in authority premises;
- Meetings of a committee taking place wholly through remote means where no physical arrangements have been made.

15.15 Some have described the kinds of meetings described above as “hybrid meetings”. This guidance and Section 47 of the 2021 Act makes no distinction between meetings where some participants join by remote means and those where all participants do so, but meeting arrangements will need to account for the practical differences that different forms of meetings will take, and make plans accordingly.

15.16 The definition of “Joining a meeting by remote means” is being in a different physical location to that of other participants, and participating through an online meeting platform. Where participants are present in a committee room or other physical space which is publicised (through a formal notice) as being the location of the meeting, those participants are present physically.

15.17 A “participant” of a multi-location meeting is a person who takes an active part in that meeting. They might be a member, a person giving evidence to a committee as a witness, an appellant or claimant on a regulatory matter, someone presenting a petition, or taking part formally in another way.

15.18 An “observer” of a multi-location meeting is a member of an audience, or otherwise spectating, a multi-location meeting. They might be in the same room

that a meeting is taking place or they might be observing by remote means.

15.19 “Meeting arrangements” are the rules and procedures that relevant authorities adopt to act on their statutory requirements relating to multi-location meetings, and to act on the recommendations in this guidance. This guidance suggests that these arrangements will form part of relevant authorities’ constitutions, where they are required.

### **Background to multi-location meetings**

15.20 Arrangements were first made in legislation to allow for “remote meetings” in section 4 of the Local Government (Wales) Measure 2011.

15.21 At the outset of the coronavirus pandemic in March 2020, the Welsh Government produced the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020. These established a framework within which all relevant authorities convened meetings by remote means throughout 2020 and part of 2021. Experience operating meetings under these Regulations has provided relevant authorities with significant expertise in understanding and managing multi-location meetings, now they have been placed on a new statutory footing. The provisions in the 2021 Act can be seen as an evolution of these prior arrangements.

### **The benefits of multi-location meetings**

15.22 Councils, and other relevant authorities, convened meetings by remote means throughout much of 2020 and 2021. While meeting this way proved challenging in the context of the global coronavirus pandemic, it has also resulted in a number of benefits.

- Enhancing and supporting local democracy. Having the flexibility to convene meetings in this way will reduce the barriers that might previously have been in place for explaining and demonstrating how relevant authorities do business;
- Working more productively. When participants come together by remote means, they have often been able to get more done. Multi-location meetings have also resulted in a dramatic reduction in the amount of paper needed and produced. The move to an approach which sees the production of formal notices and other material as being “online by default” will make it easier for councils to innovate around the use of formal meeting material;
- Making it easier for the public to attend meetings. Although experiences have been mixed, public attendance has been higher for multi-location meetings than for meetings in person. Some relevant authorities, in particular, found both before and during the pandemic that multi-location meetings have made it possible to include external participants actively, ensuring that committees

can benefit from a greater range of views. Relevant authorities have reported that members of the public think that multi-location meetings are much less intimidating than those held in person, and that they have the potential to encourage more people to stand for public office. For some though, multi-location meetings will also present challenges – for example, those with poor broadband connections or disabled people, or those unable to access meetings over the internet for other reasons;

- Making relevant authorities more resilient and sustainable in how they carry out their work. The Wellbeing of Future Generations (Wales) Act 2015 requires relevant authorities to think about, and act on, long term needs in the way that policy is developed and made. Multi-location meetings reduce the carbon footprint of physical meetings (although digital activity is not of course carbon-neutral). They can also help relevant authorities to reduce the risk of future unexpected events – such as extreme weather – which could in future present a challenge to in-person meetings. Issues of sustainability are explored in more detail below;
- Making the use of the Welsh language easier. Relevant authorities' experience during 2020 has been that the simultaneous translation on platforms such as Zoom has reduced some of the practical difficulties which some authorities have experienced around facilitating bilingualism in public meetings;
- Reducing the need for travel. For more rural relevant authorities and for relevant authorities covering large geographical areas and for joint bodies, significant time and cost savings for councillors, officers and other participants have arisen. In turn, this makes it easier for participants to take part if they have professional and caring commitments – potentially removing some significant barriers to standing for public office;
- Better support for members from diverse backgrounds, including support that recognises the social model of disability. Just as barriers are being removed to public participation, multi-location meetings have made it easier for care providers, or disabled people, or people with other protected characteristics, to engage on an equal footing. In some cases, participants have found the formality of physical meetings to be off putting, and multi-location meetings have removed this factor. Of course, this raises broader issues around the way that relevant authorities work generally, and the extent to which they welcome participation and involvement from a wide range of people. These are not matters which will be resolved through multi-location meetings alone, but such meetings could be a tool that will, in due course, help a wider range of people to take an active role in local democracy;
- Better behaviours. Although experiences have been mixed, on the whole meeting management and the behaviours of participants have both improved. It has been easier for Chairs of meetings to understand who wants to make a contribution, although it is harder to read body language.

Disruption of meetings by political argument (for example) seems to have been less of a theme as well.

15.23 Physical meetings should not be seen as representing the “gold standard” with multi-location meetings being second best. Physical meetings may be convenient and effective for those most familiar with and comfortable with how they work – but they may also be inaccessible and impractical to many. **All meetings that meet the required communication and quorate arrangements have equal status under the law.**

15.24 For some, there have been drawbacks to multi-location meetings. In particular, people have had worries about the need for more council officers to support them. In time, ongoing experience is likely to improve this and reduce the amount of resource required to support them.

### **What this guidance covers**

15.25 This guidance focuses particularly on arrangements for the convening of formal meetings held by relevant authorities under the 2021 Act , and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 as amended by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2021.

15.26 Guidance for principal councils on broadcasting these meetings, where required in law, is being provided separately.

15.27 Together, this legislation updates arrangements for the management of these meetings and enhances transparency and public access.

15.28 This guidance also engages with other enactments relating to this issue, as well as with the wider local democratic context within which the Act sits.

15.29 This guidance focuses particularly on arrangements for the convening and broadcast of formal local authority meetings. Provisions relating to local authority meetings are included in various pieces of legislation, including but not limited to:

- The Local Government and Elections (Wales) Act 2021;
- The Local Government Act 2000;
- The Local Government Act 1972;

- The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 as amended by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2021. The National Park Authorities (Wales) Order 1995;
- The North Wales Fire Services (Combination Scheme) Order 1995;
- The Mid and West Wales Fire Services (Combination Scheme) Order 1995;
- The South Wales Fire Services (Combination Scheme) Order 1995.

15.30 Chapter 4 of Part 3 of the 2021 Act covers meetings convened by relevant authorities, as well as by certain other bodies and organisations. In respect of principal councils, community and town councils, National Parks Authorities, Fire and Rescue Authorities and Port Health Authorities, it covers:

- Electronic broadcasts of meetings. Principal councils must make arrangements for broadcasting certain meetings live, and ensuring that broadcasts are available electronically afterwards. A failure to comply with this requirement does not necessarily make proceedings invalid (s46). Separate Regulations and guidance are being prepared on this matter;
- Attendance at meetings: Relevant authorities must make arrangements for “multi-location” meetings, at which participants can speak to and be heard by each other. Where meetings must be broadcast participants must also be able to see each other (s47);
- Notice of meetings, and publication of agendas: Relevant authorities must publish certain information, including notices of meetings, electronically, and electronic information relating to meetings must remain available in this format for six years following the date of the meeting (Part 1 of Schedule 4 to the 2021 Act, amending the Local Government Act 1972). Relevant authorities must also put in place facilities for the public who would otherwise not be able to do so, to access meeting documents.

15.31 Arrangements for the broadcast of meetings (physical or multi-location) held by relevant authorities is explored in separate Regulations and came into force in May 2022 and separate guidance will apply. However, relevant authorities are likely to need to consider the requirement to broadcast alongside the need to make provision for multi-location meetings. This is the reason for suggesting that meeting arrangements take account of both requirements.

### **General principles**

15.32 Relevant authorities will need to think about and agree independently the details of their own arrangements for multi-location meetings. In doing so, they should be guided by the following general principles.

15.33 All of the below relate to legal obligations. In developing meeting arrangements, relevant authorities will need to explicitly assure themselves that these principles are understood, taken into account and acted on, possibly through being the subject of specific discussion at meetings to ensure standing orders are amended by Democratic Services Committees or other bodies in relevant authorities.

15.34 Of paramount importance are the needs of local democracy. Local people need to have confidence that relevant authorities have systems in place that meet their needs – this might be about observing meetings, participating in them, and using this to hold to account a meeting’s participants for what they see and do. Relevant authorities’ approach to multi-location meetings has to be seen as part of the wider support and commitment to local democracy. The other principles described below need to be considered in light of this.

### **Transparency**

15.35 Formal meetings of relevant authorities will be spaces in which democratic debate and decision-making happen. It is fundamental that these meetings are held in public (subject to the specific exceptions available), and that the public are able to access and engage with them. Relevant authorities will need to think about wider legal requirements around transparency, and accessibility, and what that means for the way that they carry out meetings. These meetings allow public and media involvement as observers whether they are held in person or virtually.

(Local Government Act 1972, s100 et seq., Schedule 12 and 12A and related legislation).

### **Accessibility**

15.36 Democratic systems need to be organised and arranged to account for barriers that members of the public might experience. Multi-location meetings have the potential to enhance and improve access for participants. This will not happen automatically however, and meeting arrangements will need to be specifically designed to help this to happen.

15.37 Relevant authorities’ meeting arrangements will need to have regard for the protected characteristics under the Equality Act 2010, including ensuring that accessibility is considered in the context of the social model of disability, and for ensuring that the impact of its decisions on democratic arrangements are understood from these perspectives.

[\(Equality Act 2010\)](#)

## **Good conduct**

- 15.38 In line with the Nolan Principles, multi-location meetings, as with any other public meeting, should demonstrate high standards of conduct.
- 15.39 Multi-location meetings have in many places led to changes in conduct, and an improvement in behaviours. Meeting arrangements can account for the need to entrench more positive behaviours – particularly where these meetings involve a number of people together in a single physical location, where different dynamics may arise.
- 15.40 Relevant authorities will also need to have regard to the Model Code of Conduct (and to local codes of conduct, and standards arrangements) in how they develop their meeting arrangements.

The [Local Authorities \(Model Code of Conduct\) \(Wales\) Order 2008](#)

## **Use of English and Welsh Languages**

- 15.41 Adherence to legal requirements relating to the use of the English and Welsh languages is a legal requirement. It is a fundamental element of the obligations attached to public bodies in Wales – separate legislation and guidance exists. In order to maximise accessibility relevant authorities may wish to consider subtitling in English and/or Welsh, and translation into other languages depending on need – for example, BSL.
- 15.42 Arrangements must ensure that English and Welsh are treated equally and support and promote the Welsh Language. The use of the Welsh language can be provided for in multi-location meetings – and normalised in a wide range of settings – in ways which might historically have proven challenging for physical meetings. Relevant authorities will also need to take account of their individual Welsh language standards.

[\(Welsh Language \(Wales\) Measure 2011\)](#)

## **Local Needs**

- 15.43 Local authorities are democratic institutions. Decisions about local democracy – and the best approaches to promote and encourage engagement in local democratic systems – are best made at a local level. Relevant authorities' approaches to meeting arrangements should therefore be aligned with the way that they approach public participation – in particular, their plans for ensuring that they meet their public participation obligations which came into force in May



2022. An understanding of the specific needs of a wide range of local people is a part of this.

[\(Local Government and Elections \(Wales\) Act 2021, on public participation\)](#).

## Future generations

15.44 In agreeing arrangements for meetings, relevant authorities must give regard to the well-being goals and ways of working set out in the Well-being of Future Generations (Wales) Act 2015. Many of the improvements which could be brought about by multi-location meetings – innovation around the transaction or meetings, reductions in the use of paper, enhanced public accessibility and so on – will serve the objective of making local democratic systems more sustainable.

15.45 However, relevant authorities will still need to ensure that the 2015 Act's principles are actively embedded in arrangements for meetings. Digitisation has the potential to significantly reduce the carbon footprint of local democratic systems, but only where cloud services and server storage is procured from carbon neutral providers – digital services are not carbon neutral by default. The reduction in travel will also add to the reduction in the carbon footprint.

## Core requirements

15.46 This section sets out the things that relevant authorities **must** do in relation to multi-location meetings.

15.47 These provisions are set out to help ensure legal compliance. In all respects it will be for a relevant authority's Monitoring Officer to determine exactly how the authority will ensure this compliance. The expectation is that relevant authorities will want to use these requirements as a starting point from which to innovate and experiment with different arrangements for facilitating multi-location meetings, in the context of the wider needs of local democracy.

15.48 The 2021 Act requires that "arrangements" be made by principal councils for both the broadcasting of meetings, and the convening of meetings involving participants in multiple locations. These "meeting arrangements" will need to be written in such a way that integrates a relevant authority's approach to multi-location arrangements to its wider compliance with the legislative framework for formal meetings, including the new requirements for the audio and (in certain circumstances) video broadcasting of such meetings.

15.49 Although, there is a requirement for principal councils to broadcast certain meetings which was commenced in May 2022, many principal councils were

already broadcasting a number of their meetings, we therefore suggest these arrangements form an integrated part of an authority's Constitution. For principal councils such arrangements might be subject to oversight from the Democratic Services Committee.

- 15.50 The reason for integrating these arrangements into a constitutional document is that they set out how the authority is run, and will need to be integrated in some form into the rules of procedure of committees and other formal bodies.
- 15.51 Relevant authorities will need to develop these arrangements for themselves – there is no single set of rules setting out what arrangements should look like in detail. This guidance sets out a framework within which relevant authorities can explore their options and decide what is right for them and the communities they serve.

### **Practical considerations**

- 15.52 This section sets out things to which relevant authorities must give regard, but which do not form part of the legislative framework.
- 15.53 Welsh Government considers these considerations to be matters of good practice. Some specific solutions are suggested but relevant authorities should consider local circumstances in deciding what approaches are ultimately adopted, in a process which should be led by those involved in participating in meetings, and supporting those meetings' operation – always informed by the needs and expectations of the public. While meeting arrangements should fit local preferences and circumstances, there should be a clear process for considering the issues highlighted below. For local authorities the Democratic Services Committee is expected to lead this process.
- 15.54 Sitting alongside the core requirements of the “meeting arrangements” – the legally mandated arrangements that relevant authorities must make for multi-location meetings – can be a wider multi-location meetings policy, which will also reflect the general principles set out from paragraph 15.32 while setting out more detailed procedures to ensure that multi-location meetings work efficiently, effectively and accountably. Keeping such a policy distinct from the legal “meeting arrangements” is important because it will make it clear to those involved where processes are put in place because of legal requirements, and where local decisions have been made about the operation of multi-location meetings.
- 15.55 Relevant authorities can take whatever process they choose in designing and adopting this policy, but those responsible for leadership on governance matters, and participants in multi-location meetings, will need to be satisfied

that these arrangements take into account the general principles we set out from paragraph 15.32. In particular, the meetings policy will be the document to refer to the role of the public in the operation of formal meetings, and to ensure their needs and expectations are understood and treated as paramount.

15.56 Because of the public-facing nature of this work relevant authorities may consider it necessary to adopt a provisional policy, and for those within that authority and outside it (in particular, the public) to develop and refine it over time. Reviewing the policy (and of the meeting arrangements themselves) as they operate will offer the best opportunity to reflect and refine.

15.57 Where a relevant authority determines that they wish to draft such a policy it should be led by a committee of the authority with a responsibility for governance, supported by a relevant officer. This might be that authority's Monitoring Officer. Where the authority is a principal council, the decision would be made by the cabinet and the officer taking leadership might properly be the Head of Democratic Services.

15.58 The exact contents of a policy will be agreed at local level. The experience of relevant authorities in the past however suggests that it should include:

- How to decide which meetings will have physical provision made for them, and which will be conducted wholly through remote means (from paragraph 15.60);
- Which online meeting platform or platforms which will be used (from paragraph 15.71);
- How formal notices will be issued, and the publication of agendas and minutes (from paragraph 15.76);
- How exempt matters will be dealt with (from paragraph 15.82);
- Meeting attendance, including deciding where a member is "present" (from paragraph 15.89);
- How participants who sit as part of committees or bodies subject to the 2021 Act will be able to access and participate in the meeting (including support and advice on technology, behavioural and conduct issues) (from paragraph 15.100);
- How observers (including the public and the press) will be able to access the meeting, and how they may actively participate in the meeting where needed (from paragraph 15.118);
- Facilitating broadcast by members of the public (from paragraph 15.119). Broadcast by the authority itself may also be required, and is covered by separate guidance;
- Chairing of meetings (from paragraph 15.138);
- The taking of votes (from paragraph 15.145);

- Training and peer support to ensure that participants are able to take part (from paragraph 15.151).

15.59 It is important to ensure that participants and observers have access to easy to understand information which explains how they can and should engage in multi-location meetings – this documentation can be part of the multi-location meetings policy but should also be available separately, and may constitute a simple explanation of some of those arrangements for the casual reader. It is particularly important the relevant authorities highlight and publicise their multi-location meeting arrangements and policy to make it as easy as possible for the public to engage.

### **Taking different approaches for different meetings**

**15.60 *Some relevant authorities may decide that all meetings will be conducted through remote means by default. Relevant authorities may wish to adopt different approaches for different bodies, and for different circumstances.***

### **In general**

15.61 A multi-location meetings policy may make provision that different kinds of meeting be convened, by default, with all participants joining through remote means, or with some arrangement being made for people to attend and participate and observe in person. Policies should recognise that the 2021 Act requires participants to be able to join meetings through remote means for all formal meetings. It will not be permitted for relevant authorities to decide that all meetings will be held entirely physically.

15.62 The needs of local democracy, and the needs of the public in engaging with multi-location meetings, are a paramount consideration in deciding where and when meetings will be convened partially or wholly by remote means. The overriding intention of the 2021 Act on this issue is to help the public to be able to access and engage with local democratic systems. The convenience of participants and the efficient operation of relevant authorities themselves is important but the needs of the public will come first when these decisions are being made.

15.63 Relevant authorities may want to make particular plans for multi-location meetings where a number of participants are in the same physical space, while others join through remote means. Similarly, provisions might need to be made for allowing people to observe in person, or through remote means, or both.

15.64 There is no requirement for each meeting to be held in the same way every time it meets. For example, a council could decide to hold some full council meetings entirely remotely and others as multi-location meetings with a number of

councillors (or most councillors) present in a chamber. In determining which meetings may be held wholly through remote meetings and for which physical arrangements might be made available, relevant authorities might consider:

- The general circumstances of participants. Participants' needs and preferences may change over time, and policies should have the flexibility to allow for arrangements to change where this happens. For example, councillors in a local authority may decide that full Council should take place predominantly physically or predominantly through remote means – but in doing so they might ensure that the policy remains flexible enough to change this approach if participants' views change;
- The subject matter, and number of participants attending, certain meetings. This may relate to the general matters usually under discussion at a given committee (or other body) rather than the specific agenda for an individual meeting;
- The need to ensure that meetings are fully accessible to both active participants and to observers. Accessibility may under certain circumstances require physical provision;
- Connected to this, consideration of whether physical provision for a public gallery, or for the attendance of certain participants, is necessary if the majority of a meeting's participants are joining through remote means. This is discussed in more detail from paragraph 15.118.

15.65 The overriding requirement is to consider the needs of the public, both as observers and participants.

15.66 Relevant authorities may have concerns about equality of access and participation in multi-location meetings where some participants are in the same physical space. On considering the risks and other circumstances they may determine that, by default, meetings can take place either wholly by remote means, or that, where a number of participants express a preference for a meeting being held physically, that support should be given to all participants to attend physically. However it is worth reiterating that relevant authorities will not be able to require that all participants attend physically under these circumstances.

15.67 Where a relevant authority decides that physical arrangements will be made for certain meetings or classes of meetings, a multi-location meetings policy will need to determine what those arrangements will be. They may include:

- The availability of a meeting room which is publicly accessible, along with the provision of a physical public gallery (and press gallery);
- Making arrangements for participants who attend physically to be seen by those joining from other locations (a requirement under the Act), which will

require planning where multiple participants wish to attend physically and where camera facilities in a room may be less than ideal for this purpose;

- The availability of professional support in the room, or through remote means. This may be IT support or governance/clerking support;
- The streaming of broadcast footage from the meeting to those present through the use of one or more display screens (and the use of audio equipment).

15.68 Even where all participants join a meeting from another location a relevant authority may still wish to provide a physical space for members of the public to watch proceedings and to participate. This is covered from paragraph 15.118 .

### **Accessibility and involvement**

15.69 Some participants may wish to join meetings from another location regularly – because they have working or caring responsibilities which make attending meetings in person difficult. Some participants may have a preference for physical meetings. Participants may have personal protected characteristics, or circumstances, which limit their ability to participate online, and/or which requires that certain accommodations be made for physical presence. The same needs are likely to apply to observers. Particular care will be needed to be taken to take account of the needs of one-off participants, especially if they are members of the public rather than employed officers of the authority or regular meeting participants who are (for example) elected councillors.

15.70 Multi-location meetings where some or most participants are present in a single location can pose challenges around accessibility and involvement. Those present in a committee room will need to be able to participate on the same footing as those participating in other locations. This may be difficult where certain participants may be able to hear, but not see, other participants. For these kinds of meetings, there is a risk that those not physically present in a room play less of a part in discussion. These people may end up being “forgotten” by those who are physically present. For a Chair, following the visual cues of those in the same room, and those joining from other locations, is likely to be a challenge. This will need to be thought about, particularly where the Chair themselves is joining a meeting from another location.

### **Multi-location meeting platforms**

15.71 ***Multi-location meetings require additional technology and this has implications for an authority's capacity to procure and use this technology effectively. Finding and using the right platform is an important part of making meetings accessible and transparent, and the***

***business of relevant authorities more accountable to the public.***

15.72 This guidance does not recommend any specific product. Relevant authorities have made, and will make, their own arrangements in line with their IT and procurement policies. It may be, for example, that relevant authorities wish to explore joint procurement opportunities. It will be useful for relevant authorities procuring to understand how the market for these products evolved, and the need to keep in touch with other relevant authorities to exchange experiences.

15.73 Specifically, any product, or combination of products, should provide:

- The ability for participants to be able to see and hear each other, and the facility for outbound and inbound video and audio to be switched on and off either by a participant themselves or potentially also for a meeting organiser;
- The ability for participants to be named / labelled so that others can easily identify them;
- The ability for participants and observers to be able to join via mobile, or tablet, without losing significant functionality;
- The ability to provide for simultaneous translation. Relevant authorities should ensure that they use a meeting platform which provides for simultaneous translation and that members are comfortable with its use. Principal councils will need to decide whether to broadcast a feed in English, in Welsh, or in both;
- The ability to both record and broadcast the meeting and for participants and observers to know when recording and broadcasting is taking place;
- The ability to caption or subtitle, either live (which may be partially or fully automated) or through editing after the meeting has taken place;
- A “chat” facility (the use of which we discuss from paragraph 15.100 below), visible only to meeting participants, and which can be turned off by the meeting organiser if necessary;
- Sufficient security measures to ensure that the meeting cannot be accessed by unauthorised persons, and to ensure that unauthorised persons can be ejected from the meeting where necessary;
- A user interface which is intuitive and easily understood.

15.74 **Other factors will include:**

- Where and how meetings will be broadcast – for example, on the council’s own website or on Facebook Live or YouTube, or in some other way (covered in separate guidance). It is not recommended that principal councils effect the broadcast requirement by granting public access to online meeting platforms themselves. Broadcast arrangements are dealt with in separate guidance, but again, the needs of the public as observers will be especially important;

- Arrangements where joint meetings are held between relevant authorities which, by default, use different platforms;
- Arrangements for when difficulties with technology emerge, or other circumstances might make it impossible to broadcast a meeting (set out from paragraph 15.107);
- Provision for electronic voting.

15.75 Relevant authorities may wish to consult participants and observers to ensure that IT arrangements work for them, and that the technology means that multi-location meetings are as accessible as they could be.

### **Notices, agendas, reports and providing for exempt matters**

***15.76 Alongside multi-location meetings, relevant authorities will need to continue to issue notice of the convening of meetings, and make arrangements for the publication of agendas and reports, online. There are both issues and opportunities associated with this.***

- Transparency around the work programmes of bodies covered by these rules. Agendas and papers are usually expected to be published three clear working days in advance of meetings (and the detail of notice requirements are covered in more detail in the section below), but relevant authorities may wish to consider how the interests of transparency and accessibility can be served by earlier notification of proposed agenda items – through more accessible and visible work programmes and through attention being given to the visibility and accuracy of a schedule of forthcoming decisions (which in the case of a principal council executive will be the Forward Plan);
- Arrangements to ensure that those viewing a broadcast can be easily signposted to the agenda, reports and (in the case of recorded meetings) the minutes, and to any relevant background documentation;

15.77 Full detail of notice requirements for meetings (and other formal requirements for the publication of agendas, reports and minutes) can now be found:

- For local authority executives, at the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 as amended by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2021;.
- For other meetings of relevant authorities, amendments made to Part 5A and schedule 12 of the Local Government Act 1972.



15.78 The principal object of these amendments to the existing legal framework is to remove the requirement for the production of hard copy paperwork relating to formal meetings (except for a couple of specific purposes), and to require relevant authorities to make formal information available electronically, on their website.

15.79 The new arrangements can be summarised as follows:

### **Notice of meetings**

- Public notice of all meetings must be published on the relevant authority's website at least three clear days before the meeting (at the time it is convened, if it is convened at shorter notice);
- Notice must include details of how to access the meeting if it is being held by remote means only, and the place in which the meeting is held if it is partly or wholly taking place physically;
- Notice requirements also apply where a formal meeting is taking place which is not open to the public. Here, notification is required of the time of the meeting, the fact that it is being held by remote means, and that it is not open to the public.

15.80 Usually notice of meetings would be provided on an authority's website; relevant authorities may also make arrangements for notifications to be sent to members, and interested people via subscription, automatically on the uploading of agenda papers. Authorities may also make use of social media to highlight the publication of notice (although notification on social media will not constitute notice for the purposes of the Regulations).

### **Agendas and reports**

- The agenda and reports for public meetings (including late reports) must be published on the website of the authority;
- Paper agendas do need to be made available to members of the public attending meetings held partly physically;
- For principal councils only; recording of decisions by the executive collectively or individually, as well as the recording of business carried out in other meetings of principal councils. This requires that the names of who attended the meeting be recorded alongside apologies, declarations of interest and decisions made. This must be published within 7 working days of the meeting taking place. In the interests of clarity this does not require that a member's or members' signatures are required to be recorded (as has been the case previously). The information referred to above must be published on relevant authorities' websites;

- Background papers relating to meetings of relevant authorities must now be proactively published on a website, not merely be available (although, exceptionally, if it is impractical to do this, they must be open for public inspection). This is an important change; it involves the automatic placement in the public domain of specified documents which may previously have only been, in practice, published on application. Councils will therefore need to think carefully about how background papers are identified, produced and prepared for publication;
- The transaction of paperless business generally. Multi-location meetings are likely to be paperless. Regulations now specify that formal information relating to meetings be published on an authority's website, with the requirement of hard copy material being on public deposit having been removed.

15.81 There may be people who cannot access the information published electronically; principal councils must put in place facilities for members of the public who would not otherwise be able to do so, to access the documents.

### **Exempt matters**

15.82 Bodies covered by the legislation will need to be able to consider exempt matters in private. Exempt matters are things which a relevant authority is allowed not to publish because they are confidential. This may be for a range of reasons, which are set out in schedule 12A of the Local Government Act 1972. Agendas with exempt items on the agenda are often divided into a Part I – held in public – and a Part II – held in private.

15.83 A separate call on the online platform, separate from the call used for broadcast, should be set up for those participating in a meeting by remote means. This reduces the risk that exempt material may be inadvertently made public through being broadcast. The original, public, call can be left open and can continue to broadcast (with an appropriate slide to notify viewers that the committee or body is in private session), so the Chair and other participants can return to formally close the meeting, or further business. This will allow relevant authorities to make clear to observers what is happening, and why.

15.84 Information provided to participants covering exempt matters should be dealt with in the same way as it would be for physical meetings. Bearing in mind that information will now be managed electronically by default under the notice and agenda arrangements highlighted above, relevant authorities may want to ensure that more prominent warnings be placed on exempt material, or whether a different colour can be applied to the background of such material to reflect the fact that, in hard copy, exempt material is usually printed on different colour paper for this reason. In doing so, relevant authorities will need to think about the accessibility needs of participants (around colour

contrasts, for example).

### **Innovation in how agendas and paperwork are produced and presented**

- 15.85 The removal of the general requirement to provide information in hard copy by default invites the possibility for more innovation and creativity. This is not innovation for its own sake, but innovation designed to better engage the public in the work of relevant authorities. Local people will be able to follow and track the way that discussions are had, and decisions made, entirely online. The removal of hard copy notices will allow relevant authorities to experiment with the use of technology to make navigating the decision-making process, in particular, easier.
- 15.86 Relevant authorities may wish to consider how information might be made more accessible through creative use of committee content management systems to present information differently – for example, by moving away from the production of “agenda report packs” as a single PDF and towards the use of more accessible files, and file formats, which help both councillors, other meeting participants and members of the public to engage in formal business. This may include thinking about the way that minutes are drafted and presented, providing links to the substantive reports discussed, and also with the relevant section of the recording or broadcast of the meeting.

### **Hard copy archiving**

- 15.87 Relevant authorities should however consider the needs of archiving. It is common practice that councils (and other relevant authorities) retain and bind, or otherwise store for historical purposes, hard copies of the records of formal proceedings of the authority. There is an obligation that formal information be retained for a period of six years although it is considered good practice to do so in perpetuity.
- 15.88 Archiving is likely to be possible and necessary for electronic documentation – agendas, reports, minutes, background papers and other information important for researchers, historians or others to understand how decisions have come to be made. Relevant authorities will need to think about how they build systems to make sure that material produced predominantly, or entirely, electronically will be archived.

### **Meeting attendance**

- 15.89 ***Multi-location meetings provide additional challenges in terms of meeting attendance. It is important for the integrity of voting procedures and***

***attendance records that expectations and procedures are clear.***

15.90 Meeting arrangements and/or the meetings policy should make clear when a participant is considered to be “present”. There are a variety of circumstances in which this might become an issue – for example, in the taking of votes. Meeting arrangements may not engage with the detail of these issues (and others) because not all circumstances can be anticipated in advance. Local determination is important here.

15.91 Instead, the Monitoring Officer and/or governance officer in attendance at a meeting should be able to use agreed principles to provide a Chair with consistent advice over whether a participant should or should not be regarded as “present”.

15.92 This is particularly important for the taking of votes but is also relevant for participation in meetings more generally. It is likely also to have salience if the need to determine if a member has been present at a meeting is relevant for the purpose of determining whether they have attended a council meeting in the past six months (s85, Local Government Act 1972).

15.93 Particular circumstances might include:

- Connection problems. The connection may drop, making it difficult for some participants to follow debate and discussion. It may also disrupt a broadcast feed. A loss of connection may not be immediately apparent to others present. Certain committees or bodies may resolve matters through a general expression of consent rather than a roll call vote, meaning that some participants may lose the opportunity to express disagreement under these circumstances;
- Participants in meetings joining by remote means by video may seek to disable video to stabilise their connection or because they have been temporarily interrupted by events at their location - it may be unclear whether some participants are present or not. Relevant authorities will need to think about whether the requirement to be both seen and heard, for most meetings, allows for brief, temporary interruption like this;
- Where a participant is in the “waiting room” on an online platform. Here, participants will probably not be considered “present” as they cannot be seen and heard by others, cannot see and hear others (other than through a broadcast stream) and can play no active part in the meeting. The same may apply to participants who are only watching the broadcast feed as an observer.

15.94 This list is provided as an illustration; individual authorities will need to make the decisions on these points that are right for them, and which they are

confident both meet the needs of the law and the needs and expectations of local people in how local democracy is transacted.

15.95 Relevant authorities may decide that an officer could check to ensure ongoing presence at a meeting by requiring members to confirm their presence in the meeting chat at the beginning of each substantive item, as we suggested from paragraph 15.100. This could also provide a way to check presence in advance of a vote, as we suggest from paragraph 15.145.

### **The withdrawal of members with a prejudicial interest**

15.96 Where a participant has declared a prejudicial interest in an item they will be required to leave the meeting for the duration of the relevant item. The nature of an interest and whether or not it is prejudicial will be for an authority and its Monitoring Officer to decide.

15.97 For a physical meeting it is usual practice for a participant declaring such an interest to leave the room entirely while discussion is underway, as the mere act of ongoing presence of that individual could be seen as influencing the authority's action.

15.98 Where a participant is joining by remote means, and has declared a prejudicial interest, they should leave or be removed for the duration of consideration of that item. Other participants should however be aware that the participant will be able to observe the broadcast of the meeting while outside. Relevant authorities may seek to include in their policies and meeting arrangements a requirement that participants with prejudicial interests undertake not to observe a broadcast for the reasons set out above, although we note that there is no definitive way to police this requirement and it may be seen as overly restrictive.

15.99 Once the matter has been concluded the clerk or support officer to the committee should immediately notify the relevant participant so that they can re-join the meeting, and the meeting should not continue until they have re-joined (otherwise they should be marked as not present for any further items).

### **Support during meetings**

15.100 ***Support and advice will usually need to be provided to the participants of multi-location meetings, usually relating to matters of procedure. Participants (especially the Chair of the meeting) will need to find an appropriate way to seek and obtain this advice to ensure the smooth running of the meeting.***

15.101 Online platforms used by relevant authorities to convene multi-location meetings will usually have a chat function. The chat function will provide a useful way for advice to be shared and the business of the meeting to be managed, but its use can be open to misunderstanding.

15.102 Meeting policies should explain how this function will be used and the status in terms of meeting records. Some relevant authorities may think it sensible to ban use of the chat function outright, either in all meetings or in some, specified, meetings.

### **Pros of chat functions**

- Allows advice to be given by governance officers without disrupting the meeting;
- Allows the Chair to “cue up” and acknowledge requests by committee members to contribute without disrupting the flow of questioning;
- Allows members to generally express assent or agreement with another participant, or with a proposal to resolve a given issue, in a manner which gives the Chair confidence to proceed (although the fact that consent has been given in this way would need to be verbally acknowledged by the Chair in the interests of transparency);
- Allows the Chair or clerk to check whether a particular member is still “present”, as we outline from paragraph 15.145.

### **Cons of chat functions**

- Can be seen as undermining the transparency of the meeting;
- Can risk participants becoming distracted;
- Risk that participants use the chat for personal communication, and that this communication becomes inadvertently visible to other participants and to the public;
- Risk that chat will involve conversation about the matters under discussion without that discussion being visible to others, or recorded properly. Multi-location meetings policies may need to decide on the status of material recorded in the chat, and whether it can be used by the clerk to assist in the preparation of minutes;
- Risk that the chat becomes a place for general chit-chat.

15.103 The chat function will usually need to be limited to participants and the governance officer – but participants should treat conversations in chat as if they are happening in public.

15.104 Participants may decide to use WhatsApp or other messaging platforms to communicate over the course of the meeting. These platforms are not in the control of the authority; care should be taken in how they are used. For example, in the case of principal councils, if used within a political group, certain uses of WhatsApp could be seen as coming into conflict with the ban on the use of political management (whipping) at scrutiny committees.

### **Officer support arrangements**

15.105 Different meetings will require different kinds of support from governance officers, and others. In the short term, as relevant authorities adapt to multi-location meetings (and, in particular, adapt to meetings where some may join through remote means and some physically) it may be necessary to think about the need for additional support. In due course, familiarity and confidence with new systems (and training and development for both officers and participants) will reduce this need.

15.106 Multi-location meeting policies will need to specify the kind, and level, of support necessary for specific meetings, and the circumstances where support can be provided by remote means and where officers might need to be physically present.

### **Supporting participants to be able to take an active part in the meeting**

15.107 ***Meetings viewed live and available to view later maybe watched by a large audience and carefully scrutinised by the public including via social media. It is important that these meetings demonstrate good governance and high standards of conduct.***

15.108 Meeting policies will need to take account of the need for good conduct and high standards of behaviour. These policies will need to be drafted to closely align with other constitutional provisions on these matters, such as the Code of Conduct.

15.109 Principles of good conduct apply to meetings of any kind. However, there will be some issues that are especially relevant for multi-location meetings.

15.110 The issues below are especially important:

- People being clear about their roles and the roles that others are playing, either as participants or observers. We cover more on this in the section below;

- Recognising that meeting remotely (and where some, but not all, participants are remote attendees) requires a different approach to the agenda and to behaviour than a meeting in person;
- The need to think carefully about – and plan for – how everyone involved in the meeting will be able to actively contribute;
- Having a clear focus on the actual outcome of the meeting.

15.111 Participants are likely to understand that formal meetings can often be “performative” – people in a formal meeting behave differently from the way that they would otherwise behave, even if there is no audience. People’s physical presence in the same space has a significant impact on behaviour. Behaviour which might seem normal when everyone is in the council chamber – heckling, applause, the raising of points of order and so on – may feel odd and unusual when all or most people are joining through remote means. Participants in multi-location meetings during 2020 have talked about the “atmosphere” of multi-location meetings being different.

15.112 Behaviours in different types of meetings are likely to differ. Decision-making committees will look and feel different to audit or oversight committees, which will feel different from a principal council’s planning and licensing committees. Understanding these differing behaviours will help to inform how multi-location meeting policies are developed, and how they connect to policies around conduct and standards.

15.113 This is not just about conduct and behaviour in the narrow sense of the word, but about a shift in mindset about how much work it is possible to do in a multi-location meeting, and how multi-location meetings might help us to plan and carry out work differently.

15.114 Research carried out by the Centre for Governance and Scrutiny in 2020, and further evidence carried out in preparation for the production of this guidance, highlights the need for a shift in mindset associated with meetings where people join from multiple locations.

- It may be necessary to plan to do less. Meetings where some or all participants join through remote means can run as smoothly as in-person meetings, but not everyone is equally familiar with and comfortable with what remains a new way of working. Planning work programmes accordingly will be important;
- Invest in preparation. Later in this guidance we highlight how Chairs may need to carry out planning to understand better what other participants might want to get out of a meeting. This is probably a good habit for all meetings, but will be especially relevant for multi-location ones.



15.115 Behaviour, and expectations, around meetings and how business is carried out in those meetings are crucially important in making those meetings effective. Participants in multi-location meetings and others involved in managing and supporting these meetings will have become adept at organising such meetings during the pandemic. The drafting of meeting arrangements and policies provides an opportunity to reflect on how an understanding of behavioural factors needs to be woven into these systems as they reach maturity.

15.116 Positive behaviours are also about confidence, which will come from participants being properly supported to play an active and productive role in the meetings in which they are due to take part. Relevant authorities will already have a sense of the support needs of meeting participants, but establishing permanent arrangements for multi-location meetings provides an opportunity to revisit those existing assumptions.

15.117 Some of the relevant issues are listed below. These are reproduced, in an amended form, from WLGA guidance issued in early 2020.

- Ensuring that participants have access to appropriate equipment. As a default a desktop PC or laptop with access to a stable broadband connection will be the best way to engage. Participants will need a camera (if they don't have a laptop with an integrated camera) and ideally should use headphones to avoid background noise. Relevant authorities should provide participants who are members of the authority with appropriate equipment if they do not have access to it;
- Ensuring that participants can troubleshoot basic technical problems before or during a meeting – ensuring that they know how to mute and unmute themselves, to activate and disable video, to check their internet connection and so on. There may also be a need to ensure that ICT staff or others are on hand to deal with more serious technical issues;
- Ensuring that participants know how to use the raise, and lower, hand feature, as well as etiquette around muting and unmuting when speaking – the “raise hand” feature may not be usable for those joining on mobile or on a tablet and alternatives may therefore need to be available;
- Use of the chat function, WhatsApp or other messaging platforms. This is covered in more detail from paragraph 15.100;
- Ensuring that names displayed are consistent and accurate, with the role of the individual clearly identified: e.g. “Cllr John Williams – Committee Member” instead of “John’s iPhone” or “jw10881”;
- Ensuring that equipment being used has enough charge or is plugged into the mains;

- Ensuring that participants can view papers easily (we discussed the preparation and presentation of paperwork in more detail from paragraph 15.76); this may include (for example) advice being given to participants on the window snapping function on a Windows device: <https://support.microsoft.com/en-us/windows/snap-your-windows-885a9b1e-a983-a3b1-16cd-c531795e6241>
- The need for participants to check the environment around them before joining a meeting – checking lighting (recognising the daytime lighting conditions may change over the course of a meeting), background (ensuring that backgrounds are relatively neutral and do not involve the inadvertent display of personal information – the council may provide a corporate background or participants may choose to blur their background) and any visual distractions or noise, with mobiles and onscreen notifications set to silent;
- The need to check personal appearance – formal attire is probably not required but members should probably wear the kind of clothing they would wear if physically present at a meeting;
- Arrangements for preparation – joining the meeting fifteen minutes before it is due to start and checking audio and video arrangements;
- Participants assuming that, for a meeting that is planned to be broadcast, the meeting is being recorded and broadcast for the total time they are on the call.

### **Supporting observers (including the public) to access and participate in the meeting**

15.118 ***While the potential for bigger audiences provides new opportunities for participation, multi-location meetings must ensure arrangements are made for the public to participate via questions and presentations, for example. The presentation of multi-location meetings should also take into account public presence as an audience in new ways.***

15.119 The broadcast of meetings will make them more accessible generally – but councils will still need to think of the needs of both observers and participants. This may include:

- The physical layout of rooms, which will be affected by the requirements around visibility of those joining through remote means;
- How participants joining through remote means will be displayed on a screen or screens in a physical location.

### **Ensuring that observers (including the public) feel welcome**

15.120 Councils have found over the course of 2020 that the universal use of multi-location meetings has resulted in a significant increase in the number of people viewing meetings.

15.121 Generally speaking meetings of relevant authorities will be meetings taking place in public rather than “public meetings”. Members of the public will not have an automatic right to address committees or other bodies – although provision may be made in the constitution for them to do so, in which case observers can become participants.

15.122 There will be instances where those people who would otherwise be observers will need to join a meeting as an active participant. This may include:

- Those presenting petitions or deputations;
- Those asking public questions;
- People giving evidence (for example, to scrutiny committees);
- Applicants on regulatory matters (planning and licensing);
- Parties to quasi-judicial matters.

15.123 Where individuals are members of the public the Chair or an officer will need to make arrangements to ensure that they can join to participate – and that they are supported in doing so.

15.124 Meeting policies may need to make particular provision for this.

### **Making sure that members of the public feel supported when participating through remote means**

15.125 At a physical meeting, an officer might have an opportunity to speak quietly to a person beforehand to allay any nerves, and to ensure that a person is satisfied with the experience after they have contributed. In a multi-location meeting these “soft” opportunities for conversation and reassurance may not naturally exist. Individuals may find themselves, joining from their own home, on a public call with fifty strangers, being expected to contribute coherently, and then removed from the call without ceremony when the item reaches its conclusion. Clearly, this is not ideal. Relevant authorities may wish to explore how members of the public joining meetings in this way can be best supported.

### **Formal meetings which are also public meetings**

15.126 It is common for some types of authorities to convene formal meetings which are designed to actively involve the public in proceedings.

15.127 These meetings might legally be formal meetings but they may have a different character and atmosphere. Relevant authorities should not avoid holding these kinds of meetings because they think that managing them as multi-location meetings will be complex. This also goes for meetings held in places in the community other than an authority's normal premises, where the presence of technology for broadcast and display may not be immediately present.

15.128 Meeting arrangements may make particular reference to and provision for these kinds of meetings.

### **Providing for protest and dissent**

15.129 Relevant authorities may also need to consider how opportunities for public protest and dissent might be provided for in multi-location meetings.

15.130 Protest can be inconvenient (and disruptive), but it also reflects a vital public right. Where relevant authorities propose to carry out business by way of multi-location meetings as the norm, and particularly where little to no business for certain bodies may be carried out in person, this feature of the local democratic landscape could be at risk; meeting arrangements should take account of this factor. It will not be appropriate for an authority to decide that it will convene a meeting entirely remotely (with no business being carried out in person) if the principal reason for doing so is because it will eliminate the risk of embarrassment to the authority of a visible, public protest in the vicinity of the meeting.

15.131 It is, however, proper for a council to decide that it will convene all meetings so that they can only be accessed through remote means, as long as the accessibility and equality implications of this decision are understood, and as long as the discretion of the authority to make exceptions to these arrangements in particular cases is not fettered.

15.132 We noted from paragraphs 15.6 the need to make physical arrangements for certain meetings, even those where most participants may be joining through remote means. This may also provide the opportunity for public protest, which could take place in a public gallery, and made visible to those participating through remote means.

15.133 This would allow for a protest to be streamed into a meeting otherwise taking place in multiple locations, and could ensure that people protesting in this way feel that their voice has been heard.

## Supporting broadcast by members of the public

15.134 ***Members of the public or the press may wish to film for immediate or future broadcast some or all of a meeting.***

15.135 In the case of multi-location meetings where most or all participants are in the same location, this may involve the separate recording of a broadcast stream for editing and broadcast later.

15.136 For meetings where some or all participants attend physically – with physical arrangements made for observers - members of the public and members of the press may wish to use their own equipment for recording and broadcast.

15.137 Relevant authorities may wish to engage with the local press, and to invite views from the public, as to how their meeting arrangements and policies should take account of the requirement to provide access for this purpose. The way that this works is likely to be different from how councils may have supported this activity when meetings were “all-physical”. This may involve:

- Ensuring that the layout of a room is designed to support video recording (by providing a space from which people might film proceedings without visual obstruction, for example);
- Ensuring that amplification arrangements in a committee room allow proceedings to be adequately recorded by an external microphone, or providing a way for members of the public carrying out recording to take the broadcast audio feed, where relevant;
- Arrangements for shots of the room which include members of the public and others in the audience. Committee meetings occur in public and those attending do not have an automatic expectation of privacy or the right to object to recording, but there may be circumstances in which councils want to think about how they will ensure that those carrying out recording are focusing on the formal proceedings;
- Authorities will have to comply with UK data protection legislation and their own data protection policies in relation to the processing of any recording of meetings that are made. Data protection can be a complex area of law, and it is recommended that the authority consults its data protection officer to ensure compliance;
- Arrangements for video and audio recording of the recorder’s own narrative and of two-way interviews with participants within the committee room; members of the press in particular may want to film interviews, pieces to camera and establishing shots of the space in which the meeting takes place, and arrangements should be in place to support this before and after the meeting, and to ensure that those attending are aware that this may be happening.

This is not an exhaustive list.

## Chairing meetings

15.138 ***Chairing a multi-location meeting is very different to chairing a face-to-face meeting. Chairs will need to be supported to carry out their role in specific ways. The job of the Chair will be a particular challenge where a meeting is being carried out in a physical space with only some participants joining through remote means.***

15.139 The following general principles for chairing meetings in this context are reproduced and amended, from WLGA guidance issued in spring 2020, and incorporate guidance produced by the Centre for Governance and Scrutiny for both English and Welsh councils at the same time.

15.140 Chairs have a particular responsibility to prepare for the meeting, probably in a more planned and directed way than might be necessary for a physical meeting. This may involve the Chair consulting with officers, and other committee members, to determine:

- What the meeting is about, and the possible purpose and outcomes for every item on that meeting's agenda;
- What information and paperwork will need to be made available in order for these outcomes to be delivered;
- Where councillors or other meeting participants will want to contribute – and where and how public participation might need to be facilitated;
- Where these people might need particular support in order to participate in the way that they want.

15.141 Chairs will also need to engage with all participants (which may include external witnesses and members of the public or others with a role to play) to ensure that their role and means of involvement are well understood. This is covered in more detail from paragraph 15.118.

15.142 Chairs should:

- Think about the accessibility of the meeting to the public, and whether there are any things they can do that will ensure that public observers are welcomed and that business is explained in a way that is understandable, including the operation of the multi-location meeting itself;
- Ensure that they are prepared for the meeting in a logistical sense by being aware of which members and other participants may be joining by remote means. If the Chair themselves is joining by remote means while

some other participants are present in a committee room particular steps will need to be taken to prepare, which are set out from paragraph 15.6;

- Ensure before the start of the meeting that everyone is able to access the meeting, and that everyone is able to both see and hear each other (where the law requires it for specific meetings) or hear each other (for other formal meetings);
- Provide a reminder of meeting arrangements and policies, particularly relating to conduct and behaviour, including some of the material set out from paragraph 15.107 above. This may (depending on the meeting) involve advice on voting arrangements;
- At the beginning of the meeting, introduce themselves, the committee, officers present and other participants to ensure that those watching or listening to a broadcast are aware who is who;
- To avoid people speaking over each other or long silences, ask each member in turn for their contribution to an item, based on an understanding of what members wish to contribute (as we explore further from paragraph 15.107);
- Check occasionally through the meeting that no one has been 'lost' due to technical issues, and provide support to councillors experiencing challenges – in this Chairs may need the support of support officers
- Pay more attention than usual to framing the meeting with reminders of the purpose of each agenda item and summarising decisions and actions for each item and again at the end of the meeting;
- Check at the end of each agenda item that all members are content that they have been able to contribute, and ensure that agreed voting arrangements are followed where relevant.

15.143 The “balance” between individuals in a room, and those joining by remote means, will have a significant effect on how business will be transacted. This links back to the points we made in the earlier section on conduct and behaviour. Chairs and their support officers are likely to need to know ahead of time which members to attend physically and which may join by remote means. For meetings with a mix of arrangements – particularly if the Chair themselves will be joining by remote means – planning is likely to be necessary. This may include:

- Understanding the motivations and objectives of individual participants on specific agendas items, and having a sense of what they may want to say and ask;
- Identifying how a support officer or other member may bring their attention to a member wishing to make a comment through remote means or in the committee room (it will otherwise be challenging for a Chair to maintain awareness of those in the room as well as those joining remotely);

- Planning debate to be themed or otherwise structured rather than inviting comments generally, to ensure that all participants have an opportunity to contribute;
- Briefing witnesses on expectations;
- Ensuring that reports reflect the above sets of circumstances.

15.144 This kind of planning will benefit any meeting, not just those with a mix of in-person and remote attendance.

### **The taking of votes**

15.145 ***Multi-location meetings provide additional challenges in terms of capturing votes. Chosen options will depend on the chosen platform and local preferences.***

15.146 Participants in a formal meeting may decide to do something through general consent, or through a recorded vote. Immediately before the vote the Chair will need to determine that all members of the body continue to be “present”, as we set out from paragraph 15.89.

15.147 There are a number of different options when it comes to recording votes:

- A verbal roll call of those participants entitled to vote (“voters”). Particularly for full Councils, this process has been found to be the most rigorous but can be very time consuming, especially if amendments to motions are put to the vote;
- Using the ‘raise hand’ function, although this is subject to misinterpretation and human error;
- Responses via the chat;
- Dedicated voting software incorporated into the platform.

15.148 The authority will want to ensure that:

- All voters have the same opportunity to vote;
- All voters vote through the same process. In some council chambers, facilities for the taking and recording of votes may be present, but those joining through remote means may not be able to participate in the use of this in-situ technology. Relevant authorities with this technology will need to think carefully about whether, and how, such facilities might extend into the remote space, or how systems used for remote voting might extend into the physical space;



- A suitable record of the vote is captured by the appropriate officer and is confirmed in a way that is understandable to those observing the meeting.

### **Bodies reaching resolutions without a vote**

15.149 It is common that committees or other bodies may resolve to take certain action without a vote being recorded. In person, the Chair is able to get a sense of whether consensus exists by looking around the room. Those present have the opportunity to object and to press for a vote, depending on the authority's standing orders.

15.150 Where participants are joining through remote means (and particularly where some members join through remote means and some are present physically) the Chair will need to take special care to ensure that consent is present to move on without a vote.

### **Training, peer support and good practice sharing**

15.151 ***The arrangements for multi-location meetings will continue to evolve. This makes it particularly important to ensure that councillors and officers have access to good quality training, peer support and good practice sharing.***

15.152 Those participating in multi-location meetings and those expecting to participate should be offered initial, and top-up, training, development and support to ensure an understanding of these issues. This is not the same as training to support the technical use of ICT equipment.

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## STANDARDS COMMITTEE

18<sup>TH</sup> SEPTEMBER 2023

### PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL REPORT

**Purpose:** To note the Ombudsman's report and identify any actions arising

#### To consider and comment on the following issues:

What actions (if any) need to be taken

#### Reasons:

The Annual Report contains valuable information regarding code of conduct complaints during the year

**CABINET MEMBER PORTFOLIO HOLDER: Not Applicable**

#### Directorate

##### Name of Head of Service:

Linda Rees Jones

##### Designations:

Head of Administration and Law

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**EXECUTIVE SUMMARY**  
**STANDARDS COMMITTEE**  
**18<sup>TH</sup> SEPTEMBER 2023**

**PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL REPORT**

The Public Services Ombudsman for Wales (PSOW) has responsibility for investigating Code of Conduct complaint against Members of local authorities and other prescribed bodies in Wales such as Fire authorities and National Parks Authorities.

The Ombudsman has published her Annual Report for 2022-2023 a copy of which is attached. The report covers the full range of the Ombudsman's activities, not just code of conduct breaches.

Information about Code of Conduct complaints handled by the Ombudsman can be found on pages 24 to 28 of the annual report and indicates that there has been a slight reduction in serious complaints warranting investigation and a slight reduction in the number of cases referred to the Adjudication Panel for Wales.

Code of Conduct Complaints data can also be found on page 136 of the report.

The Annual letter issued by the Ombudsman to the Leader of the Council (attached) gives further information in relation to Carmarthenshire. Data regarding Code of Conduct complaints can be found at Appendix E. Committee members will note that this states 1 case has been referred to the Adjudication Panel for Wales (APW). However, the Ombudsman has confirmed that this is an error and that a fresh annual letter will be issued showing that there were 2 referrals to the Standards Committee and none to the APW

<b>DETAILED REPORT ATTACHED ?</b>	<b>YES</b>
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## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET MEMBER PORTFOLIO HOLDER(S) AWARE/CONSULTED**

N/A

**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

There are none.

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# **A year of change - a year of challenge**

## **Annual Report and Accounts 2022/23**

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July 2023



We can provide a summary of this document in accessible formats, including Braille, large print and Easy Read. To request, please contact us:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
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Email: [communications@ombudsman.wales](mailto:communications@ombudsman.wales)

**Mae'r ddogfen hon hefyd ar gael yn y Gymraeg.**

**This document is also available in Welsh.**





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Cymru • Wales

## **A year of change - a year of challenge**

# **Annual Report and Accounts 2022/23**

**of the Public Services Ombudsman for Wales**  
**for the year ended 31 March 2023**

Laid before the Welsh Parliament under paragraphs 15, 17 and 18 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019.



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# Foreword

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**This annual report reflects my first year in office. It has been a year of many successes and positive change, but also some challenges.**

One of the main themes of this year continues to be our increasing caseload. Compared to last year, we saw 3% more cases overall, and, within that, a 2% increase in public service and Code of Conduct complaints. We also closed 10% more complaints – a record number.

The increase in our workload this year has been entirely down to the volume of complaints about public services. Many more complaints means more opportunities to put things right for people. We found that something has gone wrong and intervened in about 19% of complaints about public services overall. This was a similar proportion to last year but, given the number of the complaints we closed, it means that we were able to deliver justice to many more people this year.

Positively, we welcomed this year a small reduction in the number of new complaints about the Code of Conduct for local Councillors. We were also glad

to see that, after the previous year's record numbers, we had to refer fewer cases of potentially serious breaches to local Standards Committees or the Adjudication Panel for Wales.

We have continued our work to promote systemic improvement of public services. 51 public bodies in Wales now operate under our complaints standards and this year alone we delivered 183 free training sessions to public bodies. We have also consulted on our next 'Own Initiative' investigation into carers needs assessments. By the time this report is published, that investigation will be under way. Together with 5 new Public Interest Reports and one Special Report, these are just some of the ways in which we continue to encourage public services to improve.

We also continue to look at ourselves – the quality of our decisions and our service as well as our responsibilities as an employer.

When we issue our decision on a complaint, people can ask for a review – this year, we found that we could do more in only 7% of the review requests that we handled, often because people gave us additional relevant information. We also launched our new Service Quality process, through which we will be looking at a selection of ongoing and closed cases during the year to ensure that the quality of our work meets our Service Standards.

We continue to support our staff who are dealing with year-on-year increases in caseloads and continue to work in a flexible way, allowing us to downsize our office accommodation. During the year we were delighted to see our mean gender pay decrease further and our median gender pay gap disappear altogether.

Despite these and other positives, it has also been a very challenging year. The number of new complaints to us about public services is now 41% higher than 5 years ago. In last year alone, the number of complaints about Health Boards rose by 21%, to a record high. Health continues to be the subject of over 80% of our investigations overall and these investigations are often lengthy and complex.

Whilst this is partially offset by reductions in local government complaints, this increasing caseload has impacted on our ability to meet our investigation time targets, and some people have had to wait longer for an outcome. It has also affected the well-being of our staff, with average number of days lost through sickness increasing again this year.

We understand that, to deal with these challenges, we must adjust how we operate, by adopting new ways of working and trying new solutions. Our big task this year has been to develop our new Strategic Plan, which we published in April. It sets out our vision and ambition for public services and local government in Wales. It also confirms our four new Strategic Aims:

- Delivering justice with a positive impact for people and public services
- Increasing accessibility and inclusion
- Increasing the impact of our proactive improvement work
- Ensuring that we are a healthy, efficient and accountable organisation.

We are now working to develop our new Business Plan and Key Performance Indicators (KPIs), which will help us drive better performance, influence change and capture more accurately the impact of our work. Throughout this Report, we signal how these commitments are likely to shape our future work.

I want to thank all staff for the effort and commitment they demonstrated this year. We trust that our new Strategic Plan will help us to identify opportunities to work more efficiently and have more impact, while also allowing us to remain a supportive and healthy workplace. Nevertheless, our increasing caseload pressures are a growing concern and we will be realistic about the resources and capacity available to us to deliver change as we embark on this new chapter in our service to the people of Wales.

## **Michelle Morris**

Public Services  
Ombudsman for Wales

July 2023



# About us

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**We have three main roles.**



## **We investigate complaints about public services.**

We can look at the services provided by devolved public bodies in Wales such as local councils, Health Boards, social landlords and others. We can also look at complaints about private social care and end-of-life care, as well as some private healthcare.

## **We consider complaints about councillors breaching the Code of Conduct.**

We look at complaints about councillors at local councils, fire authorities, national park authorities. We also look at complaints about police and crime panels. We are also a “prescribed person” under the Public Interest Disclosure Act for raising whistleblowing concerns about breaches of the Code of Conduct by members of local authorities.



## **We drive systemic improvement of public services and standards of conduct in local government in Wales.**

We can investigate on our own initiative, even if we have not received a complaint. We can also set complaints standards for public bodies in Wales, monitor how they handle complaints and provide training to them.




# Key statistics


**2%** more new complaints about public services and Code of Conduct received.



**2%** more new public service complaints – with **21%** increase in complaints about Health Boards.



**10%** more complaints about public services and Code of Conduct closed.




Intervention in **19%** of complaints about public services...  
... with **75%** of interventions through early resolution.




**90%** of recommendations due during the year complied with during the year.



**61%** of Code of Conduct complaints about promotion of equality and respect.

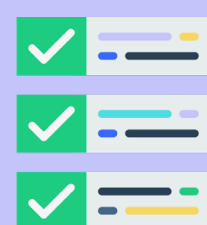


**1** Special Report issued.




**12** referrals of Code of Conduct complaints made to the Adjudication Panel for Wales or local Standards Committees.


New Service Quality process launched.



Only **7%** of review requests upheld.



**48%** of people – and **95%** of those satisfied with the outcome of their complaint – happy with our service.

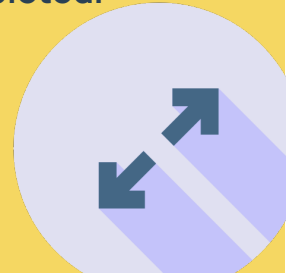




**183** online training sessions on good complaint handling delivered.



**2** extended investigations completed.



**5** Public Interest Reports issued.



Public consultation on our next wider 'Own Initiative' investigation - into carers needs assessments - completed.

**No** median gender pay gap.



**Fourth** Equality and Human Rights Casebook published.



**16%** reduction in cost per complaint closed.



Welsh language skills of our staff improved.



**134** kgs of CO2 in emissions avoided.



**New Strategic Plan developed.**



# Delivering justice

---



# Introduction

This year we received more cases than ever.

**8,423**

We received **8,423 new cases** (enquiries, pre-assessments and complaints about public services and Code of Conduct). This was **3% more than last year** and means that our caseload continues to rise year on year.

**3,073 of these cases were complaints about public services and Code of Conduct.**

**3,073  
(+2%)**

This was **2% more than last year** and marks another record number of complaints that we received in one year. This increase was entirely due to more complaints about public services.

**2,790  
(+2%)** public service complaints

**283  
(-4%)** Code of Conduct complaints

**605**

In addition, we started the year with **605 complaints that we did not close in the previous year**. This means that we handled over 9000 cases during the year.

## Our cases *i*

In the [Appendix \(page 119\)](#) we explain in more detail some terms that we use to describe our cases.



## We also closed a record number of cases.

**8,475**

We closed 8,475 cases overall. Most we closed after we initially checked them. This is where we offer people advice or point them to another organisation that could help.

**3,138  
(+10%)**

However, **we also closed 3,138 complaints about public services or Code of Conduct overall – 10% more than last year.** This is a huge achievement by our staff, but with the rising caseload we expect it will become increasingly difficult to maintain this performance.

**2,858** public service  
**(+11%)** complaints

**280**  
**(-%)** Code of  
Conduct  
complaints

**553**

Our open caseload at the end of the year has remained high - **we finished this year with 553 cases that we have not yet closed.** We are investigating almost a half of those cases and 70% of those investigations relate to health.

Unfortunately, there is still a high number of complex cases that we simply did not manage to close during the year because of our workload pressures.

In the next sections of this Report, we focus on the main trends in our **complaints only.**

In our new Strategic Plan, we have committed to explore new digital tools and processes to help us manage our increasing complaints caseload and sustain performance.

# Our complaints about public services

---

## New complaints about public services

We again received a record number of complaints about public services, especially health, housing and complaint handling. We also saw increases in complaints about Health Boards and housing associations.

Health continued to be the most common subject of our complaints overall (37%, compared to 34% in 2021/22). Almost a half of those complaints were about clinical treatment in hospital, with the next largest group (20%) about treatment by GPs.

The next largest group of complaints related to housing (18%) and complaints handling (18%). The proportion of complaints about complaint handling has risen again, from 14% in 2021/22. We hoped that we would be starting to see fewer of those complaints, as public bodies put into action the learning from our complaints standards training. However, we also know that many public bodies have received many more complaints this year.



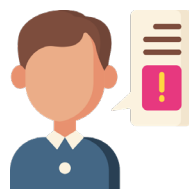
**2,790 new public service complaints**



**37% about health care**



**18% about housing**



**18% about complaint handling**



The main bodies that people complain to us about are Health Boards, local councils and Housing Associations. We include detailed data on our new complaints in the Appendix.

## New complaints numbers



**On its own, the number of new complaints about an organisation does not have to mean that the service it offers is poor. For example, an organisation offering services to many people may receive more complaints than one that services a smaller population.**

**A significant increase in new complaints about an organisation may mean that there are issues about its service – but it could also reflect that its complaints process became more accessible or that it records its complaints better.**

## Health Boards



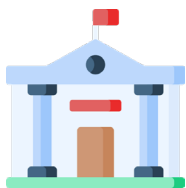
**This year, we had 926 new complaints about Health Boards – 21% more than last year.**

The number of new complaints increased for all Health Boards. As in previous years, the most complained about Health Board was Betsi Cadwaladr University Health Board.

However, when looking at the population, the Health Board with most complaints for every 1,000 residents was Swansea Bay University Health Board.

Whilst the number of complaints about Powys Teaching Health Board more than doubled, this remained by far the lowest number across all Health Boards in Wales.

## Local councils



**1,020 of our new complaints this year related to local councils - 11% less than in 2021/22.**

The council that was the subject of most complaints was Cardiff Council, while we received fewest complaints about Blaenau Gwent County Borough Council and Torfaen County Borough Council.

However, in terms of the proportion of complaints to the population of each council, the most complained about council was Ceredigion.

## Housing Associations



**This year, we had 348 new complaints about Housing Associations - 15% more than last year.**

The number of complaints about these bodies has more than doubled since 2020/21.

Although we have usually tended to receive a small number of complaints about most Housing Associations, this year 62 complaints related to Hafod Housing Association - more than double the number we received last year.

This increase may be influenced by our work with this organisation to better record complaints.

Almost a half of the complaints about Housing Associations overall - 48% - was about repairs and maintenance. This was higher than in the previous year (46%).



## Closed complaints about public services

By looking at how many complaints we close, we can better understand how efficient we are in dealing with our casework. We know that people complaining to us are often desperate for help and our staff worked incredibly hard this year to consider complaints as efficiently as possible and to minimise delays.

We again closed a record number of complaints this year. We found that public services made mistakes, and we intervened, in a slightly higher proportion of complaints than last year. Overall, we were able to put things right for many more people this year.

Mostly, we were able to intervene without conducting a full investigation – **75% of our interventions happened through Early Resolution**. This is even a higher proportion than last year (69%). Many people complaining to us

want to see their case resolved quickly and investigations take significant time and resources.

We aim to close complaints as quickly as we can. This year, we have mostly managed to close cases in a timely way if we decided not to investigate, or if we intervened through Early Resolution. However, with our high workload, we have struggled to meet our investigation time targets. We include details of our performance against our targets in the Appendix.

### Intervention



Intervention means that we found that the body made a mistake and it needs to put things right.

We can intervene without investigating or by suggesting an Early Resolution. We can also intervene after we investigated - by publishing a report which upholds a complaint, or by suggesting a settlement between the body and the person complaining.

In general, we would want our intervention rate to be low.



**2,858**

We closed 2,858 complaints about public services – 11% more than last year.

**Assess**

**2,655  
(93%)**

We closed 2,655 complaints after we assessed them.

We look at all complaints carefully, to decide if we should investigate and whether things need to be put right.

There are many cases that we cannot - or decide not to - take further action on. However, assessing all these cases requires a lot of detailed work from our staff.

**Investigate**

**203  
(7%)**

We closed a further 203 of these complaints after investigating.

This was the same proportion as last year. We only investigate in more complex cases that we cannot resolve in any other way. Most of our investigations relate to health.

With our caseload increasing year on year, it is even more important that we investigate only when there is no other way for us to deliver justice.

**2,251**

We closed the complaint - for example, because we did not have the powers to look into it further.

**402**

We intervened by resolving the complaint early.

**69**

We did not uphold the complaint, or we discontinued the investigation.

**136**

We upheld the complaint or settled it.

**538  
(19%)**

Overall, **we intervened in 538 or 19% of the complaints that we closed**. The proportion of our interventions was only slightly higher than last year (18%). However, because of the large number of the complaints that we closed this year, this means that we were able to put things right for many more people.

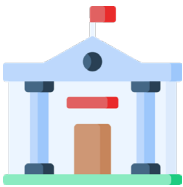
## Health Boards



**We intervened this year in 30% of the complaints about Health Boards that we closed – the same as last year.**

The Health Board with the highest intervention rate was Hywel Dda University Health Board (41%), while we saw the lowest rate of intervention for Powys Teaching Health Board (22%). Our intervention rates into complaints about other Health Boards remained similar to last year.

## Local councils



**We intervened this year in 13% of complaints about local councils – a slightly lower proportion than last year (14%).**

The council with the highest intervention rate was Ceredigion, at 30%. As in the previous year, we did not intervene in any complaints about Blaenau Gwent.

## Housing Associations



**We intervened this year in 13% of complaints about housing associations – compared to 14% last year.**

We noted the highest intervention rate for Taff Housing Association (40%) but this only amounted to intervention in two complaints. We intervened in 1 in 4 complaints about Hafod Housing Association this year.

## Recommendations

When we find that something has gone wrong with public services, we recommend that the body that provided those services puts things right.

This year, we issued 1,259 recommendations to public service providers (compared to 1,131 last year).

As in previous years, we most commonly recommended that the organisation apologised.

We sometimes recommend some financial redress, for example, for the complainant's time and trouble, or for distress.

However, sometimes this is not enough to put things right for the person who complained. Many people who complain to us want to make sure that others will not have to face the same injustice.

About 9% of our recommendations this year were about steps to make sure that services improve – for example, through training for staff or review of current practice. This was lower than last year (15%).

**Under our new Strategic Plan, we commit to seek assurance that our recommendations deliver systemic improvement of public services in Wales.**



## Compliance

Our recommendations aim to put things right, secure justice and improve services for the benefit of the public - not just for those who complain. When we make recommendations, we agree a date by which the organisation needs to comply and we ask them to send evidence that they have complied.

During the year, we have stepped up our efforts to ensure that organisations show us how they complied with our recommendations. This year, the organisations gave us evidence that they complied with **90% of the recommendations that they agreed would be implemented during the year**, compared to 81% last year. We will be chasing up the evidence related to the remaining recommendations.



90% of recommendations due during the year were complied with during the year.



1 Special Report issued.

If organisations do not comply with our recommendations, we can issue a 'Special Report', which is a public report. We issue very few Special Reports – the last one was in 2020. However, this year we had to issue one such report – about Bannau Brycheiniog National Park Authority.

## Our reference: 202104092

In 2015, Mr N complained to the Authority about how the water from the Authority's land affected an unmade track leading to his property.

The Authority issued its decision 3 years later and Mr N complained to us. We resolved that complaint in 2019. However, in 2021, Mr N complained to us again that the Authority had not acted as promised to put things right for him. We looked into this complaint, upheld it, and again recommended what the Authority should do. However, by the end of 2022, we still saw no evidence that the Authority had complied with our recommendations.

We therefore had no choice but to issue a Special Report about this case and make another recommendation to the Authority: to remedy further injustice to the complainant and ensure that its Audit & Governance Committee had regular oversight of the matter until it was satisfied that the work had been completed.

# Our complaints about the Code of Conduct

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## New Code of Conduct complaints

Compared to last year, we received fewer complaints about the Code of Conduct. We were glad to see fewer complaints about members of Town and Community Councils. However, we are concerned that more of our complaints relate to promotion of equality and respect.

We received 442 complaints about the Code of Conduct but had enough information to look into 283 - 4% less than last year.

Over a half of these complaints (56%) were about councillors at Town and Community Councils. However, for the first time since 2019/20, we saw a decrease in the number of complaints about this group of councillors. In contrast, we had 7% more complaints about councillors at principal councils.

**56%** of new Code of Conduct complaints were about councillors at Town and Community Councils.

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We report the subject of the Code of Conduct complaints based on the [Nolan Principles](#), which are designed to promote high standards in public life. 61% of the complaints that we could look into were about the promotion of equality and respect. This was a much higher proportion than last year (51%).

Generally, the cases that we categorise under 'respect' are lower level complaints. These are the ones where we tend to decide quickly that we will not investigate, or where we recommend that the complaint is resolved locally. The complaints that we categorise under 'equality' commonly involve more serious allegations of bullying or discrimination.



**61% of our new Code of Conduct complaints were about promotion of equality and respect.**

## **Our reference: 202005902**

**Carmarthenshire County Council's Standards Committee suspended a councillor for 1 month for breaches of the Council's Code of Conduct, which included a failure to show 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.**



## Closed Code of Conduct complaints

We investigated this year a slightly lower proportion of Code of Conduct complaints than last year.

We also referred fewer complaints to the Adjudication Panel for Wales and Standards Committees.

This is positive, as it suggests that we saw fewer very serious breaches of the Code.

We apply our 'public interest test' to decide which cases we should investigate. Public interest can be described as something which is of serious concern or benefit to the public.

Generally, we investigate only a small proportion of the Code of Conduct complaints we receive. This shows that the standards of conduct in local government are generally good.

In 2022/23, we assessed or investigated 280 complaints about the Code of Conduct - about the same number as the previous year.

We investigated 35, or 13%, of these complaints - a slightly lower proportion than last year (14%).

**35**

Code of Conduct investigations.



**12**

referrals to the Adjudication Panel for Wales or local Standards Committees.



It is not up to us to decide whether a councillor has breached the Code of Conduct. In cases where we investigate and consider that there may have been a serious breach of the Code of Conduct, we refer the complaint and our findings to a local Standards Committee or to the Adjudication Panel for Wales to determine.

These bodies then independently look at the evidence we have gathered, together with any information put forward by the councillor concerned. They then decide whether the councillor breached the Code of Conduct and if so, what penalty to impose.

In 2022/23, we referred 8 complaints to the Standards Committees of the relevant local authorities and 4 to the Adjudication Panel for Wales. Overall, this was much less than the previous year (20). We welcome this, as it shows that we found fewer potentially serious issues that could undermine public confidence in the people who represent them.

Here, we give examples of two decisions, following our referrals, that the Adjudication Panel for Wales issued this year.

### **Our reference: 202000660**

**A member of Pembrokeshire County Council was disqualified from holding office as a councillor for 3 years for bullying behaviour towards another councillor, harassment of a member of the public and other serious misconduct which brought his Council into disrepute.**

**You can read about this decision on the Adjudication Panel's website [here](#).**

### **Our reference: 202004442**

**A former member of Llansantffraed Community Council was disqualified from holding office as a councillor because she brought her office as a councillor into disrepute, having been convicted of the criminal offence of causing bodily harm by 'wanton and furious driving' contrary to Section 35 of the Offences against the Person Act 1861.**

**You can read about this decision on the Adjudication Panel's website [here](#).**



The Adjudication Panel for Wales and Standards Committees upheld and found breaches in 96% of our referrals they considered in 2022/23. This gives us additional assurance that our process for considering these complaints is sound.

Although we noted some positive trends this year, we continue to underline the value of more education and training for councillors on the Code of Conduct. To raise awareness of our process, we produced a video for new councillors following the May local elections.

We also encourage more use of local resolution procedures. These procedures can calm situations, deal with problems early and prevent the need for further escalation to our office.

**Under our new Strategic Plan, we commit to support good standards of conduct by councillors in local government in Wales and explore new ways and resources to do this.**

A golden scale of justice is positioned on a stack of dark blue books. In the foreground, a wooden gavel rests on a wooden surface. The background is a blurred bokeh of warm colors.

The Adjudication  
Panel for Wales  
and Standards  
Committees  
upheld and found  
breaches in 96%  
of our referrals  
they considered in  
2022/23.

## Whistleblowing disclosure report

Since 1 April 2017, we are a 'prescribed person' under the Public Interest Disclosure Act 1998. The Act provides protection for employees who pass on information concerning wrongdoing in certain circumstances. The protection only applies where the person who makes the disclosure reasonably believes that:

1. They are acting in the public interest, which means that protection is not normally given for personal grievances.
2. The disclosure is about one of the following:
  - Criminal offences (this includes financial improprieties, such as fraud)
  - Failure to comply with duties set out in law
  - Miscarriages of justice
  - Endangering someone's health and safety
  - Damage to the environment
  - Covering up wrongdoing in any of the above categories.

As a 'prescribed person', we are required to report annually on whistleblowing disclosures made in the context of Code of Conduct complaints only.

In 2022/23, we received 24 Code of Conduct complaints that would potentially meet the statutory definition of disclosure from employees or former employees of a council. 8 of these complaints related to promotion of equality and respect.

We investigated 13 of these complaints. So far, we have closed 1 of those investigations. We discontinued that investigation, as we decided that it was not in the public interest to pursue it.

We concluded an investigation into 1 relevant complaint that was ongoing since 2020/21. We found no evidence of breach.

We concluded investigations into 6 relevant complaints which were received in 2021/22. Of these:

- we referred 4 to the Adjudication Panel for Wales.
- for 2, we decided that we did not need to take any further action.

Of the 4 referred to the Adjudication Panel for Wales, a former member of St Harmon Community Council was disqualified by the Panel from holding office as a councillor for 12 months. The other 3 cases are awaiting hearing.

4 investigations opened in 2021/22 are still ongoing.

# The quality of our decisions

**We do our best to make sure that we handle complaints fairly and in a transparent way. As our caseload increases, we receive more and more requests for a review of our decision. Those reviews are considered by a member of staff who was not previously involved in the case.**

In 2022/23, we handled 285 review requests and follow-ups to previous review decisions (including cases we carried over from the previous year). This was 10% more than the previous year. We managed to close 271 of these cases, 13% more than previously.

We upheld 7% of the review requests that we closed – the same proportion as in 2021/22. This is a very small number of cases overall and gives us confidence that our process is sound.

Where we re-opened cases, as in previous years this was often because we received more evidence from the complainant. However, our review sometimes concludes that we could have done more. When this happens, we take steps to make sure we learn any lessons.

## **Our reference: 202202850**

The complainant sent us information in a number of emails. Although we had a lot of information to help us assess the complaint, one of the emails contained documents that were password protected. The complainant flagged this to us and asked us to contact him for the password, but we did not do so.

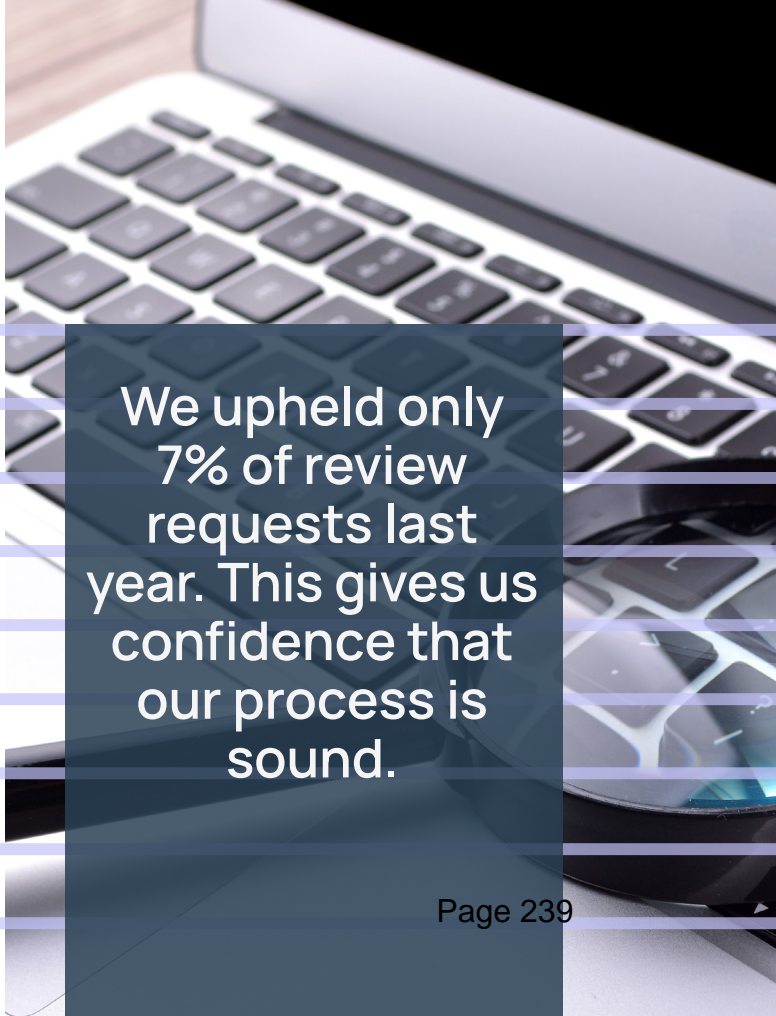
**When we reviewed this case, we concluded that we had not properly listened to the complainant or fully considered his complaint and we opened a new file to ensure we did so.**

**We identified this as a learning point to ensure that we follow up with complainants on occasions where we cannot access all the information sent to us.**

No cases were subject to judicial review proceedings in 2022/23.

During 2021/22, one former councillor applied to the High Court for permission to appeal a decision of the Adjudication Panel for Wales to disqualify them from being a councillor for 12 months. A hearing which had been set was adjourned, following a request by the former councillor. The application has not yet been considered by the Court.

Under our new Strategic Plan, we will develop new measures to check how we are performing. One of our Key Performance Indicators will be the proportion of reviews where we find that our original decision was appropriate.



We upheld only 7% of review requests last year. This gives us confidence that our process is sound.

# The quality of our service

We want to deliver an excellent service. We have 5 Service Standards that explain what service people can expect from us. Read more about our Standards [here](#).

To check how we are doing, every year we monitor and analyse our performance and gather feedback from our service users and from organisations that we look into.

## What complainants think about our service

Every year, we organise a telephone survey of about 200 people who complained to us during that year.

In the Annual Report for 2021/22, we noted with some concern a drop in how people judged our service overall. However, the results this year suggest that we have started to improve.

Generally, people tend to be happier with our service if they are happy with the outcome of their complaint.

In 2022/23, we also handled 32 complaints about us. Of the complaints about us that we closed, we upheld or partially upheld 36%. This is a lower proportion than last year (41%).

These complaints related to issues around how we communicated, how quickly we considered complaints and how we paid attention to detail. We communicated the findings internally to make sure we do not make the same mistakes again.

To ensure that we are open and accountable, if people are unhappy with how we handled their complaint about us, they can ask for that complaint about our service to be considered by an external independent review service. During 2022/23, 19 people referred their complaints to our external review service (compared to 6 last year). The external review service upheld 10.5% of issues raised in these complaints.



**48% of people – and 95% of those satisfied with the outcome of their complaint – said that they were happy with the service they received from us.**



## What organisations think about our service

We also invite comments on our work from the organisations that people complain about.

This year, we issued an online survey to 92 public bodies. We asked them for comments on their most recent complaint with us, as well as on our work in general. We received 42 complete responses. The results were broadly positive. **Overall satisfaction with our service scored 8 /10** (about the same as last year).

We also held three Sounding Board sessions in April 2023, with local councils, Health Boards and Housing Associations. 44 organisations were represented. We had feedback on some areas that we could improve – for example, how consistent we are when setting deadlines for organisations to send us evidence. However, overall, the feedback was very positive.



**84% of public bodies that responded to our survey said that our findings positively influence their organisation.**

## Service quality

During the year, we introduced our new Service Quality process. From now on, we will look at a selection of ongoing as well as closed cases during the year, to ensure that the quality of our work meets our Service Standards.

By the end of 2023/24, we are hoping to be able to have our first service quality scores, which will help us to identify areas for improvement and set targets for the years to come.

**Under our new Strategic Plan, we commit to further enhance the quality of our service delivery, in line with our Service Standards and service user feedback.**



# Accessibility and inclusion

We want to make sure that we offer a fair and equal service to all. We had some successes this year, but we will continue to work to improve how accessible we are.

We publish detailed information about the profile of people who complain to us in our Annual Equality Report. You can read our Annual Equality Reports [on our website](#).

## Contacting us

Some people may find it more difficult to complain than others and there are many ways in which we can help. We were glad to see that **87% of our complainants that we asked said that it was easy to contact us** – compared to 80% last year.

Most people complain to us online, by email or by post. However, since 2019, we can also accept complaints that are not in writing. This year, we took 160 oral complaints – compared to 221 last year. We know that this service is demand led.

However, we will be highlighting the option to complain to us other than in writing as part of our future communications and engagement work.

## Additional support

We are committed to asking all people who complain to us if they need help and support. We ask anyone who contacts us how they would want us to communicate – by phone, email or by post. In addition, this year, 79 people asked us to make some additional adjustments to help them use our service.

We also asked in our telephone survey whether, where people needed such support, we met their needs. Only 4% of people said they needed such support. Of those, 37% said that we met their needs. Although the number of people who said that we did not was very small (6), we will look to improve how we make our complainants aware of the additional support that we can offer.

## Outreach and engagement **Welsh language**

We know that some communities rarely complain to us and we want to change that.

During the year, we have sought to reach our target communities mainly through our social media. Our content has helped us build a better following – we gained 223 new followers on LinkedIn and 46 new followers on Twitter.

We also worked hard to develop our new brand identity, which features much more accessible, high contrast colours. With that work completed, we are now starting to develop new visual resources that will support our future face-to-face outreach activities.

Finally, we stepped up our conversations with advice and advocacy bodies in Wales. We reached out to over a hundred organisations to create an up-to-date directory of advice and advocacy support that could be available for our complainants. This work is ongoing. We also convened our annual Sounding Board with advice and advocacy bodies. 14 organisations attended that session and shared with us valuable feedback.

We fully embrace the Welsh language and we want to make sure that we treat it no less favourably than English in all aspects of our work and that we meet the needs of Welsh speakers. You can read our revised Welsh Language Policy [on our website](#).

We are confident that we meet all our Welsh Language Standards. We received no complaints about the Welsh language this year.

People who complain to us can deal with us in Welsh if they wish. In 2022/23, only 26 people chose that option. During the next year, we will do more to find out why so few people use our service in Welsh.

**Under our new Strategic Plan, we commit to do much more to make sure that our service is relevant and accessible and that people across Wales are aware of our office and understand how we can help.**



# Promote Learning

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# Complaints Standards

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In 2019, we gained new powers to proactively improve how public bodies handle complaints. We continue to develop how we use those powers.

51 public bodies in Wales now operate under our complaints standards. This includes all Health Boards and local councils, as well as 19 housing associations.

We published more statistics about complaints handled by local councils and – for the first time – by Health Boards and Trusts. More information can be found on our website [here](#).

We provided **183 training sessions to public bodies across Wales** in 2022/2023. We delivered almost all of our sessions remotely over Microsoft Teams and we provided them to organisations for free.

The feedback we receive from the attendees continues to be universally excellent. We are very proud of how we have been able to support public bodies at a particularly challenging time for them, but also for our own office.

“Since the training I am trying to change my behaviour so that I listen to incoming calls with an open mind and not type up the log notes before they have finished speaking.”

“My many thanks for the training sessions. They really did make me think very deeply about how we respond to clients.”



**183 online sessions on good complaint handling delivered.**

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Under our new Strategic Plan, we will enhance the impact of our Complaints Standards work.

# Own Initiative investigations

**We can undertake two different types of own initiative investigations: extended and wider.**

**Extended investigation** happens when we are already investigating a problem and we extend the investigation to other issues or complainants.

In 2022/23, we closed 2 extended investigations. 3 further investigations are ongoing.

## Our reference: 202102797

By extending our investigation, we found that a patient with respiratory problems in the care of Betsi Cadwaladr Health Board was wrongly given medication which had the potential to slow breathing and which should have been used only with caution in elderly patients. We also found that the patient was not adequately monitored for several hours afterwards.

## Our reference: 202102797

We extended an investigation into a complaint about the Welsh Ambulance Services NHS Trust, related to ambulance delay, to include the actions of Aneurin Bevan University Health Board and handover delays once the ambulance arrived at a hospital.

We found that the Emergency Department of the hospital in question was under severe pressure at that time and that, in the circumstances, the care that the patient received was reasonable. We also found that, although the delay must have caused the patient and her family distress, it did not change her health outcomes.

**Wider investigation** happens when we conduct a stand-alone investigation which does not relate to a complaint made by an individual.

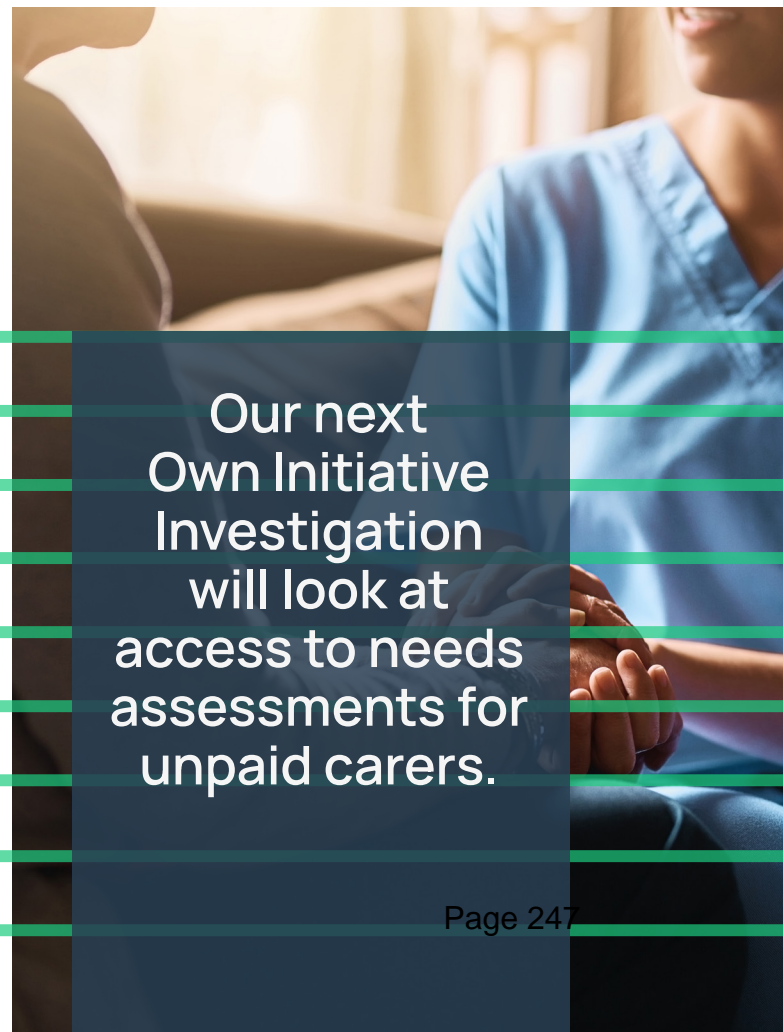
During the year, we consulted on **our next wider own initiative investigation**. Our initial plan was to look at accessibility of complaints processes and needs assessments for unpaid carers. We identified this as the potential area for investigation after engaging closely with Carers Wales and taking soundings from other regulatory and audit bodies. We received 76 responses, with almost half of those respondents being unpaid carers.

After reviewing those responses, we decided to narrow the focus of our investigation to **access to needs assessments** only. We then consulted on the detailed investigation proposal with the specific local councils that

we planned to investigate - Caerphilly, Ceredigion, Flintshire and Neath Port Talbot. That consultation closed in May and we launched the investigation at the beginning of June.

We have also continued to gather evidence of **the impact of our previous wider own initiative investigation into homelessness assessments and reviews**.

Updated data about homelessness assessments and reviews is being collated from councils. We have also liaised with Shelter and Tai Pawb to gather their views about current homelessness services.



Our next  
Own Initiative  
Investigation  
will look at  
access to needs  
assessments for  
unpaid carers.

# Sharing our findings and insights

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We believe that it is very important that we share findings and insights from our casework as widely as possible to help improve public services. We publish summaries of all our investigations on our website and share our public interest reports with a wide range of organisations, including the Welsh Government.

## Public interest reports

When we investigate a complaint and we think that something has gone wrong, we usually prepare a report which explains our findings. Sometimes, we decide to issue a Public Interest report. We do this for example when:

- there are wider lessons from our investigation for other bodies
- what went wrong was very significant
- the problem that we found may be affecting many people, not just the person who complained to us, or
- we had pointed out the problem to the body in the past, but the body did not address it.

When we issue a Public Interest Report, we draw attention to it in the media. The body must also publish an announcement in the press about the Report.

This year, we issued 5 Public Interest Reports – compared to 7 in 2021/22. You can find them on our website [here](#).



### **Our reference: 202102797 and 202105931**

We found that Cwm Taf Morgannwg University Health Board missed two opportunities to correctly diagnose and treat a patient's ruptured appendix, resulting in her death from sepsis in August 2020.

### **Our reference: 202100024**

We found that Wrexham County Borough Council did not adequately support a vulnerable adult with learning disabilities in the Council's supported living accommodation.

### **Our reference: 202102604**

We found that a patient with multiple sclerosis suffered significant injustice as Betsi Cadwaladr University Health Board failed to adequately monitor and oversee his commissioned care.

### **Our reference: 202102028**

We found that Cardiff and Vale University Health Board failed to adequately assess the patient's clinical history and new symptoms and did not admit him to the ITU after surgery. This ultimately led to his deterioration and death.

### **Our reference: 202101000**

We found that the dignity of a patient with bowel care needs was compromised after Betsi Cadwaladr University Health Board failed to deliver appropriate medical and nursing care.

## Our Equality and Human Rights Casebook

This year we published our fourth Equality and Human Rights Casebook.

We do not make definitive findings about whether a public body has breached an individual's human rights. However, if we find that something has gone wrong in the delivery of public services, we consider whether a person's human rights may have been engaged. If we think it is relevant, we comment on how the body providing the service considered those rights.

Our Equality and Human Rights Casebook assembles a selection of cases where human rights or equality issues have either been raised as part of the complaint or have been central to our findings. You can read the Casebook [here](#).

## Annual letters

Every year, we send letters to health boards and local councils about the complaints we received and considered about them during the year. We do this to help these organisations improve their complaint handling and the services that they provide. The organisations must report this information through their internal governance arrangements and use it to see how they can improve. We publish all annual letters on our website [here](#).

## Public policy

We use our expertise and the evidence from our casework to contribute to the development of public policy in areas such as health, social care and local government.

In 2022/23, we responded to 9 public inquiries and consultations. One of our key responses was about the introduction of the Duty of Candour - a legal requirement for all NHS organisations in Wales to be open and transparent with service users when they experience harm whilst receiving health care.

We welcomed this Duty, but underlined that it would not be successful without the right culture in place. We pointed out that the introduction of this Duty could mean that we receive more complaints or that we will have to consider how the Duty was implemented in cases that reach us. We also opposed any legal changes that would allow health bodies to reconsider complaints following our findings. We are glad that the Welsh Government accepted some of our points, but remain concerned about the broader impact of this Duty.

## Engagement

It is important that we directly engage with the bodies in our jurisdiction and other stakeholders operating in the sectors which account for most of our complaints. We continue to focus our main improvement efforts on Health Boards.

As part of this work during 2022/23, the Ombudsman met with Chief Executives of all Welsh Health Boards and many local councils and Housing Associations.

We also aim to share relevant information and insights with other key stakeholders responsible for the scrutiny of the health sector, such as Healthcare Inspectorate Wales, Care Inspectorate Wales, General Medical Council, Community Health Councils (now Llais) and Audit Wales, as well as the Welsh Commissioners.



# Use Resources Wisely

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# Our people

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We value and support our staff. We want them to develop the knowledge and skills that they need to offer an efficient and professional service. We are also committed to creating a healthy, equal, diverse and inclusive workplace. We are proud of how our staff performed this year, but are concerned about their health and well-being if the pressures on our service continue.

## Training and development

We want all our staff to complete at least 28 hours of training and development each year (pro rata for staff who work part time). In 2022/23, 80% of our staff achieved this. This was a higher proportion than last year and a significant achievement, given our workload pressures.

Through our appraisal process, we make sure that each member of staff sets clear objectives and priorities for the year ahead and that we review their progress regularly. New colleagues follow a separate process – we set them more immediate objectives and priorities. For staff returning from maternity/adoption leave or long-term sickness, we agree their objectives when they return. This year, **all our staff completed the appraisal process.**

## Health and wellbeing

We want our staff to be healthy and well. The very high caseload this year has put them under immense pressure.

The average percentage of working days lost through staff sickness increased from 2.7% to 3.29%. This means that **an average of 8.59 days per employee were lost because of sickness**, compared to 7.15 days in 2021/22. However, this was mainly because of long-term absences, with short-term absences marginally lower than last year.

We have continued to offer our staff support to improve their wellbeing. This has included using stress risk assessments to help staff identify emerging issues. We also kept offering Mental Health First Aider support to staff. We will continue to look for ways to handle work more efficiently and continue to recruit excellent staff when vacancies arise.

## Equality, diversity and inclusion

Equality, diversity and inclusion is important to us – as a service provider and as an employer.

Every year, we look at how well the profile of our staff reflects the population of Wales.

The proportion of people in our workforce who identified with diverse ethnic backgrounds decreased only slightly to 7% and remained slightly higher than the Welsh average.

However, several groups remain not well represented among our staff. Very few members of staff were under 25. The proportion of people who identify as disabled increased slightly, but was still much lower than the Welsh average. Very few people said they came from diverse national backgrounds, or identified as LGB+.

We also look at gender equality in our workplace. Women among our job applicants and staff consistently outnumber men by a significant margin. 75% of our current staff identified as female (compared to 76% last year).

We further **reduced our mean gender pay gap**, from 17% to 12%. We are also delighted to report that **we no longer have a median gender pay gap**. For comparison, Chwarae Teg estimated that median Gender Pay Gap in Wales in 2021 was 12.3%.

During the year, we developed a new Menopause Policy and signed the Menopause Pledge.



**This year we had no median gender pay gap.**

## Welsh Language skills of our staff

Under the Welsh Language Standards, every year we measure the Welsh language skills of our workforce.

In 2022/23, 13% of our staff said that Welsh was their main language (compared to 14% last year). However, the proportion of people with fairly good or fluent skills was generally higher than last year:

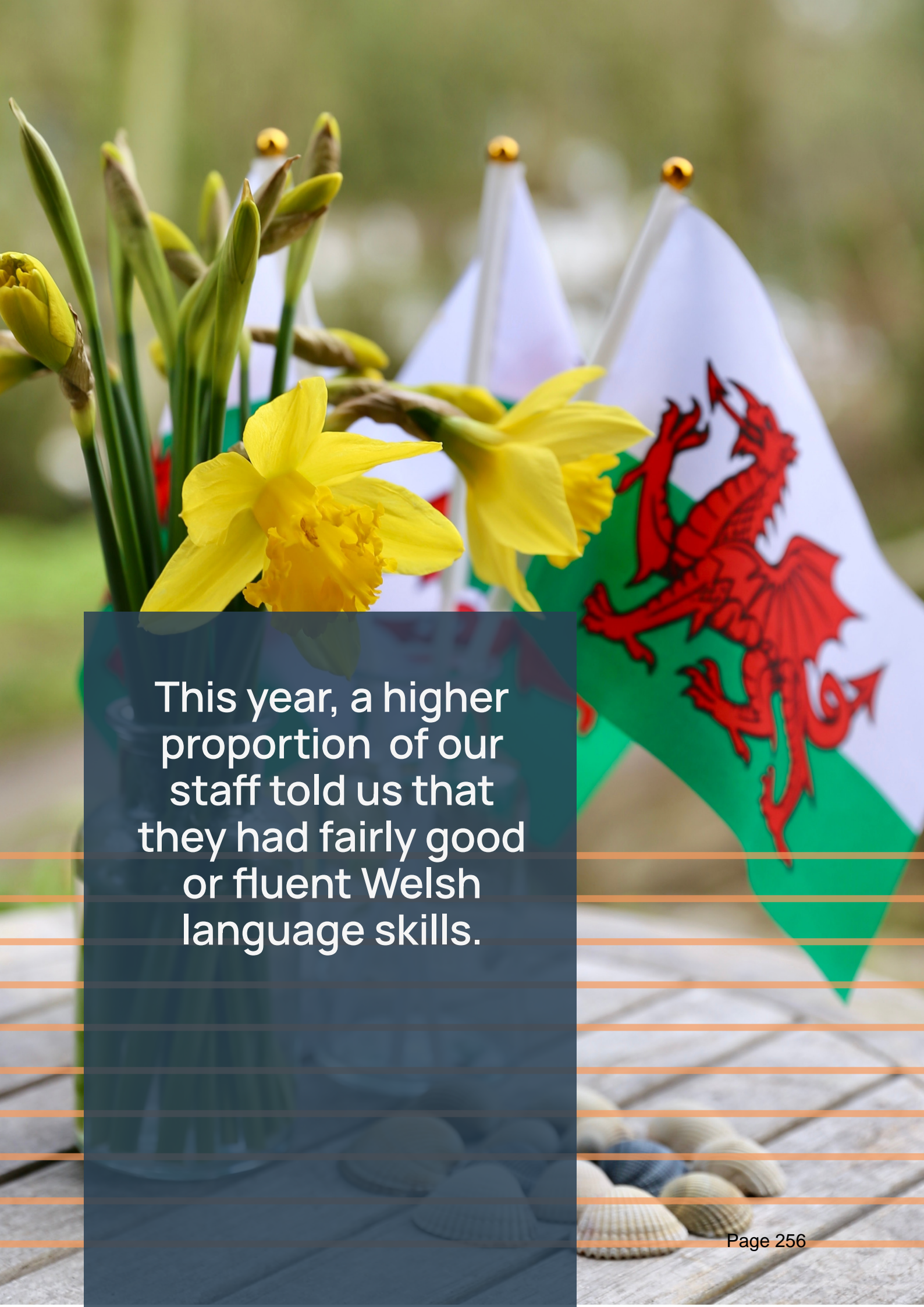
- speaking: 26% (compared to 26% last year)
- reading: 31% (compared to 29% last year)
- writing: 27% (compared to 26% last year)
- understanding: 32% (compared to 30% last year).

We are very happy with these results but continue to build our capacity to offer a Welsh medium service. We supported 8 colleagues to undertake Welsh language training during the year, with many more attending Welsh language awareness course.



**Welsh language skills of our staff have improved.**





This year, a higher proportion of our staff told us that they had fairly good or fluent Welsh language skills.



# Sustainability

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**We understand that we need to play our part in protecting the environment and continue to develop sustainable working practices.**

We produced just over 17,500 kg of waste. This was 92% more than last year and reflects the fact that, during the year, we downsized our office space and staff cleared their desks and cupboards. We were able to recycle 95% of waste and sent no general waste to landfill.

We used only slightly more energy than last year.

We avoided 134 kgs of CO2 in emissions. This was 24% less than last year and reflects the fact that more of our staff now work more regularly in the office.

We are required by law to publish a report on our sustainability under the Biodiversity and Resilience of Ecosystems Duty (section 6 duty). We publish in that report detailed information on how we managed waste, used electricity and calculated commuting emissions.



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**We avoided 134 kgs of CO2 in emissions.**

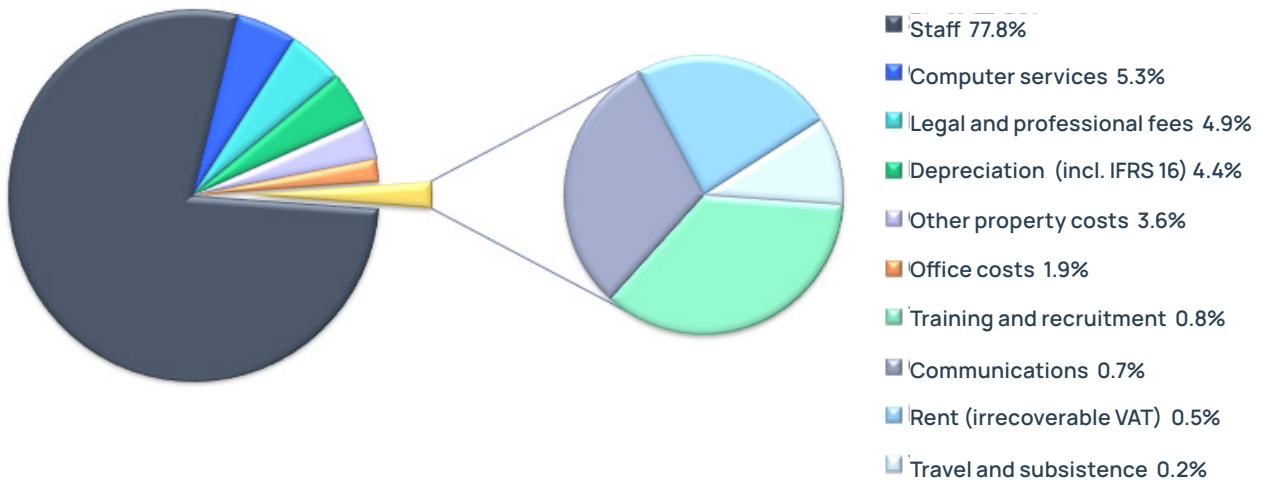
**Under our new Strategic Plan, we commit to reduce our carbon footprint.**

# Financial Management

Overall resource and cash expenditure has increased as a result of the additional funding provided to us from the Welsh Consolidated Fund to fund pay awards and inflation.

	2022/23	2021/22	Change
<b>Resource Out-turn</b>	£000s	£000s	£000s
Total Resource	5,341	5,114	+227
Cash Requirement	5,308	5,126	+182

## Gross Resource Expenditure 2022/23



## Analysis of Spending by Strategic Aims

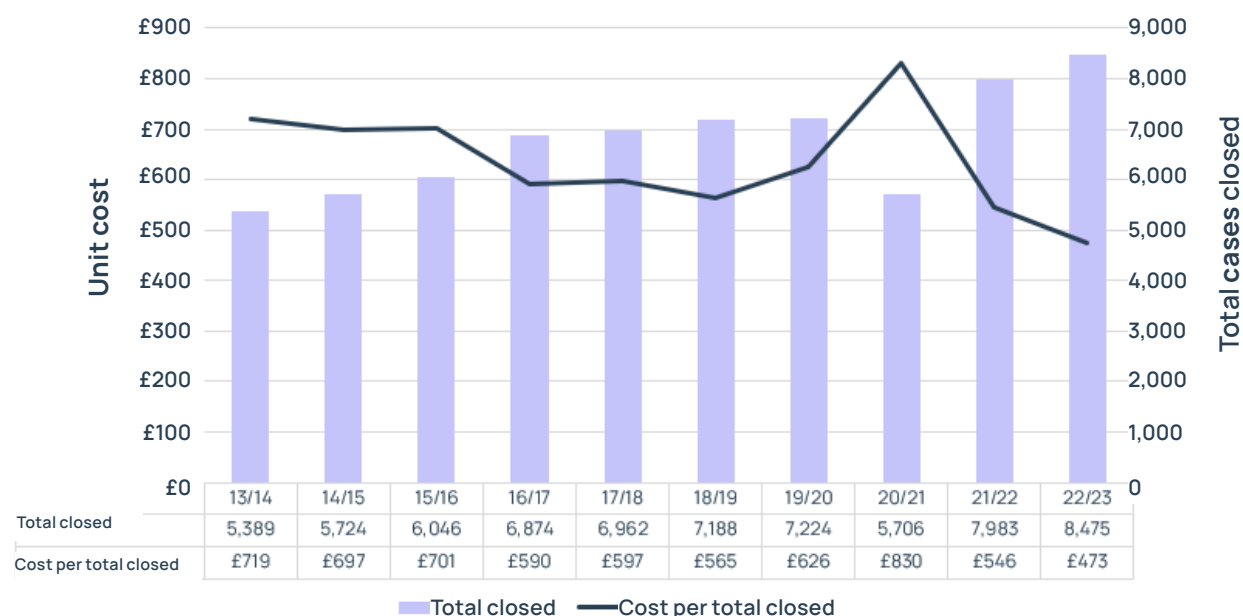


## Casework Costs

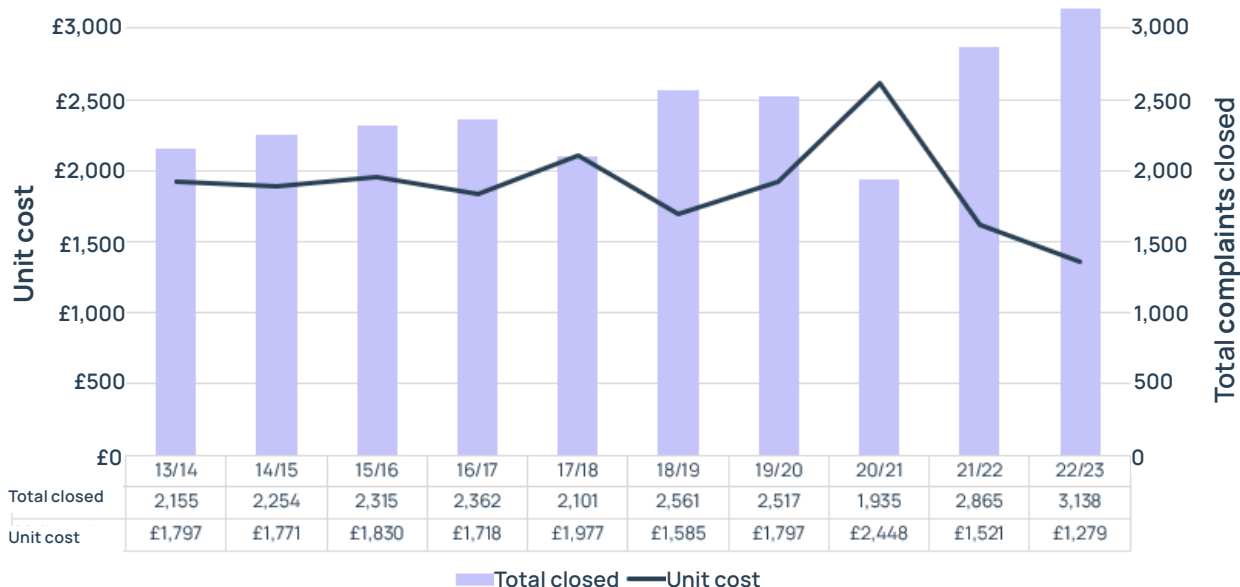
As outlined in previous years' Annual Report & Accounts we will now present average costs as calculated for our main activity – receiving, considering, investigating and responding to enquiries and complaints. This is our activity under Strategic Aim 1, and we will use the analysis figures for Operating Costs by Strategic Aims, presented within these audited accounts.

The graphs below show firstly cost per case for the full enquiry and complaints work completed in the year and secondly for cases completed in the year.

### Cost per Case for Total Office Casework Closure



### Cost per Case for Total Office Complaints Closure



Note: These graphs are based on expenditure on this Strategic Objective and adjusted to 2022/23 prices.

The casework costs reflect changes to costs and to the number of complaints and enquiries completed during the year. The variation in costs per case reflects the fact that in 2022/23, case closures were the highest ever since the creation of the Ombudsman's office, whilst our costs were significantly lower when adjusted for CPI inflation as at March 2023.

## Proactive powers

We identify expenditure related to the additional powers provided to the Ombudsman under the Public Services Ombudsman (Wales) Act 2019, and for 2022/23 this is as reported below:

<b>PSOW Act 2019: Expenditure in 2022/23</b>	<b>£000s</b>
Staff costs	304
Premises	15
Computer Services	12
Office costs	3
Training	2
Communications	1
Advisory and Legal	1
<b>Total</b>	<b>338</b>
Budget	349
<b>Variance</b>	<b>11</b>

We also continue to work to identify the benefits realised by our work using these powers, as well as the costs avoided as a result of the legislation and our work. Our work on this refers in particular to the Regulatory Impact Assessment and Explanatory Memorandum prepared on behalf of the Senedd Cymru Finance Committee to support the (then) proposed legislation.

Whilst there have been, of course, many factors affecting public services and complaints in Wales since the Explanatory Memorandum was prepared, we have worked to assess the impact of the additional powers and compare that with the estimated impact. The legislation reflected the fact that the number of complaints to the Ombudsman was likely to increase by between 5% and 12% per annum. The 'do nothing' option reflected that additional resources would need to be provided to the Ombudsman to meet this demand and used a unit cost approach to identifying the resulting additional costs.

The actual number of complaints received in 2022/23 was lower than the lowest projection, suggesting that our active improvement work has helped slow the increase in complaints. Using the methodology in the Explanatory Memorandum (using a unit cost per complaint), this equates to a cost avoidance saving of between £300k and £2.3m in 2022/23 alone. Whilst our improvement work will have made a significant contribution to this saving, there will, of course, have been other factors too. The powers under the Act were also intended to increase access to justice and support wider public service improvement. These are harder to quantify but no less important, and we are confident that our Own Initiative investigations and acceptance of complaints other than in writing (primarily oral complaints) have contributed to these aims.

## Expenditure to 31 March 2023 compared to previous year

	2022/23	2021/22	Reasons for significant changes
	£000	£000	
Salaries	3,017	2,863	Pay award of £1,925 per FTE and increase in staff numbers (2 FTE)
Social Security costs	314	273	
Pension costs	809	745	
Pension fund charges	28	39	
<b>Total Pay</b>	<b>4,168</b>	<b>3,920</b>	
Rent	28	193	2022/23 figures on IFRS 16 basis
External Audit fee	17	19	
Legal and professional fees	243	173	Additional professional fees incurred
Other property costs	192	171	Includes IFRS 16 interest charge
Computer services	284	331	Security & resilience upgrades in 2021/22
Office costs	104	137	Reduced library & telephone costs
Travel and Subsistence	12	6	Increased travel post-pandemic
Training and Recruitment	42	36	Increased recruitment in 2022/23
Communications	36	47	Reduced translation costs in 2022/23
Depreciation	234	61	2022/23 figures on IFRS 16 basis
<b>Total other Administration Costs</b>	<b>1,192</b>	<b>1,174</b>	
<b>Gross Costs</b>	<b>5,360</b>	<b>5,094</b>	
Income	(19)	(17)	Additional income for payroll services to Future Generations Commissioner
<b>Net Expenditure</b>	<b>5,341</b>	<b>5,077</b>	
Capital	-	37	Security & resilience upgrades in 2021/22
<b>Net Resource</b>	<b>5,341</b>	<b>5,114</b>	

More detailed financial information can be found in the financial statements and notes that support the accounts.

*M.M. Morris*

**Michelle Morris**

**Accounting Officer**

Public Services Ombudsman for Wales

19 July 2023

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# Accountability Report 2022/23

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# Corporate Governance Report

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## Ombudsman's Report:

Under the Government of Wales Act 2006, the Office is financed through the Welsh Consolidated Fund (WCF) with any unspent cash balances repaid into the WCF after a certified copy of the accounts has been laid before the Welsh Parliament. This creates a further control in that there is a need to effectively manage the budget on both a cash and a resource basis. The salary of the office holder of the Public Services Ombudsman for Wales and the related costs are a direct charge on the WCF and are administered through the Welsh Parliament.

As at 31 March 2023, the Office comprised 82 permanent full and part-time staff based in Pencoed, Bridgend including the Ombudsman, Chief Operating Officer & Director of Improvement, Chief Legal Adviser & Director of Investigations, as well as investigation and support staff.

The Welsh Parliament provided cash of £5.3 million for the funding of the Office. £1k of this overall funding is due to be returned to the WCF, being the unused cash balance at the year-end. The expenditure of the Office was kept within the Estimate agreed in November 2021 and amended by Supplementary Budgets during 2022/23.

As referred to previously in the report, our unit costs have fallen to their lowest levels and reflect the highest number of complaints and enquiries closed by the Office, whilst our costs were significantly lower when adjusted for CPI inflation.

## Remuneration and Pension Liabilities

Details of the pay and related costs of the Ombudsman and the Office are shown in the Remuneration Report.

Pension obligations to present and past employees are discharged through the Principal Civil Service Pension Scheme (PCSPS) and the pensions paid directly to former Commissioners or their dependants.

Further details are given in the Pensions Disclosures.

## Corporate Governance

The office holder of the Public Services Ombudsman for Wales is a Corporation Sole.

The Audit & Risk Assurance Committee supports the Ombudsman by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and on the integrity of financial statements and the annual report. Further details are set out in the Annual Governance Statement.

## Register of Interests

A register of interests is maintained for the Ombudsman, Directors and members of the Advisory Panel and Audit & Risk Assurance Committee.

## Accounts Direction

Under the Accounts Direction issued by HM Treasury dated 21 December 2006, the Ombudsman is required to prepare accounts for the financial year ended 31 March 2023 in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (the FReM) issued by HM Treasury which was in force for 2022/23.

The accounts have been prepared to:

- Give a true and fair view of the state of affairs at 31 March 2023 and of the net resource out-turn, resources applied to objectives, recognised gains and losses and cash flows for the financial year then ended.
- Provide disclosure of any material expenditure or income that has not been applied for the purposes intended by the Welsh Parliament or material transactions that have not conformed to the authorities that govern them.

## Auditors

The Auditor General for Wales is the External Auditor of the accounts of the PSOW as laid down in paragraph 18 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019.

The cost of the audit for 2022/23 was £17k (2021/22 = £19k).

As far as I am aware, my predecessor and I have taken all the steps necessary to make the auditors aware of any relevant audit information.

*M.M. Morris*

**Michelle Morris**

**Accounting Officer**

Public Services Ombudsman for Wales

19 July 2023



# Statement of Accounting Officer's Responsibilities

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**Under the Public Services Ombudsman (Wales) Act 2019, as Public Services Ombudsman for Wales I am required to prepare, for each financial year, resource accounts detailing the resources acquired, held or disposed of during the year and the use of resources by the PSOW during the year.**

The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of the PSOW and its net resource out-turn, Statement of Financial Position and cash flows for the financial year.

In preparing the accounts, as the Accounting Officer, I am required to comply with the requirements of the 'Government Financial Reporting Manual' and in particular to:

- Observe the Accounts Direction issued by the Treasury including the relevant accounting and disclosure requirements and apply suitable accounting policies on a consistent basis.
- Make judgements and estimates on a reasonable basis.
- State whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed and disclose and explain any material departures in the accounts.
- Prepare the accounts on a going concern basis.
- Confirm that the annual report and accounts as a whole is fair, balanced and understandable.
- Take personal responsibility for the annual report and accounts and the judgements required for determining that it is fair, balanced and understandable.

My relevant responsibilities as Accounting Officer include the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding the PSOW's assets, as set out in Managing Welsh Public Money and the Public Services Ombudsman (Wales) Act 2019.

As the Accounting Officer, I have taken all the steps that I ought to have taken to make myself aware of any relevant audit information and to establish that PSOW's auditors are aware of that information. So far as I am aware, there is no relevant audit information of which the auditors are unaware.

# Annual Governance Statement 2022/23

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## Status of the Public Services Ombudsman for Wales

As laid down in Schedule 1 paragraph 2 of the Public Services Ombudsman (Wales) Act 2019, the Ombudsman is a Corporation Sole holding office under His Majesty. The Ombudsman discharges the functions set down in legislation on behalf of the Crown. Schedule 1 paragraph 19 states that the Ombudsman is the Accounting Officer for the office of the Ombudsman.

## Scope of Responsibility

In undertaking the role of Accounting Officer, I have ensured that the office operates effectively and to a high standard of probity. In addition, the Ombudsman has responsibility for maintaining a sound system of internal control that supports the achievement of PSOW's policies, aims and objectives, whilst safeguarding the public funds and assets for which the Ombudsman is personally responsible, in accordance with the responsibilities set out in 'Managing Welsh Public Money'.

The Ombudsman is independent of the Senedd Cymru Welsh Parliament but is accountable to its Finance Committee and Public Accounts and Public Administration Committee for the use of resources provided. In determining the level of resources available to the office, the PSOW's budget proposals are considered by the Finance Committee of the Senedd Cymru Welsh Parliament in accordance with the process laid down in the Act. A combined Annual Report and Accounts is prepared for consideration by the Finance Committee.

I am required to include this Governance Statement with my annual report and accounts to explain how the governance of my office works and to ensure it meets the requirements of the Corporate Governance Code and The Orange Book: Management of Risk. To enable me to satisfy these requirements, I have maintained appropriate structures, systems and procedures that are comprehensive and provide me with evidence that the governance arrangements are working as intended across the whole organisation and its activities. Such arrangements include my Governance Framework, a comprehensive internal control environment, effective internal and external audit arrangements and robust financial management, risk planning and monitoring procedures.

## Strategic Planning and Performance Monitoring

The [Strategic Plan](#) for the 3 years 2019/20 to 2021/22 was extended for a further year (2022/23) to allow for the development of a new 3-year Plan.

The Plan in place during 2022/23 included the following:

### Our Vision for public services in Wales:

Services that actively listen and learn from complaints.

### Our Mission:

To uphold justice and improve public services.

### Our Strategic Aims:

#### **Strategic Aim 1: Deliver Justice**

A fair, independent, inclusive and responsive complaints service.

#### **Strategic Aim 2: Promote Learning, Work to Improve Public Services**

Promote learning from complaints and stimulate improvements on a wider scale.

#### **Strategic Aim 3: Use Resources Wisely and Future-proof the Organisation**

Identify and adopt best practice. Secure value for money and services that are fit for the future. Support staff and ensure good governance which supports and challenges us.

Whilst individual teams within the office are charged with implementing the actions identified, the Management Team monitors progress made against targets and the outcomes achieved via monthly reports.

### System of Internal Control

The system of internal control is designed to manage risk to a reasonable level rather than eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable, and not absolute, assurance of effectiveness. It is based on an ongoing process designed to identify and prioritise the risks to the achievement of my policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.



The system has been in place in the office of the PSOW for the year ended 31 March 2023 and up to the date of approval of these accounts and accords with HM Treasury guidance. Internal controls were unaffected by changes resulting from the Covid-19 pandemic. No significant areas of internal control weaknesses have been identified from audit work and steps to improve controls further are implemented promptly and monitored by the Audit & Risk Assurance Committee.

## **Corporate Governance arrangements: Audit & Risk Assurance Committee**

Governance arrangements include an Audit & Risk Assurance Committee (ARAC). The Committee's responsibilities are:

### **a) Terms of Reference**

The Committee supports me by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the annual report. The Committee has a scrutiny and advisory role only and has no role or remit in relation to casework decisions made by the PSOW.

### **b) Membership**

Membership comprises a minimum of four, and a maximum of eight, independent external members. The membership of the Committee during 2022/23 was:

- Mr Ian Williams, former Group Chief Executive of Hendre Limited - Chair
- Mr Trevor Coxon, former Monitoring Officer of Wrexham County Borough Council (until April 2022)
- Mr John McSherry, former Senior Manager at Admiral Group Limited
- Mr Mike Usher, a former Director of Audit Wales
- Mrs Joanest Varney-Jackson, former Senior Lawyer for Senedd Cymru
- Dr Jane Martin CBE (from October 2022), former Local Government Ombudsman
- Mr Dave Tosh (from January 2023), former Director of Resources for the Senedd Commission.



During the year I reviewed the ARAC and Advisory Panel governance arrangements, including the sizes of the Committee / Panel, terms of office, timing of meetings, training arrangements and skills gaps. As a result of that review, I made a number of changes to increase continuity, resilience and the range of skills. The changes, which took account of recommendations from Senedd Public Accounts Committee and Senedd Finance Committee, also made provision for more regular training for members.

### **c) Training**

Members of the Committee are invited to assess their training needs annually. An induction programme is provided for all new members of the ARAC. During 2022/23 members took part in a Cyber Security Workshop (October 2022) and attended a training session (February 2023) which included presentations from staff across the office on their areas of work.

### **d) Meetings**

The Committee sets itself an annual work programme. There are generally four meetings of the Committee during the year.

The Ombudsman attends ARAC Meetings and the Chief Operating Officer acts as Secretary to the Committee. The meetings were also regularly attended by internal and external auditors and appropriate members of the PSOW's Management Team.

At each meeting, the Committee received a number of standing agenda items. These include declarations of any identified fraud or losses, including any data losses. At each meeting, the Committee received a copy of the latest Budget Monitoring report considered by the Management Team. This is intended to provide the Committee with an assurance that there is regular scrutiny of the financial position of the office.

During the year, the Committee also received reports on a number of other appropriate matters within its Terms of Reference. They included the 9- and 12-month accounts, internal audit plans, internal audit reports, a review of the Whistleblowing Policy, updates on major IT developments, relevant financial and corporate governance matters. The Committee reviewed the Office's counter-fraud and anti-corruption arrangements, in the context of the Cabinet Office

Counter-Fraud Framework. The Committee also reviewed the Office's anti-fraud policy, to satisfy itself that appropriate arrangements are in place.

The Committee provided advice to me to ensure that this 2022/23 Annual Governance Statement included appropriate information and complied with best practice.

A standing item is risk management. At each meeting the Committee considered a report on the greatest identified risks. The Committee explored and challenged the reported risks to satisfy itself that key risks had been identified. The overall approach to risk management and risk mitigation was previously considered at a workshop facilitated by the internal auditors and was reviewed by the Committee in October 2022. A further workshop has been arranged for 2023. In addition, the Committee undertakes, at alternate meetings, an in-depth review of a specific risk selected from the risk register.

During the year, one member's terms of office ended, and one new member joined the Committee. In addition, the Chair of the Ombudsman's Advisory Panel joined the Committee. This provides continuity and supports informed scrutiny. The Committee includes 3 independent members who are not members of the Advisory Panel. The number of meetings attended, along with the number of meetings each member was eligible to attend, was as follows:

Committee Member	Maximum number of attendances possible	Actual number of attendances	% attended
Ian Williams (Chair)	4	4	100
Trevor Coxon (until April 2022)	1	1	100
John McSherry	4	4	100
Mike Usher	4	4	100
Joanest Varney-Jackson	4	3	75
Jane Martin (from October 2022)	2	1	50
Dave Tosh (from January 2023)	1	1	100

## e) Internal and External Audit

The Committee received regular reports from both the internal and external auditors. The work of internal audit during the year was planned based on their overall needs assessment and carried out through their agreed annual programme. Their reports highlighted a satisfactory internal control framework within the organisation and made recommendations for improvement where necessary.

In all audits the level of assurance was considered 'Substantial', the highest assurance level. A number of recommendations were made, and these have either been completed or will be completed in accordance with agreed timescales.

The internal audits undertaken in 2022/23 and overall assessments were as follows:

	Assurance level
Risk Management – Mitigating Controls	SUBSTANTIAL
Information Security - GDPR	SUBSTANTIAL
Equality, Diversity and Inclusion	SUBSTANTIAL
New / Proactive Powers	SUBSTANTIAL
Staff Performance Management	SUBSTANTIAL
<b>Key Financial Controls:</b>	
Payroll	SUBSTANTIAL
General Ledger	SUBSTANTIAL
Fixed Assets	SUBSTANTIAL
Post Implementation Review of Sage 200	SUBSTANTIAL

In addition, an audit of previous internal audit recommendations was undertaken. This found that all previous recommendations had been implemented. The internal auditors' Annual Report for 2022/23 stated:

'TIAA is satisfied that, for the areas reviewed during the year, Public Services Ombudsman for Wales has reasonable and effective risk management, control and governance processes in place.'

These findings also provide assurance that the arrangements in place are reducing the office's exposure to risk.

The Committee noted the thoroughness of the audit work, practicality of recommendations and the open and positive response of management to the recommendations made.

In respect of the previous financial year, the Committee considered the 2021/22 Annual Report and Accounts that included the Governance Statement of the office for 2021/22, together with the External Audit of Financial Statements Report and Management Letter. An unqualified opinion was given, following external audit work undertaken by Audit Wales, on the 2021/22 Accounts. There were no recommendations arising from the Audit.

Both Internal and External Auditors have the right to raise any matter through an open access policy to the Chair and, through that right, to bring any matter to the attention of the Committee. The Committee, by reviewing the programmes of both the External and the Internal Auditors, ensured that they were cooperating effectively with each other. The quality of the audit work has been evaluated during the year through consideration of the audit reports and recommendations and dialogue at meetings between Committee Members and the Auditors.

To ensure that appropriate matters can be raised in confidence, the Chair of the Committee holds an annual meeting with representatives of the External and Internal Auditors. Such a meeting was held on 27 April 2023.

#### **f) Monitoring processes**

At each meeting during 2022/23, the Committee received a report on progress made on the implementation of External and Internal Audit recommendations. Committee members were satisfied that all the recommendations made, had been implemented or will be implemented in accordance with agreed timescales.

## **g) Annual Review and Assessment**

This annual review is undertaken to evaluate the work of the Committee and to ensure that the work of the Audit & Risk Assurance Committee continues to comply with the Good Practice Principles set out in the HM Treasury Audit Committee Handbook. To assist the Committee in determining that it was complying with good practice, each member was invited to complete the National Audit Office's 'The Audit Committee self-assessment checklist'. Comments received from Committee members were considered in preparing the Annual Review for 2022/23.

The ARAC Annual Review concluded that it had received comprehensive assurances and information that was reliable and sufficient to enable it to carry out its responsibilities. Those assurances demonstrated a satisfactory overall internal control environment, financial reporting and the management of risk and of the quality of both the Internal and External Audit work undertaken.

The Committee was therefore able to provide assurances to support me effectively, as Public Services Ombudsman for Wales, to comply with my Accounting Officer responsibilities. The Committee provided evidence to assist in the preparation of this Annual Governance Statement.

## **Advisory Panel**

The Advisory Panel is a non-statutory forum whose main role is to provide support and advice to me in providing leadership and setting the strategic objectives of the office of the Public Services Ombudsman for Wales. The Panel also brings an external perspective to assist in the development of policy and practice. The Panel's work during the year included advising on the development of the new Strategic Plan and the Estimate for 2023/24, reviewing the organisation's performance and assessing the impact of the Ombudsman's proactive powers.

Following a recruitment exercise, three new members were appointed to the Panel from January 2023.

The Advisory Panel has an advisory role and has no role or remit in relation to operational or casework decisions made by the PSOW.

## Reporting of Personal Data Related Incidents

All incidents involving personal data are reported to the Audit & Risk Assurance Committee, regardless of whether PSOW is at fault. Where PSOW is at fault, guidance issued by the Information Commissioner's Office (ICO) is considered to establish whether it is necessary to report the incident to that office. During 2022/23, there were no incidents that required reporting to the ICO.

## The Risk and Control Framework

As required by 'Managing Welsh Public Money', I am supported by a professionally qualified Financial Accountant who carries out the responsibilities of a Finance Director as set out in that document.

Risk management and the risk register are standing agenda items for the Audit & Risk Assurance Committee, and the approach to risk management, together with risk appetite, is reviewed periodically.

I am continuing to enhance the robust internal control arrangements to ensure that the office has the capacity to identify, assess and manage risk effectively.

In undertaking this responsibility during the year ended 31 March 2023, I am supported by a Chief Operating Officer to whom some of my responsibilities have been delegated.

I am satisfied that the systems in place identify potential risks at an early stage and enable, through active management, the appropriate action to be taken to minimise any adverse impact on the office.

The Audit & Risk Assurance Committee receives regular reports on the risks relating to this office, explores the office's approach to those risks and provides comments and suggestions on current and emerging risks.

Risks are considered across a number of key areas or risk horizons. These are:

- operations, including operational support
- financial, governance and legal risks
- reputational risks
- data and information management risks.

## Key risks

The last Annual Governance Statement (2021/22) highlighted two high risks. The first of these related to the impact of increasing numbers of complaints without a corresponding increase in resources. That risk remained high for 2022/23. The other high risk related to the risk of cyber-attack, malware, virus or ransomware on our IT systems. Whilst that risk remains relatively high, considerable work has been done during the year to reduce the likelihood and impact of a successful attack. This risk requires constant and active management, but the risk rating at the year-end was slightly below high / red level, so is not reported in detail here. At the end of 2022/23, the two high / red risks were:

Risk horizon	Risk and risk impact:	Risk management and mitigation:	Residual risk:
<b>Operations &amp; operational support</b>	<p>Risks from continued high number of complaints and limited staff resources. Public service complaints are up 2% on 2021/22 (and 49% up on 2020/21), without an increase in staff.</p> <p><b>Impact:</b> slower service to complainants, increased pressure on staff, adverse impact on wellbeing and risk of stress.</p>	<p>Maximise staff resources within budget available. Support staff performance. Streamline our processes. Monitor caseloads and work progression. Work closely and supportively with public bodies to improve their complaints handling.</p>	<p>Increases in number of new complaints, without a commensurate increase in resources, means that the residual risk is considered <b>RED</b>.</p>

Risk horizon	Risk and risk impact:	Risk management and mitigation:	Residual risk:
<p><b>Financial</b></p>	<p>Future years budget settlement insufficient to meet Strategic Plan priorities.  <b>Impact:</b> Strategic Plan objectives not delivered, meaning we are unable to deliver justice as we wish, that we are unable to invest in improving our service and in helping us to manage growing numbers of complaints and that we do not achieve public service improvements and increased accessibility to our service.</p>	<p>The Strategic Plan for 2023/26 sets out four Strategic Aims to deliver justice, to increase accessibility and inclusion, to increase the impact of our proactive work and to be a healthy, efficient and accountable organisation. These require ongoing funding and investment. There is a substantial risk that budgets will be insufficient to invest to meet service demands, to improve accessibility and drive public service improvement.</p>	<p>We will use resources wisely and make the case for investment, but the residual risk is considered <b>RED</b>.</p>



# Risk Assurance Framework Arrangements

PSOW Framework			
<ul style="list-style-type: none"> <li>• Strategic objectives from Corporate Plan                             <ul style="list-style-type: none"> <li>• Work programme</li> <li>• Risk management</li> <li>• Anti-fraud policy</li> </ul> </li> <li>• Governance framework</li> <li>• Policies, procedures and code of conduct</li> </ul>			
Advisory Panel	Accounting Officer	Audit & Risk Assurance Committee	Management Team
Provides support and advice on vision, values and purposes as well as strategic direction and planning.	Governance. Decision making. Financial management. Risk management.	Reviews and monitors governance, risks and internal controls. Agrees annual governance statement.	3-year Corporate Plan. Operational Plan. Performance monitoring. Corporate policies. Risk management. Value for money.
Central Guidance		PSOW policies, plans and risk register	Annual Governance Statement
HM Treasury. FRoM. Managing Welsh Public Money. Public Sector Internal Audit.			
Assurance Map Components			
1st line of defence	2nd line of defence	3rd line of defence	
Strategic and operational delivery reporting. KPI reporting. Financial controls / Budget monitoring.	Risk register reviews. Quality assurance. Information security assurance.	Internal audit reports. Financial accountant spot checks.	
Other assurances			
External audit. Scrutiny by Finance Committee and PA&PAC.			

I and my Management Team will continue to work to manage and minimise the risks in these key areas in the year ahead and the risks will be considered at each meeting of the Audit & Risk Assurance Committee.

## Budgeting Process

As Accounting Officer, I ensure that I have in place arrangements for tight control of the public money entrusted to me. The Management Team receives a monthly budget monitoring report setting out details of actual, against budgeted expenditure. Any unexpected expenditure issues that may arise during the year are considered so that appropriate action can be taken to remain within the budgeted expenditure where possible or to seek additional resources where cost pressures cannot be contained.

As far as the process of producing the PSOW's financial estimate for 2023/24 is concerned, a paper setting out initial budget criteria was considered by the Advisory Panel in July 2022. Overall, the submission sought an increase of 11.8% (resource) to reflect pay and price increases, substantial caseload increases and the need to invest in service improvement. Following Finance Committee scrutiny in October, the Committee did not support the submission. A revised submission, seeking a 6.7% increase, was submitted and supported by the Committee. This was included in the Wales Annual Budget Motion March 2023.

## Conclusion

I can report that there were no significant weaknesses in the office's system of internal controls in 2022/23 which would affect the achievement of the office's policies, aims and objectives and that robust Corporate Governance is in operation with no breaches of the Corporate Governance Code.

*M.M. Morris.*

**Michelle Morris**

**Accounting Officer**

Public Services Ombudsman for Wales

19 July 2023

# Remuneration Report

## Public Services Ombudsman for Wales

The Government of Wales Act 2006 provides for my remuneration and associated national insurance and pension costs to be met from the Welsh Consolidated Fund, rather than being paid directly. These costs are included, for transparency, in the remuneration report.

### Remuneration

The following sections provide details of the remuneration and pension interest of the most senior management of the Office: Michelle Morris - Ombudsman, Chris Vinestock - Chief Operating Officer & Director of Improvement and Katrin Shaw - Chief Legal Adviser & Director of Investigations. Nick Bennett was in post as Ombudsman during the 2021/22 financial year.

Single Total Figure of Remuneration					
2022/23					
Officials	Salary (£'000)	Bonus payments (£'000)	Benefits in Kind (to nearest £100)	Pension benefits (to nearest £1,000)	Total (£'000)
Michelle Morris	145-150	-	-	57,000	205-210
Chris Vinestock	105-110	-	-	-47,000	60-65
Katrin Shaw	90-95	-	-	-12,000	80-85

There are negative pension benefits because the increase in pension due to extra service was not sufficient enough to offset the significant inflationary increase. Therefore, in real terms the value of the pension has reduced.

Single Total Figure of Remuneration					
2021/22					
Officials	Salary (£'000)	Bonus payments (£'000)	Benefits in Kind (to nearest £100)	Pension benefits (to nearest £1,000)	Total (£'000)
Nick Bennett	150-155	-	-	59,000	210-215
Chris Vinestock	105-110	-	-	27,000	135-140
Katrin Shaw	90-95	-	-	28,000	120-125



## Salary

Salary includes gross salary, overtime and any other allowances to the extent that they are subject to UK taxation.

## Benefits in kind

The monetary value of benefits in kind, covers any expenditure paid by the PSOW and treated by HM Revenue and Customs as a taxable emolument. There was no such expenditure.

## Bonuses

No bonus was paid during the year to me or to any staff within my office, as no bonus scheme is in operation.

## Pay multiples

The banded remuneration of the highest-paid director in the financial year 2022/23 was £145-£150,000 (2021/22 = £150-£155,000), a reduction of 3.3%.

The FreM for 2022/23 requires increased reporting on fair pay disclosures.

	2022/23	2021/22
25 <sup>th</sup> percentile remuneration	£35,069	£32,799
25 <sup>th</sup> percentile pay ratio	4.2	4.6
50 <sup>th</sup> percentile remuneration	£46,551	£44,625
50 <sup>th</sup> percentile pay ratio	3.2	3.4
75 <sup>th</sup> percentile remuneration	£50,799	£48,876
75 <sup>th</sup> percentile pay ratio	2.9	3.1

The percentage increase in median salary is 4.3%. In 2022/23, no employee received remuneration in excess of the highest-paid director (2021/22 = none).

Remuneration ranged from £23,000 to £150,000 (2021/22 = £20,000-£155,000). Total remuneration includes salary, non-consolidated performance-related pay and benefits in kind. It does not include severance payments, temporary payments, employer pension contributions and the cash equivalent transfer value of pensions.

## Pay awards

Staff pay is linked to the pay awards made to employees within Local Government in England and Wales. In line with that procedure, a pay award of £1,925 per full time equivalent was awarded to staff in November 2022 backdated to April 2022.

## Pensions

Pension entitlements for the persons shown earlier in the report are detailed below:

## Pension Liabilities

The pension obligations to present and past employees are discharged through the Principal Civil Service Pension Scheme (PCSPS) and the pensions paid directly to former Commissioners or their dependants.

Name	As at 31/03/23					As at 31/03/22
	Accrued pension at pension age and related lump sum	Real increase in pension and related lump sum at pension age	CETV	Real Increase in CETV	Employer contribution to partnership pension accounts	CETV
	£000	£000	£000	£000	Nearest £100	£000
Michelle Morris	0-5	2.5-5	48	37	-	n/a
Chris Vinestock	75-80	0	1151	-41	-	1068
Katrin Shaw	45-50	0	723	-21	-	666

CETV refers to the Cash Equivalent Transfer Value, and further information can be found in the Pensions Disclosures.

## Sickness

During the year, an average of 8.7 days per employee were lost through sickness, compared with 7.2 days in 2021/22. This is the equivalent of 3.3% (2.7% in 2021/22) of total possible workdays. This reflects typical short-term absences and a small number of staff incurring long-term sickness.

## Reporting of Civil Service and other compensation schemes

No exit packages were paid in 2022/23 (2021/22 Nil).

## Advisory Panel and Audit & Risk Assurance Committee

The following non-pensionable payments, based on a daily rate, were made to members of the Advisory Panel and Audit & Risk Assurance Committee:

	2022/23	2021/22
Ian Williams	3,875	3,150
Jane Martin	2,500	2,350
Mike Usher	2,475	2,100
Carys Evans	2,050	1,050
John McSherry	1,550	1,800
Joanest Varney-Jackson	1,050	1,200
Dave Tosh	500	-
Sue Phelps	500	-
Bernie Davies	500	-
Nia Roberts	500	-
Trevor Coxon	350	1,925
Jim Martin	-	1,925
Anne Jones	-	1,575
Tom Frawley	-	1,225

These figures also include payments made to members for attendance at risk workshops and training sessions during 2022/23.

For staff reporting issues see the Annual Equality Report.

*M.M. Morris.*

**Michelle Morris**

**Accounting Officer**

Public Services Ombudsman for Wales

19 July 2023

# Welsh Parliament Accountability and Audit Report

In addition to the primary statements prepared under **International Financial Reporting Standards (IFRS)**, the Government Financial Reporting Manual (FRm) requires the Ombudsman to prepare a statement and supporting notes to show resource out-turn against the Supply Estimate presented to the Senedd, in respect of each request for resource.

## Summary of Net Resource Out-turn for year ending 31 March 2023

	Revised Estimate			Out-turn				2021/22
	Gross Expenditure	Income	Net Total	Gross Expenditure	Income	Net Total	Net total compared to estimate	Net Total
	£000	£000	£000	£000	£000	£000	£000	£000
Revenue	5,386	(19)	5,367	5,360	(19)	5,341	26	5,077
Capital	5	-	5	-	-	-	5	37
<b>Resource DEL</b>	<b>5,391</b>	<b>(19)</b>	<b>5,372</b>	<b>5,360</b>	<b>(19)</b>	<b>5,341</b>	<b>31</b>	<b>5,114</b>
<b>Total Resources</b>	<b>5,391</b>	<b>(19)</b>	<b>5,372</b>	<b>5,360</b>	<b>(19)</b>	<b>5,341</b>	<b>31</b>	<b>5,114</b>
<b>Net Cash Requirement</b>	<b>5,328</b>	<b>(19)</b>	<b>5,309</b>	<b>5,327</b>	<b>(19)</b>	<b>5,308</b>	<b>1</b>	<b>5,126</b>

The Ombudsman’s salary is paid directly from the Welsh Consolidated Fund with only the reimbursement of actual business expenses included in the PSOW accounts.



# Reconciliation of Net Resource to Net Cash Requirements

for the year ended 31 March 2023

	Note	2022/23			2021/22
		Revised Estimate	Net Total Out-turn	Net total out-turn compared to revised estimate	Out-turn
		£000	£000	£000	£000
Net Revenue	2-4	5,367	5,341	26	5,077
Net Capital	6	5	-	5	37
<b>Total Resources</b>		<b>5,372</b>	<b>5,341</b>	<b>31</b>	<b>5,114</b>
Depreciation	6	(274)	(234)	(40)	(61)
Movements in working capital	6-9	191	184	7	84
Movements in provisions	10	20	17	3	(11)
<b>Net cash requirement</b>		<b>5,309</b>	<b>5,308</b>	<b>1</b>	<b>5,126</b>

*M.M. Morris.*

**Michelle Morris**

**Accounting Officer**

Public Services Ombudsman for Wales

19 July 2023



# The Certificate and Report of the Auditor General for Wales to the Senedd

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## Opinion on financial statements

I certify that I have audited the financial statements of the Public Services Ombudsman for Wales for the year ended 31 March 2023 under paragraph 18 (2) of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019.

The financial statements comprise the Statement of Comprehensive Net Expenditure, Statement of Financial Position, Statement of Cash Flows, Statement of Changes in Taxpayers Equity and related notes, including the significant accounting policies.

The financial reporting framework that has been applied in their preparation is applicable law and UK adopted international accounting standards as interpreted and adapted by HM Treasury's Financial Reporting Manual.

In my opinion, in all material respects, the financial statements:

- give a true and fair view of the state of the Public Services Ombudsman for Wales' affairs as at 31 March 2023 and of its net operating cost for the year then ended;
- have been properly prepared in accordance with UK adopted international accounting standards as interpreted and adapted by HM Treasury's Financial Reporting Manual and
- have been properly prepared in accordance with HM Treasury directions issued under the Public Services Ombudsman (Wales) Act 2019.

## Opinion on regularity

In my opinion, in all material respects:

- the Statement of Resource Outturn properly presents the outturn against the sums authorised by the Senedd for the year ended 31 March 2023 and shows that those totals have not been exceeded; and
- the income and expenditure in the financial statements have been applied to the purposes intended by the Senedd and the financial transactions recorded in the financial statements conform to the authorities which govern them.

## Opinion on arrangements for the economic, efficient and effective use of resources

In my opinion, the Public Services Ombudsman for Wales has made proper arrangements for securing economy, efficiency, and effectiveness in its use of resources throughout the financial year ended 31 March 2023.

## Basis of opinions

I conducted my audit in accordance with applicable law and International Standards on Auditing in the UK (ISAs (UK)) and Practice Note 10 'Audit of Financial Statements of Public Sector Entities in the United Kingdom'. My responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of my certificate.

My staff and I are independent of the body in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK including the Financial Reporting Council's Ethical Standard, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinions.

## Conclusions relating to going concern

In auditing the financial statements, I have concluded that the use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the body's ability to continue to adopt the going concern basis of accounting for a period of at least 12 months from when the financial statements are authorised for issue.

My responsibilities and the responsibilities of the Accounting Officer with respect to going concern are described in the relevant sections of this certificate.

The going concern basis of accounting for the Public Services Ombudsman for Wales is adopted in consideration of the requirements set out in HM Treasury's Government Financial Reporting Manual, which require entities to adopt the going concern basis of accounting in the preparation of the financial statements where it anticipated that the services which they provide will continue into the future.

## Other information

The other information comprises the information included in the annual report other than the financial statements and my auditor's report thereon. The Accounting Officer is responsible for the other information in the annual report. My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my certificate, I do not express any form of assurance conclusion thereon. My responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or knowledge obtained in the course of the audit, or otherwise appears to be materially misstated.

If I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact.

I have nothing to report in this regard.

## Opinion on other matters

In my opinion, the part of the Remuneration Report to be audited has been properly prepared in accordance with HM Treasury directions made under paragraph 17(1) of Schedule 1 the Public Services Ombudsman (Wales) Act 2019.

In my opinion, based on the work undertaken in the course of my audit:

- the parts of the Accountability Report subject to audit have been properly prepared in accordance with HM Treasury directions made under paragraph 17(1) of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019; and
- the information given in the Annual Report for the financial year for which the financial statements are prepared is consistent with the financial statements and is in accordance with the applicable legal requirements.

## Matters on which I report by exception

In the light of the knowledge and understanding of the body and its environment obtained in the course of the audit, I have not identified material misstatements in the Annual Report.

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- I have not received all of the information and explanations I require for my audit;
- proper accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my team;
- the financial statements and the audited part of the Accountability Report are not in agreement with the accounting records and returns;
- information specified by HM Treasury regarding the remuneration and other transactions is not disclosed;

- certain disclosures of remuneration specified by HM Treasury's Government Financial Reporting Manual are not made or parts of the Remuneration Report to be audited are not in agreement with the accounting records and returns; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

## **Responsibilities of the Accounting Officer for the financial statements**

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for:

- maintaining proper accounting records;
- the preparation of the financial statements and Annual Report in accordance with the applicable financial reporting framework and for being satisfied that they give a true and fair view;
- ensuring that the Annual Report and financial statements as a whole are fair, balanced and understandable;
- ensuring the regularity of financial transactions;
- internal controls as the Accounting Officer determines is necessary to enable the preparation of financial statements to be free from material misstatement, whether due to fraud or error;
- assessing the body's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Accounting Officer anticipates that the services provided by the Public Services Ombudsman for Wales will not continue to be provided in the future; and
- for putting in place proper arrangements for the economic, efficient and effective use of the Public Services Ombudsman for Wales resources.

## Auditor's responsibilities for the audit of the financial statements

My responsibility is to examine, certify and report on the financial statements in accordance with paragraph 18 (2) of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019.

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue a certificate that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

Irregularities, including fraud, are instances of non-compliance with laws and regulations. I design procedures in line with my responsibilities, outlined above, to detect material misstatements in respect of irregularities, including fraud.

My procedures included the following:

- enquiring of management, and those charged with governance, including obtaining and reviewing supporting documentation relating to the Public Services Ombudsman for Wales' policies and procedures concerned with: identifying, evaluating and complying with laws and regulations and whether they were aware of any instances of non-compliance.
- detecting and responding to the risks of fraud and whether they have knowledge of any actual, suspected or alleged fraud.
- the internal controls established to mitigate risks related to fraud or non-compliance with laws and regulations.
- considering as an audit team how and where fraud might occur in the financial statements and any potential indicators of fraud. As part of this discussion, I identified potential for fraud in the following areas: revenue recognition, expenditure recognition, and posting of unusual journals.
- obtaining an understanding of the Public Services Ombudsman for Wales' framework of authority, as well as other legal and regulatory frameworks that the Public Services Ombudsman for Wales operates in, focusing

on those laws and regulations that had a direct effect on the financial statements or that had a fundamental effect on the operations of the Public Services Ombudsman for Wales.

- obtaining an understanding of related party relationships.

In addition to the above, my procedures to respond to identified risks included the following:

- reviewing the financial statement disclosures and testing to supporting documentation to assess compliance with relevant laws and regulations discussed above;
- enquiring of management about actual and potential litigation and claims;
- reading minutes of meetings of those charged with governance and the Advisory Board; and
- in addressing the risk of fraud through management override of controls, testing the appropriateness of journal entries and other adjustments; assessing whether the judgements made in making accounting estimates are indicative of a potential bias; and evaluating the business rationale of any significant transactions that are unusual or outside the normal course of business.

I also communicated relevant identified laws and regulations and potential fraud risks to all audit team members and remained alert to any indications of fraud or non-compliance with laws and regulations throughout the audit.

The extent to which my procedures are capable of detecting irregularities, including fraud, is affected by the inherent difficulty in detecting irregularities, the effectiveness of the Public Services Ombudsman for Wales' controls, and the nature, timing and extent of the audit procedures performed.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of my auditor's report.



## Other auditor's responsibilities

I am required to obtain evidence sufficient to give:

- reasonable assurance that the Statement of Resource Outturn properly presents the outturn against the sums authorised by the Senedd for the year ended 31 March 2023 and shows that those totals have not been exceeded;
- reasonable assurance that the expenditure and income recorded in the financial statements have been applied to the purposes intended by the Senedd and the financial transactions recorded in the financial statements conform to the authorities which govern them; and
- assurance that the Accounting Officer has made appropriate arrangements for the economic, efficient and effective use of the Public Services Ombudsman for Wales resources.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

## Electronic publication of financial statements

The maintenance and integrity of the Public Service Ombudsman for Wales website is the responsibility of the Ombudsman. The work carried out by the auditor does not involve consideration of these matters and, accordingly, the auditors accept no responsibility for any changes that may have occurred, since audit certification, to the Statement of Accounts on the website.

## Report

I have no observations to make on these financial statements.



**Adrian Crompton**

**Auditor General for Wales**

20 July 2023

**1 Capital Quarter  
Tyndall Street  
Cardiff, CF10 4BZ**



# Annual Accounts 2022/23

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# Statement of Comprehensive Net Expenditure

for the year ended 31 March 2023

Administration costs	Note	2022/23	2021/22
		£000	£000
Staff costs	2	4,168	3,920
Other non-staff administration costs	3	1,192	1,174
<b>Gross Administration Costs</b>		<b>5,360</b>	<b>5,094</b>
Operating Income	4	(19)	(17)
<b>Net Administration Costs</b>		<b>5,341</b>	<b>5,077</b>
<b>Net Revenue Out-turn</b>		<b>5,341</b>	<b>5,077</b>

Notes 1 to 18 form part of these statements.

All activities commenced in the period are continuing.

# Statement of Financial Position

for the year ended 31 March 2023

	Note	2022/23 £000	2021/22 £000
<b>Non-current assets</b>			
Property, Plant and Equipment	6a	113	150
Intangible assets	6b	93	120
Right of use asset	6c	401	-
Receivables due after more than 1 year	7	-	-
		<b>607</b>	<b>270</b>
<b>Current Assets</b>			
Trade and other receivables	7	280	255
Cash and cash equivalents	8	1	120
		<b>281</b>	<b>375</b>
<b>Total assets</b>		<b>888</b>	<b>645</b>
<b>Current liabilities</b>			
Trade and other payables	9	(594)	(297)
Provisions less than 1 year	10	(49)	(45)
		<b>(643)</b>	<b>(342)</b>
<b>Total assets less current liabilities</b>		<b>245</b>	<b>303</b>
<b>Non-current liabilities</b>			
Trade and other payables due after 1 year	9	(6)	(10)
Provisions greater than 1 year	10	(461)	(482)
		<b>(467)</b>	<b>(492)</b>
<b>Total assets less liabilities</b>		<b>(222)</b>	<b>(189)</b>
<b>General Fund</b>		<b>(222)</b>	<b>(189)</b>

Notes 1 to 18 and the Pension Disclosures form part of these statements.

The 2022/23 figures are prepared on an IFRS 16 basis.

The financial statements were approved by the Accounting Officer and authorised for issue on 19 July 2023 by:

*M.M. Morris.*

**Michelle Morris**

**Accounting Officer**

Public Services Ombudsman for Wales

19 July 2023

# Statement of Cash Flows

for the year ended 31 March 2023

	Note	2022/23	2021/22
		£000	£000
Net cash outflow from operating activities	11	(5,308)	(5,089)
Net cash outflow from investing activities	12	-	(37)
Financing from Welsh Parliament	13	5,309	5,246
Prior year cash balance repaid		(120)	(20)
<b>Net increase (decrease) in cash equivalents after adjustments for payments to Welsh Consolidated Fund</b>		<b>(119)</b>	<b>100</b>
<b>Cash and cash equivalents at beginning of period</b>		<b>120</b>	<b>20</b>
<b>Cash and cash equivalents at end of period</b>		<b>1</b>	<b>120</b>

Notes 1 to 18 form part of these statements.

# Statement of Changes in Taxpayers' Equity

for the year ended 31 March 2023

General Fund	2022/23	2021/22
	£000	£000
Balance as at 1 April	(189)	(238)
Net operating costs	(5,341)	(5,077)
Funding by Welsh Parliament	5,309	5,246
Due back to Welsh Consolidated Fund:		
Cash	(1)	(120)
Non-operating income	-	-
<b>Total recognised income and expense for year</b>	<b>(33)</b>	<b>49</b>
<b>Balance as at 31 March</b>	<b>(222)</b>	<b>(189)</b>

Notes 1 to 18 and the Pension Disclosures form part of these statements.

# Notes to the Financial Statements

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## 1. Statement of Accounting Policies

These financial statements have been prepared in accordance with the Government Financial Reporting Manual (the FReM) issued by HM Treasury which is in force for 2022/23. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adopted or interpreted for the public sector. Where the FReM permits a choice of accounting policy, the accounting policy which has been judged to be most appropriate to the particular circumstances of the PSOW for the purpose of giving a true and fair view has been selected. The particular accounting policies adopted by the PSOW are described below. They have been applied consistently in dealing with items considered material in relation to the accounts.

### 1.1. Accounting Convention

These accounts have been prepared under the historical cost convention modified to account for any revaluation of fixed assets, where material to their value to the business, by reference to their current costs. PSOW does not include invoices where the total value is less than £500 in prepayments.

### 1.2. Property, Plant and Equipment

Expenditure on property, plant and equipment is capitalised where the purchases are expected to have a useful life extending over more than 1 year and the cost exceeds £5k. Assets costing less than £5k may be capitalised providing they are capital in nature and are part of a larger scheme that is, in total, more than £5k. Assets are shown at cost less an allowance for depreciation. On initial recognition, fixed assets are measured at cost, including such costs as installation, which are directly attributable to bringing them into working condition for their intended use. In reviewing the costs of fixed assets previously acquired and the prices paid for new acquisitions during the year there is no material difference between the historic net book value of the assets and their replacement cost less depreciation.



### 1.3. Depreciation

Assets are depreciated at rates calculated to write them down to zero or, if applicable, estimated residual value on a straight-line basis over their estimated useful life following an initial charge of a full month's depreciation in the month of purchase. Assets in the course of construction are depreciated from the month in which the asset is brought into use.

Except where otherwise noted asset lives are assumed to be the following:

Plant	10 years or the lease term if shorter
Furniture and other fittings	10 years or in the case of fittings, the lease term
Computers and other equipment	3 to 10 years

### 1.4. Intangible assets

Purchased computer software licences and developed software are capitalised where expenditure of £5k or more is incurred, and the useful life is more than 1 year. Intangible assets costing less than £5k may be capitalised providing they are capital in nature and are part of a larger scheme that is, in total, more than £5k. Intangible assets are reviewed annually for impairment and are stated at amortised historic cost. Software licences are amortised over the shorter of the term of the licence and the useful economic life of the computer equipment on which they are installed. This would usually be from 3 to 5 years. Developed software is amortised over the estimated useful life. In the year of acquisition, amortisation charges commence when the asset is brought into use.

### 1.5. Value Added Tax

The PSOW is not registered for VAT. Expenditure is therefore disclosed gross of VAT.

## 1.6. Pensions

The pension obligations to present and past employees are covered by the provisions of the Principal Civil Service Pension Scheme (PCSPS) and by direct payment to previous Commissioners for Local Administration in Wales or any surviving beneficiaries. Full details are disclosed in the Pension Disclosures at the end of the Financial Statements. The costs of providing these pensions are charged through the Statement of Comprehensive Net Expenditure.

## 1.7. Early departure costs

Where the PSOW is required to meet the additional cost of benefits beyond the normal benefits payable by the appropriate pension scheme in respect of employees who retire early, these costs are charged to the Statement of Comprehensive Net Expenditure in full when the liability arises.

## 1.8. Leases

Expenditure on leased property and equipment is charged in the period to which it relates. A right of use asset and liability has been recognised following IFRS 16 being implemented from 1 April 2022. There is also an associated depreciation charge and finance cost in the accounts.

## 1.9. Staff Costs

In line with IAS 19, short-term employee benefits, such as wages, salaries and social security contributions, paid annual leave and paid sick leave, as well as non-monetary benefits for current employees, are recognised when an employee has rendered services in exchange for those benefits.

## 1.10. Provisions

These are sums which are of uncertain timing or amount at the balance sheet date and represent the best estimate of the expenditure required to settle the obligations. Where the effect of the time value of money is significant, the estimated riskadjusted cash flows are discounted using the recommended HM Treasury discount rate.

## 1.11. Income

All income is recognised in the Statement of Comprehensive Net Expenditure in accordance with IAS 18 and IFRS 15.

## 1.12. Impact of Standards Not Yet Effective

Standard	Effective date	Further details
IFRS 17 Insurance Contracts	2023-24 at earliest	IFRS 17 replaces IFRS 4 Insurance Contracts, and requires a current measurement model, using updated information on obligations and risks, and requiring service results to be presented separately from finance income or expense. It applies to all insurance contracts issued, irrespective of the type of entity issuing the contracts, so is not relevant only for insurance companies.

## 2. Staff Costs and Numbers

The aggregate employment costs were as follows:

	2022/23	2021/22
	£000	£000
Permanent staff:		
Salaries	2,999	2,836
Social Security costs	314	272
Pension costs	809	745
Pension fund charges	28	39
<b>Total</b>	<b>4,150</b>	<b>3,892</b>
Temporary staff:		
Salaries	18	27
Social Security costs	-	1
Pension costs	-	-
<b>Total</b>	<b>18</b>	<b>28</b>
<b>Total Staff Costs</b>	<b>4,168</b>	<b>3,920</b>



The average number of whole-time equivalent persons employed (including senior management and fixed term appointments) during the year was as follows:

	2022/23	2021/22
	No.	No.
Directors	2	2
Communications and PA	3	3
Complaints and Investigations	50	49
Improvement Team	6	5
Support	8	8
<b>Total</b>	<b>69</b>	<b>67</b>

### 3. Non-Staff Administration Costs

	2022/23	2021/22
	£000	£000
Rent	28	193
External Audit fee	17	19
Legal and professional fees	243	173
Other property costs	187	171
IFRS 16 interest charge	5	-
Computer services	284	331
Office costs	104	137
Travel and Subsistence	12	6
Training and Recruitment	42	36
Communications	36	47
<b>Sub-total</b>	<b>958</b>	<b>1,113</b>
Depreciation	207	36
Amortisation charge	27	25
Loss on disposal	-	-
<b>Sub-total</b>	<b>234</b>	<b>61</b>
<b>Total Other Administration Costs</b>	<b>1,192</b>	<b>1,174</b>

The 2022/23 figures are prepared on an IFRS 16 basis.

## 4. Operating Income

	2022/23	2021/22
	£000	£000
Seconded staff	(18)	(16)
Other – Future Generations Commissioner	(1)	(1)
<b>Total</b>	<b>(19)</b>	<b>(17)</b>

## 5. Operating Costs by Strategic Aims

The costs of providing a first-class Ombudsman service to Wales are set out below. During 2022/23 we had 3 strategic aims for delivering our mission and the allocation of costs to each of the aims has been based on the following:

- a an estimate of the staff time spent on the objective
- b direct allocation of expenditure where applicable
- c apportionment of other costs pro rata to the estimate of staff time.

	2022/23		2021/22	
	£000	%	£000	%
<b>Strategic Aim 1:</b> A fair, independent, inclusive and responsive complaints service.	4,012	75.1	3,918	77.2
<b>Strategic Aim 2:</b> Promote learning from complaints and stimulate improvements on a wider scale.	1,083	20.3	944	18.6
<b>Strategic Aim 3:</b> Identify and adopt best practice. Secure value for money and services that are fit for the future. Support staff and ensure good governance which supports and challenges us.	246	4.6	215	4.2
<b>Net Resources Out-turn</b>	<b>5,341</b>	<b>100.0</b>	<b>5,077</b>	<b>100.0</b>

The Aims analysis excludes capital expenditure.

## 6a. Property, Plant and Equipment

2022/23	Plant	Computers and other equipment	Furniture and other fittings	Surplus assets	Total
	£000	£000	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>156</b>	<b>240</b>	<b>442</b>	<b>-</b>	<b>838</b>
Additions	-	-	-	-	-
Reclassifications	-	(48)	(89)	137	-
Disposals	-	(45)	-	-	(45)
<b>At 31 March</b>	<b>156</b>	<b>147</b>	<b>353</b>	<b>137</b>	<b>793</b>
<b>Depreciation as at 1 April</b>	<b>(156)</b>	<b>(171)</b>	<b>(361)</b>	<b>-</b>	<b>(688)</b>
Charged in the year	-	(19)	(18)	-	(37)
Reclassifications	-	48	89	(137)	-
Disposals	-	45	-	-	45
<b>At 31 March</b>	<b>(156)</b>	<b>(97)</b>	<b>(290)</b>	<b>(137)</b>	<b>(680)</b>
<b>Carrying amount as at 31 March 2023</b>	<b>-</b>	<b>50</b>	<b>63</b>	<b>-</b>	<b>113</b>
Carrying amount as at 31 March 2022	-	69	81	-	150

2021/22	Plant	Computers and other equipment	Furniture and other fittings	Total
	£000	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>156</b>	<b>224</b>	<b>442</b>	<b>822</b>
Additions	-	16	-	16
Disposals	-	-	-	-
<b>At 31 March</b>	<b>156</b>	<b>240</b>	<b>442</b>	<b>838</b>
<b>Depreciation as at 1 April</b>	<b>(156)</b>	<b>(154)</b>	<b>(342)</b>	<b>(652)</b>
Charged in the year	-	(17)	(19)	(36)
Disposals	-	-	-	-
<b>At 31 March</b>	<b>(156)</b>	<b>(171)</b>	<b>(361)</b>	<b>(688)</b>
<b>Carrying amount as at 31 March 2022</b>	<b>-</b>	<b>69</b>	<b>81</b>	<b>150</b>
Carrying amount as at 31 March 2021	-	70	100	170

## 6b. Intangible Assets

2022/23	Information Technology	Software Licences	Total
	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>518</b>	<b>52</b>	<b>570</b>
Additions	-	-	-
Disposals	-	-	-
<b>At 31 March</b>	<b>518</b>	<b>52</b>	<b>570</b>
<b>Amortisation as at 1 April</b>	<b>(398)</b>	<b>(52)</b>	<b>(450)</b>
Amortisation charged in the year	(27)	-	(27)
Disposals	-	-	-
<b>At 31 March</b>	<b>(425)</b>	<b>(52)</b>	<b>(477)</b>
<b>Carrying Value as at 31 March 2023</b>	<b>93</b>	<b>-</b>	<b>93</b>
Carrying Value as at 31 March 2022	120	-	120



2021/22	Information Technology	Software Licences	Total
	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>497</b>	<b>52</b>	<b>549</b>
Additions	21	-	21
Disposals	-	-	-
<b>At 31 March</b>	<b>518</b>	<b>52</b>	<b>570</b>
<b>Amortisation as at 1 April</b>	<b>(373)</b>	<b>(52)</b>	<b>(425)</b>
Amortisation charged in the year	(25)	-	(25)
Disposals	-	-	-
<b>At 31 March</b>	<b>(398)</b>	<b>(52)</b>	<b>(450)</b>
<b>Carrying Value as at 31 March 2022</b>	<b>120</b>	<b>-</b>	<b>120</b>
Carrying Value as at 31 March 2021	124	-	124

In the opinion of the Public Services Ombudsman for Wales there is no material difference between the net book value of assets at current values and at their historic cost.

## 6c. Right of Use Assets

2022/23	IFRS 16 right of use asset	Total
	£000	£000
<b>Transition asset as at 1 April</b>	<b>571</b>	<b>571</b>
Additions	-	-
Disposals	-	-
<b>At 31 March</b>	<b>571</b>	<b>571</b>
<b>Depreciation as at 1 April</b>	<b>-</b>	<b>-</b>
Charged in the year	(170)	(170)
Disposals	-	-
<b>At 31 March</b>	<b>(170)</b>	<b>(170)</b>
<b>Carrying amount as at 31 March 2023</b>	<b>401</b>	<b>401</b>
Carrying amount as at 31 March 2022	-	-

The discount factor used in our IFRS 16 calculations is 0.95% for the financial year in line with the guidance issued by the Treasury. There are no prior year figures as IFRS 16 was implemented from 1 April 2022.

## 7. Trade and other Receivables

	2022/23	2021/22
	£000	£000
<b>Amounts falling due within 1 year</b>		
Prepayments	280	255
Trade debtors	-	-
<b>Amounts falling due after more than 1 year</b>		
Prepayments	-	-
<b>Total</b>	<b>280</b>	<b>255</b>

## 8. Cash and Cash Equivalents

Any bank balance held at the year-end must be returned to the Welsh Consolidated Fund. A figure of £1k (£120k in 2021/22) has been included within the accounts, being the net balance at the year-end on all the bank accounts operated by the Public Services Ombudsman for Wales, irrespective of whether the individual account is in debit or credit.

The year-end balance will be repaid to the Welsh Consolidated Fund in 2023/24 under the Government of Wales Act 2006.

## 9. Trade Payables and other Current Liabilities

	2022/23	2021/22
	£000	£000
<b>Amounts falling due in 1 year</b>		
Untaken annual leave	115	122
Deferred rent reduction	5	5
Welsh Consolidated Fund - unspent balances	1	120
Trade payables	8	3
Right of use asset creditor	411	-
Accruals	54	47
	<b>594</b>	<b>297</b>
<b>Amounts falling due in more than 1 year</b>		
Deferred rent reduction	6	10
<b>Total</b>	<b>600</b>	<b>307</b>

The 2022/23 figures are prepared on an IFRS 16 basis.

## 10. Provisions for Liabilities and Charges

	2022/23				2021/22
	Pensions for Former Commissioners	Dilapidation Costs	Other Costs	Total	Total
	£000	£000	£000	£000	£000
Balance at 1 April	204	323	-	527	516
Additional provision required	43	-	-	43	54
Discount rate movement	(14)	-	-	(14)	2
Provisions utilised in the year	(46)	-	-	(46)	(45)
<b>Balance at 31 March</b>	<b>187</b>	<b>323</b>	<b>-</b>	<b>510</b>	<b>527</b>

Analysis of expected timings of payment of provisions:

	2022/23	2021/22
	£000	£000
Payable within 1 year	49	46
Payable within 2 to 5 years	461	474
Payable in more than 5 years	-	7
<b>Balance at 31 March 2021</b>	<b>510</b>	<b>527</b>

Pension provisions are calculated based on the National Life Tables for England and Wales issued by the Office of National Statistics. Later year pension increases are in line with GDP deflator information issued by HM Treasury. The discount factor has been amended to 1.70% for the financial year (-1.30% in 2021/22) in line with the guidance issued by the Treasury. Two surviving spouses of former Commissioners remain as a pension liability.

## 11. Reconciliation of Operating Cost to Operating Cash Flows

	Notes	2022/23	2021/22
		£000	£000
<b>Net operating cost</b>		<b>(5,341)</b>	<b>(5,077)</b>
Adjust for non-cash items	3	(337)	61
Decrease/(Increase) in trade and other receivables	7	(25)	(26)
Increase/(Decrease) in trade and other payables	9	293	42
Movement in provisions	10	(17)	11
Movement in cash repaid to Welsh Consolidated Fund	8	119	(100)
<b>Net cash outflow from operating activities</b>		<b>(5,308)</b>	<b>(5,089)</b>

The 2022/23 figures are prepared on an IFRS 16 basis.

## 12. Non-Current Asset Expenditure and Financial Investment

	2022/23	2021/22
	£000	£000
Purchases of property, plant and equipment	-	(16)
Proceeds of disposals of property, plant and equipment	-	-
Purchases of intangible assets	-	(21)
<b>Net cash outflow from investing activities</b>	<b>-</b>	<b>(37)</b>

### 13. Reconciliation of Net Cash Requirement to Increase/(Decrease) in Cash

	2022/23	2021/22
	£000	£000
Net Cash Requirement:		
Operating activities	(5,308)	(5,089)
Capital Expenditure	-	(37)
	<b>(5,308)</b>	<b>(5,126)</b>
Financing from Welsh Parliament	5,309	5,246
Repayment to Welsh Consolidated Fund	(120)	(20)
<b>Increase/(Decrease) in cash and cash equivalents</b>	<b>(119)</b>	<b>100</b>

### 14. Commitments under Operating Leases

	2022/23	2021/22
	£000	£000
Total future minimum operating lease payments on building:		
Payable within 1 year	198	198
Within 2 and 5 years	304	502
More than 5 years	-	-
	<b>502</b>	<b>700</b>
Other:		
Payable within 1 year	-	-
Within 2 and 5 years	-	-
More than 5 years	-	-
	-	-
<b>Total of all operating leases</b>	<b>502</b>	<b>700</b>

## 15. Contingent Liabilities

There are no claims or litigations that would affect the financial statements themselves but there is one Code of Conduct case where leave to appeal has been sought. The outcome is uncertain and the amount of any potential liability is unknown.

## 16. Capital Commitments

There were no capital commitments at 31 March 2023 (2021/22 Nil).

## 17. Related Party Transactions

The PSOW is headed by the Public Services Ombudsman for Wales. The office was established under the Public Services Ombudsman (Wales) Act 2005 and is now governed by the Public Services Ombudsman (Wales) Act 2019. The Ombudsman is independent of Government and the funding arrangements of the Office are set up to ensure that the independence of the Office is secured. The PSOW has had a number of material transactions with the Welsh Parliament, HM Revenue and Customs (Tax and National Insurance) and the Cabinet Office (payments in respect of the Principal Civil Service Pension Scheme). During the year, no directors, key members of staff or their close relatives have undertaken any material transactions.

## 18. Events after the Reporting Period

None.

# Pension Disclosures

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One pension scheme was operated on behalf of current staff during 2021/22 – The Principal Civil Service Pension Scheme (PCSPS). There also remains an ongoing liability to meet the unfunded pensions of two dependant relatives of former Local Government Commissioners.

## Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015 a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or **alpha**, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date all newly appointed civil servants and the majority of those already in service joined **alpha**. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS). The PCSPS has four sections: 3 providing benefits on a final salary basis (**classic**, **premium** or **classic plus**) with a normal pension age of 60; and one providing benefits on a whole career basis (**nuvos**) with a normal pension age of 65.

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under **classic**, **premium**, **classic plus**, **nuvos** and **alpha** are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012 remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 switch into **alpha** sometime between 1 June 2015 and 1 February 2022. Because the Government plans to remove discrimination identified by the courts in the way that the 2015 pension reforms were introduced for some members, eligible members with relevant service between 1 April 2015 and 31 March 2022 may be entitled to different pension benefits in relation to that period (and this may affect the Cash Equivalent Transfer Values shown in this report – see below). All members who switch to **alpha** have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or **alpha** – as appropriate. Where the official has benefits in both the PCSPS and **alpha** the figure quoted is the combined value of



their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a defined contribution (money purchase) pension with an employer contribution (**partnership** pension account).

Employee contributions are salary-related and range between 4.6% and 8.05% for members of **classic**, **premium**, **classic plus**, **nuvos** and **alpha**. Benefits in **classic** accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For **premium**, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike **classic**, there is no automatic lump sum. **classic plus** is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per **classic** and benefits for service from October 2002 worked out as in **premium**. In **nuvos** a member builds up a pension based on his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. Benefits in **alpha** build up in a similar way to **nuvos**, except that the accrual rate is 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The **partnership** pension account is an occupational defined contribution pension arrangement which is part of the Legal & General Mastertrust. The employer makes a basic contribution of between 8% and 14.75% (depending on the age of the member). The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.5% of pensionable salary to cover the cost of centrally provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of **classic**, **premium** and **classic plus**, 65 for members of **nuvos**, and the higher of 65 or State Pension Age for members of **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha the figure quoted is the combined value of their benefits in the two schemes, but note that part of

that pension may be payable from different ages.)

Further details about the Civil Service pension arrangements can be found at the website [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

## Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

## Real Increase in CETV

This reflects the increase in CETV that is funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

## Compensation for loss of office

No staff left under Voluntary Exit or Voluntary Redundancy terms during the financial year.

## Pensions for former Ombudsmen

With the agreement of the Secretary of State for Wales in 1991 and subsequent confirmation by Statutory Instrument 1993 No. 1367, Local Government Commissioners became eligible to join the Local Government Pension Scheme. However, the pensions of the three previous Local Government Commissioners remained the responsibility of the Public Services Ombudsman for Wales and are met through the Statement of Comprehensive Net Expenditure.

At 31 March 2023 two surviving spouses of former Commissioners continued to receive a pension.

Pensions are increased annually in line with other pension schemes within the Public Sector. The basis of calculations of the Annual Pensions Increase has been changed from using the annual movement based on the Retail Price Index (RPI) to the Consumer Price Index (CPI). The amount of the uplift applied is normally set out in the Statutory Instrument Pensions Increase (Review) Order. This uplift for 2022/23 was 10.1%.

The total payments during 2022/23 were £46k (£45k in 2021/22). The liabilities arising out of the obligation to finance these pensions together with any dependant pensions has been calculated to be £186k (£204k in 2021/22). The calculation to determine the overall liability has been carried out internally using life expectancy tables for males and females in Wales obtained from the website of the Government Actuary's Department. A discount rate, from PES (2022), of 1.70% (-1.30% in 2021/22) has been applied in accordance with the Treasury guidance that all pension liabilities should be discounted.

# Appendices

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## Some terms that we use in this report

<p><b>Case:</b> any matter raised with us by a member of the public</p>	<p><b>Caseload:</b> all cases that we handle.</p>
<p><b>Enquiry:</b> a case where a member of the public contacts us with a general query but is not yet ready to complain – or we know straight away that we cannot look into their issue. If that happens, we try to offer advice or direct people to another organisation that can help.</p>	<p><b>Pre-assessment:</b> a Code of Conduct case which is not a duly made complaint. People who complain to us about the Code of Conduct need to sign a declaration to say that the details of the complaint are true and they are aware that their details and the complaint will be shared with the member. If they do not sign that declaration, we close the case as preassessment.</p>
<p><b>Complaint:</b> a case where we have had enough information to start looking into an issue to see what we can do. Once we consider the information received, we can reject a complaint, suggest how it can be resolved quickly ('early resolution') or start an investigation.</p>	
<p><b>Outcome:</b> our decision after we have considered a complaint.</p>	
<p><b>Intervention:</b> a complaint outcome when we decided that something has gone wrong with public services and things must be put right. This could be by making recommendations or agreeing early resolution or settlement of a complaint.</p>	<p><b>Referral:</b> a type of outcome in Code of Conduct cases where we refer a matter to a Standards Committee or the Adjudication Panel for Wales. We generally do this for cases which involve serious breaches of the Code.</p>

# The complaint journey

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## Check - we check that we can look into your complaint

### What we will do

When you first contact us, we will check if we can look into your complaint. This includes checking that:

- we can look at the issue you are complaining about
- we can look into the organisation you are complaining about
- we have enough information about your complaint.

### What can we decide?

If we can look into your complaint, we will let you know (see 'Assess').

If we cannot look into your issue further, we will let you know. We will do our best to suggest what you can do next. If we know of an organisation that could help, we will give you more information about it.

## Assess – we take a closer look at your complaint to see if we can resolve it early or if we need to investigate

### What we will do

We will look at your complaint in more detail. These are examples of the things we will think about:

- whether you complained to us within a year of knowing about the issue
- you have (or had) the option of taking legal action instead to put things right for you
- another organisation is better placed to deal with your complaint
- there are signs that the organisation potentially got things wrong and that it had a negative effect on you or the person you are complaining for
- there is more that the organisation could do to put things right for you.

### What can we decide?

We are an independent decision-maker. To be fair to you and the organisation you have complained about, we will look at the evidence and the facts before we make a decision.

As we assess your complaint, we can:

- decide to investigate your complaint (see 'Investigate')
- arrange early action for the organisation to put things right for you. We will write to you to explain what we have arranged and we will close your complaint. We will make sure that the organisation did what it agreed to do (see 'Make sure').

If we can't do either of these things, we will write to you to tell you why.

We close most of our complaints at 'Assess'. We only investigate about 1 in 10 of our complaints, usually when the issue is very complicated or if it may affect other people.

### How long will it take?

On average, it takes us about 25 days to assess a complaint. It can sometimes take longer, for example, if we are arranging early action for the organisation to put things right.

## Investigate – we investigate some or all of your concerns

### What we will do

We will talk to you about the investigation process. We will then write to you to let you know when the investigation starts and confirm what we are investigating.

We'll gather all the information we need, including from you and the organisation you have complained about. We will also often ask for advice from professional advisors. We will then make our decision on your complaint.

### What can we decide?

As we investigate your complaint, we can:

- complete the investigation and decide to uphold your complaint
- complete the investigation and decide not to uphold your complaint
- decide to settle the complaint where the organisation can take action to put things right
- decide to end the investigation early if we find that there is not enough evidence to show that the organisation has done something wrong

If we uphold your complaint, we will recommend what the organisation should do to put things right.

At the end of the investigation we will explain what we found and why we did or did not uphold your complaint.

Of the complaints we investigate each year, we uphold or settle around 7 out of 10.

### How long will it take?

An investigation can take around 12 months from when you first complain to us. When the complaint is very complicated it can take us longer to investigate it. We will keep in touch with you during the investigation.



## Follow up – we check that the organisation did what it promised to do

### What we will do

When we arrange early action for the organisation to put things right for you, or we settle or uphold your complaint after we investigated, we will recommend what the organisation should do to put things right for you.

We will tell the organisation how much time it has to show us that it did what it promised to do.

If the organisation does not show us that it acted on our recommendations, we will take further action.

# Our Key Performance Indicators

We check how well we perform against a set of measures called Key Performance Indicators (KPIs). Below we explain how we aimed to perform and how we did.

Performance indicator	Target	2022/23	2021/22
<b>Public services complaints</b>			
decision that a complaint is not within jurisdiction within 3 weeks	90%	94%	90%
decision taken not to investigate a complaint (after making initial enquiries) within 6 weeks	90%	87%	83%
where we seek early resolution, decision within 9 weeks	90%	90%	88%
decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	37%	69%
cases closed within 12 months	85%	37%	76%
<b>Code of Conduct complaints</b>			
decision taken not to investigate within 6 weeks.	90%	95%	98%
decision to investigate and start investigation within 6 weeks of the date sufficient information is received	90%	89%	80%
cases closed within 12 months	90%	66%	67%
<b>Customer satisfaction*</b>			
we are easy to find	-	87 / 95%	80 / 95%
we offer a helpful service	-	64 / 85%	60 / 86%
we clearly explain our process and decision	-	65 / 95%	65 / 91%
<b>How bodies fulfil our recommendations ('compliance')</b>			
proportion of recommendations due and complied with by public service providers	-	90%	81%
number of compliance visits	7	10	6

\* We present these results for all respondents (the first figure) as well as those satisfied with the outcome (the second figure).

Performance indicator	Target	2022/23	2021/22
Human resources			
completion of appraisal process	-	100%	100%
employee response to staff survey	-	89%**	84%
Staff training			
proportion of staff achieving target number of days of continuing professional development	-	80%	72%
Staff attendance			
average number of days lost through sickness per member of staff	-	8.59	7.2
proportion of working days lost through staff sickness	-	3.29%	2.70%
proportion of working days lost through short term sickness	-	1.01%	1.04%
proportion of working days lost through long term sickness	-	2.28%	1.70%
Financial performance			
cash repaid to Welsh Consolidated Fund	< 3%	0.01%	2.3%
unit cost per case	£700	£473	£491***
support costs as percentage of budget	< 5%	4.6%	4.2%
external Audit Opinion on Accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts
internal Audit Opinion on internal controls	Substantial Assurance	Substantial Assurance	Substantial Assurance
Complaints about us			
number of complaints received	N/A	30	32
number of complaints upheld	N/A	12	12
Sustainability			
waste (kg)	26,000	17,696	9,205
electricity (kWh)	104,000	74,102	73,754

\*\* We carry out our main staff survey every two years. For 2022/23 we are reporting response rate on an interim survey linked to FairPlay Employer status.

\*\*\* Figures reported for unit costs reflect the approach introduced in 2020/21. The target and previous years' figures have been restated using the same approach, so figures are meaningful.

# Complaints data

## Public services - new complaints

Subject	2022/23	2021/22
Health	37%	34%
Housing	18%	16%
Complaints Handling	18%	14%
Social Services	7%	8%
Planning and Building Control	4%	8%
COVID19	1%	3%
Other	15%	17%
<b>Grand Total</b>	<b>100%</b>	<b>100%</b>

Sector	2022/23	2021/22
NHS Bodies (including Health Boards, NHS Trusts, Dentist, GPs, Opticians and Pharmacists)	1288	1115
Local Authorities (including County/ County Borough Councils and School Appeal Panels)	1032	1162
Social Housing sector (housing associations)	348	302
Welsh Government and its sponsored bodies	61	74
Community Councils	30	31
Other	31	42
<b>All sectors</b>	<b>2790</b>	<b>2726</b>

Health Board	2022/23		2021/22	% change from 2021/22
	Number	Received per 1000 residents	Number	
Aneurin Bevan University Health Board	166	0.28	142	17%
Betsi Cadwaladr University Health Board	225	0.33	213	6%
Cardiff and Vale University Health Board	137	0.28	89	54%
Cwm Taf Morgannwg University Health Board	134	0.30	113	19%
Hywel Dda University Health Board	104	0.27	88	18%
Powys Teaching Health Board	23	0.17	10	130%
Swansea Bay University Health Board	137	0.36	110	25%
<b>All Health Boards</b>	<b>926</b>	<b>0.30</b>	<b>765</b>	<b>21%</b>

County and County Borough Council	2022/23		2021/22	% change from 2021/22
	Number	Received per 1000 residents	Number	
Blaenau Gwent County Borough Council	16	0.24	14	14%
Bridgend County Borough Council	55	0.38	55	0%
Caerphilly County Borough Council	49	0.28	60	-18%
Cardiff Council (Incl. Rent Smart Wales)	142	0.39	182	-22%
Carmarthenshire County Council	53	0.28	54	-2%
Ceredigion County Council	35	0.49	52	-33%
Conwy County Borough Council	31	0.27	27	15%
Denbighshire County Council	32	0.33	34	-6%
Flintshire County Council	65	0.42	99	-34%
Cyngor Gwynedd	36	0.31	39	-8%
Isle of Anglesey County Council	25	0.36	29	-14%
Merthyr Tydfil County Borough Council	17	0.29	27	-37%
Monmouthshire County Council	23	0.25	20	15%
Neath Port Talbot Council	39	0.27	45	-13%
Newport City Council	42	0.26	40	5%
Pembrokeshire County Council	44	0.36	39	13%
Powys County Council	38	0.29	55	-31%
Rhondda Cynon Taf County Borough Council (Incl South Wales Parking Group)	54	0.23	51	6%
Swansea Council	94	0.39	71	32%
Torfaen County Borough Council	16	0.17	18	-11%
Vale of Glamorgan Council	49	0.37	61	-20%
Wrexham County Borough Council	65	0.48	71	-8%
<b>All County and County Borough Councils</b>	<b>1020</b>	<b>0.33</b>	<b>1143</b>	<b>-11%</b>

Housing Association	2022/23	2021/22	% change from 2021/22
Adra	15	10	50%
Aelwyd Housing Association Ltd	1	2	-50%
Ateb Group Ltd	2	4	-50%
Barcud	4	3	33%
Bro Myrddin Housing Association	0	1	-100%
Bron Afon Community Housing Ltd	17	17	0%
Cadwyn Housing Association Ltd	6	0	
Cardiff Community Housing Association	7	15	-53%
Caredig	3	0	
Cartrefi Conwy	6	14	-57%
Charter Housing Association (part of the Pobl Group)	7	4	75%
Clwyd Alyn Housing Association	10	10	0%
Coastal Housing Group Ltd	6	14	-57%
Cynon Taf Community Housing Group	4	6	-33%
Derwen (part of the Pobl Group)	0	0	
Family Housing Association (Wales) Ltd	0	5	-100%
First Choice Housing Association Ltd	1	0	
Grwp Cynefin	5	4	25%
Hafan Cymru	0	1	-100%
Hafod Housing Association	62	28	121%
Linc Cymru Housing Association	14	9	56%
Melin Homes Ltd	3	5	-40%
Merthyr Tydfil Housing Association Ltd	1	5	-80%
Merthyr Valleys Homes	8	4	100%

## Complaints data

Monmouthshire Housing Association	2	6	-67%
Newport City Homes	19	8	138%
Newydd Housing Association	9	9	0%
North Wales Housing	4	8	-50%
Pobl	23	19	21%
Rhondda Housing Association Ltd	9	1	800%
Taff Housing Association	4	3	33%
Tai Calon Community Housing	10	5	100%
Tai Ceredigion Ltd	0	0	
Tai Tarian	21	15	40%
Trivallis	13	17	-24%
Ty Gwalia (part of Pobl Group)	3	3	0%
United Welsh Housing Association	16	16	0%
Valleys To Coast Housing	19	20	-5%
Wales & West Housing Association	14	11	27%
<b>All Housing Associations</b>	<b>348</b>	<b>302</b>	<b>15%</b>



## Public services - closed complaints

Health Board	2022/23			2021/22		
	No. of Interventions	No. of Closures	Intervention rate	No. of Interventions	No. of Closures	Intervention rate
Aneurin Bevan University Health Board	48	160	30%	42	125	34%
Betsi Cadwaladr University Health Board	80	231	35%	61	193	32%
Cardiff and Vale University Health Board	30	129	23%	18	81	22%
Cwm Taf Morgannwg University Health Board	37	141	26%	30	99	30%
Hywel Dda University Health Board	41	100	41%	23	82	28%
Powys Teaching Health Board	5	23	22%	3	6	50%
Swansea Bay University Health Board	33	134	25%	29	105	28%
<b>All Health Boards</b>	<b>274</b>	<b>918</b>	<b>30%</b>	<b>206</b>	<b>691</b>	<b>30%</b>

County and County Borough Council	2022/23			2021/22		
	No. of Interventions	No. of Closures	Intervention rate	No. of Interventions	No. of Closures	Intervention rate
Blaenau Gwent County Borough Council	0	16	0%	0	13	0%
Bridgend County Borough Council	5	57	9%	7	54	13%
Caerphilly County Borough Council	6	52	12%	7	58	12%
Cardiff Council (Incl Rent Smart Wales)	26	154	17%	46	175	26%
Carmarthenshire County Council	7	60	12%	7	49	14%
Ceredigion County Council	13	44	30%	13	46	28%
Conwy County Borough Council	5	35	14%	2	24	8%
Denbighshire County Council	2	33	6%	4	33	12%
Flintshire County Council	5	70	7%	15	94	16%
Cyngor Gwynedd	5	33	15%	6	41	15%
Isle of Anglesey County Council	5	25	20%	3	28	11%
Merthyr Tydfil County Borough Council	1	18	6%	2	26	8%
Monmouthshire County Council	1	22	5%	2	21	10%
Neath Port Talbot Council	7	38	18%	5	45	11%
Newport City Council	8	48	17%	4	36	11%
Pembrokeshire County Council	3	45	7%	2	40	5%
Powys County Council	8	44	18%	7	55	13%

Rhondda Cynon Taf County Borough Council (Incl South Wales Parking Group)	2	56	4%	3	45	7%
Swansea Council	10	99	10%	10	76	13%
Torfaen County Borough Council	1	17	6%	2	20	10%
Vale of Glamorgan Council	15	53	28%	9	62	15%
Wrexham County Borough Council	6	67	9%	4	67	6%
<b>All County and County Borough Councils</b>	<b>141</b>	<b>1086</b>	<b>13%</b>	<b>160</b>	<b>1108</b>	<b>14%</b>

Housing Association	2022/23			2021/22		
	No. of Interventions	No. of Closures	Intervention rate	No. of Interventions	No. of Closures	Intervention rate
Adra	2	16	13%	1	9	11%
Aelwyd Housing Association Ltd	0	1	-	0	2	-
Ateb Group Ltd	0	2	-	2	4	50%
Barcud	0	4	-	0	3	-
Bro Myrddin Housing Association	0	0	-	0	1	-
Bron Afon Community Housing Ltd	2	18	11%	3	18	17%
Cadwyn Housing Association Ltd	1	6	17%	0	0	-
Cardiff Community Housing Association	0	8	-	1	14	7%
Caredig	0	3	-	0	0	-
Cartrefi Conwy	2	7	29%	0	13	-
Charter Housing Association (Part of the Pobl Group)	0	7	-	1	5	20%
Clwyd Alyn Housing Association	0	9	-	0	10	-
Coastal Housing Group Ltd	0	6	-	1	14	7%
Cynon Taf Community Housing Group	0	4	-	1	6	17%
Family Housing Association (Wales) Ltd	0	0	-	0	5	-
First Choice Housing Association Ltd	0	1	-	0	0	-
Grwp Cynefin	0	5	-	1	4	25%
Hafan Cymru	0	1	-	0	0	-
Hafod Housing Association	15	59	25%	7	27	26%
Linc Cymru Housing Association	2	13	15%	2	10	20%
Melin Homes Ltd	0	3	-	0	6	-
Merthyr Tydfil Housing Association Ltd	0	1	-	1	7	14%
Merthyr Valleys Homes	1	8	13%	1	5	20%

Monmouthshire Housing Association	0	4	-	3	6	50%
Newport City Homes	2	18	11%	0	8	-
Newydd Housing Association	1	10	10%	1	9	11%
North Wales Housing	1	5	20%	1	8	13%
Pobl	3	22	14%	1	17	6%
Rhondda Housing Association Ltd	0	8	-	1	1	100%
Taff Housing Association	2	5	40%	0	1	-
Tai Calon Community Housing	0	9		0	5	-
Tai Tarian	0	22	-	2	14	14%
Trivallis	2	15	13%	3	17	18%
Ty Gwalia (Part Of Pobl Group)	0	3	-	0	3	-
United Welsh Housing Association	2	18	11%	2	14	14%
Valleys To Coast Housing	5	17	29%	3	22	14%
Wales & West Housing Association	1	14	7%	2	13	15%
<b>Grand Total</b>	<b>44</b>	<b>352</b>	<b>13%</b>	<b>41</b>	<b>301</b>	<b>14%</b>



## Code of Conduct - new complaints

Subjects	2022/23	2021/22
Accountability and openness	10%	5%
Disclosure and registration of interests	9%	11%
Duty to uphold the law	8%	9%
Integrity	6%	8%
Objectivity and propriety	3%	11%
Promotion of equality and respect	61%	51%
Selflessness and stewardship	3%	5%

Body	2022/23	2021/22	% change from 2021/22
Town and Community Councils	158	171	-8%
County and County Borough Councils	122	114	7%
National Parks	3	5	-40%
Fire Authorities	0	0	n/a
Police and Crime Panels	0	4	-100%
<b>Total</b>	<b>283</b>	<b>294</b>	<b>-4%</b>





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## STANDARDS COMMITTEE

18<sup>TH</sup> SEPTEMBER 2023

### A NEW TRIBUNAL SYSTEM FOR WALES: WHITE PAPER

**Purpose:**

To note the consultation proposals and formulate a response on behalf of the committee

**To consider and comment on the following issues:**

The impact of the proposals as they relate to the work of the Adjudication Panel for Wales and the operation of the Members Code of Conduct

**Reasons:**

The proposals directly impact upon the Adjudication Panel for Wales

**CABINET MEMBER PORTFOLIO HOLDER: Not Applicable**

**Directorate**

**Name of Head of Service:**

Linda Rees Jones

**Designations:**

Head of Administration and Law

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**EXECUTIVE SUMMARY**  
**STANDARDS COMMITTEE**  
**18<sup>TH</sup> SEPTEMBER 2023**

**A NEW TRIBUNAL SYSTEM FOR WALES: WHITE PAPER**

On the 19<sup>th</sup> June 2023 the Welsh Government published a consultation paper on proposed reforms to the devolved tribunals in Wales.

Whilst the impact of the proposals goes far beyond the work of the Adjudication Panel for Wales (APW) the proposal expressly brings it within the scope of the reforms. Paragraph 37 sets out the proposed new structure namely.

A unified tribunal system for Wales comprising 2 new generic tribunals:

- a. **the First-tier Tribunal for Wales**, the tribunal of first instance organised into chambers based on jurisdiction to assume the jurisdictions of the tribunals that will transfer into the new unified structure and to accommodate and preserve judicial expertise, and
- b. **the Appeal Tribunal for Wales**, the appeal tribunal to hear appeals from the First-tier Tribunal for Wales, also organised into chambers as appropriate as appeal jurisdictions are transferred to it and the volume of appeal work develops.

If adopted, this will add an additional layer of appeal compared to the current APW structure.

The White Paper contains 43 consultation questions which can be found at Annex 1 and which for ease of reference have been compiled into a separate document attached to this report.

The deadline for responses is the 2<sup>nd</sup> October 2023.

<b>DETAILED REPORT ATTACHED ?</b>	YES
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## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET MEMBER PORTFOLIO HOLDER AWARE/CONSULTED**

N/A

**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

There are none.

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Llywodraeth Cymru  
Welsh Government

OPEN CONSULTATION

# A New Tribunal System for Wales: white paper

This consultation seeks views on proposed reforms to devolved tribunals in Wales to create a unified, coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales

**First published:** 19 June 2023

**Last updated:** 19 June 2023

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Go to <https://www.gov.wales/new-tribunal-system-wales-white-paper-html> for the latest version.

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## Ministerial foreword

The principles of justice with which we will all be familiar – including equality under the law and fair treatment – are key components to making Wales a just, equal, diverse and prosperous nation. Justice permeates so many aspects of the lives of the people of Wales, and the effective delivery of justice is crucial to the way in which each one of us can make our voices heard and can enforce our basic rights.

For many years, the Welsh Government has argued that justice should be devolved to Wales, and we continue to pursue this as part of our programme for government. We believe that taking decisions about justice here in Wales will lead to better outcomes, by properly aligning justice with our distinct and developing social, health and education policies and the growing body of Welsh law.

In **Delivering Justice for Wales**, we set out some of the many innovative ways in which justice is currently being delivered in Wales, and why securing change is of a fundamental concern to the Welsh Government.

As we pursue change, however, we must also use our existing areas of responsibility as benchmarks of what can be achieved. Whilst the courts and tribunals system that operates in Wales is generally not devolved; Wales has its own small but significant body of devolved tribunals. As the independent Commission on Justice in Wales chaired by Lord Thomas of Cwmgiedd noted:

“ ...the Welsh tribunals and their administration should be seen and treated as part of Wales’ own emergent judicial system” (**Commission on Justice in Wales report**). ”

A tribunal is an efficient and accessible forum for dispute resolution, in some cases offering important protections against unfair action by the state and in other cases a means for individuals to resolve their private legal disputes. Although often more informal than a court, they are no longer seen as an arm of

government but rightly as an integral part of the judicial system.

Our devolved tribunals are each governed by stand-alone legislative frameworks. In practical terms, this has designed gaps and inconsistencies into the tribunal system in Wales as it stands today. This is not because that has been the intention. Rather, it is by default because tribunals have developed piecemeal over many years. Recent developments have seen the creation of the office of the President of Welsh Tribunals by the Wales Act 2017. But that legislation overlays the existing frameworks and does not create a coherent whole.

We are focused on ensuring devolved elements of the justice system are an exemplar of what Wales can achieve. Tribunal reform is fundamental to this ambition. The Law Commission has set out a blueprint for reform (**Devolved Tribunals in Wales**) and the proposals contained in this White Paper build on the Law Commission's findings and recommendations.

We propose to bring our separate devolved tribunals into a unified and coherent structure comprising of a First-tier Tribunal for Wales and – for the first time in Welsh legal history - an Appeal Tribunal for Wales. Our proposals will also build flexibility into the tribunal system, so that as devolved law continues to grow, further routes of appeal can be absorbed with very little disruption, enabling our tribunal justice infrastructure to grow and evolve over time.

We want to ensure everyone in Wales is treated fairly and equally, including in relation to access to justice. Our proposals for reform further these commitments. In implementing our proposals to create a new structure for Wales' tribunals our objective is twofold. First, to create a modern tribunal system for Wales focused on access to justice and the needs of tribunal users who can be confident the system operates with independence and in a way that adjudicates on their disputes justly, efficiently and expeditiously. Second, to lay the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

We look forward to hearing your views on our proposals, and we value your

opinion.

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS / MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad

Counsel General and Minister for the Constitution



## Chapter 1: Introduction

### Introduction

1. This white paper sets out the Welsh Government's aims to reform the

devolved tribunals and to create a First-tier Tribunal for Wales divided into chambers and an Appeal Tribunal for Wales.

2. The Commission on Justice in Wales, which issued its report in October 2019 ([Justice in Wales for the people of Wales](#)), and the Law Commission have both concluded the system of devolved tribunals in Wales requires reform. The Law Commission review focused in-depth on the reform of devolved tribunals, and its report ([Devolved Tribunals in Wales](#)), published and laid before the Senedd in December 2021, set out 53 recommendations which together made up a blueprint for a modern, unified and coherent structure for tribunals in Wales (the Law Commission recommendations are set out in Annex 2 to this white paper).

3. The Law Commission consulted on its findings and proposals between 16 December 2020 to 19 March 2021. The review found that the current legislation relating to the devolved tribunals is unfit for purpose and that a unified tribunal service should be created.

4. In this paper, we draw upon the Law Commission's review and have undertaken further analysis where this was appropriate. This paper is supported by an integrated impact assessment, which provides a summary of the impacts of the proposals. This will be developed further alongside the legislation that will be required to implement reform.

## Historical background

5. The body of devolved tribunals in Wales are characterised by their piecemeal development over many years spanning the pre and post devolution periods. A number of our devolved tribunals were initially established before devolution by the then government for the United Kingdom and were administered by the departments that had established them. The Mental Health Review Tribunal for Wales, for example, was administered by the Health Department of the Welsh Office.



6. The Government of Wales Act 1998 devolved certain subject fields to the National Assembly for Wales, including functions for tribunals associated with those fields. Principally, this was because tribunals were then seen as being a function of the executive arm of government, established by government departments they were created to serve, rather than a judicial function.

7. In recognising that tribunals carry out judicial functions, steps have been taken to separate the devolved tribunals from the areas they are designed to exercise judgment over. The post of the President of Welsh Tribunals, the first senior judicial role relating solely to Wales, was created by the Wales Act 2017 to provide judicial leadership over a grouping of tribunals defined as the “Welsh Tribunals” (Section 59(1) of the Wales Act 2017). There are other tribunals, however, that operate in Wales, in devolved fields, but are not defined as Welsh Tribunals, and which fall outside the remit of the President of Welsh Tribunals.

8. In terms of the Welsh Tribunals, administrative steps have been taken to ensure day-to-day operational responsibilities are separate from the Welsh Government’s policy functions through the creation of a Welsh Tribunals Unit. The unit is responsible for administrative and operational support to the Welsh Tribunals. But structurally, the Welsh Tribunals Unit is part of and is embedded in Welsh Government.

9. The current approach has been made to work. We are not aware of any significant practical concerns about the effectiveness or fairness of the Welsh Tribunals. However, the existing arrangements are clearly not optimal. The legislation governing each tribunal in Wales does not recognise the way we treat them today. Consequently, we have a set of individual tribunals we are treating as a group or a unit, which were never intended to exist in anything other than in isolation.

10. The proposals set out in this white paper are informed by a significant body of work and by the reform undertaken in other jurisdictions, most notably:

- a. the report by Sir Andrew Leggatt ("**the Leggatt Report**") and proposals for reform for tribunals in England and Wales, excluding devolved tribunals,

were enacted by the Tribunals, Courts and Enforcement Act 2007 to put in place a unified First-tier Tribunal and an appellate Upper Tribunal, each divided into chambers

- b. the Administrative Justice and Tribunals Council (“the AJTC”) Welsh Committee review of tribunals operating in Wales (Administrative Justice and Tribunals Council Welsh Committee (2010) **Review of Tribunals Operating in Wales**, implementation of which the Welsh Government reviewed in 2014)
- c. the Committee for Administrative Justice and Tribunals Wales (“the CAJTW”) report on the administrative justice landscape in Wales (**Administrative Justice: A Cornerstone of Social Justice in Wales**)
- d. the Commission on Justice in Wales report (**Justice in Wales for the people of Wales**), and
- e. the Law Commission report (**Devolved Tribunals in Wales**).

11. The AJTC called for a consistent and unified approach across devolved tribunals, a recommendation echoed by its successor body the CAJTW which called for a standardised procedure for appointments, as well as a senior judicial lead for devolved tribunals. Some progress has been made, as set out in paragraphs 8 and 9 above. However, more can be done, and reform is needed.

## Why reform is needed

12. The tribunal system in Wales provides a commendable service to the people of Wales, but the legislative frameworks which underpin it are outdated, inflexible and lack coherence. Work arounds have been found for various issues, but they are a sticking plaster rather than a cure. A clearer, simpler, more effective and coherent way of operating Wales’ tribunal system is essential to the cause of delivering justice for the people of Wales.

13. A reformed tribunal system will provide a solid foundation for future change and devolution of justice functions to Wales. This is not about a one size fits all approach, but a unified system capable of accommodating differences between jurisdictions.

14. Similar processes of reform have already been undertaken in the other nations of the UK, where there is a greater degree of devolution and a longer history of responsibility for their own legal institutions and infrastructure. In following in the footsteps of other parts of the UK, Wales can learn from their successes and also in some areas go further to promote the fair, effective and independent delivery of justice.

## Proposals for reform – in summary

15. We propose to create a modern, structurally independent and unified system to absorb the jurisdictions of existing devolved tribunals, and to take on further functions over time. Our proposals are to create a single First-tier Tribunal for Wales divided into chambers, and an Appeal Tribunal for Wales. This will enable the tribunal justice system in Wales to better accommodate developments arising from future legislation, creating a structure that is flexible by design and capable of absorbing new jurisdictions with relatively little disruption.

16. The main proposed elements of our reform agenda are:

- a. a statutory framework for a single, unified and coherent tribunal system organised by type of jurisdiction with clear and consistent onward rights of appeal and capable of accommodating additional jurisdictions over time
- b. statutory duties to uphold the independence of the new tribunal system and greater structural independence for the way in which it is administered
- c. judicial leadership for the new tribunal system under the aegis of the President of Welsh Tribunals and Chamber Presidents and Deputy Presidents
- d. clear and efficient processes for setting procedural rules for the new tribunal system, and
- e. consistent arrangements for appointing tribunal members and clear processes including for determining remuneration, deployment and dealing with complaints and/or disciplinary matters.

17. The chapters that follow set out our proposals in more detail.

## Chapter 2: Scope of our reforms

### Proposal

We propose the scope of our proposals to create a unified and coherent tribunal system for Wales extends to “the devolved tribunals” in Wales as defined by the Law Commission’s review of devolved tribunals in Wales.

### Introduction

18. Our proposals are aimed at improving and regularising the structure and operation of the devolved tribunals in Wales. This not only applies to those tribunals that are currently referred to in law as “the Welsh Tribunals”, but other devolved tribunals in Wales too. This will strengthen the system of devolved tribunals under the leadership of the President of Welsh Tribunals.

### Determining the devolved tribunals

19. Being clear as to what is, and what is not, a tribunal is a first step towards identifying what functions should come within the scope of a modern tribunal system. In the future some functions currently undertaken elsewhere will move into the tribunal system, and some functions currently undertaken by tribunals may move into other forums for dispute resolution; but our starting point must be to look at the existing functions of devolved tribunals, and ensure they are undertaken as effectively as possible.

20. There is no single, generally accepted definition of a “tribunal”. The Law

Commission identified the general characteristics of “tribunals”, namely that they are bodies that hear disputes between parties and adjudicate upon them by making binding decisions. The Law Commission concluded that devolved tribunals were those that fell within the definition of “devolved tribunal” as set out in paragraph 9(2) of Schedule 7A to the Government of Wales Act 2006, namely a tribunal all of whose functions are exercisable only in relation to Wales and do not relate to reserved matters.

21. Based on its analysis, the Law Commission considered those bodies that fell within, and consequently fell without, the scope of their review of devolved tribunals in Wales.

22. We generally agree with the Law Commission as to those bodies that are devolved tribunals and are therefore in scope as existing devolved tribunals, namely:

- a. the Agricultural Land Tribunal for Wales
- b. the Mental Health Review Tribunal for Wales
- c. the Residential Property Tribunal for Wales (with 3 constituent tribunals: residential property; leasehold valuation; and rent assessment committees)
- d. the Education Tribunal for Wales (also managing the jurisdictions of tribunals constituted to hear appeals relating to the registration of school inspectors and nursery education inspectors)
- e. the Adjudication Panel for Wales
- f. the Welsh Language Tribunal
- g. the Valuation Tribunal for Wales
- h. school admission appeal panels and
- i. school exclusion appeal panels

23. The tribunals at sub-paragraphs (a) to (f) above are, collectively, defined as “the Welsh Tribunals” by section 59 of the Wales Act 2017, under the President of Welsh Tribunals who has powers relating to training, guidance and welfare. The tribunals at sub-paragraphs (g) to (i) above are devolved tribunals falling outside of the President’s supervisory oversight. Annex 3 sets out further detail about the constitution and history of each of these devolved tribunals which we

consider fall within the scope of this tribunals reform project.

24. We agree with the Law Commission as to those bodies that are not devolved tribunals because they make recommendations rather than binding decisions, they do not follow an adjudicative process and/or their functions are not only exercisable in relation to Wales. The Law Commission identified ombudsmen (including the Public Services Ombudsman for Wales), the Planning Inspectorate (whose functions in Wales transferred to Welsh Government on 1 October 2021 and are dealt with by a division called Planning and Environment Decisions Wales / Penderfyniadau Cynllunio ac Amgylchedd Cymru), continuing NHS health care review panels, and Forestry Committees for Wales.

25. Our one point of difference is with the Law Commission's conclusion that Social Care Wales panels are “devolved tribunals” for the purposes of the tribunal reform project. Our view is that these panels are part of the internal mechanisms in place to ensure Social Care Wales makes fair and balanced decisions on registration-related issues, which decisions are subject to a route of appeal to the UK First-tier Tribunal (Part 8 of the Regulation and Inspection of Social Care (Wales) Act 2016).

26. In addition to existing devolved tribunals we consider to be in scope, our intention is to ensure the new tribunal system is flexible and able to accommodate future jurisdictions that should or could be undertaken by a tribunal. We consider the proposed structure for the new tribunal system in Chapter 3 and in Chapter 4 we consider the jurisdictions transferring into the new system.

## Consultation question 1

Do you agree with the tribunals we have identified as the devolved tribunals, as set out in paragraph 22?

# Chapter 3: A new structure for Wales' tribunal system

## Proposal

We propose the scope of our proposals to create a unified and coherent tribunal system for Wales extends to “the devolved tribunals” in Wales as defined by the Law Commission’s review of devolved tribunals in Wales.

## Introduction

27. We have set out in this white paper the historical background of the body of devolved tribunals in Wales. The piecemeal nature of their development, with each tribunal governed by its own legislative framework, means our tribunal system as a whole is characterised by a lack of consistency and coherence in both administration and practices and procedures. As we explore in this white paper, most tribunals are administered by central government, while others, such as school admission and exclusion appeal panels, remain closely tied to local government, and membership structures vary.

28. Whilst our tribunal system does generally provide effective access to justice for tribunal users, the current structure can be difficult for users to navigate and can be better framed for the judiciary to manage cases and resources.

29. The Law Commission saw a number of advantages to unifying the devolved tribunals in a single statutory structure:

- a. greater coherence through amalgamation, allowing tribunals to pick the best of existing arrangements while reducing complexity for tribunal users and members
- b. increased profile for the body of devolved tribunals as a means of facilitating

- access to justice for the people of Wales, and
- c. the ability to accommodate future developments within devolved tribunals over time, particularly new or additional jurisdictions.

30. We consider a unified tribunal system for Wales will lay the foundation for a future where justice is increasingly devolved, and Wales administers its own wider system of courts and tribunals.

## A unified tribunal system for Wales

31. Extensive reform of the reserved tribunals and their administration was undertaken following the review by Sir Andrew Leggatt (“the Leggatt Report” - see Chapter 1: Introduction, paragraph 10), who concluded

“ If it is to be capable of handling its workload effectively, and ensuring the consistent development of the law, the Tribunal system must have a coherent structure to enable the effective management of workload, encourage consistency, and further a common approach in decision-making and case handling and management. ([Report of the Review of Tribunals](#), paragraph 6.2) ”

32. As a result of the Leggatt Report, combined with the reform to the reserved tribunals under the Tribunals, Courts and Enforcement Act 2007 which provided the legislative framework for many of the recommendations of the Leggatt Report, many reserved tribunals were separated from their sponsoring government departments and given a separate judicial structure. A separate administration was also created initially under the responsibility of the Ministry of Justice. A large number of tribunals were replaced with just 2: a unified First-tier Tribunal hearing cases of different jurisdictions; and the Upper Tribunal hearing appeals from the new lower tribunal. Both First-tier Tribunal and Upper Tribunal are organised into chambers to manage particular functions or jurisdictions of their respective tribunal. The post of Senior President of Tribunals was created



to head the tribunals judiciary.

33. The devolved tribunals in Wales did not fall within the scope of the Leggatt Review and were not within the scope of the 2007 Act.

34. Similarly, the Leggatt Report did not consider devolved tribunals in Scotland. It was not until 2014, following the Tribunals (Scotland) Act 2014 (“the 2014 Act”) being passed, that a new tribunal structure which aimed to bring together individual tribunals (listed in Schedule 1 to the 2014 Act) into a first-tier tribunal, the “First-tier Tribunal for Scotland”, was provided for. The 2014 Act also provides for subdivision of the work of the First-tier Tribunal for Scotland into chambers.

35. The Commission on Justice in Wales, chaired by former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, (“the Thomas Commission”) recommended that the courts and tribunals which determine disputes in both civil and administrative law should be under one unified system in Wales ([Justice in Wales for the people of Wales](#), recommendation 22 paragraph 5.56, page 260). The Thomas Commission was also of the view that the Welsh Tribunals Unit should have structural independence and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation ([Justice in Wales for the people of Wales](#), recommendation 27 and paragraphs 6.59, 6.59.1 and 6.49.2, page 284).

36. Building on all of these experiences, as well as its own consultation, the Law Commission has recommended the creation of a structurally independent tribunal service for Wales, comprising 2 new generic tribunals - a single unified First- tier Tribunal for Wales and an Appeal Tribunal for Wales (See Annex 2, Law Commission recommendations 1 and 11). Our proposals for structural independence are discussed further in Chapter 5 of this white paper.

37. We propose a unified tribunal system for Wales comprising 2 new generic tribunals:

a. the First-tier Tribunal for Wales, the tribunal of first instance organised into

chambers based on jurisdiction to assume the jurisdictions of the tribunals that will transfer into the new unified structure and to accommodate and preserve judicial expertise, and

- b. the Appeal Tribunal for Wales, the appeal tribunal to hear appeals from the First-tier Tribunal for Wales, also organised into chambers as appropriate as appeal jurisdictions are transferred to it and the volume of appeal work develops.

38. We propose the structure of the unified tribunal system is flexible by design and able to accommodate:

- a. the jurisdictions transferred in on establishment
- b. the creation of new chambers to take on additional existing jurisdictions or routes of appeal that are transferred in, or are new routes of appeal created by future legislative change
- c. the addition of jurisdictions to existing chambers, and
- d. the transfer of jurisdictions between chambers,

and to do so with relatively little disruption.

39. We propose the initial chamber structure is created on the face of the Bill to absorb the jurisdiction of specified tribunals transferred into the First-tier Tribunal for Wales, as set in Chapter 4. Thereafter, we propose there should be flexibility relating to the chamber structure to further organise the work of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, without further primary legislation being required. This would include a power to create new chambers and to allocate work to and transfer jurisdictions into and between those chambers, including the transfer of appellate jurisdiction to the Appeal Tribunal.

40. We propose the power in relation to the chamber structure should be exercised by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals. The power is to build flexibility into the new tribunal system and how its work is organised.

41. It is intended the power will be exercised, for example, on establishment of

the First-tier Tribunal for Wales, to organise the jurisdictions of existing Welsh Tribunals into an organisational structure. To preserve specialist expertise and improve the service to tribunal users, jurisdictions will be grouped so that similar work is dealt with by judges and members with the relevant skills to deal with it. The chambers system is intended to be flexible so that changes can be made easily to those boundaries as the workload of the tribunals changes.

42. We propose the power is subject to a duty to consult with, for example, Chamber Presidents, Deputy Presidents, other members of the First-tier Tribunal for Wales/Appeal Tribunal for Wales, members of the broader judiciary, practitioners and tribunal users, before making the statutory instrument. We welcome views as to whether (and if so which) consultees should be compulsory and therefore named on face of the Bill, or whether it is sufficient to require that ministers consult with whomever it appears to them is appropriate.

43. We consider our proposals will bring coherence, simplicity and efficiency to the existing system, increase the public profile of the tribunals, enhance the tribunal user's experience and importantly improve access to justice. We particularly wish to ensure that the structure adopted is fit for purpose today and has the flexibility to be fit for the future, with the ability to accommodate future developments within the devolved tribunals in Wales.

44. The devolved tribunal jurisdictions to be transferred into the new system on establishment and the proposed scheduling of such of this is set out in Chapter 4 ("Scheduling Reform").

## Consultation question 2

Do you agree with the proposed structure of the unified tribunal system for Wales?

## Tribunal judiciary and membership

45. There is lack of consistency in terms of membership across existing devolved tribunals.

46. In practice, all of the Welsh Tribunals (Section 59(1) of the Wales Act 2017 lists the tribunals known collectively as “the Welsh Tribunals”) have a membership that comprises an office holder with a judicial leadership role, and a wider membership that can be divided into legal and non-legal members. However, the legislative framework and the description of the categories of tribunal member varies for each tribunal. It also varies across those other tribunals not falling within the ambit of section 59 of the Wales Act 2017 but falling within scope of the tribunal reform project.

47. For example, most of the Welsh Tribunals have presidents who are judicial members (barristers or solicitors with experience of specified periods). However, the Residential Property Tribunal for Wales has both a president and a vice-president. Members of the Education Tribunal Wales are eligible to deal with any cases which arise in the jurisdiction of the Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal. Members of the Valuation Tribunal for Wales are volunteers, whereas members of the section 59 tribunals are generally fee paid, with a small number of salaried members. No member of the School Admission Appeal Panels and School Exclusion Appeal Panels is required to be a barrister or a solicitor.

48. We propose that there should be coherence in terms of tribunal membership in the unified structure for the new tribunal system. Whilst judicial leadership in each chamber will undoubtedly maintain a separate identity for that chamber and the day-to-day operation of its discrete jurisdiction, we consider that this should be framed by the structural coherence of the unified system consistent with good practice across the system as a whole.

49. We, therefore, propose that both the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be under the judicial leadership of the

President of Welsh Tribunals as presiding judge and that the President of Welsh Tribunals is able to sit as a judge in both tribunals. We also propose there should be a consistent structure of membership for each chamber:

- a. We proposed the structure for the membership of each chamber of the First-tier Tribunal for Wales be as follows:
  - i. Chamber President
  - ii. Deputy Chamber Presidents (where necessary, dependent upon factors such as the volume of applications)
  - iii. Legal members, and
  - iv. Non-legal members, with requisite qualification, skill and experience based on the requirements of the particular jurisdiction.
- b. We propose the structure for the membership of the Appeal Tribunal for Wales be as follows:
  - i. Chamber Presidents of the First-tier Tribunal for Wales, *ex officio*
  - ii. existing members of the Upper Tribunal for England and Wales cross deployed as members of the Appeal Tribunal for Wales as required, and
  - iii. members appointed, as set out in Chapter 7.

There should be scope to amend the membership, for example as the Tribunal is organised into chambers as appropriate as appeal jurisdictions are transferred to it and the volume of appeal work develops.

50. A sustainable tribunal membership reflective of Wales' demography and diversity is a key component of the new tribunal system, and Chapter 7 of this white paper outlines our proposals for appointments to each of the above offices.

### Consultation question 3

Do you agree with the proposed structure for the tribunal membership in the unified tribunal system?

# Chapter 4: Jurisdictions transferring into the tribunal system

## Proposal

We propose:

- the jurisdictions of the Welsh Tribunals, together with those of the Valuation Tribunal for Wales and school exclusion appeal panels are transferred to the First-tier Tribunal for Wales and organised into chambers as shown in Figure 1
- the further transfer of jurisdictions, be they existing ones or ones created by future legislation, should be considered on a case-by-case basis, and
- the Appeal Tribunal for Wales should be organised into chambers as appropriate and as appeal jurisdictions are transferred to it and the volume of appeal work develops.

## Introduction

51. This chapter sets out which jurisdictions of the devolved tribunals should transfer to the new tribunal system on its establishment. In chapter 2 we identified “the devolved tribunals” we consider are in scope of our proposals to create a unified tribunal system, and in chapter 3 we set out the proposed structure of that unified system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

## The First-tier Tribunal for Wales

52. The transfer of the jurisdictions of individual devolved tribunals to the new

First-tier Tribunal for Wales will need to be carefully managed. First, amalgamation of existing tribunals into the new tribunal must avoid disruption to the operation and business of those tribunals as they transfer. Second, the way in which the new tribunal is organised must reflect the specialisation of each jurisdiction and place the interests of tribunal users, and their access to justice, at the forefront of reform.

## The Welsh Tribunals

53. The Law Commission recommends that the Welsh Tribunals defined by section 59 of the Wales Act 2017 (Chapter 2: Scope of our reforms, paragraphs 22 and 23) should be consolidated into a single unified tribunal. We have set out why reform is needed (Chapter 1: Introduction, paragraphs 12 to 14) and our proposals for a unified and coherent tribunal system for Wales are informed by a significant body of work (Chapter 1: Introduction, paragraph 10). As long ago as 2010, the Administrative Justice and Tribunals Council (“the AJTC”) Welsh Committee’s recommendations for reform in relation to tribunals operating in Wales were “...designed to promote a more integrated, user-focused system” (Administrative Justice and Tribunals Council Welsh Committee, 2010. [Review of Tribunals Operating in Wales](#), page 3). We agree with the Law Commission that the Welsh Tribunals should be transferred into the First-tier Tribunal for Wales.

### Consultation question 4

Do you agree the jurisdictions of the Welsh Tribunals should be transferred to the First-tier tribunal for Wales?

## The Valuation Tribunal for Wales

54. The Law Commission concluded that, in the absence of practical issues and

obstacles indicating a contrary course of action, the jurisdiction of the Valuation Tribunal for Wales (“the VTW”) should be transferred to the First-tier Tribunal for Wales.

55. We agree with the Law Commission that the VTW should be absorbed into the new tribunal system. The nature of its jurisdiction is not such that it is markedly different to the Welsh Tribunals and does not warrant it continuing as a separate standalone tribunal.

56. There are, however, practical issues to aligning the VTW with the Welsh Tribunals in the First-tier Tribunal for Wales that will need to be overcome. The model for adjudicating on disputes, for example, is different in the VTW compared to the Welsh Tribunals. The VTW panels are structured in a similar way to the lay magistracy, and comprise lay members advised by a specialist clerk. Moreover, those lay members are volunteers and are not remunerated, unlike members of the Welsh Tribunals who are almost universally fee paid (the Ministry of Justice [Judicial Daily Sitting Fees](#) - effective 1 April 2022 - and [Judicial Daily Sitting Fees for Sitting in Retirement Posts](#) - effective 1 April 2022 - include rates for members of the Welsh Tribunals). In addition, any liabilities that may arise from the VTW transferring to the new tribunal system will need to be assessed (a process which we have begun), together with the implications for staff of proposals in this white paper to create a single arm's-length body to administer the new tribunal system.

57. We do not consider these practical issues to be insurmountable. It is feasible that, as the Law Commission commented, the VTW’s current model for adjudicating on disputes could be carried into the First-tier Tribunal on its establishment and the need for reform of it could be considered in time as part of the ongoing development of tribunals justice in Wales. But we will need to work through the issues to determine if any negate the proposed transfer of the VTW into the new tribunal system or suggest it might better happen at a later stage.

58. If the jurisdiction of the VTW was not transferred to the new tribunal system on its establishment, and ahead of its future transfer into the structure, the Law Commission recommended it should nonetheless be subject to the supervision



of the President of Welsh Tribunals who we propose will have new statutory duties and functions. This will strengthen judicial independence, increase cohesion with the broader devolved tribunal system and represent the tribunal's interests to the Senedd. We agree with this. In this scenario, the President's relationship with the Governing Council of the Valuation Tribunal would have to be considered.

### Consultation question 5

Do you agree that, in principle, the jurisdiction of the Valuation Tribunal for Wales should be transferred to the First-tier tribunal for Wales?

### Consultation question 6

Do you agree that if the jurisdiction of the Valuation Tribunal for Wales is not transferred to the First-tier Tribunal for Wales, it should still be subject to the supervision of the President of Welsh Tribunals?

## School exclusion appeal panels

59. The Law Commission recommended the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales. This followed a similar recommendation from the Committee for Administrative Justice and Tribunals Wales ("the CAJTW"), which, in its 2016 report on the administrative justice landscape in Wales, recommended (**Administrative justice: a cornerstone of social justice in Wales**, recommendation 24, page 12) Welsh Government should explore the merits of extending the jurisdiction of the then Special Educational Needs Tribunal for Wales, now the Education Tribunal for Wales, to be a national tribunal for school admissions and exclusion

appeals.

60. The Commission on Justice in Wales ("the Thomas Commission") also commented:

“ We are concerned that school admissions and exclusions appeals panels operate without any kind of judicial scrutiny save in those very rare cases in which an exclusion leads to an application for judicial review. The role of judges in determining disputes relating to the education of pupils has steadily increased over time as functions of public bodies have increased. We consider that a thorough appraisal of the operation of local authority appeal panels and oversight by the President of Welsh Tribunals of their decision-making processes is required. (**Justice in Wales for the people of Wales**, paragraph 6.47, page 280) ”

61. We agree with these recommendations and propose that the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales and adjudicated on as part of Wales' independent tribunal system. We do not consider that those involved in the exclusion of a child from a school approach those decisions lightly, but the consequences of school exclusion for a child and for a school are of the highest significance. It is essential that decision-making is consistent and unquestionably independent.

## Consultation question 7

Do you agree the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales?

## School admission appeal panels

62. The Law Commission concluded that, at least for the time being, school

admission appeal panels, as described in Annex 3, should remain outside of the new unified tribunal system and administered by admission authorities.

63. In reaching this conclusion, the Law Commission highlighted local knowledge and seasonal peaks in case load as the determining factors. They also acknowledged, however, that this approach will preserve in the system a sub-optimal position as regards independence for school admission appeals that is a key design feature of other tribunals. In part, and to mitigate the implications of this position, the Law Commission recommended that appeals from school admission appeal panels should be available on a point of law to the First-tier Tribunal for Wales.

64. We have referred to the body of work that has recommended reform of school admission appeal panels and school exclusion appeal panels (see paragraph 60 of this chapter of the white paper). We also note the logistical complexities identified by the Law Commission as regards the transfer of the jurisdiction of school admission appeal panels.

65. Our conclusion is that in the long run the jurisdiction of school admission appeal panels should ultimately be incorporated into the new tribunal system. The structure we propose for our tribunal system is intended to be flexible enough to accommodate the jurisdiction of school admission appeal panels. However, it is important on practical grounds that the accumulation of new jurisdictions within the First-Tier Tribunal is phased and that there is a degree of prioritisation, based on the importance of the subject matter and the logistical complexity among other factors. We therefore agree with the Law Commission's recommendation that school admission appeal panels continue to be administered by admission authorities at this time, but that there should be a right of appeal to the First-tier Tribunal for Wales on points of law.

## Consultation question 8

Do you agree the jurisdiction of school admission appeal panels should

continue to be administered by admission authorities for the time being?

## Consultation question 9

Do you agree appeals from school admission appeals panels should be available on a point of law to the First-tier Tribunal for Wales?

# Organising the work of the First-tier Tribunal for Wales

66. In chapter 3 we proposed the work of the 2 new tribunals should be organised into chambers. The chamber structure will accommodate the jurisdictions transferring into the new tribunal system. They therefore need to be carefully constructed to accommodate the specialised nature of each jurisdiction. Jurisdictions should be combined in single chambers where there is synergy and where it is appropriate practically and operationally to do so.

67. Our proposed structure for the new tribunal system is designed with sufficient flexibility to accommodate the transfer in of jurisdictions, the creation of new chambers and the allocation of the work between chambers. It is our intention, working with the President of Welsh Tribunals and the President's senior judicial colleagues in the new tribunal system to keep the organisation of the new tribunal system under review. This means that there will be scope to add existing jurisdictions at a later stage if not transferred on the establishment of the new system, to create new chambers and to alter the allocation of work between chambers.

68. In addition, the flexibility designed into the new tribunal system to accommodate jurisdictions will, we propose, be capable of absorbing

jurisdictions in the Welsh justice system that may arise in the future. The Commission on the UK's Future (commonly referred to as the Brown Commission) established by the UK Labour Party has, for example, recommended the devolution of youth justice to Wales ([A New Britain: Renewing our Democracy and Rebuilding our Economy](#)). See “Enhancing Wales’ powers of self-government” and recommendation 24 pages 112 -113). A tribunal setting could in many ways be better than a court setting for youth justice matters, because tribunals are a more informal approach to adjudicating on matters compared to courts. We therefore propose to continue to consider the devolution of youth justice and the fit of it with the new tribunal system, for example dovetailing youth justice with a broader range of issues concerning the child including welfare, health and education.

69. We propose the initial chamber structure for the First-tier Tribunal for Wales should be set out in legislation establishing the new tribunal system. The initial chamber structure we propose is set out in Figure 1, below.

## **Initial chamber structure for the First-tier Tribunal for Wales**

- ALT and RPTW moves to Property
- APW moves to Standards
- MHRTW moves to Mental Health
- WLT moves to Welsh Language
- RSIAT, RNEIAT, ETW, School exclusion appeal panels, Appeals on points of law from school admission appeal panels move to Education
- VTW moves to Taxation
- No existing jurisdictions proposed for transfer but propose creating a catchall chamber to be already established and capable of absorbing other jurisdictions that do not align with the other chambers, e.g. data protection and Freedom of Information Act 2000 matters - moves to General Regulatory Chamber.

## Consultation question 10

Do you agree with the initial chamber structure we propose for the First-tier Tribunal for Wales?

# The principle for routes of appeal in devolved Welsh legislation

70. One of the key principles of the new tribunal system for Wales is that it will be able to adapt to changing requirements without the need for further primary legislation. Whilst we propose the structure for the new tribunal system on its establishment will be put in place by the legislation creating the new system, the nature and timing of future change to the system will be accommodated by the structure we have set out in chapter 3.

71. The Thomas Commission commented that the Welsh tribunals have been under-used as a means of enforcing Welsh legislation (**Justice in Wales for the people of Wales**, paragraph 16, page 12). In the commission's view:

“ Welsh tribunals should be used for dispute resolution relating to future Welsh legislation. There has been a tendency in the legislation passed by the Assembly for it to specify that dispute resolution should take place in the County Court or in the non-devolved courts and tribunals. We regard this as anomalous when specialist Welsh tribunals exist that have the competence and capability to determine disputes. (**Justice in Wales for the people of Wales**, paragraph 6.59.2, page 284) ”

72. We propose that our guiding principle is that disputes deriving from Welsh law should as a general rule, be heard in a Welsh judicial institution, unless there are circumstances that dictate otherwise identified by the full and detailed analysis of each proposal.

73. In addition to jurisdictions of the devolved tribunals we have identified in Chapter 2, there are numerous appeal routes to the courts and tribunals of England and Wales, for example to the UK First-tier Tribunal. In accordance with our guiding principle, we consider that such routes of appeal should be gradually drawn into the new system in Wales. For example, appeals relating to devolved taxes (land transaction tax and landfill disposals tax) are made to and heard by the UK First-tier Tribunal (Tax Chamber) and the UK Upper Tribunal (Tax and Chancery Chamber) before progressing to the relevant Appeal Court. We intend in time to examine transferring these jurisdictions into the First-tier Tribunal for Wales and Appeal Tribunal for Wales, possibly the Taxation Chamber of the First-tier Tribunal for Wales, as part of the establishment of the unified tribunal system in Wales. Cases currently coming before the UK tribunals are limited in number and we therefore propose to consider this issue in due course. Considerations in relation to the route of appeal for any future Welsh taxes will be on a case-by-case basis.

74. The power we propose for the Welsh Minsters with the concurrence of the President of Welsh Tribunals to organise the work of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales into chambers is the mechanism by which the new tribunal system can be adapted to absorb additional routes of appeal over time. Initially, the workload of the Appeal Tribunal for Wales may be such as not to need distinct chambers.

## Consultation question 11

Do you agree as a guiding principle disputes deriving from Welsh law should be heard in a Welsh judicial institution?

## Consultation question 12

Are there any particular types of dispute under devolved law which you

believe lend themselves particularly well to being resolved by a tribunal?

## The Appeal Tribunal for Wales

75. A key component of the unified and coherent structure of the proposed new tribunal system is the Appeal Tribunal for Wales, the first Welsh appellate body in Welsh legal history. We see the Appeal Tribunal for Wales as a vehicle for developing the devolved law of Wales in a coherent and uniquely Welsh way.

76. Current routes of appeal from the devolved tribunals have developed piecemeal over time and are very much the product of the historical development of the devolved tribunals rather than the product of a coherent approach to Wales' system of devolved tribunals where routes of appeal are an integral part. In his response to the Law Commission consultation, Sir Wyn Williams, then President of Welsh Tribunals commented:

“ ... there is no reasonable justification for appeals from some (a minority) tribunals going to the High Court whereas appeals from the remaining tribunals (the majority) go the Upper Tribunal of England and Wales. The current routes of appeal are, in my view, the result of historical developments undertaken on a piecemeal basis and without reference to the overarching objective of having in place a coherent tribunal structure of which routes of appeal are an integral part. ([Devolved Tribunals in Wales Report](#), paragraph 4.12, page 60) ”

77. The Law Commission recommended the creation of an Appeal Tribunal for Wales (see Annex 2, Law Commission recommendations 11) and for jurisdictions to be added to the Appeal Tribunal over time. The Law Commission also recommended the mechanism for this should be a power for the Welsh Ministers by statutory instrument to establish chambers of the Appeal Tribunal and to transfer appellate jurisdictions to it over time (see Annex 2, Law



Commission recommendations 12).

78. But the Law Commission also recognised that the proper location of appeals from devolved tribunals in Wales was one of the most difficult topics it tackled in its review. Referring to the consultation it ran to inform its recommendations, the Law Commission said:

“ Several of the existing leaders of the section 59 tribunals have responded to the consultation explaining that their current appeal route works well for their tribunal, and should be preserved. This desire to preserve current appeal routes must however be balanced against a need to make sure that the system is coherent and works well as a whole; that it is capable of evolving and accommodating new appeal routes. ([Devolved Tribunals in Wales Report](#), paragraph 4.47, page 69) ”

79. Views on preserving current routes of onward appeal have also been relayed to us in the discussions we have held with the Judicial Leads of the Welsh Tribunals. These are clearly well considered views and they are made by judicial leaders of considerable experience.

80. The Law Commission’s view was that the introduction of a unified First-tier Tribunal creates a strong impetus for a single route of appeal to the Appeal Tribunal for Wales. The Law Commission said:

“ This project undoubtedly presents an opportunity to create a system that is simple, intuitive and coherent, whereas building in different appeal routes from the outset risks compromising that objective. ([Devolved Tribunals in Wales Report](#), paragraph 4.47, page 69) ”

81. Whilst the Law Commission recommends legislating to create the Appeal Tribunal for Wales, it comments we should do so:

“ ...with a view to bringing those provisions into force and establishing the

tribunal when the Welsh Government has a clearer view of how the tribunal system is likely to develop. The legislation should include powers to transfer jurisdictions to the Appeal Tribunal... The Welsh Government would then be able to bring the Appeal Tribunal for Wales into existence and populate it when the time is ripe. ”

82. We agree with the Law Commission’s recommendation to create an Appeal Tribunal for Wales and to the manner in which jurisdictions should be transferred to the Appeal Tribunal for Wales and organised into chambers. Our aspiration if possible would be for the Appeal Tribunal to be operational in at least some jurisdictions from the same point at which the First-tier Tribunal for Wales comes into existence.

83. Notwithstanding the eminence of those setting out a contrary view, we are not convinced that it will ultimately be sensible to have different appeal routes from different chambers of the First-tier Tribunal. This has the potential to undermine the coherence and accessibility of the system, and the standing and credibility of the new institutions, as well as the attractiveness of roles within it. In our view, the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made.

84. However, it is of course essential that the Appeal Tribunal for Wales does not take on functions for which the judiciary are not confident it is appropriately prepared. We therefore propose that the power of the Welsh Ministers to transfer jurisdictions to the Appeal Tribunal for Wales by subordinate legislation should be with the concurrence of the President of Welsh Tribunals.

## Consultation question 13

Do you agree there should be an Appeal Tribunal for Wales?

## Consultation question 14

Do you agree the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made?

## Consultation question 15

Do you agree jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals?

# Chapter 5: Independence

## Proposal

We propose:

- all those responsible for the administration of justice in Wales should be under a statutory duty to uphold the independence of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, and
- the creation of a statutory body arms-length from Welsh Government with operational responsibility for the administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

## Introduction

86. Judicial independence is the principle that guides the way in which judicial institutions are and will continue to be supported in Wales. Whilst our approach to administering the Welsh Tribunals through the Welsh Tribunals Unit has developed over time, the Unit remains part of Welsh Government. Protecting judicial independence and giving greater structural independence to the administration of justice is a key objective of the structural reforms we are proposing to modernise our tribunal system in Wales.

## Statutory duty to uphold independence

87. The Law Commission recommended a statutory duty to uphold the independence of the devolved tribunals (see Annex 2, Law Commission recommendation 52). The Commission on Justice in Wales (“the Thomas Commission”) was of the view that it is essential the judiciary and other institutions have an independent relationship with the Welsh Government and Senedd and that a statutory duty as regards independence should be in place (**Justice in Wales for the people of Wales**, paragraph 12.177). Statute makes provision designed to guarantee continued judicial independence at a UK level (Section 3 of the Constitutional Reform Act 2005), but there is no current statutory protection for independence that applies across the devolved tribunals. We consider a statutory duty to uphold independence is consistent with the continued development of our devolved tribunal system as a cornerstone of Wales’ emerging justice system.

88. We propose a statutory duty to uphold judicial independence could potentially apply to all those with responsibility for the administration of justice as that applies to the reformed tribunal system and the members of the new tribunals. Thus, the duty could potentially apply to the First Minister, the Welsh Ministers, the Counsel General and any other persons discharging a responsibility as regards the new tribunals.

89. The duty should include a duty to have regard to the need for members of the tribunals to have the necessary level of support to enable them to carry out their functions.

90. The duty could also apply to all Members of the Senedd, given that the Senedd has ultimate responsibility for Wales' constitutional arrangements and for decisions on public expenditure, including the level of funding that would be available for the operation of the tribunals. We note that a similar duty applies to Members of the Scottish Parliament. However, while we hope that all Members of the Senedd would support the independence of the judiciary, there are legitimate questions which could be asked about the practical implications of such a duty and whether it could impact on free speech during Senedd proceedings. We would therefore see it as a matter for the Senedd Commission to consider as to whether it would be appropriate to include such a duty.

## Consultation question 16

Do you agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales?

## Consultation question 17

Who do you think should be included on the list of those with responsibility for the administration of justice as it applies to the reformed tribunal system in Wales?

## Judicial oath

91. The Law Commission recommends all members in the new tribunal system should be required to take a judicial oath or affirmation (see Annex 2, Law Commission recommendation 53).

92. At present, only the President of Welsh Tribunals is required to take the oath of allegiance and the judicial oath as set out in sections 2 and 4 of the Promissory Oaths Act 1868 (Paragraph 14 of Schedule 5 to the Wales Act 2017). By contrast, similar legal requirements apply to all members of the Scottish Tribunals (Paragraph 11 of Schedule 7 to the Tribunals (Scotland) Act 2014) and to the Senior President of Tribunals and all members of the UK First-tier Tribunal and the Upper Tribunal (Paragraph 11 of Schedule 1, paragraph 9 of Schedule 2, paragraph 10 of Schedule 3 and paragraph 8 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007). In Northern Ireland, the judicial oath has a different formulation (Section 19 of the Justice (Northern Ireland) Act 2002).

93. Oaths have a clear historical and symbolic significance across the UK's justice systems. They also have a practical significance in terms of the perception of judicial independence. That said, there is a rational argument that a modern justice system should not rely on office holders taking oaths to each affirm they exercise their respective duties guided by principles of equality, fairness of treatment and the rule of law. Requirements on individuals to act in certain ways would be more clearly justiciable if directly written into statute or were a matter of contract embodied by the terms and conditions of a person's appointment as a member in the new tribunal system in Wales.

94. If, however, all members of the new tribunal system are to be required to take an oath or affirmation to enhance the public perception of judicial independence, we consider a modern formulation of the form of oath or affirmation will be compatible with the ethos of the new modern tribunal system for Wales. Such an oath or affirmation could be broadly akin to the following:

“ I .... do swear [or solemnly and sincerely and truly affirm] that I will well and faithfully serve in the office of .... and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm. ”

## Consultation question 18

Is there a need for all members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to take an oath or affirmation of their commitment to uphold judicial independence?

## Consultation question 19

Do you have views on the proposed formulation of the oath or affirmation, if one is adopted?

## Structural independence

95. The remodelling of the administration of our nascent justice system in Wales is a necessary part of the journey towards building a justice infrastructure for Wales capable of adopting jurisdictions and growing and evolving over time.

96. The Thomas Commission and the Law Commission both concluded that the current arrangements for the administration of the Welsh Tribunals, whereby the Welsh Tribunals Unit, embedded in and part of Welsh Government, provides administrative support services, does not sufficiently establish the perception of judicial independence.

97. The Thomas Commission preferred to see operational responsibility for the

administration of devolved tribunals reformed on the model of the Scottish Courts and Tribunals Service (“the SCTS”) (**Justice in Wales for the people of Wales**, paragraphs 12.162 to 12.165). The SCTS is a body corporate established by statute. The commission recommended the Welsh Tribunals Unit should have structural independence from Welsh Government (**Justice in Wales for the people of Wales**, paragraphs 6.58 to 6.59).

98. The Law Commission also recommended structural independence for the future administration of the system of devolved tribunals in Wales (see Annex 2, Law Commission recommendation 51). Whilst the Law Commission offered some general principles to guide the design and establishment of a body, neither the Thomas Commission nor the Law Commission offered any detailed recommendations about the structure, composition and functions of the body (although they did express views on its status, discussed further below).

99. We agree the judiciary must be, and must be seen to be, independent of the executive and legislative arms of government. The fundamental question to address is therefore whether the independence of the new tribunal system is best served if functions of administering the system are part of or are separate from Welsh Government.

100. There are 2 principal models that could be deployed for the administration of the new tribunal system, while providing for greater structural independence:

- a. Administrative arrangements could be made, for example through a framework document. His Majesty’s Courts and Tribunals Service (HMCTS), for example, is not established in statute. It is commonly described as being an executive agency responsible for administrative functions for the courts and tribunals of England and Wales and is part of the Ministry of Justice. HMCTS is now managed jointly by the executive and the judiciary with the Senior President of Tribunals sitting on the board, strengthening judicial independence in the administration of tribunals. (HMCTS is governed by a **framework document** that sets out partnership arrangements between the Lord Chancellor, Lord Chief Justice and the Senior President of Tribunals).
- b. Alternatively, the level of independence could be set by statute. The Scottish



Courts and Tribunals Service is an example of a statutory body corporate (Part 4 of and Schedule 3 to the Judiciary and Courts (Scotland) Act 2008) independent of the Scottish Government and constituted with the function of providing administrative support to the Scottish courts and tribunals.

101. In proposing a model, our objective is to create structural separation between responsibility for operational and administrative functions for the new tribunal system (with an appropriate level of judicial involvement in that) and the executive and legislative functions of the Welsh Government and of the Senedd respectively. Although these operational and administrative functions are executive rather than judicial, on balance we believe that it is right for these functions to have a greater degree of separation from government than can be provided if they remain delivered by an arm of government, for example by an executive agency.

102. We therefore propose to legislate to create a body corporate as a separate legal entity, at arms' length from Welsh Government and with operational responsibility for the administration of the new tribunal system. We consider this model will deliver the structural separation and independence from Government that aligns with the guiding principle of judicial independence and the weight of opinion expressed by both the Thomas Commission and the Law Commission.

## **Tribiwnlysoedd Cymru / Tribunals Wales**

103. For the purposes of this consultation, we call the proposed statutory body “Tribiwnlysoedd Cymru / Tribunals Wales”, its name to be formally considered and confirmed in due course.

104. There will of course be an on-going relationship between Tribunals Wales and the Welsh Government, the nature of which will be informed by the way in which Tribunals Wales is constituted.

105. The purpose of Tribunals Wales will be to assume operational responsibility

for the new tribunals service by exercising the functions and powers conferred on it by primary legislation within the budget set by the Welsh Government. The legislative and governance frameworks put in place will define the extent of the Welsh Ministers' accountability for Tribunals Wales.

106. Our proposed structure and governance for Tribunals Wales is set out in Table 1, below. Unlike current arrangements, we propose it is governed by a board. The board would have a combination of executive, non-executive and judicial members. Its overall function would be to oversee the governance and operation of the body.

107. Our proposals include a requirement for the board to complete a corporate plan and to publish an annual report and accounts, as is generally considered best practice. The annual report would be expected to include information about the operational performance of the tribunals and their chambers – including measures around efficiency of operation, and the frequency with which decisions of each chamber were appealed or changed upon internal review. We would also expect (where possible) for the report to include user satisfaction measures.

108. The creation of the board that includes judicial oversight of the new tribunal system provides the foundation to collect key performance information about the operation of the system. Key performance measures to be monitored by the board would be determined in due course. We see these as including matters such as the use of the Welsh language in the tribunals system, differential experiences of tribunal users from different backgrounds and the diversity of tribunal members.

109. The proposals in Table 1 include a limited power for the Welsh Government to make requirements of the board; for example, these might include provisions which the government would find helpful to see included in its annual report.

110. Annual reporting is one of the ways in which dialogue is maintained between the different branches of government – but it is not the only way in which we would expect that dialogue to continue. For example, the Counsel General and Minister for the Constitution meets regularly with the President of

Welsh Tribunals, and we would expect that to continue. It is important that there is regular exchange of information about the operation of the law and the impact of governmental decisions.

111. Similarly, although these things are not all matters for the government, we have welcomed the practice of the President of Welsh Tribunals being regularly invited to appear before a Senedd committee to discuss his annual report, and of that report being debated in the Senedd. We would welcome a similar practice developing with regard to the annual reports of Tribunals Wales.

112. A particular point to highlight is that we propose the Chair for the Board of Tribunals Wales should be a non-executive member selected through an open and fair public appointment process. In his evidence session to the Legislation, Justice and Constitution Committee, on 13 March 2023, Sir Wyn Williams, then President of Welsh Tribunals, said he favoured a judge acting as Chair because that would, in perception terms, ensure that independence is preserved.

113. Both examples exist elsewhere in the sphere of organisational leadership of justice bodies. The Chair of the Scottish Courts and Tribunals Service is the Lord President, the most senior judge in Scotland, whereas the chair of HMCTS is non judicial but a person who has held senior business positions and as a leader of organisations (having been selected through an open competition focused on chairing and leadership skills, rather than the process by which senior judges are selected which necessarily has to give significant weight to other factors) ([Legislation, Justice and Constitution Committee](#), paragraph 15).

## Status of Tribunals Wales

114. The structural independence of Tribunals Wales will be guaranteed by its establishment in statute and the functions, duties and powers conferred on it by that statute, as set out in Table 1.

115. Every public body also has a status, and there are 2 principal statuses of devolved statutory bodies in Wales. It is important to note, however, that neither of these models is inherently more independent than the other. Other than the characteristics of whether their staff are civil servants or not, both of the below models appear to us to be compatible with the arrangements at Table 1.

- a. The first potential model is that Tribunals Wales could be constituted as a non-ministerial department (“NMD”). This was the model recommended by the Thomas Commission and the Law Commission. NMDs are staffed by civil servants. An example in Wales is the Welsh Revenue Authority.
- b. Another potential model is a Welsh Government Sponsored Body (“WGSB”). There are a number of WGSBs operating independently of Welsh Government and an example operating in the justice sphere is the Valuation Tribunal for Wales (“the VTW”). The VTW and its governing council was established by subordinate legislation made by the Welsh Ministers (The Valuation Tribunal for Wales Regulations SI 2010 No.713 W.69). A framework document ([Valuation Tribunal for Wales framework document](#)) sets out the broad framework within which the VTW operates and details the terms and conditions under which the Welsh Ministers provide funds to it. Its staff are public servants but not civil servants.

116. As stated above, both of these models appear to us to have the potential to provide sufficient structural independence. The principal impact we have determined of the decision between the 2 options is the implication for the management of the organisation and for its staff. A decision on the model to be pursued has the potential to impact on staff of the Welsh Tribunals Unit and the Valuation Tribunal for Wales, and on the ability to attract and reward staff in the future. We are therefore interested in hearing views on the implications of this decision, and indeed whether there are other ways of providing structural independence which have advantages beyond these 2 models. We plan to use the consultation period to engage with staff and trade unions, and we will continue to do so as we develop legislation to implement reform.

## Consultation question 20

Do you agree with the creation of a statutory body arms-length from Welsh Government to be responsible for the administration of the new tribunal system in Wales?

## Consultation question 21

Do you think the proposed statutory body should be constituted as a Welsh Government Sponsored Body, as a Non-Ministerial Department, or something else? Why?

## Consultation question 22

Do you think the Chair of the Board of the statutory body should be a Welsh Ministers' appointment or the President of Welsh Tribunals ex officio?

## Consultation question 23

Do you have any other comments on arrangements for the administration of the new tribunal system at Table 1?

# **Tribiwnlysoedd Cymru / Tribunals Wales, a proposed arms-length body corporate: proposed**

# structure and governance

Areas:

- **Establishment**
- **Purpose**
- **Board**
- **Staff**
- **Finance**
- **Corporate governance**
- **Transfer of staff**
- **Transfer of property and liabilities**
- **Consequential matters**

[View in table format](#)

## Establishment

### Statutory provision: Incorporation

A body corporate known as “Tribunals Wales/Tribiwnlysoedd Cymru” (proposed name for working purposes only). Creates a statutory body with legal personality.

### Welsh Ministers’ accountability

Determined by the legislative framework for Tribunals Wales.

### Statutory provision: Status

As a general principle the Law Commission concluded the administration for the

tribunal system should be staffed by civil servants, which is usually the status of staff employed by an NMD. We are consulting on options.

### **Welsh Ministers' accountability**

The portfolio Welsh Minister will account to the Senedd, along with the Permanent Secretary and the CEO and Chair of the Board.

## **Purpose**

### **Statutory provision: Objective**

To have operational responsibility for the administration of the new tribunal system and to exercise its functions to provide services to ensure the effective administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales and to support members to discharge their functions.

### **Welsh Ministers' accountability**

Creates structural separation between operational responsibility for the administration of the new tribunal system, sitting with Tribunals Wales, and policy functions sitting with the Welsh Government.

### **Statutory provision: Functions and powers**

Statute to detail functions of Tribunals Wales and its general and ancillary powers.

## **Welsh Ministers' accountability**

Accountable for overall performance of Tribunals Wales.

## **Statutory provision: Government policy**

A duty on Tribunals Wales in the exercise of its functions to have regard to such aspects of Welsh Government policy and such other matters as the Welsh Ministers may direct.

## **Welsh Ministers' accountability**

Day-to-day administration will not sit with ministers. This is not a power for the Welsh Ministers to give Tribunals Wales specific directions as to the exercise of its functions.

## **Statutory provision: Advice to the Welsh Ministers**

Duty to provide advice and assistance to the Welsh Ministers as requested; power to offer advice on policy relation to matters where Tribunals Wales exercises functions or the administration of justice in Wales.

## **Welsh Ministers' accountability**

Mechanism for Welsh Ministers to draw on relevant expertise of Tribunals Wales and for it to be able to offer advice to ministers framed by its functions.

## **Statutory provision: Default power**

Power for the Welsh Ministers by regulations to assume responsibility for the



functions of Tribunals Wales where ministers consider the body is failing to carry out its functions to deliver its purpose or is doing so in such a way so as to create a significant risk to the functioning of the tribunal system.

### **Welsh Ministers' accountability**

Equivalent to section 70 of the Judiciary and Courts (Scotland) Act 2008.

## **Board**

### **Statutory provision: Chairperson**

Chairperson appointed by the Welsh Ministers, or President of Welsh Tribunals ex officio.

### **Welsh Ministers' accountability**

Welsh Ministers' role in appointing chair if the President of Welsh Tribunals ex officio does not hold the chair.

### **Statutory provision: Members**

#### **Judicial members**

President of Welsh Tribunals ex officio (if not Chairperson); one judicial member of the new tribunal system for Wales selected by the President.

## **Non-judicial members**

Not fewer than 3 nor more than 6 persons appointed by the Welsh Ministers.

## **Executive members**

CEO ex officio; one other member of staff appointed by the CEO.

(This gives a board of between 8 and 11 persons).

## **Welsh Ministers' accountability**

Welsh Ministers to be under a "have regard to" duty to ensure appointees have experience of matters relevant to the Tribunals Wales' purpose and functions and to secure a variety of skills and experience among the members (e.g. a person representative of tribunal users, or a solicitor or barrister with experience of devolved tribunals).

Tribunals Wales to be a regulated body with appointments to it regulated by the Commissioner for Public Appointments.

## **Statutory provision: Tenure (except PWT governed by separate legislation)**

4 years. Eligible for reappointment. Provision for resignations and removals also required.

## **Welsh Ministers' accountability**

Ensure appointments meet Code of Practice, including any restrictions on reappointments.

## **Statutory provision: Remuneration**

Power for Tribunals Wales to pay remuneration and expenses to members of the board and any co-opted members of committees.

## **Welsh Ministers' accountability**

Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for Tribunals Wales to carry out its functions.

## **Statutory provision: Committees**

Power for Tribunals Wales to establish committees and co-opt persons to sit on them.

## **Statutory provision: Proceedings**

Power for Tribunals Wales to regulate its proceedings, quorum (including committees), manner of voting, etc.

## **Statutory provision: Delegation**

Power for Tribunals Wales to delegate any function to a member, committee, employee or any other person, corporation or statutory entity, but not to divest itself of responsibility for the function delegated.

## Staff

### **Statutory provision: CEO**

First CEO to be appointed by Welsh Ministers on the T&Cs they determine appropriate.

Subsequent CEOs to be appointed by the Board of Tribunals Wales on T&Cs it, with the approval of the Welsh Ministers, determines appropriate.

### **Welsh Ministers' accountability**

Welsh Ministers make first appointment of CEO and required to approve T&Cs of that and subsequent appointees.

### **Statutory provision: Other staff**

Tribunals Wales can appoint staff as it considers appropriate to enable it to discharge its functions. If an NMD, this will be subject to the Civil Service Commission Recruitment Principles.

### **Welsh Ministers' accountability**

Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for the Tribunals Wales to carry out its functions. Ensure that CEO and Board are recruited under Code of Practice.

# Finance

## **Statutory provision: Funding**

Sources of funding for Tribunals Wales: income from fees; and grant-in-aid from Welsh Ministers of such amount ministers consider appropriate for the body to carry out its functions and subject to conditions ministers consider appropriate.

## **Welsh Ministers' accountability**

Welsh Ministers accountability underpinned by a framework document/ interdepartmental agreement setting out the Welsh Government's budget planning processes, governed by the Government of Wales Act 2006 and Senedd Cymru Standing Orders. Decision on budget allocation to sit with ministers.

Tribunals Wales to co-operate with ministers by providing all necessary assistance, information and budget forecasts to inform Government budget planning decisions.

Budget allocations for the year ensuing to be confirmed in an annual remit letter.

## **Statutory provision: Accounting Officer**

CEO to be the Accounting Officer of Tribunals Wales with responsibility for deployment of resources in line with conditions of funding specified by the Welsh Ministers, signing the annual report and accounts and so forth.

## **Welsh Ministers' accountability**

Framework document/interdepartmental agreement to set out the roles and

responsibilities of the CEO as Accounting Officer and the Permanent Secretary as Principal Accounting Officer for the Welsh Ministers.

### **Statutory provision: Audit**

External auditor to be the Auditor General for Wales, with power to examine the economy, efficiency and effectiveness of the use of resources but not to question the merits of the objectives of Tribunals Wales.

### **Welsh Ministers' accountability**

Framework document/interdepartmental agreement to set out detail on matters in relation to internal audit and external audit.

## **Corporate governance**

### **Statutory provision: Corporate plan**

Tribunals Wales to prepare a corporate plan for a defined period to be approved by the Welsh Ministers which the body must then publish and lay before the Senedd. It must set out the body's strategic objectives for the planning period and the performance measures by which achievement of the objectives can be measured.

### **Welsh Ministers' accountability**

Framework document/interdepartmental agreement to set out the corporate governance planning framework: Term of Government remit letter (subject to process for modification if government priorities shift); corporate plan for a defined period; annual business plan; accounts and annual report.

The planning period the corporate plan must cover could be prescribed in primary legislation (e.g. periods of 3 years commencing on a certain date) or in subordinate legislation with a power for the Welsh Ministers to amend the period as they consider appropriate.

### **Statutory provision: Accounts and annual report**

Tribunals Wales to keep proper accounting records and prepare an annual statement of accounts in accordance with any directions given by the Welsh Ministers.

### **Welsh Ministers' accountability**

Framework document/interdepartmental agreement to set out detail on the statutory accounting and reporting requirements.

### **Statutory provision: Accounts and annual report**

Tribunals Wales to keep proper accounting records and prepare an annual statement of accounts in accordance with any directions given by the Welsh Ministers.

### **Welsh Ministers' accountability**

Framework document/interdepartmental agreement to set out detail on the statutory accounting and reporting requirements.

### **Statutory provision: Provision of information**

Tribunals Wales to provide the Welsh Ministers with any information they require relating to the exercise of the body's functions, subject to the confidentiality of

information relating to applications to the tribunals.

### **Welsh Ministers' accountability**

Framework document/interdepartmental agreement to set out detail on Welsh Ministers access to information held by Tribunals Wales.

## **Transfer of staff**

### **Statutory provision: Transfer scheme for staff**

Power for the Welsh Ministers by regulations to provide for the transfer of staff employed by them to be transferred to Tribunals Wales.

Power for the Welsh Ministers to second staff to Tribunals Wales.

### **Welsh Ministers' accountability**

Welsh Ministers accountable for the initial staffing of Tribunals Wales.

## **Transfer of property and liabilities**

### **Statutory provision: Transfer scheme for property and liabilities**

Power for the Welsh Ministers by regulations to provide for the transfer of any property and liabilities to Tribunals Wales.



## Welsh Ministers' accountability

Welsh Ministers accountable for the initial property and liabilities of Tribunals Wales.

## Consequential matters

### Statutory provision: Amendments to legislation

Tribunals Wales to be included in relevant schedules as a public body, including, e.g.:

- The Freedom of Information Act 2000
- The Well-being of Future Generations Act 2015, and
- The Public Services Ombudsman (Wales) Act 2019.

## Table 1: Tribiwnlysoedd Cymru / Tribunals Wales, a proposed arms-length body corporate: proposed structure and governance

Area	Statutory provision	Detail	Welsh Ministers' accountability
Establishment	Incorporation	A body corporate known as "Tribunals Wales/Tribiwnlysoedd Cymru" (proposed name for working purposes only). Creates a statutory body with	Determined by the legislative framework for Tribunals Wales.

<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
	Status	<p>legal personality.</p> <p>As a general principle the Law Commission concluded the administration for the tribunal system should be staffed by civil servants, which is usually the status of staff employed by an NMD. We are consulting on options.</p>	<p>The portfolio Welsh Minister will account to the Senedd, along with the Permanent Secretary and the CEO and Chair of the Board.</p>
<b>Purpose</b>	Objective	<p>To have operational responsibility for the administration of the new tribunal system and to exercise its functions to provide services to ensure the effective administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales and to support members to discharge their functions.</p>	<p>Creates structural separation between operational responsibility for the administration of the new tribunal system, sitting with Tribunals Wales, and policy functions sitting with the Welsh Government.</p>
	Functions and powers	<p>Statute to detail functions of Tribunals Wales and its general and ancillary powers.</p>	<p>Accountable for overall performance of Tribunals Wales.</p>

<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
	Government policy	A duty on Tribunals Wales in the exercise of its functions to have regard to such aspects of Welsh Government policy and such other matters as the Welsh Ministers may direct.	Day-to-day administration will not sit with ministers. This is not a power for the Welsh Ministers to give Tribunals Wales specific directions as to the exercise of its functions.
	Advice to the Welsh Ministers	Duty to provide advice and assistance to the Welsh Ministers as requested; power to offer advice on policy relation to matters where Tribunals Wales exercises functions or the administration of justice in Wales.	Mechanism for Welsh Ministers to draw on relevant expertise of Tribunals Wales and for it to be able to offer advice to ministers framed by its functions.
	Default power	Power for the Welsh Ministers by regulations to assume responsibility for the functions of Tribunals Wales where ministers consider the body is failing to carry out its functions to deliver its purpose or is doing so in such a way so as to create a significant risk to the functioning of the tribunal system.	Equivalent to section 70 of the Judiciary and Courts (Scotland) Act 2008.

Area	Statutory provision	Detail	Welsh Ministers' accountability
Board	Chairperson	Chairperson appointed by the Welsh Ministers, or President of Welsh Tribunals ex officio.	Welsh Ministers' role in appointing chair if the President of Welsh Tribunals ex officio does not hold the chair.
	Members	<p><b>Judicial members</b></p> <p>President of Welsh Tribunals ex officio (if not Chairperson); one judicial member of the new tribunal system for Wales selected by the President.</p> <p><b>Non-judicial members</b></p> <p>Not fewer than 3 nor more than 6 persons appointed by the Welsh Ministers.</p> <p><b>Executive members</b></p> <p>CEO ex officio; one other member of staff appointed by the CEO.</p> <p>(This gives a board of between 8 and 11 persons).</p>	<p>Welsh Ministers to be under a "have regard to" duty to ensure appointees have experience of matters relevant to the Tribunals Wales' purpose and functions and to secure a variety of skills and experience among the members (e.g., a person representative of tribunal users, or a solicitor or barrister with experience of devolved tribunals).</p> <p>Tribunals Wales to be a regulated body with appointments to it regulated by the Commissioner for Public Appointments.</p>
	Tenure (except PWT)	4 years. Eligible for reappointment.	Ensure appointments meet Code of Practice,

Area	Statutory provision	Detail	Welsh Ministers' accountability
	governed by separate legislation)	Provision for resignations and removals also required.	including any restrictions on reappointments.
	Remuneration	Power for Tribunals Wales to pay remuneration and expenses to members of the Board and any co-opted members of committees.	Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for Tribunals Wales to carry out its functions.
	Committees	Power for Tribunals Wales to establish committees and co-opt persons to sit on them.	
	Proceedings	Power for Tribunals Wales to regulate its proceedings, quorum (including committees), manner of voting, etc.	
	Delegation	Power for Tribunals Wales to delegate any function to a member, committee, employee or any other person, corporation or statutory entity, but not to divest itself of responsibility for the function delegated.	

<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
<b>Staff</b>	CEO	<p>First CEO to be appointed by Welsh Ministers on the T&amp;Cs they determine appropriate.</p> <p>Subsequent CEOs to be appointed by the Board of Tribunals Wales on T&amp;Cs it, with the approval of the Welsh Ministers, determines appropriate.</p>	Welsh Ministers make first appointment of CEO and required to approve T&Cs of that and subsequent appointees.
	Other staff	Tribunals Wales can appoint staff as it considers appropriate to enable it to discharge its functions. If an NMD, this will be subject to the Civil Service Commission Recruitment Principles.	Welsh Ministers allocate finance through annual grant-in-aid of such amount ministers consider appropriate for the Tribunals Wales to carry out its functions. Ensure that CEO and Board are recruited under Code of Practice.
<b>Finance</b>	Funding	Sources of funding for Tribunals Wales: income from fees; and grant-in-aid from Welsh Ministers of such amount ministers consider appropriate for the body to carry out its functions and subject to conditions ministers	Welsh Ministers accountability underpinned by a framework document/ interdepartmental agreement setting out the Welsh Government's budget planning processes, governed by

Area	Statutory provision	Detail	Welsh Ministers' accountability
		consider appropriate.	<p>the Government of Wales Act 2006 and Senedd Cymru Standing Orders. Decision on budget allocation to sit with ministers.</p> <p>Tribunals Wales to co-operate with ministers by providing all necessary assistance, information and budget forecasts to inform Government budget planning decisions.</p> <p>Budget allocations for the year ensuing to be confirmed in an annual remit letter.</p>
	Accounting Officer	CEO to be the Accounting Officer of Tribunals Wales with responsibility for deployment of resources in line with conditions of funding specified by the Welsh Ministers, signing the annual report and accounts and so forth.	Framework document/ interdepartmental agreement to set out the roles and responsibilities of the CEO as Accounting Officer and the Permanent Secretary as Principal Accounting Officer for the Welsh Ministers.
	Audit	External auditor to be the Auditor General for	Framework document/ interdepartmental

<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
		Wales, with power to examine the economy, efficiency and effectiveness of the use of resources but not to question the merits of the objectives of Tribunals Wales.	agreement to set out detail on matters in relation to internal audit and external audit.
<b>Corporate Governance</b>	Corporate Plan	Tribunals Wales to prepare a corporate plan for a defined period to be approved by the Welsh Ministers which the body must then publish and lay before the Senedd. It must set out the body's strategic objectives for the planning period and the performance measures by which achievement of the objectives can be measured.	<p>Framework document/ interdepartmental agreement to set out the corporate governance planning framework: Term of Government remit letter (subject to process for modification if government priorities shift); corporate plan for a defined period; annual business plan; accounts and annual report.</p> <p>The planning period the corporate plan must cover could be prescribed in primary legislation (e.g., periods of 3 years commencing on a certain date) or in subordinate legislation with a power for the Welsh Ministers to amend the period as they consider appropriate.</p>



<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
	Accounts and annual report	Tribunals Wales to keep proper accounting records and prepare an annual statement of accounts in accordance with any directions given by the Welsh Ministers.	Framework document/ interdepartmental agreement to set out detail on the statutory accounting and reporting requirements.
	Provision of information	Tribunals Wales to provide the Welsh Ministers with any information they require relating to the exercise of the body's functions, subject to the confidentiality of information relating to applications to the tribunals.	Framework document/ interdepartmental agreement to set out detail on Welsh Ministers access to information held by Tribunals Wales.
<b>Transfer of staff</b>	Transfer scheme for staff	<p>Power for the Welsh Ministers by regulations to provide for the transfer of staff employed by them to be transferred to Tribunals Wales.</p> <p>Power for the Welsh Ministers to second staff to Tribunals Wales.</p>	Welsh Ministers accountable for the initial staffing of Tribunals Wales.

Area	Statutory provision	Detail	Welsh Ministers' accountability
<b>Transfer of property and liabilities</b>	Transfer scheme for property and liabilities	Power for the Welsh Ministers by regulations to provide for the transfer of any property and liabilities to Tribunals Wales.	Welsh Ministers accountable for the initial property and liabilities of Tribunals Wales.
<b>Consequential matters</b>	Amendments to legislation	<p>Tribunals Wales to be included in relevant schedules as a public body, including, e.g.:</p> <ul style="list-style-type: none"> <li>• The Freedom of Information Act 2000</li> <li>• The Well-being of Future Generations Act 2015, and</li> <li>• The Public Services Ombudsman (Wales) Act 2019.</li> </ul>	

## Chapter 6: The President of Welsh Tribunals

### Proposal

We propose:

- the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a

- judge in those tribunals, and
- the role of President of Welsh Tribunals should be enhanced by conferring new statutory duties and functions on the office.

## Introduction

117. The Wales Act 2017 created the office of President of Welsh Tribunals. The President's functions under the Act are twofold (Section 60(5) of the Wales Act 2017). First, the President is responsible for the maintenance of the tribunals (Section 59 of the Wales Act. See also Chapter 2: Scope of our reforms) within the resources made available by the Welsh Ministers. This extends to training, guidance and welfare of the members of those tribunals. Second, the president is responsible for representing the views of members of the tribunals to the Welsh Ministers and to the Senedd. The first President of Welsh Tribunals, Sir Wyn Williams did this in part through his annual reports that were presented to the First Minister and Counsel General, then laid before the Senedd.

118. The Wales Act does not exhaustively define the duties, functions and powers of the President, some of which are implied. For example, it is commonly accepted that as the President is the most senior judicial figure within the devolved tribunals in Wales, with a complementary supervisory role over the tribunals in respect of which the President has statutory functions. Those functions are, however, currently limited to matters of training, guidance and welfare.

119. The role of the President of Welsh Tribunals is complicated by the nature of the current legislative frameworks for the tribunals under the President's supervision. This is because the Wales Act 2017 has been overlaid across pre-existing legislation spanning the pre and post devolution periods. In addition, there are devolved tribunals within the scope of our proposals that do not fall within the purview of the President's role.

120. We consider the office of President of Welsh Tribunals is a key component

of Wales' devolved tribunal system. The senior judicial leadership the office provides is required as our new tribunal system is created and as it evolves going forward. But we think there is potential to enhance the office of President of Welsh Tribunals, potential the UK government has grasped, too, in making the President of Welsh Tribunals the appointing authority for sitting-in-retirement offices for the Welsh Tribunals. Any such appointments, however, currently still require the agreement of the appointing authority for the original judicial office, which will either be the Welsh Ministers or the Lord Chancellor (Section 124 of the Public Service Pensions and Judicial Office Act 2022).

## A judicial role for the President of Welsh Tribunals

121. The Law Commission recommends the President of Welsh Tribunals should be presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals (See Annex 2, Law Commission recommendations 17 and 18).

122. The Wales Act 2017 does not expressly confer a judicial role on the President of Welsh Tribunals to sit as a judge in the Welsh Tribunals. This position contrast with the equivalent senior leadership roles of the tribunals in England and Wales and in Scotland where, respectively, the Senior President of Tribunals and the President of Scottish Tribunals both have judicial roles prescribed in statute (Sections 4(1)(c) and 5(1)(a) of the Tribunals Courts and Enforcement Act 2007 and section 17(5) of the Tribunals (Scotland) Act 2014). Sir Wyn Williams as President of Welsh Tribunals commented on the judicial role of the President of Welsh Tribunals in his first annual report :

“ Although the Act is silent upon the point, it seems clear that, as a senior judge, the President is entitled to sit as the legal chair of each of the Welsh Tribunals. That said, my view is that the President should sit as a legal chair of a Tribunal only if the Judicial Lead of that Tribunal and the

President agree that the circumstances prevailing in a given case make it inappropriate for the Judicial Lead to sit. (**President of Welsh Tribunals First Annual Report** page 3) ”

123. At present, whilst it may be implied the President of Welsh Tribunals can sit as a judge in one of the tribunals within the President’s remit, there is no accepted mechanism for this arrangement in practice and no provision in procedural rules or directions setting out the practice and procedure for how the President should sit.

124. We consider there are clear practical benefits for express statutory provision to be made for a judicial role for the President of Welsh Tribunals in both the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. First, it will provide clarity to the current legal basis of the President’s judicial role. Second, together with suitable procedural rules it will provide certainty as to the practice and procedure to be followed on those occasions the President sits as a judge. Third, it will make senior judicial resource available to Wales’ emerging justice system particularly where issues arise relating to the application of devolved legislation across the tribunals as a whole. Fourth, it will provide a valuable insight to the President about the running of the tribunals and the allocation of resources across them. Finally, a specified judicial role for the President will increase the attraction of the office for potential incumbents in the future.

125. For clarity, we also propose an express statutory provision that the President of Welsh Tribunals is the presiding judge of both the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

## Consultation question 24

Do you agree the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for

## New statutory duties and functions

126. We have discussed the statutory provisions underpinning the office of President of Welsh Tribunals, and the current limited nature and extent of the President's functions. Whilst the office of President of Welsh Tribunals has since its inception under the Wales Act 2017 added very significant value to the tribunal justice system in Wales, we consider the office should be enhanced and have more substance.

127. In addition to an express statutory provision underpinning the judicial role of the President of Welsh Tribunals, we consider further statutory duties and functions should be conferred on the office to strengthen its leadership role across the new tribunals and in the interests of judicial independence. Many of these duties and functions are discussed in the other chapters of this white paper. They are set out in summary below:

### Proposed duties and functions for the President of Welsh Tribunals

- Judicial oversight for the structure of the organisation of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales - chapter 3
- Judicial oversight of proposals to add jurisdictions to the new tribunal system - chapter 3
- Judicial member or Chair of the Board of Tribunals Wales (“Tribiwnlysoedd Cymru/Tribunals Wales ” is the working name of the new statutory body we propose to create – see Chapter 5: Independence), the new body corporate arms-length from Welsh Government with operational responsibility for the administration of the new tribunal system - chapter 5

- Appointing authority for legal and non-legal members of the First-tier Tribunal for Wales - chapter 7
- Judicial oversight and concurrence to appointments by the Welsh Ministers of Chamber President and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales - chapter 7
- Authorising cross-deployment of tribunal members across the First-tier Tribunal for Wales and the Appeal Tribunal for Wales - chapter 7
- Adjudicating on complaints about members of the First-tier Tribunal for Wales - chapter 8
- Judicial oversight and concurrence to adjudications on complaints about members of the Appeal Tribunal for Wales - chapter 8
- Chair of the Tribunal Procedure Committee for Wales, responsibility for appointing members to the Committee and for making procedural rules for the First-tier Tribunal for Wales and the Appeal Tribunal for Wales - chapter 9

128. The list of proposed duties and functions set out above is not exhaustive. We intend to ensure the office of President of Welsh Tribunals is underpinned by a statutory framework that equips the President to provide judicial leadership for the new tribunal system on its creation and as it develops in the future.

## Consultation question 25

Do you agree with our proposals to enhance the office of President of Welsh Tribunals by conferring statutory duties, functions and powers on the office, as detailed in this white paper?

# Chapter 7: Appointments and deployment

## Proposal

We propose:

- a coherent approach for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales
- in making appointments there should be regard to the need to encourage diversity in the range of persons appointed as members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales
- terms and conditions, including remuneration, to be set by the Welsh Ministers, and
- a system for the effective deployment of tribunal members across the new tribunal system.

## Introduction

129. We set out in Chapter 5 our proposals to support judicial independence in the new tribunal system. With independence comes accountability, and these are not incompatible propositions. The Judicial Executive Board has summarised judicial accountability as follows:

“ Individual judges are subject to a strong system of internal accountability in respect of legal errors and personal conduct...[and] are accountable to the public in the sense that in general their decisions are in public and are discussed, often critically, in the media and by interest groups and sections of the public affected by them. The judiciary is similarly institutionally accountable in respect of first instance and appellate decisions.



“ Neither individual judges nor the judiciary are, nor should they be, accountable to the executive branch of the state because that is inimical to the judicial independence which is a necessary requirement for the discharge by judges of their core responsibility to resolve disputes fairly and impartially. (**The Accountability of the Judiciary**) ”

130. Judicial independence and accountability operate in balance. Whilst current appointments for Welsh Tribunal members follow transparent selection processes, the legislation for appointments is inconsistent. A coherent approach to the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, resulting from clear and transparent selection processes, will contribute to this balance. Our proposals for appointments to the new tribunal system are therefore guided by the following principles:

- a. processes and procedures should protect the independence of tribunal members and the new tribunal system
- b. there should be consistency of appointing authority to ensure fairness, and
- c. appointments should be underpinned by clear and transparent selection processes.

## Consultation question 26

Do you agree with our guiding principles for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

## Current arrangements for appointments

131. Responsibility for, and the process of, appointing members to devolved tribunals is inconsistent. This is one of the products of the piecemeal development of the Welsh Tribunals and it has arisen not because of policy

decisions to treat appointments across tribunals in different ways, but instead largely because of the passage of time and as thinking about the judicial nature of tribunals has developed. Different procedures apply again to members of the VTW and school admission and exclusion appeal panels.

132. The current arrangements for appointments to the devolved tribunals, including for the office of President of Welsh Tribunals, are set out in the table below:

## **Appointments**

### **President of Welsh Tribunals**

Legislation: Section 60 of and Schedule 5 to the Wales Act 2017

Appointing authority: Lord Chief Justice, consultees - Lord Chancellor, and Welsh Ministers.

### **Adjudication Panel for Wales**

Legislation: Section 75 Local Government Act 2000

Appointing authority: Welsh Ministers

### **Agricultural Land Tribunal for Wales**

Legislation: Section 73 of Schedule 9 to the Agriculture Act 1947

Appointing authority: Lord Chancellor

## **Educational Tribunal for Wales**

Legislation: Section 91 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018

Appointing authority: Lord Chancellor appoints the President, and the legal chair panel.

Welsh Ministers appoint lay panel with the agreement of the Secretary of State and the President.

## **Mental Health Review Tribunal for Wales**

Legislation: Section 65 of and Schedule 2 to the Mental Health Act 1983

Appointing authority: Lord Chancellor

## **Residential Property Tribunal for Wales**

Legislation: Section 229 of the Housing Act 2004, section 173 of the Commonhold and Leasehold Reform Act 2002 and Schedule 10 to the Rent Act 1977

Appointing authority: Lord Chancellor appoints legal members. Welsh Ministers appoint other members, Vice President, and President from the persons appointed by the Lord Chancellor.

## **Welsh Language Tribunal**

Legislation: Section 120 of and Schedule 11 to the Welsh Language (Wales) Measure 2011

Appointing authority: Welsh Ministers

## **Valuation Tribunal for Wales**

Legislation: Regulations 9, 11 and 12 of and Schedule 2 to the Valuation Tribunal for Wales Regulations 2010

Appointing authority:

Appointments Panel of the VTW's Governing Council:

- Members
- Chairpersons

Election by ballot of full VTW membership:

- President

Note: The Welsh Ministers hold default powers if the above appointments are not made within 3 months of a vacancy.

## **School admission**

Legislation: The Education (Admission Appeals Arrangements) (Wales) Regulations 2005

Appointing authority: Local authority or governing body must appoint either 3 or 5 members to each appeal panel

## **School exclusion**

Legislation: The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003

Appointing authority: Local authority must appoint either 3 or 5 members to each appeal panel.

133. With limited exceptions (see Chapter 6: The President of Welsh Tribunals, paragraph 112), the President of Welsh Tribunals does not have responsibilities for appointments to the Welsh Tribunals. The current limited judicial involvement in and oversight of appointments to devolved tribunals contrasts with the position in the England and Wales system and in Scotland, and the functions conferred respectively on the Senior President of Tribunals ([Footnote 1](#)) and on the Lord President and President of Tribunals ([Footnote 2](#)).

## Proposed arrangements for appointments

134. The Law Commission's recommendations for reform of existing appointments processes propose new appointing authorities for the First-tier Tribunal for Wales and the Appeal Tribunal for Wales (see Annex 2, Law Commission recommendations 31 to 37). These can be summarised as follows:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

135. We agree with the principle of the Law Commission's proposals. The responsibilities of appointing authority could be conferred on the Welsh Ministers, as recommended by the Law Commission, or on a specific minister such as the First Minister or Counsel General. Under current arrangements, appointing responsibilities for some of the Welsh Tribunals sit with a specific minister (the Lord Chancellor) who has specific statutory duties with regard to the independence of the judiciary. Generally, functions are not imposed on individual Welsh Ministers.

136. We consider a coherent approach to appointments across the new tribunal system, particularly the enhanced role for the President of Welsh Tribunals, will contribute to judicial independence. Under these proposals, no appointments will be able to be made without judicial involvement, in the shape of the President acting as appointing authority or concurring to appointments where the Welsh Ministers act as appointing authority.

137. Of course, whoever is the appointing authority, the most important element is that appointment decisions should be based on recommendations resulting from clear and transparent selection processes. The Judicial Appointments Commission (“the JAC”) is a statutory body and has responsibility for selecting people for judicial appointments to the Welsh Tribunals where the Lord Chancellor is currently the appointing authority. Where Welsh Ministers are the appointing authority, the JAC manages the selection processes under the terms of an arrangement under section 83 of the Government of Wales Act 2006.

138. We propose that appointments should continue to be underpinned by clear and transparent selection processes. We are exploring with the JAC and with the UK government the practical issues of retaining the JAC to undertake selection processes and to make recommendations for appointments of members to the new tribunal system.

139. The upshot of accepting these proposals would be that the Lord Chancellor would not retain a role as an appointing authority in the new unified tribunal system. This appears to us to be appropriate: the Lord Chancellor is responsible for the judiciary of the reserved, England and Wales jurisdiction and does not generally have commensurate functions with regard to the judiciary in devolved institutions, such as the courts of Scotland.

## Consultation question 27

Do you agree with our proposals for the appointing authority for members

of the new tribunals:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

## Criteria for appointments

140. A further product of the piecemeal development of the devolved tribunals is that the criteria for appointment as tribunal members that prospective candidates must satisfy lack coherence and vary from tribunal to tribunal, rather than being consistent across the system. Currently, for example, for the Welsh Tribunals the judicial-appointment eligibility condition (Section 50 of the Tribunals Courts and Enforcement Act 2007) only applies by statute to legal roles in the Welsh Language Tribunal, the Education Tribunal for Wales and the Agricultural Land Tribunal for Wales.

141. The judicial-appointment eligibility condition imposes a statutory requirement for at least 5 or 7 years of post-qualification experience and specifies the relevant legal qualification that candidates must hold for appointment to a legal role. Those qualifications include, for example, barrister, solicitor, or Fellow of the Chartered Institute of Legal Executives ("CILEx"). Currently, however, those holding the CILEx qualification are eligible to apply for a more limited range of legal roles in the wider England and Wales jurisdiction compared to those qualified as a barrister or as a solicitor. We note the flexibility available to the Senior President of Tribunals who may appoint a judge of the First-tier Tribunal even if that person does not satisfy the judicial-appointment

eligibility condition (paragraph 2(d) of Schedule 2 to the Tribunals Courts and Enforcement Act 2007).

142. Non-legal roles cover a wider and varied range of areas. For the Welsh Tribunals this covers mental health, agriculture and local government ethical standards, amongst others. The eligibility criteria for non-legal roles therefore varies where this is appropriate, depending on the jurisdiction of the tribunal to which a non-legal role applies.

143. Whilst clear and consistent criteria for appointments is part of the equation for building and maintaining the body of members for the new tribunal system, another part is diversity. The Commission on Justice in Wales (“the Thomas Commission”) commented:

“ The people of Wales are entitled to a system for the provision of justice that meets their specific needs and takes into account demography, geography, diversity and equality. (**Justice in Wales for the people of Wales**, paragraph 12.3.2, page 450) ”

144. The annual official statistics on judicial diversity in England and Wales for 2022, covering the current judiciary, judicial appointments and legal professions, indicates, for example, that approximately half of tribunal judges were women, but the proportion is lower in the court judiciary, particularly in senior roles. In addition, for judicial appointments, recommendation rates from the eligible pool for ethnic minority candidates were an estimated 37% lower than for white candidates, a difference that is described in the official statistics as being statistically significant (**Diversity of the judiciary: Legal professions, new appointments and current post-holders** - 2022 Statistics).

145. We note the UK government has announced proposals to broaden the legal roles open to CILEx qualified legal professionals to include Judge of the Upper Tribunal of England and Wales, amongst others (**UK Government press release**, 11 May 2023). Broadening the pool from which appointments can be made will encourage greater diversity in the judiciary over time. The Thomas



Commission saw CILEx as increasing diversity in the legal profession in Wales, with some 75 per cent of its members female and 70 per cent of its members aged below 44 years of age (**Justice in Wales for the people of Wales**, paragraph 9.20, page 379). It offers a more accessible route to qualification for many in Wales:

“ The Chartered Institute of Legal Executives’ route to qualification as a legal professional is more accessible, flexible and affordable... It provides a non-university route to achieving the academic stage of legal training. Students can study, often on a part time basis, through local colleges or by distance learning and at a pace of their choosing; they can be in relevant employment whilst doing so. The Institute estimates that it costs a person on average less than £10,000 to qualify as a Chartered Legal Executive, which is much less than the costs to qualify as a solicitor or a barrister. (**Justice in Wales for the people of Wales**, paragraph 9.45, page 388) ”

146. Currently, only in respect of appointments to one of the Welsh Tribunals is the appointing authority required to have regard to the need to encourage diversity in the range of persons appointed. That tribunal is the Welsh Language Tribunal where the Welsh Ministers are the appointing authority (Welsh Language Tribunal (Appointment) Regulations SI 2013 No.3139 (W.312), Regulation 4). We consider the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should similarly be required to have regard to the need to encourage diversity in the range of persons appointed.

147. We also consider the pool of candidates eligible for appointment should be drawn widely to encourage persons with the appropriate experience, qualifications and skills, including, for example, legal professionals holding the CILEx qualification, to apply to join the membership of the new tribunal system. Gathering data on and monitoring key performance indicators will be a function of the Board of the new arms-length body. We see this as including indicators on the diversity of tribunal members and the Welsh language across the tribunal

system.

### Consultation question 28

Do you agree the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be required to have regard to the need to encourage diversity in the range of persons appointed?

### Consultation question 29

Do you agree eligibility criteria for appointment to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should enable the pool of candidates eligible for appointment to be drawn as widely as possible?

## Terms and conditions of appointment

148. The Welsh Ministers have the power to set the terms and conditions, including remuneration, of members of the Welsh Tribunals under the various separate legislative frameworks governing each of them. We propose the Welsh Ministers have an equivalent power in relation to all members of the new tribunals, enabling regard to be had to making terms and conditions common, where possible and appropriate, across the various jurisdictions as well as facilitating cross-deployment.

## Consultation question 30

Do you agree the Welsh Ministers should set terms and conditions of appointment of members of the new tribunal service?

### Deployment

149. Cross-deployment, or cross-ticketing, is a means by which a member of a Welsh Tribunal can sit and hear cases in a Welsh Tribunal other than the one to which the member has been appointed (Section 62 of the Wales Act 2017). This is a flexible means of resourcing to meet the needs the current Welsh Tribunals. This system of flexible resourcing does not currently apply across all devolved tribunals in Wales.

150. Cross-deployment can also operate between the Welsh Tribunals and the UK First-tier Tribunal and Upper Tribunal and vice versa, where the President of Welsh Tribunals and the Senior President of Tribunals agree (Section 63 of the Wales Act 2017).

151. To facilitate the effective deployment of tribunal members across the new tribunal system in Wales and across the wider system of reserved tribunals, we propose a system of cross-deployment for judicial, legal and non-legal members should operate in the new tribunal system and the tribunal system in place in the England and Wales jurisdiction. It should be subject to appropriate approvals from the senior judicial leaders for each system of tribunals, in Wales this responsibility will sit with the President of Welsh Tribunals.

152. We propose the powers of cross-deployment are restricted to such deployment to tribunals at the same level, and so, for example, a judge or other member of the First-tier Tribunal for Wales could be deployed to an equivalent position in a different jurisdiction to that of the Chamber to which they are appointed but cannot be cross-deployed into the Appeal Tribunal for Wales.

## Consultation question 31

Do you agree to there continuing to be a system of cross-deployment for judicial, legal and non-legal members in the new tribunal system?

# The appointment of the President of Welsh Tribunals

153. The President of Welsh Tribunals is a Lord Chief Justice appointment and both the Lord Chancellor and the Welsh Ministers are consultees in that. The Lord Chancellor also has functions in relation to removal of the President from office (Section 60 of and paragraphs 2 and 10 of Schedule 5 to the Wales Act 2017).

154. We have considered the underpinning rationale for the current arrangements and whether they remain optimal for the office of President in the new tribunal system. We propose in the paragraphs below in relation to appointments of tribunal members that the current appointing authority functions of the Lord Chancellor should not be retained in relation to the tribunals in the new unified tribunal system. We propose that, similarly, the current functions of the Lord Chancellor in relation to the appointment of the President should not be retained for the new tribunal system.

155. Our rationale for this proposal is the office of President of Welsh Tribunals is the most senior judge in the devolved tribunal system. The executive function in the process of the President's appointment, namely affirming agreement to the Lord Chief Justice appointing a person to the office should be exercised by the Welsh Ministers alone, who collectively with the Counsel General and the Deputy Ministers are the Welsh Government, the executive for Wales.

156. We consider that there should be synergy and coherence between appointment and disciplinary processes, as we set in the paragraphs below. We

therefore propose that the Lord Chancellor's existing functions in relation to the dismissal of the President should not be retained for the new tribunal system.

157. As noted, the Lord Chief Justice of England and Wales is the appointing authority for the President of Welsh Tribunals. Within the hierarchy of judges, it is logical the President of Welsh Tribunals sits under the Lord Chief Justice, including within the system of devolved tribunals. It is also logical that the Lord Chief Justice has a role in the President's appointment and in matters relating to discipline, particularly in relation to dismissal. But this does not mean the President must necessarily be appointed by the Lord Chief Justice. Appointing authority arrangements for the President's appointment could therefore continue as they currently are in the new tribunal system, or there could be a Welsh appointing authority.

158. We welcome your comments on the process for appointing the President of Welsh Tribunals and whether and how it should evolve as part of the new tribunal system in Wales.

## Consultation question 32

Do you think the appointment processes for the President of Welsh Tribunals should change in any way as part of the proposed reforms set out in the white paper?

## Footnotes

1. See, for example, section 4 and paragraph 1 of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007, conferring the function on the Senior President of Tribunals to appoint ordinary members and legal members of the First-tier Tribunal for England and Wales. [Back to text.](#)
2. See, for example, sections 22 and 32 and paragraph 1 of Schedule 4 to the

Tribunals (Scotland) Act 2014. The Scottish Ministers are the appointing authority for appointments to the First-tier Tribunal for Scotland and must: consult with the Lord President before appointing Chamber Presidents; and appoint Deputy Chamber Presidents if requested to do so by the President of Tribunals. [Back to text](#).

## Chapter 8: Complaints and discipline

### Proposal

We propose:

- a uniform procedure for complaints and discipline about the conduct of all tribunal members of the new tribunals, and
- a uniform procedure for complaints about the administration of the new tribunal service.

### Introduction

159. Just as a coherent approach to appointments to the new tribunal system contributes to the balance between judicial independence and judicial accountability, so too does a complaints and disciplinary system that is fair, robust and transparent, meeting both the expectations of tribunal users and protecting judicial independence.

160. The current complaints and disciplinary procedures across the devolved tribunals are inconsistent. Some tribunals have policies that cover complaints about the conduct of tribunal members, some have policies that also encompass complaints about tribunal administration, and some have no policies to address either issue.

161. Our objective in proposing reformed procedures to apply to the new tribunal system in Wales is twofold: first, a uniform procedure for complaints about the conduct of all tribunal members; and second, a uniform procedure for complaints about the administration of the new tribunal service, administered by Tribunals Wales (“Tribunals Wales”, is the statutory body arms-length from Welsh Government we propose is responsible for the operational administration of the new tribunal system. See Chapter 5: Independence, for our detailed proposals).

## Complaints about tribunal members

162. We propose a consistent procedure across all chambers of the First-tier Tribunal for Wales and for the Appeal Tribunal for Wales based on the Law Commission’s recommendations .

163. In terms of the First-tier Tribunal for Wales, we propose:

- a. Chamber Presidents to be responsible for investigating conduct complaints about non-legal and legal members of their respective chambers and an independent body or person to be responsible for investigating complaints about Chamber Presidents and Deputy-Presidents, and
- b. On receipt of an investigatory report and recommendations, the President of Welsh Tribunals to be responsible for discipline and dismissal, if necessary, of members of the First-tier Tribunal for Wales. We propose that dismissal in respect of Chamber Presidents and Deputy Presidents should be with the concurrence of the Welsh Ministers.

164. In terms of the Appeal Tribunal for Wales, we propose that complaints about members be investigated by an independent body or person. We agree with the Law Commission’s analysis on the approach to sanctioning Appeal Tribunal members, namely based on the independent investigator’s report and recommendations, sanctions falling short of dismissal to be imposed by the First Minister with the concurrence of the President of Welsh Tribunals; powers of dismissal vesting in the First Minister alone to avoid the possibility of deadlock

between the executive and the judiciary in the most serious of cases.

165. Our proposals outlined above envisage an investigatory role for an independent body or person. We have considered the Lord Chancellor's responsibility for judicial discipline as conferred by statute and the power to make regulations about the procedure that may be followed in dealing with disciplinary matters (Section 115 and 116 of the Constitutional Reform Act 2005). The Lord Chancellor, with the agreement of the Lord Chief Justice, the Lord President of the Court of Session and Lord Chief Justice of Northern Ireland, has designated officials for the purpose of exercising functions relating to judicial discipline. The officials so designated are known collectively as the Judicial Conduct Investigations Office ("the JCIO"), technically, a department of the Ministry of Justice.

166. In practice, the JCIO is treated as an arm's-length body and operates as an independent office supporting the Lord Chancellor and the Lord Chief Justice in managing complaints about judicial office holders. This extends to members of the Welsh Tribunals where the Lord Chancellor is currently the appointing authority, but not where the Welsh Ministers are the appointing authority. There is currently no formal arrangement in place for the JCIO to support the Welsh Ministers to manage complaints about judicial office holders that the Welsh Ministers appoint, should any such complaints arise (this contrasts processes for the selection and recommendation of person for appointment where an arrangement under section 83 of the Government of Wales Act 2006 is in place between the Welsh Ministers and the JAC for the JAC to exercise those functions on behalf of the Welsh Ministers'). We are exploring with the JCIO and the UK government the practical issues around the JCIO supporting the complaints process and nominating a person or persons to carry out the investigatory role that we propose. We are also exploring other options as to the body or person placed to undertake this role..



### Consultation question 33

Do you agree with our proposals for managing complaints and making disciplinary decisions about members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

### Consultation question 34

Do you agree with the proposed investigatory role for an independent body or person? Who do you think that body or person should be?

## Complaints about the administration of the new tribunal system

167. We agree with the Law Commission that there should be a uniform procedure for complaints about the administration of the new tribunal system by Tribunals Wales (See Annex 2, Law Commission recommendation 40).

168. As Chapter 5 discusses, we propose to create a body corporate arms-length from Welsh Government with operational responsibility for the administration of the new tribunal system (See Chapter 5: Independence, pages 36-49 on “Structural independence”, where we propose such an arms-length body is created either as a Welsh Government Sponsored Body or as a Non-Ministerial Department). We propose that complaints about the administration of the new tribunal system, including complaints about Board Members and staff of Tribunals Wales, should be dealt with in the first instance by Tribunals Wales. Appropriate internal complaints mechanisms are a key part of an effective redress and oversight system, and Tribunals Wales should be enabled to innovate to put in place a uniform complaints policy that should be easily

accessible for tribunal users and that clearly articulates the procedure that a complainant is required to follow (see [Public Administration and a Just Wales](#)).

169. We further propose that Tribunals Wales in the exercise of its functions to administer the tribunal system in Wales should be subject to the jurisdiction of the Public Services Ombudsman for Wales. We do not propose the Ombudsman's jurisdiction should extend to complains about judicial or ordinary members of the First Tier Tribunal for Wales or the Appeal Tribunal for Wales.

### Consultation question 35

Do you agree with our proposals for the management of complaints about the administration of the new tribunal system?

## Chapter 9: Procedural rules

### Proposal

We propose:

- there should be common procedural rules across the new tribunal system as far as appropriate, but mindful of the need to accommodate differences between jurisdictions
- each chamber of the First-tier Tribunal for Wales and of the Appeal Tribunal for Wales should have its own set of procedural rules, and
- a Tribunal Procedure Committee for Wales be established, chaired by the President of Welsh Tribunals, to develop and keep up to date procedural rules which would be made by the President subject to them being approved by the Welsh Ministers.

## Introduction

170. We have in previous Chapters of this white paper discussed the piecemeal development of the devolved tribunals in Wales, which is particularly evident in the procedural rules of the devolved tribunals. Some procedural rules date back to pre-devolution legislation from the 1970s and were not written with Wales or modern tribunal practice in mind. This is not helped by the inconsistent use of terminology across the various pieces of legislation to refer to the power to make “rules”, “regulations”, “provision for procedure” and “procedure regulations”.

171. The existing procedural rules currently in place across the devolved tribunals in scope of the tribunal reform project are inconsistent, complex and out of date. This causes difficulties for both judges as well as tribunals users. We agree with the Law Commission that there is a need to address the coherence of procedural rules for the new tribunal system.

172. We therefore propose the creation of a Tribunals Procedure Committee for Wales with responsibility for reviewing and updating procedures to be known as “Tribunal Procedure Rules”, with common rules across the new tribunal system forming part of bespoke rules tailored to the jurisdiction of each of the chambers of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

## A Tribunal Procedure Committee for Wales

173. We propose the creation of a Tribunal Procedure Committee for Wales with responsibility for reviewing and updating procedures to be known as “Tribunal Procedure Rules”, to address the coherence of procedural rules for the new tribunal system instead of the existing inconsistent, complex and out of date rules currently in place across the devolved tribunals in scope of the tribunal reform project.

174. This model in part mirrors the approach taken in relation to the UK First-tier

Tribunal and Upper Tribunal. The responsibility of making the rules governing the practice and procedure in those tribunals is vested in the Tribunal Procedure Committee, an advisory non-departmental public body, established by Section 22 of the Tribunals, Courts and Enforcement Act 2007 and sponsored by the Ministry of Justice. The Tribunal Procedural Committee makes the procedural rules with the aim of ensuring that tribunals are accessible and fair; cases are quick and efficient; and rules are simple and clear. The Tribunal Procedural Committee keeps the procedural rules under constant review particularly in light of new rights of appeal and legislative change.

175. We consider it is important to have an oversight body to ensure the consistency of the rules where necessary; to recognise the need to protect the unique characteristics and needs of individual tribunals where appropriate; and to ensure the procedural rules are regularly reviewed and kept up to date.

176. We propose the Tribunal Procedure Committee for Wales will be a statutory committee, to be chaired by the President of Welsh Tribunals, who will also be responsible for appointing the committee's members, being guided in this process by factors set out in legislation. We propose the Tribunals Procedure Committee for Wales membership should reflect the various jurisdictions/ chambers of the First-tier Tribunal for Wales but should also consist of representatives of tribunal users.

177. Our proposed structure for the Tribunal Procedure Committee for Wales, including matters such as, its membership, how members are appointed, and the tenure of members, amongst other matters, are set out in Table 4.

## Consultation question 36

Do you agree with the creation of a statutory committee with responsibility for developing Tribunal Procedure Rules, as detailed in paragraphs 173-177 and **below**?

## Power to make procedural rules

178. The Tribunals, Courts and Enforcement Act 2007 (Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007), sets out the procedure for making the Tribunal Procedural Rules of the First-tier Tribunal and the Upper Tribunal. Broadly, these procedural rules are made by the [UK] Tribunals Procedure Committee, following a majority agreement of its members (Paragraph 28(2)(a) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007) and, amongst other things, after consultation with such persons as they think appropriate (including Chamber Presidents) (Paragraph 28(1)(a) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). The Draft rules are submitted to the Lord Chancellor, who may allow or disallow them (Paragraphs 28(2)(b) and 28(3) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). If allowed, the rules are made by the Committee by statutory instrument (Paragraphs 28(5) and 28(6) of Part 3 to Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). The Tribunal Procedural Rules are made by Committee in line with statutory objectives, and further guiding principles based on the underlying statutory objectives.

179. The Scottish Civil Justice Council, a body established in May 2013, is responsible for the preparation of draft rules of procedure for civil courts in Scotland, which are presented to the Court of Session who then create the rule by Act of Sederunt. The Tribunals (Scotland) Act 2014 amended the functions of the Scottish Civil Justice Council to include a duty to “review the practice and procedure followed in proceedings in the Scottish Tribunals” (The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 s2 (1) (ba) (as amended by paragraph 13 to Schedule 9, to the Tribunals (Scotland) Act 2014). The amendment is not yet in force; in the meantime tribunal rules are made by the Scottish Ministers.

180. The Law Commission sought views as to how the procedural rules of the devolved tribunals should be made (Law Commission (2020) Devolved Tribunals in Wales Consultation Paper, consultation question 34, Paragraphs 5.109 (page 106) and 11.33 (page 215)). Whilst, most respondents considered the rules

should be made by a majority of the Tribunal Procedure Committee for Wales, nearly a third of respondents supported a combination of the rules being made by a majority of the Tribunal Procedure Committee for Wales or by the President of Welsh Tribunals with the approval of the Welsh Ministers. This included Sir Wyn Williams, who at the time of responding held the office of the President of Welsh Tribunals.

181. The Law Commission concluded the best approach was as suggested by Sir Wyn Williams: that the rules be made by the President of Welsh Tribunals, only after having been formulated and accepted by a majority of the committee. The Law Commission considered this approach should meet the wish of tribunal members for checks and balances to be in place, should prevent a majority of the committee from imposing their views and would also help to empower and ensure the credibility of the committee. Finally, given the terms of procedural rules can have cost implications, the Law Commission considered the rules should, in addition, be subject to the approval of the Welsh Ministers. The Law Commission formularised its conclusion in Recommendation 25 (See Annex 2, Law Commission recommendation 25) of its final report. The Law Commission further recommended a duty on the Committee to consult with whomever it considers appropriate before the rules are made (See Annex 2, Law Commission recommendation 26).

182. We have considered the responses to the Law Commission's consultation and the conclusions drawn. We agree with the recommendations of the Law Commission and propose the Tribunal Procedure Rules of the devolved tribunals are to be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee for Wales, and subject to being approved by the Welsh Ministers.

183. We propose provision is included on the face of the bill setting out the process for making Tribunal Procedure Rules. The Tribunal Procedure Rules will be made by the President of the Welsh Tribunals with the concurrence of the Welsh Ministers through statutory instrument.

184. We consider there is merit in ensuring wide consultation with judicial leads,

tribunal members, policy-makers and tribunal users before the rules are made, to ensure robust procedural rules, which work for all potential tribunal users and the judiciary. Therefore, we also propose the Tribunal Procedure Committee for Wales should be subject to a duty to consult with whomever it considers appropriate (including members of the tribunal, members of the broader judiciary, practitioners and tribunal users, as suggested by the Law Commission) before making the rules.

185. Further detail regarding the making of the Tribunal Procedure Rules is set out in Table 4 below.

### Consultation question 37

Do you agree with the proposed exercise of the power to make the tribunal procedural rules?

## Standardising procedure rules

186. We consider the standardisation of some aspects of the Tribunal Procedural Rules of the devolved tribunals will ensure the procedural rules for the tribunal system in Wales are consistent and accessible for tribunal users and for administrative staff and cross-ticketed tribunal members sitting across chambers in the new structure. Thereby, promoting flexibility and efficiency in the unified devolved tribunal system.

187. The First-tier Tribunal and the First-tier Tribunal for Scotland both have separate sets of procedural rules for each chamber. There are 7 sets of procedural rules in the First-tier Tribunal, containing an identical overriding objective and duty of the parties to cooperate with the tribunal. One of the guiding principles followed by the UK Tribunal Procedure Committee is that the Committee should strive to: adopt common rules across tribunals wherever

possible, so that rules specific to a chamber or a tribunal operate only where there is a clear and demonstrated need for them.

188. We propose the Tribunal Procedure Committee for Wales develop common Tribunal Procedure Rules across the new tribunal system. But importantly this standardisation should only be as far as this is appropriate. Therefore, in addition we propose, chambers into which jurisdictions are organised should have bespoke rules recognising the unique characteristics and needs of their respective jurisdictions. Similarly, when the Appeal Tribunal for Wales is divided into chambers the same approach should apply to its Tribunal Procedure Rules.

189. Whilst it will be for the Tribunal Procedure Committee for Wales to develop the Tribunal Procedure Rules, we agree with the Law Commission recommendation (see Annex 2, Law Commission recommendation 30) and therefore propose the procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

190. Further details on our proposals on the matters proposed, as noted in paragraph 188 above, which could be included in the standardised procedural rules, are set out in paragraphs 191 to 208 below.

191. We also propose the Tribunals Procedure Committee for Wales has the power to develop Tribunal Procedure Rules nuanced for each chamber and its specific jurisdiction, as detailed in Table 4 below.



## **An overriding objective and a non-exhaustive list of illustrative examples**

192. The procedural rules of the Mental Health Review Tribunal for Wales, Education Wales Tribunal, residential property tribunals which form part of the Residential Property Tribunal for Wales and the Welsh Language Tribunal contain an overriding objective. Although each overriding objective differs in its wording, they have in common the requirement that cases should be dealt with “fairly and justly” (an example of variation can be found in Mental Health Review Tribunal for Wales Rules SI 2008 No 2705, Rule 3, which states the overriding objective of the rules is to enable the tribunal to deal with cases “fairly, justly, efficiently and expeditiously”).

193. The Law Commission recommended that the new standardised procedural rules of the devolved tribunals should contain an overriding objective to be applied consistently across tribunals. Procedural rules generally provide a non-exhaustive definition of what it means to deal with cases “fairly and justly”. The Law Commission consultation paper included an example of what the overriding objective (Law Commission, 2020. [Devolved Tribunals in Wales Consultation Paper](#), consultation question 21, paragraphs 5.19, page 87 and 11.21, page 212) could contain, drawing on examples taken from the statements of overriding objective contained in the existing procedural rules ([Devolved Tribunals in Wales Consultation Paper](#), paragraph 5.13, page 86). The Law Commission recommended that a new overriding objective should include a non-exhaustive list of illustrative examples.

194. We propose the new standardised procedural rules should include a statement of principle to guide exercises of discretion by containing an overriding objective which the devolved tribunals must give effect to when exercising any function under the tribunal procedure rules or interpreting any procedural rule.

195. We propose the Tribunal Procedure Rules of the First-tier Tribunal for Wales and Appeal Tribunal for Wales could contain an overriding objective, for

example, to enable the Tribunal to deal with cases fairly and, justly. There is authority that, even where there is no express overriding objective in a particular set of tribunal rules, a tribunal must deal with matters fairly and justly. Whilst this objective may be implied, we propose to make it express. We consider the inclusion of an overriding objective would promote justice, assist in judicial decision making and assist tribunal users. We propose the overriding objective should also include an inexhaustive list of illustrative examples of what it means to deal with cases in line with the objective.

## **A duty of the parties to cooperate with each other and the tribunal**

196. The Law Commission's final report recommended an overriding objective should be accompanied by a duty of the parties to cooperate with each other and the tribunal. Such a duty being currently contained in the overriding objective of the procedural rules of some of the devolved tribunals. In the case of the Mental Health Review Tribunal for Wales, whilst not contained within its own procedural rules, such a rule is contained within that of its First -tier tribunal for England and Wales equivalent.

197. We propose there should be a duty of tribunal users to cooperate with the tribunal and other parties. However, we recognise the duty ought to encourage cooperation rather than being too prescriptive. The duty would emphasise the inquisitorial rather than adversarial nature of a tribunal.

## **Provision for service of documents by electronic means**

198. The procedural rules on service of documents across the devolved tribunals are inconsistent and out of date, reflecting their piecemeal development. The rules do not address modern tribunal practice and are not reflective of technological advances. For example, express provision permitting documents to be sent by email is only contained in the procedural rules of 3 of the devolved tribunals ([footnote 1](#)), with the rules of others only implicitly

appearing to permit documents to be sent by email. Practice directions have been utilised to expressly permit parties to serve documents by email ([footnote 2](#)) during the COVID-19 pandemic. The problem has been highlighted by recent caselaw ([footnote 3](#)).

199. The Law Commission, in its consultation, proposed the procedural rules of the devolved tribunals should provide for service of documents by electronic means.

200. We note the concerns raised by some respondents, whilst agreeing with the principle of the provisional proposal. For example, particularly in the context of the Mental Health Review Tribunal for Wales, it was considered that provision should be enabling rather than prescriptive, to allow hard copy communications where appropriate ([footnote 4](#)). It was also considered that permitting the electronic service of documents could impede the participation of digitally excluded people.

201. We particularly share the concerns regarding digital inclusion in relation service of documents. Through the [Digital Strategy for Wales](#) we make clear that for people who cannot, or decide not to, participate digitally, we must continue to apply the principles of user-centred design so that there are alternative ways to access public services in Wales and that these access routes should be as good as those offered online. The [National Survey for Wales 2021-22](#) confirmed there is an estimated 180,000 people aged 16 and over, living in Wales who do not personally use the internet and therefore cannot access digital services, including tribunal related services. These citizens cannot be left behind.

202. It is of note that the procedural rules of all the chambers of the UK First-tier Tribunal make express provision for the electronic service of documents. However, none of them prescribe electronic service of documents as the only method of service. We propose the Tribunal Procedure Rules should make provision for service of documents by electronic means, but not exclusively. This would ensure the devolved tribunals procedural rules are consistent and brought up to date with modern tribunal practice and technological advances, whilst also

acknowledging the importance of affording proper protection to the potentially vulnerable and to the digitally excluded, and in turn safeguarding access to justice.

## **A power for the First-tier Tribunal for Wales to review its own decisions**

203. The power to review decisions can be a useful tool to tribunals, as it provides them with an opportunity to correct obvious errors without the need for an appeal. However, the power of devolved tribunals to review their decisions varies across the tribunals, where such a provision exists at all.

204. We agree with the Law Commission recommendation that the Tribunal Procedural Rules contain a power for the First-tier Tribunal for Wales to review its own decisions. The power to review decisions would allow the First-tier Tribunal Wales to rectify any obvious errors of law or procedure, it would not seek to alter the grounds of appeal. In this way the Tribunal Procedural Rules would consistently provide a sensible, proportionate and cost-effective means of scrutinising the decision-making process in circumstances limited to correcting obvious errors of law or procedure and avoiding unnecessary appeals.

## **Rules on remote hearings**

205. The COVID-19 pandemic saw tribunal hearings migrate from face-to-face to remote hearings, whether by telephone conference or video conference. Whilst this approach to tribunal hearings was in response to the pandemic, in some cases the impact has been beneficial for tribunal users. The President of Welsh Tribunals reported, in his 2020/2021 annual report ([President of Welsh Tribunals Third Annual Report 2020-2021](#)), the great success of remote hearings in relation to the then Special Educational Needs Tribunal for Wales and its tribunal users positive preference for remote hearings, since tribunal users “are, in the main, able to participate from their own homes and, in consequence, feel more relaxed and better able to participate” in the

proceedings ([President of Welsh Tribunals Third Annual Report 2020-2021](#) page 12).

206. Where appropriate, remote hearings continue to be utilised today, despite the COVID-19 pandemic restrictions having now been lifted. However, currently, there is no uniform procedure for remote hearings across the devolved tribunals. The Law Commission “saw no principled reason for such inconsistency” ([Devolved Tribunals in Wales](#), paragraph 6.155, page 126) and considered the significant increase in the use of remote hearings since the beginning of the COVID-19 pandemic, “created a strong case for updating and standardising procedural rules relating to remote hearings across the devolved tribunals” ([Devolved Tribunals in Wales](#), paragraph 6.155, page 126). The Law Commission, therefore, recommended that rules on remote hearings should be standardised in the devolved tribunal procedural rules. However, there would need to be “sufficient flexibility” to accommodate the requirements of each individual tribunal in the use of remote hearings ([Devolved Tribunals in Wales](#), paragraph 6.165, page 128; and see Annex 2, Law Commission recommendation 30).

207. We agree with the Law Commission recommendation. Remote hearings will continue to be a feature of the modern tribunal system and there is a need to standardise the rules relating to them. We, therefore, propose that the procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include rules on remote hearings.

208. We recognise the potential benefits of standardising the rules relating to remote hearings. For example, improving the accessibility of the tribunals; and ensuring tribunals users in Wales are not disadvantaged by the potential creation of a two-tier system, if we do not keep pace with the shift towards digitalisation within His Majesty’s Courts and Tribunals Service. However, we also acknowledge the concerns raised by some respondents to the Law Commission consultation. For example, the importance of working with deaf individuals to ensure their communication needs are met appropriately for both face-to-face and remote hearings (See comments of The National Deaf Children’s Society Cymru: [Devolved Tribunals in Wales](#), paragraph 6.162,

page 127); and of giving careful consideration to the “unique circumstances of the Mental Health Review Tribunal for Wales and the fact that it is very difficult to ascertain the physical and mental state of a person remotely” (**Devolved Tribunals in Wales**, paragraph 6.163, pages 127-128).

209. Consequently, whilst it will be for the Tribunal Procedure Committee for Wales to consider and formulate the draft Tribunal Procedure Rules, we believe the Tribunal Procedure Committee for Wales should consider the need for sufficient flexibility in its approach to and application of the rule, allowing practice directions which build on the standard rule on remote hearings so as to reflect the unique subject matters of all the devolved tribunals.

### Consultation question 38

Do you agree with the Tribunal Procedure Rules Committee developing common procedural rules across the new tribunal system whilst recognising and accommodating the unique characteristics of each jurisdiction?

### Consultation question 39

Do you agree with our proposal that the Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

# Transitional arrangements

210. To ensure as little disruption as possible to the devolved tribunals in Wales, we propose provision is included on the face of the bill detailing the transitional arrangements. We propose that such a provision would set out that, on creation of the new tribunal system and the transfer into it of those tribunals to be incorporated in the new structure from day one (for example, the Section 59 Welsh Tribunals), the procedural rules that are in force immediately before transfer will have effect as if they are the Tribunal Procedure Rules of that particular chamber of the First-tier Tribunal for Wales until such time as new chamber Tribunal Procedure Rules are made and implemented.

## The proposed new Tribunal Procedure Committee for Wales and Tribunal Procedure Rules

Areas:

- [Establishment](#)
- [Purpose](#)
- [Membership](#)
- [Sub-groups](#)
- [Proceedings](#)
- [Delegation](#)
- [Secretariat](#)
- [Making of the Tribunal Procedure Rules](#)
- [Duties on the Tribunal Procedure Committee](#)
- [Tribunal Procedural Rules](#)

[View in table format](#)

## Establishment

### **Statutory provision: Tribunal Procedure Committee for Wales**

A statutory committee, the “Tribunal Procedure Committee for Wales” to be established.

### **Statutory provision: Status**

As a general principle the Law Commission concluded the administration for the tribunal system should be staffed by civil servants, which is usually the status of staff employed by an NMD. We are consulting on options.

### **Welsh Ministers’ accountability**

The portfolio Welsh Minister will account to the Senedd, along with the Permanent Secretary and the CEO and Chair of the Board.

## Purpose

### **Statutory provision: Objective - (to make Tribunal Procedure Rules)**

To develop rules, to be called “Tribunal Procedure Rules”, governing:

- a. the practice and procedure to be followed in the First-tier Tribunal for Wales, and
- b. the practice and procedure to be followed in the Appeals Tribunal for Wales.

The Tribunal Procedure Committee for Wales is to be responsible for ensuring the Tribunal Procedure Rules are developed, reviewed on a regular basis and



remain up-to-date.

The Tribunal Procedure Rules would seek to deliver fairness, greater access to justice for users, efficiency, clarity of language, consistency, simplicity for administrative staff and cross-ticketed judges.

## **Statutory provision: Functions**

Statute to detail functions of the Tribunal Procedure Committee for Wales.

## **Membership**

### **Statutory provision: Chairperson**

President of the Welsh Tribunals

### **Welsh Ministers' accountability**

Section 60(1) of and Schedule 5 to the Wales Act 2017, provide that the Lord Chief Justice may appoint a person to the office of President of Welsh Tribunals after consultation with the Welsh Ministers and Lord Chancellor, if no agreement is met then the recruitment may be referred to the Judicial Appointments Commission.

The Welsh Ministers will have no further role in the appointment of the Chairperson of the Tribunal Procedure Committee for Wales.

### **Statutory provision: Members appointment**

The President of Welsh Tribunals to be responsible for appointing members to the Tribunal Procedure Committee for Wales.

We do not intend to prescribe the membership of the Tribunal Procedure Committee for Wales by statute. However, we propose the President of Welsh Tribunals, when appointing members of the Tribunal Procedure Committee for Wales will be under a duty "to have due regard" to factors/general guiding principles to be set out in legislation, including the need for:

- i. the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented
- ii. the committee to have access to persons with relevant expertise, and
- iii. the committee to include persons who have experience of appearing in front of the tribunal or advising those that do.

### **Statutory provision: Members**

Appointed by the President of Welsh Tribunals, we envisage the Tribunal Procedure Committee for Wales to consist of core members and additional members appointed as and when required to provide jurisdiction-specific knowledge. Members are to be drawn from judicial and non-judicial/practitioner fields.

Judicial members: Chambers Presidents as ex officio members (based on our proposed structure for the First-tier Tribunal for Wales (see Figure 1); or the President of Welsh Tribunals to select from some judicial members from the pool of Chamber Presidents; or rotate membership between Chamber Presidents.

Non-judicial/Practitioner members: Members with special knowledge of administrative and tribunal decision-making. Not fewer than 3 nor more than 6 persons to ensure a balance of views based on the proposed structure for First-tier Tribunal for Wales.

[This potentially provides a Tribunal Procedure Committee for Wales of between 9 and 12 members excluding the President of Welsh Tribunals.]

The composition of the Tribunal Procedure Committee for Wales may need to

vary depending on the jurisdiction for which it is making Tribunal Procedure Rules and as jurisdictions transfer into the new unified tribunal structure.

### **Statutory provision: Tenure/Term of appointment (except PWT)**

Tenure to be considered for members of the Tribunal Procedure Committee for Wales.

The pool of members is likely to be small, and specialism may be lost if the normal limits on the tenure for public appointments is rigidly imposed. Therefore, we consider that a more flexible approach to length of service on the Tribunal Procedure Committee for Wales should be adopted.

### **Statutory provision: Time commitment**

We propose consideration should be given to the number of committee meetings to be held each year being prescribed in statute to correspond with the duty to meet described below. Possibly 9 per year, in line with the UK Tribunal Procedure Committee.

### **Statutory provision: Remuneration**

Unremunerated, but a power so that the Board of the new body may reimburse members of the Tribunal Procedure Committee for their standard/reasonable travel and out-of-pocket expenses.

This is in line with the power for the Lord Chancellor in relation to UK Tribunal Procedure Committee Members expenses under paragraph 26 of Part 2 to Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

## **Sub-groups**

### **Statutory provision: Sub-groups**

The Tribunal Procedure Committee for Wales to be able to establish sub-groups to focus on particular areas of work.

Power for the Tribunal Procedure Committee for Wales to establish sub-groups and co-opt persons to sit on them.

## **Proceedings**

### **Statutory provision: Proceedings**

Power for the Tribunal Procedure Committee for Wales to regulate its proceedings, quorum (including sub-groups), manner of voting, etc.

## **Delegation**

### **Statutory provision: Delegation**

Power for the Tribunal Procedure Committee for Wales to delegate any function to a member, subgroup, employee of the new body (see Table 1) or any other person, but not to divest itself of responsibility for the function delegated.

## **Secretariat**

### **Statutory provision: Staff**

The board of the new body (see Table 1) can appoint staff as it considers appropriate to enable the committee to discharge its functions.

### **Welsh Ministers' accountability**

Welsh Ministers to provide annual grant-in-aid of such amounts as ministers consider appropriate for the body to carry out its functions.

## **Making of the Tribunal Procedure Rules**

### **Statutory provision: Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals**

Provision to set out the process for making the Tribunal Procedure Rules.

The Tribunal Procedure Rules of the devolved tribunals to be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee for Wales, and subject to being approved by the Welsh Ministers.

NB: this could be a “qualified majority” (i.e., somewhat greater than 50%) or a simple majority of the Tribunal Procedure Committee for Wales.

### **Welsh Ministers' accountability**

The Tribunal Procedure Rules will be made by subordinate legislation/statutory

instrument.

The Welsh Ministers will be accountable for approving the rules to be made by the PWT.

## **Duties on the Tribunal Procedure Committee for Wales**

### **Statutory provision: Tribunal Procedure Committee for Wales “duty to consult”**

The Tribunal Procedure Committee for Wales to be under a “duty of to consult” with whomever it considers appropriate (including Chamber Presidents (if not ex officio), members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before the making of the rules.

### **Statutory provision: Tribunal Procedure Committee for Wales “duty to meet”**

The Tribunal Procedure Committee for Wales to be under a “duty to meet” (unless it is inexpedient to do so).

(see paragraph 28(1)(c) of Part 3 to schedule 5 to the Tribunals, Courts and Enforcement Act 2007, in relation to the UK Tribunal Procedure Committee).

### **Statutory provision: Tribunal Procedure Committee for Wales “duty to have regard” to procedural rules of other courts and tribunals in the UK.**

Tribunal Procedure Committee for Wales to be under a duty to have regard to procedural rules of other tribunals in the UK.

## **Tribunal Procedural Rules**

### **Statutory provision: Each chamber to have its own set of Tribunal Procedure Rules**

To include commonalities and to recognise individual characteristics of the jurisdiction of each chamber.

The Tribunal Procedure Committee for Wales to adopt common Tribunal Procedure Rules across tribunals but importantly as far as this is appropriate – chambers should have their own set of bespoke Tribunal Procedure Rules recognising the unique characteristics of the jurisdictions in each chamber and similarly when the Appeal Tribunal for Wales is divided into chambers.

### **Welsh Ministers' accountability**

See process for "Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals" above.

### **Statutory provision: Contents of the Tribunal Procedural Rules - All rules**

The Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to include:

- i. an overriding objective relating to fairness and justice, with illustrative and non-exhaustive examples such as promoting independent decisions based on factual evidence
- ii. a duty of the parties to cooperate with each other and the tribunal
- iii. provision for service of documents by electronic means
- iv. a power for the First-tier Tribunal to review its own decisions; and rules on

remote hearings.

The Tribunal Procedure Committee to have a statutory duty to draft the rules, guided by clear principles when doing so, e.g., securing that justice is done in proceedings, that the tribunal system is accessible and fair and such like – an example is at section 22(4) of the Tribunals, Courts and Enforcement Act 2007.

### **Statutory provision: Contents of the Tribunal Procedure Rules - Non-exhaustive list of discretionary provisions**

In addition to the rules to apply across all jurisdictions (as noted above), the Tribunal Procedure Committee will have the power to make rules which are needed in each jurisdiction able to make different rules for different circumstance. We propose it may make provision in respect of the following although this is not intended to be an exhaustive list and the Committee will exercise its judgement as to the tailored rules for each jurisdiction:

- i. Delegation to staff
- ii. Time limits
- iii. The extent to which matters may be decided without a hearing and whether a hearing may be public or private
- iv. Proceedings without prior notice
- v. Representation
- vi. Evidence and witnesses, including provisions relating to the payment of expenses for those attending hearings
- vii. Use of information
- viii. Costs and expenses
- ix. Alternative dispute resolution
- x. Correction of decisions and setting aside of decisions on procedural grounds

See as an example Part 1 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.



## Statutory provision: Transitional arrangements

Statute to include transitional arrangements to the effect that on creation of the new tribunal system and the transfer into it of the “listed tribunals” (those tribunals to be incorporated in the new structure from day one) the procedural rules that are in force immediately before transfer have effect as if they are the Tribunal Procedure Rules of that particular chamber of the First-tier Tribunal for Wales.

### Table 4: The proposed new Tribunal Procedure Committee for Wales and Tribunal Procedure Rules

Area	Statutory provision	Detail	Welsh Ministers' accountability
<b>Establishment</b>	Tribunal Procedure Committee for Wales	A statutory committee, the “Tribunal Procedure Committee for Wales” to be established.	
<b>Purpose</b>	Objective - (To make Tribunal Procedure Rules)	To develop rules, to be called “Tribunal Procedure Rules”, governing:  a. the practice and procedure to be followed in the First-tier Tribunal for Wales, and  b. the practice and procedure to be followed in the Appeal	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p data-bbox="742 365 1011 398">Tribunal for Wales.</p> <p data-bbox="679 450 1075 719">The Tribunal Procedure Committee for Wales is to be responsible for ensuring the Tribunal Procedure Rules are developed, reviewed on a regular basis and remain up-to-date.</p> <p data-bbox="679 770 1075 1077">The Tribunal Procedure Rules would seek to deliver fairness, greater access to justice for users, efficiency, clarity of language, consistency, simplicity for administrative staff and cross-ticketed judges.</p>	
	Functions	Statute to detail functions of the Tribunal Procedure Committee for Wales.	
<b>Membership</b>	Chairperson	President of Welsh Tribunals	Section 60(1) of and Schedule 5 to the Wales Act 2017, provide that the Lord Chief Justice may appoint a person to the office of President of Welsh Tribunals after consultation with the Welsh

Area	Statutory provision	Detail	Welsh Ministers' accountability
			<p>Ministers and Lord Chancellor, if no agreement is met then the recruitment may be referred to the Judicial Appointments Commission.</p> <p>The Welsh Ministers will have no further role in the appointment of the Chairperson of the Tribunal Procedure Committee for Wales.</p>
	Members' appointment	<p>The President of Welsh Tribunals to be responsible for appointing members to the Tribunal Procedure Committee for Wales.</p> <p>We do not intend to prescribe the membership of the Tribunal Procedure Committee for Wales by statute. However, we propose the President of Welsh Tribunals, when appointing members of the Tribunal Procedure Committee for Wales will be under a duty "to have due</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>regard" to factors/general guiding principles to be set out in legislation, including the need for:</p> <ul style="list-style-type: none"> <li>i. the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented</li> <li>ii. the committee to have access to persons with relevant expertise, and</li> <li>iii. the committee to include persons who have experience of appearing in front of the tribunal or advising those that do.</li> </ul>	
	Members	<p>Appointed by the President of Welsh Tribunals, we envisage the Tribunal Procedure Committee for Wales to consist of core members and additional members appointed as and when required to provide jurisdiction-specific knowledge. Members are to be drawn from judicial and non-judicial/practitioner fields.</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>Judicial members: Chambers Presidents as ex officio members (based on our proposed structure for the First-tier Tribunal for Wales (see Figure 1); or the President of Welsh Tribunals to select from some judicial members from the pool of Chamber Presidents; or rotate membership between Chamber Presidents.</p> <p>Non-judicial/Practitioner members: Members with special knowledge of administrative and tribunal decision-making. Not fewer than three nor more than 6 persons to ensure a balance of views based on the proposed structure for First-tier Tribunal for Wales.</p> <p>(This potentially provides a Tribunal Procedure Committee for Wales of between nine and 12 members excluding the President of Welsh Tribunals.)</p> <p>The composition of the Tribunal Procedure Committee for Wales may</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>need to vary depending on the jurisdiction for which it is making Tribunal Procedure Rules and as jurisdictions transfer into the new unified tribunal structure.</p>	
	<p>Tenure/Term of appointment (except PWT)</p>	<p>Tenure to be considered for members of the Tribunal Procedure Committee for Wales.</p> <p>The pool of members is likely to be small, and specialism may be lost if the normal limits on the tenure for public appointments is rigidly imposed. Therefore, we consider that a more flexible approach to length of service on the Tribunal Procedure Committee for Wales should be adopted.</p>	
	<p>Time commitment</p>	<p>We propose consideration should be given to the number of committee meetings to be held each year being prescribed in statute to correspond with the duty to meet described below. Possibly 9 per year, in line with the UK Tribunal Procedure Committee.</p>	

<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
	Remuneration	<p>Unremunerated, but a power so that the Board of the new body may reimburse members of the Tribunal Procedure Committee for their standard/reasonable travel and out-of-pocket expenses.</p> <p>This is in line with the power for the Lord Chancellor in relation to UK Tribunal Procedure Committee Members expenses under paragraph 26 of Part 2 to Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.</p>	Welsh Ministers to provide annual funding to Tribunals Wales of such amounts as ministers consider appropriate for the body to carry out its functions.
<b>Sub-groups</b>	Sub-groups	<p>The Tribunal Procedure Committee for Wales to be able to establish sub-groups to focus on particular areas of work.</p> <p>Power for the Tribunal Procedure Committee for Wales to establish sub-groups and co-opt persons to sit on them.</p>	
<b>Proceedings</b>	Proceedings	Power for the Tribunal Procedure Committee for Wales to regulate its proceedings, quorum	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		(including sub-groups), manner of voting, etc.	
<b>Delegation</b>	Delegation	power for the Tribunal Procedure Committee for Wales to delegate any function to a member, subgroup, employee of the new body (see Table 1) or any other person, but not to divest itself of responsibility for the function delegated.	
<b>Secretariat</b>	Staff	The Board of the new body (see Table 1) can appoint staff as it considers appropriate to enable the Committee to discharge its functions.	Welsh Ministers to provide annual grant-in-aid of such amounts as ministers consider appropriate for the body to carry out its functions.
<b>Making of the Tribunal Procedure Rules</b>	Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals	<p>Provision to set out the process for making the Tribunal Procedure Rules.</p> <p>The Tribunal Procedure Rules of the devolved tribunals to be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee for</p>	The Welsh Ministers will be accountable for approving the rules to be made by the PWT.



Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>Wales, and subject to being approved by the Welsh Ministers.</p> <p>NB: this could be a “qualified majority” (i.e., somewhat greater than 50%) or a simple majority of the Tribunal Procedure Committee for Wales. The Tribunal Procedure Rules will be made by subordinate legislation/statutory instrument.</p>	
<p><b>Duties on the Tribunal Procedure Committee for Wales</b></p>	<p>Tribunal Procedure Committee for Wales “duty to consult”</p>	<p>The Tribunal Procedure Committee for Wales to be under a “duty of to consult” with whomever it considers appropriate (including Chamber Presidents (if not ex officio), members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before the making of the rules.</p>	
	<p>Tribunal Procedure Committee for Wales “duty to meet”</p>	<p>The Tribunal Procedure Committee for Wales to be under a “duty to meet” (unless it is inexpedient to do so).</p> <p>(see paragraph 28(1)(c) of</p>	

<b>Area</b>	<b>Statutory provision</b>	<b>Detail</b>	<b>Welsh Ministers' accountability</b>
		Part 3 to schedule 5 to the Tribunals, Courts and Enforcement Act 2007, in relation to the UK Tribunal Procedure Committee).	
	Tribunal Procedure Committee for Wales “duty to have regard” to procedural rules of other courts and tribunals in the UK.	Tribunal Procedure Committee for Wales to be under a duty to have regard to procedural rules of other tribunals in the UK.	
<b>Tribunal Procedural Rules</b>	Each chamber to have its own set of Tribunal Procedure Rules, to include commonalities and to recognise individual characteristics of the jurisdiction of each chamber.	The Tribunal Procedure Committee for Wales to adopt common Tribunal Procedure Rules across tribunals but importantly as far as this is appropriate – chambers should have their own set of bespoke Tribunal Procedure Rules recognising the unique characteristics of the jurisdictions in each chamber and similarly when the Appeal Tribunal for Wales is divided into chambers.	See process for Process for making Tribunal Procedure Rules - by the President of Welsh Tribunals above.

Area	Statutory provision	Detail	Welsh Ministers' accountability
	Contents of the Tribunal Procedural Rules - All rules	<p>The Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to include:</p> <ul style="list-style-type: none"> <li>i. an overriding objective relating to fairness and justice, with illustrative and non-exhaustive examples such as promoting independent decisions based on factual evidence</li> <li>ii. a duty of the parties to cooperate with each other and the tribunal</li> <li>iii. provision for service of documents by electronic means</li> <li>iv. a power for the First-tier Tribunal to review its own decisions; and rules on remote hearings.</li> </ul> <p>The Tribunal Procedure Committee to have a statutory duty to draft the rules, guided by clear principles when doing so, e.g., securing that justice is done in proceedings, that the tribunal system is accessible and fair and such like – an example is at</p>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		section 22(4) of the Tribunals, Courts and Enforcement Act 2007.	
	Contents of the Tribunal Procedure Rules - Non-exhaustive list of discretionary provisions	<p>In addition to the rules to apply across all jurisdictions (as noted above), the Tribunal Procedure Committee will have the power to make rules which are needed in each jurisdiction able to make different rules for different circumstance. We propose it may make provision in respect of the following although this is not intended to be an exhaustive list and the Committee will exercise its judgement as to the tailored rules for each jurisdiction:</p> <ul style="list-style-type: none"> <li>i. Delegation to staff</li> <li>ii. Time limits</li> <li>iii. The extent to which matters may be decided without a hearing and whether a hearing may be public or private</li> <li>iv. Proceedings without prior notice</li> <li>v. Representation</li> <li>vi. Evidence and witnesses, including</li> </ul>	

Area	Statutory provision	Detail	Welsh Ministers' accountability
		<p>provisions relating to the payment of expenses for those attending hearings</p> <ul style="list-style-type: none"> <li>vii. Use of information</li> <li>viii. Costs and expenses</li> <li>ix. Alternative Dispute Resolution</li> <li>x. Correction of decisions and setting aside of decisions on procedural grounds</li> </ul> <p>See as an example Part 1 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.</p>	
	Transitional arrangements	<p>Statute to include transitional arrangements to the effect that on creation of the new tribunal system and the transfer into it of the “listed tribunals” (those tribunals to be incorporated in the new structure from day one) the procedural rules that are in force immediately before transfer have effect as if they are the Tribunal Procedure Rules of that particular chamber of the First-tier Tribunal for Wales.</p>	

## Footnotes

1. Only the Education Tribunal for Wales, Valuation Tribunal for Wales and residential property tribunal rules specifically state that documents can be sent by email. See The Special Educational Needs Tribunal for Wales Regulations SI 2012 No. 322 (W. 53), regulation 79(2)(c); The Education Tribunal for Wales Regulations SI 2021 No. 406 (W. 132), regulation 75(4); The Valuation Tribunal for Wales Regulations SI 2010 No 713 (W 69), regulation 46(5); and The Residential Property Tribunal (Wales) Regulations SI 2006 No. 1641 (W.156), regulation 37. [Back to text.](#)
2. See The Mental Health Review Tribunal for Wales Rules SI 2008 No. 2705 (L. 17), rule 9(1); The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations SI 2001 No 2288 (W 176), regulation 24(b); The Agricultural Land Tribunals (Rules) Order SI 2007 No 3105, rule 49(b); and The Leasehold Valuation Tribunals (Procedure) (Wales) Regulations SI 2004 No 681 (W 69), regulation 23(c)(ii). [Back to text.](#)
3. See, for example, Agricultural Land Tribunal for Wales, Evans v Bodorgan Properties (CI) Limited ALT 06/2017; and the Upper Tribunal (Lands Chamber) considered the Agricultural Land Tribunal for Wales' rules on service in Adams v Jones [2021] UKUT 9 (LC); [2021] All ER (D) 65 (Jan). [Back to text.](#)
4. The First-tier Tribunal (Health, Education and Social Care) procedural rules are enabling and not prescriptive. The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules SI 2008 No 2699, rule 13(4) provides that:

“ ... where the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. ”

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# Chapter 10: Bringing justice closer to the people of Wales

## Introduction

211. The reforms set out in this White Paper are important in and of themselves. But they are also important steps on a longer journey, which the Welsh devolution settlement is taking, towards a sustainable constitutional framework which has the greatest possible democratic legitimacy, and is best placed to meet the needs of the people of Wales.

212. In particular, the establishment of the First-Tier Tribunal for Wales and Appeal Tribunal for Wales has the potential to directly enable the successful devolution of parts of the justice system; and more indirectly, it is an indicator of the approach that the Welsh Government would take in designing and overseeing a devolved justice system.

213. This chapter looks particularly at:

- a. How a reformed tribunal system can support the development of a stronger justice system even ahead of potential further devolution
- b. The interaction between tribunals reform and any further devolution of justice, including youth justice and (subsequently) the justice system more broadly – above all the courts.

## Strengthening the justice system under the current constitutional settlement

214. The reforms we propose in this White Paper will make a significant contribution to the improved operation of the justice system in Wales. Even if there was no further expansion of our plans for reform beyond the initial

rationalisation measures set out in this paper, those measures will give it greater independence, coherence, accessibility and efficiency.

215. However, the structural reforms to the tribunals system set out in this paper are also steps on a journey of improvement for justice in Wales.

216. Part of that journey of improvement will be bringing more functions, over time, within the ambit of the new tribunals system. Within its areas of competence the Senedd is able to establish further tribunals or allocate new functions to the existing devolved tribunals. Just as school exclusion appeals will be brought into the scope of the new First-Tier and Appeal Tribunals on their inception, other functions will follow over time, where it is thought that they might benefit from the approach taken by tribunals and the associated characteristics (such as the relative informality, at least in comparison to a court).

217. In determining which disputes should be put to the new tribunals structure, it will be important to consider the other means of dispute resolution potentially available – not just courts, but also other forms of dispute resolution such as ombudsmen, mediation, arbitration or conciliation. The Commission on Justice in Wales (“the Thomas Commission”) reviewed the operation of the justice systems in Wales and made recommendations concerning the civil and administrative justice system in Wales ([Justice in Wales for the people of Wales](#)).

218. The Thomas Commission concluded, amongst other things that:

“ resolving a dispute is complex for many reasons, including the lack of co-ordination between the courts, tribunals and different forms of alternative dispute resolution ([Justice in Wales for the people of Wales](#), Executive summary, see paragraph 15). ”

219. The Thomas Commission recommended that:

“ Dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative



law, should be promoted and coordinated in Wales through a body chaired by a senior judge (**Justice in Wales for the people of Wales** recommendation 21, paragraph 5.55, page 260). ”

220. The Administrative Justice and Tribunals Council (“the AJTC”) Welsh Committee **review of tribunals operating in Wales** suggested a unified whole system approach to tribunal system in Wales as the underpinning to more effective administrative justice in Wales.

221. Proposals for reform of devolved tribunals in Wales as set out in the white paper represent a significant step forward for Wales’ nascent justice system. It is a key part of the wider and civil administrative landscape. Beyond the immediate development of legislative proposals based on this consultation, it is vital the operation of the wider landscape is kept under review.

## Consultation question 40

Do you agree the operation of civil and administrative justice in Wales should be kept under review? And, if so, how should this be done?

222. In Chapter 5, we also set out how, through establishing a board to govern Tribunals Wales and reporting requirements for that board, we could ensure there is transparent monitoring of the system’s performance, of user satisfaction, and of information relating to diversity within the system. Monitoring this information consistently is not an end in itself – but it will allow a platform on which the system can build plans for the future that establish a culture of continual improvement.

223. However, there are also limits to what we can achieve to improve the justice system in Wales within the confines of the current system, where responsibility for justice remains largely vested in the UK government. There are

therefore further challenges ahead to properly and fully align justice matters with the operation of services that are devolved to and delivered in Wales.

## Devolution of justice

224. The Thomas Commission unanimously recommended full legislative devolution of justice and policing. The most important recommendation in the context of this paper was the creation of a unified system of courts and tribunals in Wales, for determining (among other things) all civil and administrative law disputes ([Justice in Wales for the people of Wales](#), recommendation 22, paragraph 5.56, page 260).

225. The operation of courts and tribunals by a single service is of course something that currently happens in England, and in Scotland. It was recommended in the light of observations about whether the current division of responsibilities between courts and tribunals is rational and comprehensible to service users.

226. The legislation set out in this paper sets a clear marker for how we could operate a courts and tribunals service in future – as a statutory body, with the guarantee of independence that is provided by that model.

227. As we said in *Delivering Justice for Wales*, "we do not see reform of the justice system in Wales being a single event, but rather a process of change over time, prioritising those areas where we can most improve outcomes for Welsh citizens".

228. The Commission on the UK's Future established by the UK Labour Party ("the Brown Commission") has given one answer as to how that process of change might commence. The Brown Commission noted that one of the stark differences between the Welsh and Scottish devolution settlements is the devolution of matters relating to justice and policing, and that there is no reason of principle why such devolution should be less in Wales. In its report, the Brown

Commission recommended that the next UK Labour government should embark upon the devolution of youth justice and the probation service (**A New Britain: Renewing our Democracy and Rebuilding our Economy**). See “Enhancing Wales’ powers of self-government” and recommendation 24, pages 112 -113), while also engaging constructively with the recommendations of the Independent Commission on the Constitutional Future of Wales, which is due to report by the end of 2023.

229. As a place to end this paper, the devolution of youth justice offers an excellent example of the potential opportunities offered both by tribunal reform and by devolution of justice. It is easy to see how a tribunal setting could in many ways be better than a court setting for youth justice matters, because tribunals are a more informal approach to adjudicating on matters compared to courts. Tribunals such as the Education Tribunal for Wales have long experience of giving the highest priority to the voice of the child, of understanding and making recommendations around children’s needs, and creating environments and ways of working that allow children to participate in proceedings in a way that minimises trauma to them.

230. Some magistrates do receive specific training and develop considerable experience and expertise in working with children who offend, and consideration of their rights and welfare. Some cases in the Magistrates’ Courts are also heard by District Judges or Deputy District Judges, who will have professional legal qualifications and may have specific qualifications with regard to working with children and families. However, there is still a disparity between the basis on which magistrates are recruited and the necessary prerequisites for appointment to the Education Tribunal, based on the differing functions the 2 jurisdictions generally serve.

231. The Welsh Government is already benefiting from the work of an advisory group chaired by Dr Jonathan Evans, considering the strengths and weaknesses of the current youth justice system in Wales, the potential beneficial outcomes of devolution, and the mechanisms for achieving those benefits. As part of taking forward that work, we propose to consider the potential for a role for the new tribunal system, including international experience in operating such a model.

232. At this stage, this is just one idea among many as to how youth justice might be delivered differently with devolution. But it is included here to serve as an example of the creativity that would be allowed by devolution of justice – and the opportunity it gives to take a truly holistic approach to policy making for the first time.

233. In the meantime, our reforms to tribunals set a clear precedent of the approach we would take to the management of justice in Wales, guided by the principle of judicial independence and the need to ensure all the people of Wales have proper access to justice, wherever and whenever it is needed.

## **Annex 1: How to respond**

### **Consultation questions**

#### **Question 1**

Do you agree with the tribunals we have identified as the devolved tribunals, as set out in paragraph 22?

#### **Question 2**

Do you agree with the proposed structure of the unified tribunal system for Wales?

#### **Question 3**

Do you agree with the proposed structure for the tribunal membership in the unified tribunal system?

## Question 4

Do you agree the jurisdictions of the Welsh Tribunals should be transferred to the First-tier tribunal for Wales?

## Question 5

Do you agree that, in principle, the jurisdiction of the Valuation Tribunal for Wales should be transferred to the First-tier tribunal for Wales?

## Question 6

Do you agree that if the jurisdiction of the Valuation Tribunal for Wales is not transferred to the First-tier Tribunal for Wales, it should still be subject to the supervision of the President of Welsh Tribunals?

## Question 7

Do you agree the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales?

## Question 8

Do you agree the jurisdiction of school admission appeal panels should continue to be administered by admission authorities for the time being?

## Question 9

Do you agree appeals from school admission appeals panels should be

available on a point of law to the First-tier Tribunal for Wales?

## Question 10

Do you agree with the initial chamber structure we propose for the First-tier Tribunal for Wales?

## Question 11

Do you agree as a guiding principle disputes deriving from Welsh law should be heard in a Welsh judicial institution?

## Question 12

Are there any particular types of dispute under devolved law which you believe lend themselves particularly well to being resolved by a tribunal?

## Question 13

Do you agree there should be an Appeal Tribunal for Wales?

## Question 14

Do you agree the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made?

## Question 15

Do you agree jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals?

## Question 16

Do you agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales?

## Question 17

Who do you think should be included on the list of those with responsibility for the administration of justice as it applies to the reformed tribunal system in Wales?

## Question 18

Is there a need for all members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to take an oath or affirmation of their commitment to uphold judicial independence?

## Question 19

Do you have views on the proposed formulation of the oath or affirmation, if one is adopted?

## Question 20

Do you agree with the creation of a statutory body arms-length from Welsh Government to be responsible for the administration of the new tribunal system in Wales?

## Question 21

Do you think the proposed statutory body should be constituted as a Welsh Government Sponsored Body, as a Non-Ministerial Department, or something else? Why?

## Question 22

Do you think the Chair of the Board of the statutory body should be a Welsh Ministers' appointment or the President of Welsh Tribunals ex officio?

## Question 23

Do you have any other comments on arrangements for the administration of the new tribunal system at Table 1?

## Question 24

Do you agree the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals?



## Question 25

Do you agree with our proposals to enhance the office of President of Welsh Tribunals by conferring statutory duties, functions and powers on the office, as detailed in this white paper?

## Question 26

Do you agree with our guiding principles for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

## Question 27

Do you agree with our proposals for the appointing authority for members of the new tribunals:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

## Question 28

Do you agree the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be required to have regard to the need to encourage diversity in the range of persons appointed?

## Question 29

Do you agree eligibility criteria for appointment to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should enable the pool of candidates eligible for appointment to be drawn as widely as possible?

## Question 30

Do you agree the Welsh Ministers should set terms and conditions of appointment of members of the new tribunal service?

## Question 31

Do you agree to there continuing to be a system of cross-deployment for judicial, legal and non-legal members in the new tribunal system?

## Question 32

Do you think the appointment processes for the President of Welsh Tribunals should change in any way as part of the proposed reforms set out in the white paper?

## Question 33

Do you agree with our proposals for managing complaints and making disciplinary decisions about members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

## Question 34

Do you agree with the proposed investigatory role for an independent body or person? Who do you think that body or person should be?

## Question 35

Do you agree with our proposals for the management of complaints about the administration of the new tribunal system?

## Question 36

Do you agree with the creation of a statutory committee with responsibility for developing Tribunal Procedure Rules, as detailed in paragraphs 173-177 and in [chapter 9](#)?

## Question 37

Do you agree with the proposed exercise of the power to make the tribunal procedural rules?

## Question 38

Do you agree with the Tribunal Procedure Rules Committee developing common procedural rules across the new tribunal system whilst recognising and accommodating the unique characteristics of each jurisdiction?

## Question 39

Do you agree with our proposal that the Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

## Question 40

Do you agree the operation of civil and administrative justice in Wales should be kept under review? And if so, how should this be done?

## Question 41

We would like to know your views on the effects that our proposed reforms to devolved tribunals in Wales to create a unified, coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales would have on the Welsh language, specifically:

- i. on opportunities for people to use Welsh and
- ii. on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

## Question 42

Please also explain how you believe the proposed reforms could be formulated or changed so as to have:

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

## Question 43

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

When you reply, please confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name
- your position (if applicable)
- the name of organisation (if applicable)
- an address (including post code)
- an email address, and
- a contact telephone number

## Respond to the consultation

Submit your comments by **2 October 2023**, in any of the following ways:

- [complete our online form](#)
- download, complete our [response form](#) and email [JusticePolicy@gov.wales](mailto:JusticePolicy@gov.wales)
- download, complete our [response form](#) and post to:

Justice Policy Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

## Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

### Data Protection Officer

Welsh Government  
Cathays Park  
Cardiff

CF10 3NQ

**Email:** [dataprotectionofficer@gov.wales](mailto:dataprotectionofficer@gov.wales)

Rydym yn croesawu gohebiaeth yn Gymraeg / We welcome correspondence in Welsh.

### **Information Commissioner's Office**

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

**Telephone:** 01625 545 745 or 0303 123 1113

Website: [Information Commissioner's Office](#)

## **UK General Data Protection Regulation (UK GDPR)**

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g., a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh

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You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than 3 years.

## Further information and related documents

Number: **WG47494**

You can view this document in [alternative languages](#). If you need it in a different format, please [contact us](#).

## Annex 2: Law Commission recommendations

### A tribunal system for Wales

#### Recommendation 1

We recommend that the tribunals listed in section 59 of the Wales Act 2017 should be replaced by a single First-tier Tribunal for Wales, which may then be subdivided into chambers.



## **Recommendation 2**

We recommend that chambers of the First-tier Tribunal for Wales should be led by chamber Presidents, supported by Deputy Presidents where necessary.

## **Recommendation 3**

We recommend that the Welsh Ministers should be empowered to subdivide the First-tier Tribunal for Wales into chambers, and to allocate work to those chambers, by way of secondary legislation made with the concurrence of the President of Welsh Tribunals.

## **Recommendation 4**

We recommend that the jurisdictions of the Valuation Tribunal for Wales should be transferred to a new Valuation Chamber of the First-tier Tribunal for Wales.

## **Recommendation 5**

We recommend that school exclusion appeals should be transferred to the Education Chamber of a First-tier Tribunal for Wales.

## **Recommendation 6**

We recommend that school admission appeal panels in Wales should continue to be administered by admission authorities.

## **Recommendation 7**

We recommend that social care appeal panels should continue to be administered by Social Care Wales.

## **Recommendation 8**

We recommend that the Welsh Ministers exercise their power to create chambers of the First-tier Tribunal for Wales so as to form an Education Chamber to exercise the jurisdictions of the Registered School Inspectors Appeal Tribunal, the Registered Nursery Education Inspectors Appeal Tribunal and the Education Tribunal for Wales.

## **Recommendation 9**

We recommend that the Welsh Ministers exercise their power to create chambers of the First-tier Tribunal for Wales so as to form a Property Chamber of the First-tier Tribunal for Wales to exercise the jurisdictions of the Agricultural Land Tribunal for Wales and Residential Property Tribunal for Wales.

## **Recommendation 10**

We recommend that the Welsh Government should keep the organisation of chambers of First-tier Tribunal for Wales, including the possible creation of a General Regulatory Chamber, under review as new tribunal jurisdictions are created.

# Appeals

## Recommendation 11

We recommend that legislation should create an Appeal Tribunal for Wales.

## Recommendation 12

We recommend that the Welsh Ministers should have power by statutory instrument to establish chambers of the Appeal Tribunal and to transfer appellate jurisdiction to it.

## Recommendation 13

We recommend that the Appeal Tribunal for Wales should, in the absence of positive reason for different provision, be the appeal venue for appeals from the First-tier Tribunal for Wales.

## Recommendation 14

We recommend that appeals from rent assessment committees should require permission.

## Recommendation 15

We recommend that appeals from school admission appeals panels should be available on a point of law to the Education Chamber of the First-tier Tribunal for Wales.

## **Recommendation 16**

We recommend that onward appeals from decisions of the Education Chamber on appeals from school admission appeals panels should be limited to cases which raise some important point of principle or practice, or where there is some other compelling reason to hear the appeal.

## **The President of Welsh Tribunals**

### **Recommendation 17**

We recommend that the President of Welsh Tribunals should be a judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. Provision for the President of Welsh Tribunals to sit should be made in procedural rules or directions.

### **Recommendation 18**

We recommend that the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

### **Recommendation 19**

We recommend that the Welsh Government should consult with the President of Welsh Tribunals on the School Admissions Appeal Code pursuant to section 85(2) of the School Standards and Framework Act 1998.

## **Recommendation 20**

If the Valuation Tribunal for Wales remains outside the unified system of tribunals, it should nonetheless be subject to the supervision of the President of Welsh Tribunals.

## **Procedural rules**

### **Recommendation 21**

We recommend that there should be a Tribunal Procedure Committee for Wales.

### **Recommendation 22**

We recommend that the Tribunal Procedure Committee for Wales should be able to establish sub-groups to focus on particular areas of work.

### **Recommendation 23**

We recommend that the President of Welsh Tribunals should be responsible for chairing the Tribunal Procedure Committee for Wales and appointing its members.

### **Recommendation 24**

We recommend that the President of Welsh Tribunals, when appointing members of a Tribunal Procedure Committee for Wales, should have regard to factors set out in legislation, including the need for:

1. the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented
2. the committee to have access to persons with relevant expertise, and
3. the committee to include persons who have experience of appearing in front of the tribunal or advising those that do.

## **Recommendation 25**

We recommend that the rules be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee, subject to their being approved by the Welsh Ministers.

## **Recommendation 26**

We recommend that the Tribunal Procedure Committee for Wales should consult with whomever it considers appropriate (including members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before making the rules.

## **Recommendation 27**

The Tribunal Procedure Committee for Wales should adopt common procedural rules across the tribunals as far as is appropriate.

## **Recommendation 28**

There should be a set of procedural rules for each chamber of the First-tier Tribunal for Wales and for the Appeal Tribunal for Wales. If the Appeal Tribunal for Wales is divided into chambers, the Tribunal Procedure Committee for Wales should consider whether to make a separate set of rules for each chamber.

## Recommendation 29

We recommend that the Tribunal Procedure Committee for Wales should be required by legislation to have regard to the desirability of consistency within the procedural rules of the devolved tribunals and between them and those of other courts and tribunals in the UK.

## Recommendation 30

The procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include:

1. an overriding objective
2. a duty of the parties to cooperate with each other and the tribunal
3. provision for service of documents by electronic means
4. a power for the First-tier Tribunal to review its own decisions, and
5. rules on remote hearings.

## Appointments

### Recommendation 31

We recommend that members of the First-tier Tribunal for Wales should be appointed by the President of Welsh Tribunals.

### Recommendation 32

We recommend that Presidents and any Deputy Presidents of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

## **Recommendation 33**

We recommend that members of the Appeal Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

## **Recommendation 34**

We recommend that members of the Valuation Tribunal for Wales should be appointed by the President of Welsh Tribunals.

## **Recommendation 35**

We recommend that the President and any Deputy President of the Valuation Chamber of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

## **Recommendation 36**

We recommend that the Judicial Appointments Commission should select candidates for all appointments to the First-tier Tribunal for Wales and Appeal Tribunal for Wales.

## **Recommendation 37**

We recommend that the Judicial Appointments Commission should select candidates for all appointments to the Valuation Chamber of the First-tier Tribunal for Wales.



# Complaints and discipline

## Recommendation 38

We recommend that a standard complaints policy should apply to all chambers of the First-tier Tribunal for Wales, allowing for variations for individual chambers where necessary.

## Recommendation 39

We recommend that the complaints policy applying to the First-tier Tribunal for Wales should be available both online and in hard copy on request.

## Recommendation 40

We recommend that there should be a uniform procedure for complaints about the administration of the Tribunals Service for Wales.

## Recommendation 41

We recommend that there should be a uniform procedure for complaints about the conduct of members, Presidents and Deputy Presidents of the First-tier Tribunal for Wales.

## Recommendation 42

We recommend that complaints about the conduct of tribunal members of the First-tier Tribunal for Wales are investigated by the relevant Chamber President.

## **Recommendation 43**

We recommend that complaints about the conduct of Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales are investigated by the Judicial Conduct Investigations Office.

## **Recommendation 44**

We recommend that complaints about the conduct of members of the Appeal Tribunal for Wales are investigated by the Judicial Conduct Investigations Office.

## **Recommendation 45**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the First-tier Tribunal for Wales.

## **Recommendation 46**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the Valuation Chamber of the First-tier Tribunal for Wales.

## **Recommendation 47**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss Presidents and Deputy Presidents of chambers of the First-tier Tribunal for Wales, with the concurrence of the Welsh Ministers.

## **Recommendation 48**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss the President of the Valuation Chamber of the First-tier Tribunal for Wales, with the concurrence of the Welsh Ministers.

## **Recommendation 49**

We recommend that the First Minister should have power to dismiss judges of the Appeal Tribunal for Wales. Sanctions falling short of dismissal should be imposed by the First Minister with the concurrence of the President of Welsh Tribunals.

## **Recommendation 50**

We recommend that the School Admissions Appeal Code should provide for complaints about the conduct of members of school admission appeal panels.

## **Tribunals administration**

### **Recommendation 51**

We recommend the establishment of a Tribunals Service for Wales as a non-ministerial department.

# Judicial independence

## Recommendation 52

We recommend that the Welsh Ministers and others responsible for the administration of justice in Wales should be subject to a statutory duty to uphold the independence of the devolved tribunals.

## Recommendation 53

We recommend that all members of the First-tier Tribunal for Wales (including Chamber Presidents and Deputy Presidents) and members of the Appeal Tribunal for Wales should be required to take a judicial oath or affirmation.

## Annex 3: Devolved Tribunals within the scope of the Tribunal Reform Project

### Tribunals within the scope of the Tribunal Reform Project

The devolved tribunals falling within the scope of this project are as set out below:

#### Section 59 tribunals

The Welsh Tribunals as listed in Section 59(1) of the Wales Act 2017:

- a. The Agricultural Land Tribunal for Wales
- b. The Mental Health Review Tribunal for Wales

- c. The Residential Property Tribunal for Wales
- d. The Education Tribunal for Wales
- e. The Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal
- f. The Adjudication Panel for Wales
- g. The Welsh Language Tribunal

## Other devolved tribunals

The following tribunals are not “Welsh tribunals” listed in section 59 of the Wales Act 2017. They have no formal relationship with the President of Welsh Tribunals and are not administered by the Welsh Tribunals Unit.

- a. The Valuation Tribunal for Wales
- b. Independent appeal panels: school admission appeal panels; and school exclusion appeal panels

## The Agricultural Land Tribunal for Wales

Agricultural tribunals were established by the Agriculture Act 1947. The Act did not originally provide for an Agricultural Land Tribunal for Wales (“the ALTW”), instead giving the Lord Chancellor the power to make orders establishing tribunals for particular areas within England and Wales. The Transfer of Tribunal Functions Order 2013 abolished agricultural land tribunals for areas in England, transferring their functions to the First-tier Tribunal. The order also provided for the continuance of an Agricultural Land Tribunal for Wales.

The tribunal hears both disputes between agricultural landlords and tenants and drainage disputes. In the 2021-2022 reporting period, the ALTW received 20 applications in total. As the tribunal’s work is heavily reliant on site visits, its hearings are conducted in hotels, town halls or council buildings in the locality of the land in question.

The ALTW can review its own decisions, either on its own initiative or on application by a party, should more evidence become available, or if the decision contains a clerical error. An appeal may also be made to the Upper Tribunal (Lands Chamber) on any point of law.

The President of the ALTW is appointed by the Lord Chancellor and must be a barrister or solicitor of at least 7 years' experience. The chairperson of the panel must have a legal qualification and is accompanied by lay panel members who have knowledge and experience of farming, drainage and landowner matters in Wales.

## The Mental Health Review Tribunal for Wales

Mental Health Review Tribunals were initially established on a regional basis under the Mental Health Act 1959. The Mental Health Review Tribunal for Wales ("the MHRTW") was specifically provided for by the Mental Health Act 1983. The MHRTW hears applications by and in respect of persons detained, in a hospital in Wales, or a person residing in Wales who is subject to conditional community discharge or guardianship under the Mental Health Act 1983, as amended by the Mental Health Act 2007. In England, the Health Education and Social Care Chamber of the First-tier tribunal hears equivalent claims.

The MHRTW handles the largest volume of applications of all the devolved tribunals falling within section 59(1) of the Wales Act 2017, receiving 1,840 applications or referrals for a Tribunal hearing in 2021-2022. Due to the nature of the MHRTW's work, most of its hearings take place in psychiatric hospitals. There is a right of appeal to the Upper Tribunal (Administrative Appeals Chamber) on any point of law arising from a decision made by the MHRTW.

The President of the MHRTW, who is the only salaried judge in the Welsh Tribunals, is responsible for the members and the decisions of the tribunal. There are invariably 3 tribunal members on the hearing panel: a legal member, a medical (psychiatric) member and a lay member. Members of the MHRTW are

appointed by the Lord Chancellor, except for legal members who sit on the restricted panel. They are appointed by the Lord Chief Justice in consultation with the Lord Chancellor. The Lord Chief Justice has delegated the appointment function to the President of Welsh Tribunals.

## The Residential Property Tribunal for Wales

The Residential Property Tribunal for Wales (“RPTW”) hears appeals relating to privately rented and leasehold property under a number of pieces of legislation. The RPTW is in fact an “umbrella” tribunal, comprising 3 different tribunals, each based in different pieces of underlying legislation: rent assessment committees, leasehold valuation tribunals and residential property tribunals. In England similar claims are heard within the First-tier tribunal (Property Chamber).

Because the RPTW is composed of 3 different tribunals, the provisions governing its appeals differ. All appeals go to the Upper Tribunal (Lands Chamber), but appeals from rent assessment committees are explicitly limited by primary legislation to appeals on a point of law.

Due to the nature of the RPTW’s workload, hearings are conducted in town/village halls or hotels in the locality of the disputed property. Some cases are heard in the tribunal’s office, at Cleppa Park in Newport, but these are rare. We are aware of one large case involving 30 to 40 participants that was heard in Cardiff County Court.

The Lord Chancellor appoints tribunal chairpersons, who are legally qualified. The Welsh Ministers then appoint a president and vice-president from among those chairpersons. All other members of the tribunal are appointed by the Welsh Ministers. Tribunal hearings are conducted by a legally qualified chairperson, a professional member, and in some cases, a lay member.

# Education Tribunal for Wales

The Education Tribunal for Wales was established in 2003, by Section 333 (1ZA) of the Education Act 1996. At the time, it was called the Special Educational Needs Tribunal for Wales (SENTW) and governed by the Education Acts 1996 and 2002. Its name was changed with effect from September 2021 by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

The tribunal covers the whole of Wales. This includes children who live in England but receive their education in Wales. The Education Tribunal for Wales is responsible for hearing and deciding appeals against decisions made by local authorities and further education institutes about children and young people’s additional learning needs, or special educational needs. ETW is also responsible for dealing with claims of disability related discrimination in schools in Wales under section 116 of the Equality Act 2010. The Education Tribunal for Wales also hears disability discrimination claims. The English equivalent of the Education Tribunal for Wales is the First-tier Tribunal (Special Educational Needs and Disability) which is part of the Health, Education and Social Care Chamber of the First-tier Tribunal.

The 2018 Act changes the way pupils’ additional learning needs are met in schools and other education bodies. It will replace previous legislation about special educational needs slowly. Each year, a group of school years will move from the Special Educational Needs (SEN) system to the new Additional Learning Needs (ALN) system. In the first year, nursery age children were included into the system, and in the third year, young people from age 16-25 will be included. The SEN legislation only included children of compulsory school age.

Section 70 of the 2018 Act provides a list of all the occasions in which a child, young person or parent can appeal to the Tribunal. This section is being brought into force incrementally by age group. Section 72 of the 2018 Act makes provision as to the right to appeal decisions which impact upon detained



persons.

The Education Tribunal for Wales received 151 applications in 2021-2022. Appeals may be made from the Education Tribunal for Wales to the Upper Tribunal (Administrative Appeals Chamber) on a point of law.

During 2021-2022 the Education Tribunal for Wales held 69 hearings: of those, 6 hearings were held on the basis of the papers only, 62 held as virtual hearings and one hearing was held in person. Where hearings are in-person, they are held in public buildings that are usually within one hour travelling distance from the child or young person's home.

The Education Tribunal for Wales is led by a President, who is appointed by the Lord Chancellor and must be a barrister or solicitor of at least 7 years' experience. Panels are made up of a chairperson, who must possess a legal qualification, and lay members who have experience in education or a related subject.

## **The Registered Schools Inspectors Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal**

The School Inspections Act 1996 (which applied to both England and Wales) provided for a register of school inspectors. A similar register of nursery education inspectors was created by the School Standards and Framework Act 1998. An inspector who disagreed with a decision to remove them from or not include them on the register, or which imposed conditions on their registration, could apply to a tribunal. The Education Act 2005 ("the EA 2005") abolished the requirement to keep registers of both school and nursery education inspectors in England.

The provisions in relation to school inspectors were kept for Wales by section 27 of the EA 2005. Inspectors of nurseries in Wales are also still able to apply to a

tribunal constituted under section 27 of the EA 2005. The tribunals are referred to as two separate tribunals by the regulations which govern their procedure: the Registered Schools Inspectors Appeal Tribunal (“RSIAT”) and the Registered Nursery Education Inspectors Appeal Tribunal (“RNEIAT”).

It is understood that the tribunal has not been constituted, and no applications have been received since 2007/2008. Members of the Education Tribunal for Wales are, however, eligible to deal with any cases which arise in the jurisdiction of the RSIAT and the RNEIAT. RSIAT and RNEIAT cases could presumably, if the need arose, be heard in the same locations as used by the Education Tribunal for Wales.

A tribunal established under section 27 of the EA 2005 may review, set aside or vary its own decisions if: a decision is wrongly made as a result of an error on the part of the tribunal staff; a party fails to appear with reasonable cause; new evidence becomes available; or the interests of justice require. There is no appeal from the tribunal. The tribunal chair is appointed by the Lord Chief Justice in consultation with the Lord Chancellor. Two other tribunal members are appointed by the Welsh Ministers.

## The Adjudication Panel for Wales

The Adjudication Panel for Wales (“the APW”) was established under Part III of the Local Government Act 2000, with its first members appointed in 2002.

It is responsible for determining alleged breaches of authorities’ codes of conduct by members of Welsh county, county borough and community councils, and fire and national park authorities.

The APW has 2 statutory functions. The first is to consider references made by the Public Services Ombudsman for Wales following the Ombudsman’s investigation into a breach of a statutory code of conduct by a local authority member. These references are heard by case or interim case tribunals. The

APW also determines appeals from local authority standards committees, which are heard by appeals tribunals. The equivalent English tribunal, the Adjudication Panel for England, was abolished in 2010.

There is a right of appeal from case tribunals to the High Court. The APW has a small caseload and in the 2021-22 financial year it received 10 applications.

The APW is led by the Tribunal President, who is a legal member. The tribunal also has a Deputy President. A hearing panel is typically formed of 3 members; 2 lay members and the chairperson, who is a legal member. More than 1 legal member may sit on the panel; it is understood this approach has been taken for the purposes of training, or where there is a conflict of interest, or a shortage of lay members.

## The Welsh Language Tribunal

The Welsh Language Tribunal (“the WLT”) was established in 2015 under section 120 of the Welsh Language (Wales) Measure 2011 (“the Measure”). It hears appeals against the Welsh Language Commissioner’s decisions in relation to the Welsh Language Standards. There is no equivalent tribunal in England.

There are 3 types of appeal. (1) where the Commissioner notifies a person of a determination that the requirement to comply with a Standard is not unreasonable or disproportionate, the Tribunal can determine whether the requirement is unreasonable or disproportionate; (2) a person who has made a complaint to the Commissioner that another person has failed to comply with a Standard may appeal (a) against the Commissioner’s decision that the other person has not failed to comply with the Standard; or (b) against the Commissioner’s decision not to carry out an investigation, not to consider whether to carry out an investigation or to discontinue an investigation.

The tribunal received 3 applications in 2021-2022. One application was brought under Section 99(2) of the Measure; one application was brought under section

103 and one application identified section 95(2) and 95(4) in the same application.

The WLT can review, vary or revoke its own decisions. There is also a right of appeal to the High Court on any point of law arising from a decision made by the WLT. To date, no appeals from the WLT to the High Court have been brought.

The WLT's President is responsible for organising the work of the members, and for making decisions in relation to appeals and complaints. The President is appointed by the Welsh Ministers and must either be a barrister or a solicitor with at least 10 years' experience. Cases are heard by a legal member, and 2 lay members.

## The Valuation Tribunal for Wales

The history of valuation tribunals is a long one, and can be traced back to the Union Assessment Committees Act 1862. It is a history closely linked to local government, with valuation tribunals for each local authority.

The Valuation Tribunal for Wales ("the VTW") is established by statute and is funded by the Welsh Government as an arms-length Welsh Government Sponsored Body. Although the money to run the Tribunal comes from Welsh Government, the VTW is not part of Welsh Government. It stands alone as an independent tribunal with its own staff, who are not civil servants. The staff are employed directly by the VTW itself. It deals with appeals in relation to Non-Domestic Rating Valuations, and Council Tax Valuations and Drainage Rates Valuations.

The VTW receives more applications than other devolved tribunals. In 2021-2022 the VTW received 4,808 applications and made 1,070 tribunal decisions.

Cases are heard by members, who are local unpaid volunteers. Formal qualifications are not required in order to be a member. The VTW seeks to

appoint a range of individuals with different backgrounds, experiences and qualifications. All members are required to undertake regular training in valuation tribunal matters. There were 71 members in position as reported in the VTWs 2021-2022 Annual Report. Three members typically hear appeals, supported by a clerk. Clerks are employees of the VTW, who have detailed expertise and training in the underlying substance of the appeal. Their role is to advise on the relevant law and procedure. The VTW has 6 tribunal clerks and 2 senior tribunal clerks.

The VTW has the ability to review its own decisions. Further appeals are to the High Court (on a point of law, for Council Tax cases) or the Upper Tribunal (in relation to Non-Domestic Rating cases). The VTW hears cases locally across Wales.

The VTW conducts its own administration. It has its own chief executive. It is governed by a governing council, which includes the President of the VTW, 3 national representatives, and up to 3 members appointed by the Welsh Government.

## Independent appeal panels

School admission appeal panels hear appeals against decisions of admission authorities, who decide which school a child should attend. Exclusion appeal panels hear appeals against decisions by school governors, who have decided that a pupil should be excluded from a school. Both panels are usually administered by local authorities. In practice it is common for them to be run together, under the umbrella term of “independent appeal panel”.

While administering the panel is usually the responsibility of the local authority, the Welsh Government has published a statutory code on admission appeals (the “Admissions Appeals Code”). It has also published guidance on exclusion from schools and pupil referral units (the “Exclusion Guidance”).

Both school admission and exclusion appeal panels should be heard in neutral locations, and not in the admitting/excluding school itself. Local authority buildings are permissible locations, so long as the hearing is conducted in a building that is not associated with the education department or admissions or exclusion teams of the local authority.

Following temporary measures which were put in place during the COVID-19 pandemic which allowed for school admission appeals to be heard remotely, the Welsh Government noted the benefits for all parties in having the option of remote school admission appeals on a permanent footing. The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 have recently come into force, which allow admission authorities the option to undertake school admission appeals remotely. The Welsh Government expects a large proportion of school admission appeals to be undertaken remotely going forward.

## School admission appeal panels

Section 94(5) of the School Standards and Framework Act 1998 provides that admission authorities are responsible for administering admission appeal panels. Local authorities are the admission authorities for community and voluntary controlled schools (the majority of schools in Wales), while governing bodies are the admission authorities for foundation and voluntary aided schools. In Wales these are often faith schools, run by the Roman Catholic Church or the Church in Wales.

In practice, governing bodies may decide to ask the local authority to arrange the appeal panels for which the governing body is responsible. The Admissions Appeals Code also envisages the possibility of collaboration between local authorities. In relation to panel members, the Admissions Appeals Code notes that “pooling resources with neighbouring admission authorities and local authorities can help ensure that the same members do not sit on panels for a school on a repeated basis”.

School admission appeal panels are made up 3 or 5 members. One of those members must have experience in education, or be the parent of a pupil registered at another school. Another must be a “lay” member: someone “without personal experience in the management of any school or the provision of education in any school”. Admissions authorities are required to re-advertise for lay members every 3 years.

The appeal panel can direct that a child be given a place at a particular school. That decision is binding on both the admissions authority and the governing body of a community or voluntary controlled school at which the panel determines the child should be placed.

School admission appeals are far more common than exclusion appeals.

## School exclusion appeal panels

School exclusion appeal panels are provided for by the Education Act 2002. They hear appeals against decisions of governing body discipline committees on permanent exclusions. They are arranged by the local authority. Composition of the panels is similar to that of admissions panels; a panel consists of 3 or 5 members, including lay members, members working in education or education management, and members who are or have been governors of maintained schools. A panel is able to order that:

1. the exclusion be upheld
2. the pupil be reinstated, or
3. the case is an exceptional one where reinstatement is not a practical way forward but would otherwise have been the appropriate direction.

There are fewer exclusion appeals than there are admission appeals.

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# Tribunal White Paper Annex 1:

## Consultation questions

### Question 1

Do you agree with the tribunals we have identified as the devolved tribunals, as set out in paragraph 22?

### Question 2

Do you agree with the proposed structure of the unified tribunal system for Wales?

### Question 3

Do you agree with the proposed structure for the tribunal membership in the unified tribunal system?

### Question 4

Do you agree the jurisdictions of the Welsh Tribunals should be transferred to the First-tier tribunal for Wales?

### Question 5

Do you agree that, in principle, the jurisdiction of the Valuation Tribunal for Wales should be transferred to the First-tier tribunal for Wales?

### Question 6

Do you agree that if the jurisdiction of the Valuation Tribunal for Wales is not transferred to the First-tier Tribunal for Wales, it should still be subject to the supervision of the President of Welsh Tribunals?

### Question 7

Do you agree the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales?

### **Question 8**

Do you agree the jurisdiction of school admission appeal panels should continue to be administered by admission authorities for the time being?

### **Question 9**

Do you agree appeals from school admission appeals panels should be available on a point of law to the First-tier Tribunal for Wales?

### **Question 10**

Do you agree with the initial chamber structure we propose for the First-tier Tribunal for Wales?

### **Question 11**

Do you agree as a guiding principle disputes deriving from Welsh law should be heard in a Welsh judicial institution?

### **Question 12**

Are there any particular types of dispute under devolved law which you believe lend themselves particularly well to being resolved by a tribunal?

### **Question 13**

Do you agree there should be an Appeal Tribunal for Wales?

### **Question 14**

Do you agree the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made?

### **Question 15**

Do you agree jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals?

## **Question 16**

Do you agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales?

## **Question 17**

Who do you think should be included on the list of those with responsibility for the administration of justice as it applies to the reformed tribunal system in Wales?

## **Question 18**

Is there a need for all members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to take an oath or affirmation of their commitment to uphold judicial independence?

## **Question 19**

Do you have views on the proposed formulation of the oath or affirmation, if one is adopted?

## **Question 20**

Do you agree with the creation of a statutory body arms-length from Welsh Government to be responsible for the administration of the new tribunal system in Wales?

## **Question 21**

Do you think the proposed statutory body should be constituted as a Welsh Government Sponsored Body, as a Non-Ministerial Department, or something else? Why?

## **Question 22**

Do you think the Chair of the Board of the statutory body should be a Welsh Ministers' appointment or the President of Welsh Tribunals ex officio?

### **Question 23**

Do you have any other comments on arrangements for the administration of the new tribunal system at Table 1?

### **Question 24**

Do you agree the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals?

### **Question 25**

Do you agree with our proposals to enhance the office of President of Welsh Tribunals by conferring statutory duties, functions and powers on the office, as detailed in this white paper?

### **Question 26**

Do you agree with our guiding principles for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

### **Question 27**

Do you agree with our proposals for the appointing authority for members of the new tribunals:

- a. except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals, and
- b. Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

### **Question 28**

Do you agree the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be required to have regard to the need to encourage diversity in the range of persons appointed?

### **Question 29**

Do you agree eligibility criteria for appointment to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should enable the pool of candidates eligible for appointment to be drawn as widely as possible?

### **Question 30**

Do you agree the Welsh Ministers should set terms and conditions of appointment of members of the new tribunal service?

### **Question 31**

Do you agree to there continuing to be a system of cross-deployment for judicial, legal and non-legal members in the new tribunal system?

### **Question 32**

Do you think the appointment processes for the President of Welsh Tribunals should change in any way as part of the proposed reforms set out in the white paper?

### **Question 33**

Do you agree with our proposals for managing complaints and making disciplinary decisions about members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

### **Question 34**

Do you agree with the proposed investigatory role for an independent body or person? Who do you think that body or person should be?

### **Question 35**

Do you agree with our proposals for the management of complaints about the administration of the new tribunal system?

### **Question 36**

Do you agree with the creation of a statutory committee with responsibility for developing Tribunal Procedure Rules, as detailed in paragraphs 173-177 and in [chapter 9](#)?

### **Question 37**

Do you agree with the proposed exercise of the power to make the tribunal procedural rules?

### **Question 38**

Do you agree with the Tribunal Procedure Rules Committee developing common procedural rules across the new tribunal system whilst recognising and accommodating the unique characteristics of each jurisdiction?

### **Question 39**

Do you agree with our proposal that the Tribunal Procedure Rules of the First tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a. an overriding objective
- b. a duty of the parties to cooperate with each other and the tribunal
- c. provision for service of documents by electronic means
- d. a power for the First-tier Tribunal for Wales to review its own decisions, and
- e. rules on remote hearings.

### **Question 40**

Do you agree the operation of civil and administrative justice in Wales should be kept under review? And if so, how should this be done?

## **Question 41**

We would like to know your views on the effects that our proposed reforms to devolved tribunals in Wales to create a unified, coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales would have on the Welsh language, specifically:

- i. on opportunities for people to use Welsh and
- ii. on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

## **Question 42**

Please also explain how you believe the proposed reforms could be formulated or changed so as to have:

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

## **Question 43**

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

When you reply, please confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name
- your position (if applicable)
- the name of organisation (if applicable)
- an address (including post code)
- an email address, and
- a contact telephone number

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## STANDARDS COMMITTEE

18 SEPTEMBER 2023

### RECENT DECISIONS BY THE ADJUDICATION PANEL FOR WALES

**Purpose:** To note the decisions made and identify any points of learning

**To consider and comment on the following issues:**

What actions (if any) need to be taken

**Reasons:**

Adjudication Panel decisions provide useful guidance to Standards committees in the performance of their functions

**CABINET MEMBER PORTFOLIO HOLDER:** Not Applicable

**Directorate**

**Name of Head of Service:**

Linda Rees Jones

**Designations:**

Head of Administration and Law

**Tel Nos.**

01267 224012

[LRJones@carmarthenshire.gov.uk](mailto:LRJones@carmarthenshire.gov.uk)

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**EXECUTIVE SUMMARY**  
**STANDARDS COMMITTEE**  
**18 SEPTEMBER 2023**

**RECENT DECISIONS BY THE  
ADJUDICATION PANEL FOR WALES**

The Adjudication Panel for Wales (APW) has responsibility for determining the most serious Code of Conduct referrals from the Public Services Ombudsman for Wales as considering appeals disciplinary decisions by Standards Committees.

Since the 1<sup>st</sup> April 2023 the APW has determined 4 referrals from the Ombudsman. These cases are

- Councillor Steve Davies (Ceredigion County Council and Aberystwyth Town Council)
- Former Councillor Chris Evans (Newport City Council)
- Former Councillor Donald Jenkins (St Harmon Community Council)
- Former Councillor Laurie-Parry (Powys County Council)

The committee are invited to consider the attached decision reports and identify any learning points from them.

**DETAILED REPORT ATTACHED ?**

**NO**

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Linda Rees-Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - not applicable
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET MEMBER PORTFOLIO HOLDER(S) AWARE/CONSULTED**

N/A

**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

There are none.

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**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/014/2022-023/CT

**REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT**

**RESPONDENT:** Councillor Steve Davies

**RELEVANT AUTHORITIES:** Ceredigion County Council and  
Aberystwyth Town Council

**1. INTRODUCTION**

- 1.1 An Interim Case Tribunal convened by the President of the Adjudication Panel for Wales has considered an Interim Report in respect of the above Respondent which had been made by Michelle Morris, the Public Services Ombudsman for Wales (“the PSOW”). The Interim Case Tribunal had before it a 374-page hearing bundle of documents containing the Listing direction of 15<sup>th</sup> June 2023, the Interim Report of the PSOW into the investigation of a complaint against Councillor Steve Davies of Ceredigion County Council and Aberystwyth Town Council dated 20<sup>th</sup> March 2023 and twenty-two appendices, relevant correspondence and the APW’s tribunal procedural guidance on references from the PSOW. The Interim report and appendices comprise 221 pages. References in square brackets are to page numbers in the hearing bundle.
- 1.2 In a letter dated 20<sup>th</sup> March 2023, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales in relation to allegations made against Cllr Steve Davies. The allegations were that Cllr Davies had breached the Ceredigion County Council and Aberystwyth Town Council Code of Conduct by failing to comply with paragraphs 4(b), 4(c), 6(1)(a) and 7(a) of the Code.
- 1.3 The Interim Case tribunal issued a listing direction dated 15<sup>th</sup> June 2023 in which it was noted that the Respondent had failed to respond to the letter sent to him by the Registrar to the APW dated 23<sup>rd</sup> March 2023. The Respondent was written to by the APW on 23<sup>rd</sup> March 2023 [317] at his home address explaining the purpose of the Interim Case Tribunal and was sent the form APW01, the Reply to a Notice of Reference Form,[321] as well as other documents namely the PSOW Report, the APW Tribunal procedural guidance [350], the APW

Frequently Asked Questions booklet [362] and the APW Practice Direction 1 dated 1<sup>st</sup> January 2020 [369]. It was made clear to the Respondent in the APW's letter of 23<sup>rd</sup> March 2023 that his response to the notice must be received by the Registrar to the APW within 21 days and that the completed Respondent's reply to the reference form was to arrive at the APW office by no later than 13<sup>th</sup> April 2023.

- 1.4 The Respondent failed to provide any response at all within that time frame, and the tribunal therefore decided that, in accordance with regulations 15(1)(b) and 3(3) of The Adjudications by Case Tribunals and Interim Case Tribunal (Wales) Regulations 2001, that the Interim Case Tribunal would determine the interim application without a hearing.
- 1.5 The Interim Case Tribunal is satisfied that the Respondent, Councillor Davies, had received the letter sent to him by the APW on 23<sup>rd</sup> March 2023. The letter was not returned to the APW in the dead letter system. Further, the Interim Case Tribunal were informed by the Registrar of the APW that Councillor Davies had e mailed the APW on 27<sup>th</sup> April 2023. The Interim Case Tribunal have not seen and were not informed about the contents of that e mail, only of its existence, since it was dealt with by the President of the APW who directed that it could not be put before the Interim Case Tribunal on the grounds of legal professional privilege. However, Councillor Davies had no reason to e mail the APW unless he had received the APW's letter of the 23<sup>rd</sup> March 2023.
- 1.6 The case was determined on the papers by the Interim Case Tribunal meeting by remote video hearing on Microsoft Teams on 10<sup>th</sup> July 2023.

## **2. PRELIMINARY DOCUMENTS**

### **2.1 Reference from the Public Services Ombudsman for Wales**

- 2.1.1 The reference to the APW from the PSOW by letter dated 20<sup>th</sup> March 2023 contained an Interim Report which detailed an initial complaint made to the PSOW by the then Statutory Director of Social Services for Ceredigion County Council on 9<sup>th</sup> December 2021, and further incidents that had come to light and were under investigation by the PSOW.

### **2.2 The Ombudsman's Interim Report.**

- 2.2.1 Section 72(1) of the Local Government Act 2000 ("the Act") authorises the PSOW to produce an interim report where the Ombudsman considers it necessary and in the public interest, before the completion of the Ombudsman's investigation under section 69.
- 2.2.2 The PSOW says that it was appropriate to investigate whether Councillor Davies had failed to comply with any of the following provisions of the Code of Conduct;
- 2.2.3. Paragraph 4 (b) states that "*You must- show respect and consideration for others;*"

- 2.2.4. Paragraph 4(c) states that “*You must- not use bullying behaviour or harass any person.*”
- 2.2.5 Paragraph 6(1)(a) states that “*You must- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute:*
- 2.2.6 Paragraph 7(a) states that “*You must not- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage.*”
3. The Interim Report notes that both the relevant authorities adopted a Code of Conduct for their members which incorporates the provisions of a Model Code of Conduct contained in an order made by Welsh Ministers. A copy of the Code was included in the papers before the Interim Case Tribunal [33]. The Respondent gave a signed undertaking that, in performing his functions, he would observe the Code of Conduct for Ceredigion County Council on 11th May 2012, 9th May 2017 and 20th May 2022. He did so likewise for Aberystwyth Town Council on 15th May 2017. The PSOW report notes at paragraph 4 [11], that the Respondent would have been required to give such a written undertaking on being re-elected to the Town Council in 2022 but that the Town Council had not been able to locate a copy of his acceptance of office. The PSOW was satisfied that the absence of that document does not affect the Respondent’s standing as a member or his duty to comply with the Code of Conduct.
4. The allegations that the Ombudsman considered on balance were suggestive of a breach of the Code were as follows;
- 4.1.1 In October 2020 a complaint was made to the Council that the Respondent was making repeated ‘welfare checks’ on a vulnerable widow (Ms A) despite her not being in his Ward and her asking him not to visit her. Ms A said that she did not wish to make a formal complaint and that she was terrified of the Respondent. The Respondent was spoken to by the Monitoring Officer.
- 4.1.2 In November 2020 a Police referral was made to the Council indicating that a member of the public (Ms B) had complained of harassing behaviour towards her by the Respondent. Ms B did not wish to make a formal complaint, but the Respondent was given words of advice by the Police.
- 4.1.3 In March 2021 the Respondent was alleged to have made inappropriate sexual and offensive remarks to a staff member (Ms C) and volunteer (Ms D) at a community hub where he also volunteered. The Respondent was advised by the hub that he was no longer welcome to attend there. Ms C and Ms D did not feel comfortable reporting matters to the Police owing to the Respondent’s position as a councillor and because he lived close to them. One of the alleged victims, Ms C, has reported that this was part of a pattern of behaviour by the Respondent that went unaddressed.

- 4.1.4 In March 2021, a woman, Ms E, advised Police that the Respondent had, since March 2020, been making unwanted visits to her home including at night. The Police recorded this as a stalking offence and gave advice to the Respondent. This was a different woman to the subject of the allegation at 4.1.1 above.
- 4.1.5 In January 2023 an allegation was made to the Police of harassment and stalking behaviour towards a much younger woman (Ms F) by the Respondent. Ms F did not pursue the complaint, but the Respondent was given advice by the Police and the incident recorded by the Police as a stalking event.

### **Legal considerations for the Interim Case Tribunal.**

5. The Interim Case Tribunal is tasked, in accordance with section 76(2) of the Local Government Act 2000, with adjudicating upon the following three considerations;
- 5.1.1 Is the prima facie evidence such that it appears that the Respondent has failed to comply with the Code of Conduct of the relevant authorities?
- 5.1.2 Is the nature of that failure such as to likely to lead to disqualification under section 79(4)(b)?
- 5.1.3 Is it in the public interest to suspend or partially suspend the Respondent immediately?

### **Case Tribunal's Decision**

6. **Is the prima facie evidence such that it appears that the Respondent has failed to comply with the Code of Conduct of the relevant authorities?**

- 6.1 There is no mystery about the words 'prima facie evidence' or about considering if there is a prima facie case made out. The Latin expression has been described as meaning "at first sight, "of first appearance", "at first view" and "based on first impression" or similar words. In other words, in the circumstances that are the subject of the PSOW's report and allegations of the apparent breaches of the Code, is there "a case in which there is evidence which will suffice to support the allegation made in it and which will stand unless there is evidence to rebut the allegation?" (Osborne's Concise Law Dictionary, Eighth Edition).
- 6.2 It is particularly important to note, and the Interim Case Tribunal reminded itself, that the consideration of whether there is prima facie evidence such that **it appears** that the Respondent has failed to comply with the Code of Conduct, is a different exercise to determining whether, on the facts, there has been a



breach of the Code of Conduct. The Interim Case Tribunal is not determining whether the allegations of a breach of the Code of Conduct are made out or not. That is a task for the Case Tribunal in due course. It follows that the Interim Case Tribunal is not required to and has made no findings of fact on whether the allegations are made out or not.

- 6.3 In respect of the **first allegation** noted at 4.1.1 above, the PSOW Interim Report included a statement from Ms Elin Prysor, Ceredigion County Council Monitoring Officer [203], dated 20<sup>th</sup> January 2023, which at paragraph 13 of Ms Prysor's statement details the Customer Services Record of 1<sup>st</sup> October 2020 recording the complaint and her subsequent telephone conversation with the Respondent on 2<sup>nd</sup> October 2020 [204], in which Councillor Davies accepted that he should not visit and had no reason to visit the Ms A. The Interim Case Tribunal note that the Respondent did not deny that he had been visiting Ms A as alleged. The Interim Case Tribunal also noted that there was evidence that suggested that the Respondent was visiting homes of others in apparent breach of the Covid pandemic rules that were then in force [205, paragraph 19].
- 6.3.1 Further, the PSOW Interim Report contained a statement from Ms Elizabeth Upcott, the Corporate Safeguarding Manager of Ceredigion County Council, dated 2<sup>nd</sup> August 2022 [165]. This statement, at paragraph 6 [166] refers to the complaint that had been received in October 2020 in relation to Ms A. This confirms that Ms A was not a constituent of the Respondent's and so he had no reason to visit her. The statement refers to a letter that was sent to the Respondent by the Safeguarding Officer and that the Safeguarding Officer spoke to the Respondent who was concerned that this had been escalated to safeguarding. Paragraph 8 of the statement says; *"The Safeguarding Officer said that as he is a Councillor, he needs to be aware that he will sometimes deal with vulnerable people. Councillor Davies made a comment that he would be careful about who he would pick next, and that it would be someone who wouldn't complain. Although this was said half-jokingly, we were concerned about this comment."*
- 6.3.2 The Interim Case Tribunal were satisfied on the totality of the evidence in the PSOW Interim Report that the prima facie evidence was such that it appeared that the Respondent had failed to comply with paragraphs 4(b),4(c), 6(1)(a) and 7(a) of the Code of Conduct in respect of the first allegation.
- 6.4. In respect of the **second allegation** noted at 4.1.2 above, of harassing and stalking behaviour in relation to Ms B, the Interim Case Tribunal notes the minutes of the Professional Concerns Meeting held about the Respondent under the Social Services and Wellbeing Act 2014, Part 7 and the All Wales National Safeguarding Procedures in respect of the Safeguarding of Adults who may be at Risk of abuse and/or neglect on 16<sup>th</sup> December 2020 [143]. This meeting was attended by officers of Ceredigion Council and representatives of the Police. The circumstances of the allegation were set out in detail [145-147], which included unwanted contact between the Respondent and Ms B, entirely initiated by the Respondent, including him leaving 8-9 notes on her bicycle. The contents of some of the notes that the Respondent had left for Ms B were included. Ms B was not known to the Respondent and the allegation was that

he had continued to leave notes for her despite being asked to desist from doing so by Ms B and her boyfriend.

- 6.4.1 Ms B did not wish to make a formal criminal complaint but did wish the Police to speak to the Respondent. One of the discussion outcomes recorded from the meeting said “4- *The fact that Cllr Davies did not heed the advice from the police, the person herself, and also not listened to her partner, shows there to be a risk where he is not seeing professional/personal boundaries.*” [144] It was noted that if Ms B had supported the criminal process that the Respondent would have been charged with harassment and stalking crimes. The meeting notes recorded [144] that the Respondent confirmed that he had tried to contact Ms B and he was surprised that this was a matter of stalking. He was spoken to by the police and given advice and did not deny the conduct alleged. The Adult Safeguarding Enquiry Outcome Report in relation to this allegation, completed by Paul Portman-Barnard, Senior Practitioner for Ceredigion Adult Safeguarding Team, dated 20<sup>th</sup> November 2020 [106-107] notes that when the Respondent was spoken to and given words of advice about this matter “*he was unwilling to admit that the behaviour was unacceptable, regardless of whether it was threatening, and stated that he merely wanted a way to communicate with the IP.*” [107].
- 6.4.2 The Interim Case Tribunal were satisfied on the totality of the evidence in the PSOW Interim Report that the prima facie evidence was such that it appeared that the Respondent had failed to comply with paragraphs 4(b),4(c) and 6(1)(a) of the Code of Conduct in respect of the second allegation. The Interim Case Tribunal have noted above at paragraphs 6.4 and 6.4.1 prima face evidence suggestive of a breach of the Code in relation to this allegation and that the Respondent did not deny that the behaviour complained of had taken place.
- 6.5 The **third allegation** noted at 4.1.3 above concerns allegations of inappropriate and offensive sexual remarks and behaviour to Ms C and Ms D. There was a detailed statement from Ms C [273] dated 7<sup>th</sup> March 2023 which contained her evidence relating to incidents on 21<sup>st</sup> and 28<sup>th</sup> February 2021 amongst other matters relating to the Respondent’s behaviour. This included an exhibit of an e mail sent contemporaneously by Ms C on 28<sup>th</sup> February 2021 raising a complaint about the Respondent’s behaviour and noting that he treated it as ‘banter’. There is a letter dated 5<sup>th</sup> March 2021 to the Respondent on behalf of the Board of Trustees [285] at the community forum where the Respondent had been volunteering and where the behaviour complained of was alleged to have taken place. This detailed an internal investigation by the Board of Trustees and the decision to suspend the Respondent indefinitely from forum activities as a result.
- 6.5.1 The minutes of the Professional Concerns meeting of 16<sup>th</sup> March 2021 [from 137] detailed discussion of this third allegation and how a safeguarding meeting had been held with the Respondent on the 15<sup>th</sup> March 2021. There is evidence that this incident was referred to Dyfed–Powys Police who sent a MARF (Multi Agency Referral Form) to Ceredigion Council on 9<sup>th</sup> March 2021 [123]. An Adult Safeguarding Enquiry Report had been initiated by Paul Portman-Barnard [75]

on 9<sup>th</sup> March 2021. There is a (heavily redacted) report of the incidents that make up the third allegation from Dyfed-Powys Police, noting that the report was made to the Police on 11<sup>th</sup> March 2021 [183] and the allegation was that the injured person has received unwanted comments which are inappropriate, sexual and offensive over a period of months from the Respondent. The Police were considering this as a case of harassment.

6.5.2. The Interim Case Tribunal were satisfied on the evidence in the PSOW Interim Report that the prima facie evidence was such that it appeared that the Respondent had failed to comply with paragraphs 4(b),4(c), 6(1)(a) and 7(a) of the Code of Conduct in respect of the third allegation. The Interim Case Tribunal have noted above at paragraphs 6.5 and 6.5.1 prima face evidence suggestive of a breach of the Code in relation to this allegation.

6.6 The **fourth allegation** noted at 4.1.4 above related to unwanted visits being made by the Respondent to Ms E including at night. There is a report from Dyfed-Powys Police [180] which the Police had categorised as a potential stalking offence which recorded that since the beginning of the initial covid lockdown, (which was in late March 2020), it was alleged that the Respondent had attended at Ms E's address on several occasions unannounced, he had taken Ms E flowers even after being asked to stay away which had made Ms E feel harassed, alarmed and distressed. The Police had sufficient information to interview the Respondent about this and to issue him with words of advice.

6.6.1 The fourth allegation is also recorded in the 'Chronology in relation to Concerns regarding Councillor Steve Davies' [68] prepared by Ms Upcott, Corporate Safeguarding Manager dated 12<sup>th</sup> October 2021 which confirms that Ms E had received unwanted visits to her home from the Respondent since March 2020 without invitation and that he continued to visit when asked not to including at night. He would bring her flowers and tend to her garden even when asked not to do so. It is recorded that the Police were told that the Respondent made remarks which the woman perceived to be of a sexual nature. The Interim Case Tribunal noted that this matter was discussed in the Professional Concerns Strategy Meeting of 15<sup>th</sup> April 2021 when it was noted that people are reluctant to make a formal complaint against the Respondent because he is a County Councillor and lives in the area.

6.6.2 The Interim Case Tribunal were satisfied on the evidence in the PSOW Interim Report that the prima facie evidence was such that it appeared that the Respondent had failed to comply with paragraphs 4(b),4(c), 6(1)(a) and 7(a) of the Code of Conduct in respect of the fourth allegation. The Interim Case Tribunal have noted above at paragraphs 6.6 and 6.6.1 prima face evidence suggestive of a breach of the Code in relation to this allegation.

6.7 The **fifth allegation** noted at 4.1.5 above related to an allegation of stalking and harassment behaviour by the Respondent in relation to Ms F, a much younger woman. The Police report of this matter [262] describes that the Respondent had undertaken a course of conduct towards Ms F at her two places of work

from 2022. He had started to give her unwanted presents from around October 2022, had left Christmas presents and a card and that despite being told that Ms F did not want any presents and he was not to attend there, he did so again in January 2023 with presents, a Valentines card and a letter which said that she should choose between her boyfriend and the Respondent.

- 6.7.1 The information from the Police was shared with Ceredigion County Council and was also dealt with in the witness statement of Ms Audrey Somerton-Edwards, Interim Statutory Director of Social Services and Corporate Lead Officer [267] who pointed out that the complainant Ms F was over 30 years younger than the Respondent and that he did not stop his behaviour when asked to do so.
- 6.7.2 The fifth allegation in relation to Ms F was discussed at a Professional Concerns Meeting on 22<sup>nd</sup> February 2023 [Minutes of the meeting are at 309]. These minutes record that Ms F made a statement to the Police and although she did not want to make a formal complaint, she did want the Respondent to be spoken to about his behaviour. The minutes record that the Respondent was spoken to about this by a Detective Sergeant who gave him words of advice. The Detective Sergeant felt that the Respondent “does not think he is doing anything wrong” [310].
- 6.7.3 The Interim Case Tribunal were satisfied on the evidence in the PSOW Interim Report that the prima facie evidence was such that it appeared that the Respondent had failed to comply with paragraphs 4(b),4(c), 6(1)(a) of the Code of Conduct in respect of the fifth allegation. The Interim Case Tribunal have noted above at paragraphs 6.7 and 6.7.1 and 6.7.2 prima face evidence suggestive of a breach of the Code in relation to this allegation.
- 6.7.4 The Interim Case Tribunal therefore finds by unanimous decision that in relation to the five particular allegations that there is prima facie evidence such that it appears that the Respondent has failed to comply with the Code.

7. **Is the nature of that failure such as to likely to lead to disqualification under section 79(4)(b)?**

7.1 The PSOW at paragraph 20 of her report [17] considers that the prima facie evidence is so serious that if proven, it would justify a disqualification. Factors that the PSOW considered in assessing the seriousness of the allegations (summarised at paragraph 21 of her report) were;

- The numerous alleged breaches of the Code that have taken place at a number of different locations involving several different women.
- That the Respondent has persisted with his conduct despite being advised by safeguarding officers, the Police and the Monitoring Officer about how his behaviour is being perceived.
- The potential consequences of the breaches are wide ranging and as the behaviour continues there is potential for further incidents.
- The Interim Statutory Director of Social Services has stated that the Respondent poses a risk to the public. He has displayed predatory

behaviour towards a much younger woman and there are concerns about his behaviour towards vulnerable adult women.

- The impact on the Councils is very serious if the behaviour continues. The Respondent has access to vulnerable members of the community through his role and the witness evidence suggests that he is using his position to call on women. If proven, his behaviour has the potential to have a serious negative impact on the reputation of the Council.

7.2 The PSOW considered that if the breaches are proven then disqualification is likely to be the most appropriate sanction in order to make clear the unacceptable nature of such conduct in public office, underscore the importance of safeguarding the public as well as the public's confidence in local democracy and to deter repetition of the behaviour. The PSOW's view was that if the alleged breaches of the Code were to be proven, then the Respondent's behaviour shows a disregard for the Code which calls in to question his fitness for public office.

7.3 The Interim Case Tribunal have had regard to the APW Sanctions Guidance ("the Guidance") which at paragraph 57 stresses that Interim Case Tribunals aim to facilitate the Ombudsman's effective and expeditious investigation of the Respondent's conduct, to minimise any disruption to the business of the authority concerned during its investigation, to maintain the reputation of the authority concerned and to protect the authority from legal challenge. The Sanctions Guidance recognises that any form of suspension can have a significant impact on a member's role, credibility and finances at a time when no definitive ruling has yet been made on the validity of the allegations. The Sanctions Guidance makes it clear that Interim Case Tribunals will seek to take the minimum action necessary to ensure the effective completion of the PSOW's investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The Interim Case Tribunal has fully taken such matters into account.

7.4 The Interim Case Tribunal has therefore considered, in accordance with the Guidance, whether, if the allegations were substantiated, a suspension or partial suspension would be an appropriate sanction. To do this the Interim Case Tribunal follows the Guidance as to the Five Stage Process for determining sanction. The first step is to assess the seriousness of the breaches (if substantiated) and any consequences for individuals and the Council. The Interim Case Tribunal notes the number of allegations of breach of the Code, that they happened over a period of time and related to a number of different women. The Respondent was given advice by the Monitoring Officer and the Police and yet allegedly continued to behave in a manner that was characterised by the Police as stalking and harassment, was predatory and involved allegations of sexual misconduct. These are all matters that the Interim Case Tribunal regard as potentially very serious breaches if proven.

7.5 The Interim Case Tribunal does not consider that this is a case where it would be appropriate to take no action or impose no sanction in the event of the breaches being proven. The Interim Case Tribunal has considered whether suspension for up to 12 months might be the appropriate sanction but also notes the Guidance considers this appropriate where it is felt highly unlikely that there

will be a further breach of the Code, that the member has recognised their culpability, shown insight into their behaviour and apologised to all involved. Whilst the Respondent has not provided any information to the APW despite being given the opportunity to do so, and whilst he will have the further opportunity to have his say at the Case Tribunal in due course, such information and evidence as is currently before the Interim Case Tribunal suggests that the Respondent, at present, does not recognise his culpability and has not shown insight or apologised to those involved. A theme of the concerns of the officers of Ceredigion County Council is that there have been further allegations against the Respondent after he has been given words of advice by both the Police and Council Officers that he does not appear to have heeded. Whilst the Guidance does provide advice on circumstances when a partial suspension might be appropriate, those circumstances do not appear to be present in this case.

- 7.6 Further the Guidance provides details of both mitigating circumstances and aggravating factors at paragraph 42. There was no indication or evidence of any mitigating factors before the Interim Case Tribunal but there was evidence suggestive of various aggravating factors, including repeated and numerous alleged breaches of the Code, allegations of a breach of position of trust, allegations of ignoring advice and lack of acceptance of the alleged misconduct and its consequences, failing to co-operate with the PSOW and APW's processes, (the Respondent failed to comment on the PSOW's draft report) and allegations of behaviour that has brought the Authorities and public service into disrepute. This is not an exhaustive list.
- 7.7 The Guidance at paragraph 39.13 lists circumstances in which a tribunal may decide that a disqualification is appropriate. These include deliberately seeking to disadvantage another by exploiting membership of the authority, deliberately disregarding or failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour, conduct that calls into question the Respondent's fitness for public office and bringing the authority into serious disrepute. Whilst the Interim Case Tribunal makes no findings of fact, we are required to consider if such failures to abide by the Code on the part of the Respondent as are alleged would be likely to lead to disqualification if proven. The alleged failures to comply with the Code do meet the circumstances in the Guidance for which disqualification is appropriate and the Interim Case Tribunal note that the Respondent is an experienced councillor who first signed the undertaking to observe the Council's Code of Conduct in 2012 and should therefore be familiar with the requirements of the Code.
- 7.8 The Interim Case Tribunal notes that the overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and to maintain confidence in local democracy. Taking all of these matters into account, the Interim Case Tribunal accept the representations of the PSOW (summarised at 7.1 and 7.2 above) and find that the nature of such alleged failures to follow the Code of Conduct is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000 if there are positive findings of fact in respect of them.
8. **Is it in the public interest to suspend or partially suspend the Respondent immediately?**

- 8.1 The PSOW addresses this issue at paragraphs 23- 28 of her report [18] saying that it would be in the public interest to do so if it would facilitate her effective and expeditious investigation, would minimise any disruption to the business of the authority concerned during an investigation, maintain the reputation of the Councils or protect the Authorities from a legal challenge. The PSOW asserts that the Respondent remains active in the community and there is evidence before her that witnesses are cautious about coming forward. If the Respondent were to be suspended from his role as councillor, then it would provide reassurance to the public that complaints about him are being investigated independently by the PSOW's office so that potential witnesses may engage fully with the investigation.
- 8.2 The PSOW notes that the Respondent is in a position of authority as a member of both the County Council and Town Council and the Councils have no power to suspend or restrict the Respondent's role and remit. In the light of the Council's general safeguarding concerns, including about the Respondent's engagement with the public and in relation to female members of staff who work with or provide support to the Respondent, suspending the Respondent will minimise any disruption to Council business. It is noted that the Respondent is a school governor and although the complaints have not involved children, the role places him in a position of authority in the local school and its community, and that it would not be possible to monitor the Respondent's activities within the school without significant disruption to normal business and suspending him from his role will minimise the disruption to Council business.
- 8.3 The PSOW states that the Respondent has been advised by Council Safeguarding Officers and the Monitoring Officer that his behaviour is inappropriate and could pose a risk to the Council's reputation, but he has not acknowledged or accepted that this is so. There is a risk that if his behaviour continues, that the Council will be held publicly accountable for his actions because his role as a Councillor allows him access to vulnerable members of the community. The Council does not have any powers itself to suspend the Respondent and if suspended by the APW it will reduce the risk of further damage to the Council. The PSOW notes that the Respondent did not comment on the draft of the PSOW's Interim Report despite being given the opportunity to do so.
- 8.4 The PSOW's submissions deal with the factors set out in the Guidance at paragraph 57 upon the aims of Interim Case Tribunals. The Guidance at paragraph 63 says that if the Interim Case Tribunal concludes that a finding on breach would result in a suspension it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the PSOW completing her investigation and referring a final report to the APW.
- 8.5 The Interim Case Tribunal recognises the force of the PSOW's submissions. It was clear from the information in the bundle that there have been other

allegations made against the Respondent which were not included in the five specific examples dealt with, and that will require ongoing investigation. The Interim Case Tribunal is also satisfied that the allegations raise issues of such gravity that they jeopardise public confidence in the Councils concerned.

9. Section 78(1) of the Local Government Act 2000 states that an interim case tribunal which adjudicates on any matters which are the subject of an interim report from the PSOW must reach one of the following conclusions;
  - (a) that the subject of the recommendation in the PSOW's interim report (the Respondent) should not be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned, or
  - (b) that the subject of the recommendation in the PSOW's interim report (the Respondent) should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned for a period which does not exceed six months or (if shorter) the remainder of the person's term of office.
  
- 9.1 For the reasons given above, the Interim Case Tribunal has decided that the Respondent should be suspended from being a member or a co-opted member of Ceredigion County Council and Aberystwyth Town Council for a period which does not exceed **six months** or (if shorter) the remainder of the Respondent's term of office **with effect from 10<sup>th</sup> July 2023, the date of the decision notice.**
  
10. Ceredigion County Council and Aberystwyth Town Council and their Standards Committees are notified accordingly.
  
11. The Respondent has the right to seek the leave of the High Court to appeal the above decision.

Signed.....*R. Payne*.....

Date 9<sup>th</sup> August 2023

Tribunal Judge Richard Payne  
Chairperson of the Case Tribunal

Mrs S. McRobie  
Panel Member

Mr D. Morris  
Panel Member



**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/013/2022/023/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE  
CODE OF CONDUCT**

**RESPONDENT:** Former Councillor Karen Laurie-Parry

**RELEVANT AUTHORITY:** Powys County Council

**1. INTRODUCTION**

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 For the reasons set out in paragraphs 1.3 to 1.7 of the Listing Direction of 12 May 2023, the Case Tribunal determined its adjudication by way of written representations at a meeting held on a 6 July 2023 by way of remote video-conferencing. The meeting was not open to the public.

1.3 The Respondent did not provide any further representations in accordance with paragraph 1.2 of the Listing Direction. On 29 June, she did write to assert that she did not know that the Tribunal had issued directions in respect of written submissions and/or that the matter would have been determined on paper. The Tribunal was satisfied that she had been sent the Listing Direction (see the email of 29 June at the end of the Hearing Bundle, Section E). It summarised its communications with her in a detailed email of 4 July, as follows;

*“The Panel’s communications with you have been carefully reviewed and the following has become clear.*

*In addition to your Council email address ([full address not reproduced] @powys.go.uk), you widely used 3 separate, private email addresses which are appear throughout the appendices to the Ombudsman’s report, although the last two appeared to have been used more frequently. The Panel has only ever used those addresses to communicate with you, as set out below;*

1. [full address not reproduced] @yahoo.com
2. [full address not reproduced] @gmail.com
3. [full address not reproduced] @gmail.com

*The Panel is unaware how the Ombudsman sent you a copy of its final report with the referral, but the Panel nevertheless notified you of its receipt on 28 February, a letter that was sent by email (to email address No. 1 above) and the only postal address that we had ([full address not reproduced] LD2 XXX). A further letter was sent to the same postal and email addresses on 28 March highlighting the fact that you had not responded.*

*On 17 April, the Panel received a letter from the Ombudsman, enclosing an email from you of 14 April, indicating that you had moved (to [full address not reproduced] CF44 XXX). Your email had been sent from email address No. 2.*

*You were then given another 28 days to respond to the Ombudsman's report. That letter was sent to the new, correct postal address (CF44 XXX) and also by email.*

*The Panel received no further comments from you and proceeded to issue the Listing Direction. You were then in breach of paragraph 3 of the Schedule to The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, as amended. It was concluded that the matter could proceed on the basis of written submissions (for the avoidance of doubt, see another copy of the Direction now attached). Unfortunately, the Listing Direction was erroneously sent to your old postal address (LD2 XXX) but nevertheless provided to your email address (No. 3).*

*No reply was received and the direction for a response was not complied with. On 29 June, however, you communicated to say that you were unaware of the forthcoming meeting of the Tribunal to determine the allegations. You used address No. 2 to send that message and it was that email address to which the Panel responded, informing you that you could still submit written submissions up to the date that the Tribunal was due to meet (Thursday). Your further communication today contains no such representations.*

*The Panel has communicated with you using addresses which have been used by you throughout the period covered by the complaints. You have been aware that this process has been ongoing and have not sought to alert the Panel to a preferred address or the fact that any may not have been functioning.*

*The Tribunal is satisfied that you have been properly notified in accordance with paragraph 24 of the Schedule to the Regulations governing its procedure."*

A yet further opportunity was given for her to provide written submissions before the Tribunal met, but she did not do so. She did ask to be present during the Tribunal's deliberations. That request was refused.

1.4 At 5.47 pm on 6 July, after the Tribunal had met to consider its decision, the Respondent sent some further written submissions to the Registrar to the Panel which were circulated. To the extent that there were other matters of relevance within it, they have been addressed below.

1.5 Unless otherwise stated, page references below are to the electronic page numbers of the Master Bundle, comprising the Ombudsman's bundle and report, and have been cited in square brackets.

## **2. PRELIMINARY DOCUMENTS**

### **2.1 Reference from the Public Services Ombudsman for Wales**

2.1.1 In a letter dated 22 February 2023, the Adjudication Panel for Wales received a referral from the Public Service Ombudsman for Wales ('the Ombudsman') in relation to allegations made against the Respondent. The allegations were that she had breached Powys County Council's Code of Conduct by making repeated, unsubstantiated allegations of corruption and malfeasance and had corresponded in an excessive and unreasonable manner and in breach of restrictions that had been placed upon her.

### **2.2 The Former Councillor's response to the Reference**

2.2.1 Although the Respondent did not respond in writing to the Ombudsman's reference to the Panel, she was interviewed as part of the Ombudsman's investigation on 27 July 2022 [1827-1910]. She also provided further written submissions on 13 September 2022 [1912-1922] and commented upon the Ombudsman's draft Report on 5 January 2023 [1924]. In dealing with the matter on the basis of written submissions in accordance with rule 3 (3) and 15, the Tribunal took into account the contents of that information.

### **2.3 Further written representations following the Listing Direction**

2.3.1 In accordance with paragraph 1.2 of the Listing Direction, the Ombudsman provided submissions of 5 June 2023 [2523-5], which were only addressed to the Third Stage, submissions having been made in relation to the other elements previously (Section D of the Hearing Bundle). The Respondent supplied no further written submissions until after the Tribunal had met to consider its decision (see paragraph 1.4 above).

### **3. FINDINGS OF FACT**

- 3.1 Having considered the documentary evidence, the Case Tribunal found the following material facts on the balance of probabilities. This was not a difficult task as the evidence was largely contained within a significant number of email exchanges. The Tribunal approached its task by addressing the main factual areas which underpinned the allegations of breach of the Code of Conduct
- 3.2 In addition to the sources of the Respondent's account referred to in paragraph 2.2.1 above, the Ombudsman's investigation included the taking of witness statements from the following witnesses;
- Dr Turner, Chief Executive Officer [1724-1738];
  - Mr Brinn, Corporate Director for the Environment and Economy [1785-1794];
  - Ms Jones, Deputy Monitoring Officer [1795-1802];
  - Mr Boyd, Cabinet Manager [1556-1560];
  - Ms Baynham, County Councillor [1561-1566];
  - Mr Hurford, Chair of Bronllys Green Group [1803-1807].

#### Introduction

- 3.3 The Respondent was elected as a member of Powys County Council in 2017. She did not stand for re-election in May 2022. She nevertheless acted in her capacity as an elected Member during the events complained of.
- 3.4 When interviewed, she accepted that she had received training on the Code of Conduct in 2017 and 2020 [1839].

#### Communications about matters of concern

- 3.5 Between 2019 and 2022, the Respondent sent a large volume of emails to a number of recipients on a regular basis. Although a range of different subjects were covered, three matters took particular prominence;

##### 3.5.1 Bronllys;

There is a housing development project on a disused school site in the village of Bronllys, north-east of Brecon. The local Green Group wanted part of the site to be protected and retained under Village Green status.

Mr Brinn is the Corporate Director for the Economy and the Environment Directorate within the Council with overall responsibility for the project to develop the site. It was a complicated development because of the potential Village Green application, an adjacent development owned and operated by

Monmouthshire Council, an existing housing site and the use and/or incorporation of a play area.

The Respondent (and Mr Hurford who led the local Green Group) were pushing for the Council to apply for Village Green status. Mr Brinn was firmly of the opinion that obtaining such status would hamper an attempt to develop affordable homes on the site. The proposed development already incorporated an area of open space for play in any event. He met the Respondent on a number of occasions to discuss the site and the Council's proposals. It was clear that there was a difference of opinion between them as to the way forward. It was also clear that, during one of the meetings that he had with her, as he accepted, he referred to his desire to 'wipe the slate clean', in the sense that he wanted to move forward rather than look back.

Mr Brinn alleged that, following their two meetings on 12 July and 20 August 2020, the Respondent made assertions about what had been said which were not true. She believed that she had been threatened by him to stop interfering so that the site could have been developed as he had wanted. She asserted that he threatened to withdraw the proposal to build an all-weather 3G pitch on the site, which he said had never been part of any proposal. She construed the expression 'wiping the slate clean' as some form of bullying. She also alleged that the meeting had occurred on a different day, which he stated could not have been the case as he had been on leave on that day.

Whatever happened and whatever was said (although their accounts were broadly similar), it was clear from the evidence that they fell out. The Respondent clearly interpreted the words used differently from how Mr Brinn had believed that he had used them. It was also clear that the Respondent then proceeded to make a significant number of public allegations of misinformation and corruption against Mr Brinn and those connected with the site (see, further below).

### 3.5.2 Y Gaer;

This was a complicated construction project in Brecon. Kier, a well-known construction business, had been awarded the contract but there was a significant overspend which was subsequently audited. The audit report went to the Scrutiny Committee of the Council. The Respondent made a number of serious allegations in respect of the project and Mr Brinn's (and others') involvement in it.

### 3.5.3 The Heart of Wales Property Service ('HOWPS');

HOWPS was a joint venture established in 2017 between the Council and Kier. The joint venture Board contained two elected members from the Council and two of its officers, one of whom was Mr Brinn. This was a further organisation which the Respondent raised concerns about repeatedly.

- 3.6 The Tribunal did not concern itself with the nature or extent of the Respondent's communications in 2019 or earlier. The focus of the evidence was on the period from the middle of 2020 onwards. That was not to say that the Respondent did not communicate extensively about the matters set out above before the middle of 2020.
- 3.7 As referred to above, there were two meetings at the Bronllys site in the summer of 2020. Thereafter, the frequency of the Respondent's emails increased significantly. Ms Jones, the Council's Deputy Monitoring Officer, described it as 'daily' and the evidence bore that out. She was then writing to different officers and Cabinet Members, frequently copying in Councillors. She was making allegations against Mr Brinn personally and the Head of Legal and Democratic Services and the Monitoring Officer, Mr Pinney, and the Leader, Mr Davies. Examples could be found at [122-3, 124-5, 127-8, 129 and 130]. Some were so serious that apologies were requested and Code breaches alleged by the Monitoring Officer himself [126-7].
- 3.8 The Council's Chief Executive, Dr Turner, considered that the only way to stem the flow of correspondence was to provide the Respondent with what she wanted; an investigation into the matters that she had raised. By then, she said, she was aware of 10 members of staff who had felt intimidated (paragraph 27 of her witness statement [1728]). She therefore treated two of the Respondent's emails of 14 and 23 August 2020 as triggers to conduct a Stage 2 Formal Investigation into the all of her concerns.
- 3.9 The Respondent was provided with a detailed written response on 18 September 2020 [171-7]. Her concerns were found to have been without merit. Each was addressed in turn and in depth. She was therefore asked not to repeat them in the future unless some evidence to back up her allegations was brought forward. In particular, she was told that the allegations that she had made against Mr Brinn were serious and ought not to be repeated if they could not be substantiated. She was directed to the Ombudsman if she remained unhappy and she was warned that further allegations of the nature that she had been making might have been considered to be breaches of the Code of Conduct and/or libellous. In order to try to curtail her conduct, she was asked to not contact anyone below the level of Heads of Service, with the exception of the Deputy Monitoring Officer, Ms Jones.
- 3.10 The Respondent's emails continued nevertheless. She did not heed the direction contained within 18 September letter. Amongst emails to a number of officers and councillors, she continued to allege that there

were '*non-transparent practices*' [162] and other issues of concern within the three projects referred to above and in other areas, without any further evidence being provided. It was noteworthy that many of the emails were chased for a response the same day (for example, [161]).

- 3.11 In light of the continuing conduct, advice was sought from the Ombudsman's office directly. As a result, the Respondent was directed to use Ms Jones, the Deputy Monitoring Officer, as a *single* point of contact ('SPOC'), in a letter dated 9 October 2020 [178-180]. In that letter, she was also reminded that repeated allegations against Mr Brinn could be seen to amount to harassment.
- 3.12 Dr Turner and Ms Jones met with the Respondent on 19 October 2020 to explain the reasons for appointing a SPOC and the impact of her voluminous emails upon the Council and its officers. A recording of the meeting formed part of the Ombudsman's evidence [406], a transcript of which was also provided as a separate document. The Respondent was asked not to revisit issues for which she had been provided with explanations or answers (page 32 of the transcript) and warned against the dangers of repeating allegations without evidence (page 38). It was explained that a great deal of time and cost was involved in responding to her extensive correspondence.
- 3.13 Although the Respondent again alluded to having being 'threatened' and being 'scared' (page 6) and to a lack of openness (page 8), she was apologetic when confronted with the information that her bombardment of officers was considered to have been grossly excessive and was causing intimidation and pressure (pages 25-8). She nevertheless stated that she would be taking her concerns to the Ombudsman.
- 3.14 The frequency of correspondence from the Respondent then did abate somewhat until December 2020, but it increased significantly up to and past Christmas 2020. She continued to make numerous, repetitious allegations without any further evidence being produced to substantiate them. Between 4 December and 5 February 2021, she sent 94 emails to Ms Jones alone, a period of 29 working days [189]. She sent 60 in January and 70 in February. Although she had indicated that she was '*respecting the wishes*' of Dr Turner not to contact others [107], she started to do so again. She also had a habit of chasing for responses to emails within days or, sometimes, hours. See, for example, the emails sent on 14, 15 and 17 January [105-7] and those sent on 6 April in which she initially demanded a response within 2½ hours, in default of which she threatened to contact officers directly [144], which she then proceeded to do, but before her own deadline had passed [140].
- 3.15 The time which Ms Jones devoted to dealing with the Respondent led her to the view that she was provided with a '*bespoke service*'. Many of her emails were answered immediately, in an attempt to ward off further correspondence, in preference to other communications. Responses

were provided well within the 10 day reply target prescribed in the Council's Charter (paragraphs 25-6 [1799]).

- 3.16 Many of her emails continued to contain allegations of corruption and/or a conflict of interest [145], a lack of transparency and/or openness [93], suggestions that individuals within the Council were attempting to line their own pockets [137] and that there was a widespread failure to comply with Local Government Regulations [154].
- 3.17 Her communications continued despite a further attempt by Dr Turner in February to draw a line in the sand. She reiterated the fact that matters had been examined through the investigation and she asked the Respondent again to curtail her activities [189-191]. At that stage, her conduct had been so poor that it was considered to have merited an apology. She was also reminded of her own route of complaint to the Ombudsman which, despite her threats, she still had not taken up.
- 3.18 Cllr Baynham referred to the number and frequency of emails that she received; sometimes three or four a day and many over a 24 or 48-hour period if she was concerned about something. They were described as 'tiresome', 'repetitive' and 'time consuming' (paragraph 4 of the witness statement [1561]);  
*"When she has an issue, she just keeps on emailing and won't accept the answer she is given. It is quite difficult because, when I see an email from Councillor Karen, I feel quite deflated. I don't think Councillor Karen means to be deliberately difficult, I don't think she means to say anything deliberately nasty."* (paragraph 5).
- 3.19 Mr Brinn referred to the Respondent's emails as "*repetitive, relentless and unaccepting of explanations provided to her*" (paragraph 24 [1789]). The frequency was 'prodigious' but much of it was "*just inappropriate repetition*" (paragraph 26). He was clearly upset by the manner in which she had launched what had been a personal attack on him in such a public manner. He was concerned about the effect upon his own reputation but, more objectively, the time which he had spent dealing with her queries, concerns and complaints was draining, particularly as he was a relatively expensive resource to the Council as a senior officer (paragraph 33 to 34 [1790]).
- 3.20 Dr Turner was acutely aware of the effect of the Respondent's actions upon Mr Brinn and Mr Pinney. They had joined a union specifically in order to obtain support over the issue (paragraphs 81 and 82 [1737]).
- 3.21 By May 2021, having employed all methods known to her to curtail the Respondent's activities, Dr Turner made her own complaint to the Ombudsman [78]. As a result of the further matters set out below, a further complaint was made on 20 July 2021.



- 3.22 Dr Turner subsequently discovered that a number of councillors had implored the Respondent to stop emailing them (see paragraph 78 of her witness statement [1736-7]).

Council meeting 15 July 2021

- 3.23 There was a full Council meeting on 15 July 2021 at the end of which there was a confidential session during which members discussed staffing issues, including the salary and grading of Mr Brinn and another officer. During those discussions, the Respondent made derogatory comments about the Council and a number of its officers. She continued in what was described as a '*rant*' or an '*absolute outburst*'. She complained about salary levels generally and demanded that a number of directors were investigated. She made specific comments about Mr Brinn; that he was not worth what he was paid and that she had been bullied by him. She was described as having shouted, been "*quite agitated*" and "*a bit aggressive*" (Cllr Baynham's statement, paragraph 19 [1564]). When asked to cease her attack, she accused the Chair of bullying her.

Sharing of alleged confidential information

- 3.24 The Ombudsman alleged that the Respondent shared confidential information in three respects;

3.24.1 On 21 January 2020, at a Cabinet Meeting, the sale of some housing stock was discussed (item 15 on the agenda [374]). Following the meeting, the Respondent asked Mr Pinney for a copy of the District Valuer's Valuation Report for Powys Residential Sites (Internal). She was sent it on a '*private and confidential*' basis '*as we had agreed*' [117]. It had not been shared in full during the meeting. The report itself watermarked '*Private and Confidential*' [1453].

On 25 March 2021, she emailed the report in full to her trade union representative and two other councillors [91]. A few days later, on 30 March, she emailed the report to Dr Turner, Ms Jones, a further eight councillors and the leader of SWAP (the Council's internal audit function) [98]. An accompanying email from Mr Hurford of the Bronllys Green Group indicated that he had seen a copy of the report as well [95-6] although, somewhat mysteriously, he denied having written and/or sent the email which bore his name himself [1804];

3.24.2 On 11 March 2021, Mr Brinn provided a confidential update on an alleged tarmac theft from the Council [115]. An internal investigation had been mounted and four Council employees had been suspended. The police had been informed. The same day, the Respondent then emailed questions about the investigation to Dr Turner, Ms Jones and the Police and Crime

Commissioner [1224]. She was immediately chastised for her breach of confidentiality by a fellow councillor, Cllr Breeze [1226]. The Respondent questioned the alleged breach, believing that the Police and Crime Commissioner “*is Dyfed-Powys police*” [1240];

3.24.3 On 11 June 2021, the Respondent sent an email to a number of fellow councillors and a Senedd member in which she disclosed that her union representative was suffering with poor mental health [1773]. She also alleged that he had been bullied by officers and/or employees of the Council and was threatened in order to withdraw his support from her. He was off work sick at the time and she subsequently acknowledged that she had not had permission to divulge his state of health to anybody. She also subsequently acknowledged that she had no evidence of him having been bullied in the manner which she had alleged.

3.25 When the Respondent was interviewed and in her written submissions, she referred to having suffered from bouts of anxiety which had been magnified by Covid and the resulting lock downs. She referred to a number of domestic and personal stressors; the ill health of her parents, her divorce and the need for medication to control her blood pressure and assist her mental health.

3.26 It was important to note that Dr Taylor, Cllr Baynham and others attested to their belief that the Respondent had really believed what she had been saying in her emails. In essence, they described her as misguided, but not malicious.

3.27 It was also noteworthy that, even by 2022, the Respondent’s behaviour did not appear to have changed markedly. In February and March, Ms Jones received a total of 107 emails from her, sometimes up to 12 a day (paragraph 23 witness statement [1799]).

#### **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

##### **4.1 The Code of Conduct**

4.1.1 The relevant parts of the Code of Conduct were as follows;

Paragraph 4 (b) and (c);

*“You must-  
(b) show respect and consideration for others;  
(c) not use bullying behaviour or harass any person;”*

Paragraph 5 (a);

*“You must not-*

*(a) Disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent of a person authorised to give such consent, or unless required by law to do so;”*

Paragraph 6 (1)(a) and (d);

*“(1) You must –*

*(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;*

*(d) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.”*

Paragraph 7 (b)(i) and (iv);

*“You must not –*

*(b) use, or authorise others to use, the resources of your authority*

*(i) imprudently;*

*(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;”*

## **4.2 The Respondent’s Submissions**

4.2.1 The Respondent’s only submissions, beyond the evidence which she had provided to the Ombudsman, were contained within an email of 6 July at 5.47 pm. Although filed beyond the date required in the Listing Direction, beyond the stipulations contained in further advice to her and after the Tribunal’s deliberations, the email was nevertheless circulated, read and considered.

4.2.2 Most of the document continued to express and explain the concerns which she had been airing through the emails discussed above, but it did not deal with the allegations which the Tribunal was dealing with. The Tribunal did note, however, that she appeared to attribute her conduct to a sense of *“being alienated and no real sense of inclusion”* and, at the end, that she expressed some limited degree of contrition, albeit that she still felt that her conduct had served the public good.

## **4.3 The Ombudsman’s Report**

4.3.1 It was contended that the following breaches of the Code of Conduct had occurred;

(i) Paragraph 4 (b) and (c);

It was asserted that the Respondent’s repeated making of allegations, particularly against Mr Brinn, in the absence of evidence to support them, to a wide audience, constituted bullying and harassment and, at the very least, demonstrated a lack of respect and consideration. In particular, her

unsubstantiated allegation of his threatening behaviour, despite concerns having been raised to her about such conduct, constituted breaches of the paragraphs.

- (ii) Paragraph 5 (a);  
It was alleged that the Respondent had breached confidentiality in relation to the three matters set out in paragraph 3.24 above.
- (iii) Paragraph 6 (1)(a);  
It was alleged that the Respondent's repeating of allegations of a lack of transparency, conflicts of interest and corruption in public fora and over a significant period of time, without evidential proof, was capable of undermining public confidence in the Council and its officers.
- (iv) Paragraph 6 (1)(d);  
The Ombudsman's case was that the Respondent's comments at the 15 July 2021 Council meeting about Mr Brinn had been both vexatious and malicious.
- (v) Paragraph 7 (b) (i) and (iv);  
This allegation focused upon the nature and extent of the Respondent's communications and the drain on the Council's resources in dealing with them. It was alleged that the nature of the correspondence caused the Respondent to use the council's resources imprudently, particularly when she had been asked to stop sending repeated emails, particularly about matters which had been answered and/or dealt with.

#### **4.4 Case Tribunal's Decision**

4.4.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there were failures to comply with Powys County Council's Code of Conduct as follows:

- (i) Paragraph 4 (b) and (c);

The right to freedom of expression embodied in Article 10 of the Human Rights Act was not without limit. Article 10 (2) provided for restrictions when necessary in a democratic society, for the protection of the reputation and rights of others. In *Heesom-v-Public Services Ombudsman for Wales* [2014] EWGC 1504 (Admin), it was determined that it was a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, an adverse effect upon good administration. Officers should not therefore be subject to unwarranted comments which may be reputationally damaging or that hamper their ability to carry out their duties or undermine public confidence in the administration.

Cases of this nature often require a tribunal to separate a respondent's firmly held, if misplaced, concerns about the running of council affairs and their right to express them, from an excessive and personal attack on one or more of its officers. As the *Guidance from the Public Services Ombudsman for Wales in relation to the Code of Conduct* indicates, members are, however, always expected 'to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives'.

Here, not only were the Respondent's communications frequent, but they contained little precision and often included personal and damaging rhetoric which directly concerned the integrity and professionalism of a senior officer. The allegations were made in a public forum in writing and even in a Council meeting. Yet further, she was given many opportunities to substantiate her claims over a significant length of time and failed to do so. She was asked not to repeat the allegations if they could not have been substantiated, but also failed to heed that direction.

The Respondent's repeated, serious allegations against Mr Brinn in particular, constituted a breach of paragraphs 4 (b) and (c) as alleged. Her conduct on 15 July 2021 was further evidence of those breaches. The repeated nature of the conduct constituted bullying and the effect upon Mr Brinn was evident from his witness statement.

The Tribunal gave particular attention to pages 16-19 of the Ombudsman's *Guidance* (above). The nature of the Respondent's conduct was in excess of that which might have required of somebody in Mr Brinn's position as a person who was expected to have had a 'thick skin'. As set out on page 18, the Respondent's communications amounted to a pattern of offensive and insulting behaviour which upset and annoyed both Mr Brinn and some of the wider audience (Cllr Baynham, for example). The Respondent's concerns were dealt with as a formal complaint, yet still she continued. She was directed to the Ombudsman on more than one occasion, but ignored that invitation. Instead, she continued to embark upon the course of conduct which constituted breaches of paragraph 4.

(ii) Paragraph 5 (a);

The Tribunal was satisfied that the Respondent was also in breach of paragraph 5 (a) of the Code of Conduct. First, she disclosed the contents of a report from the District Valuer to a number of people, both internal and external to the Council, which had been provided to her on an 'agreed'...'confidential basis' [117]. She should therefore have reasonably believed that she ought not to have disseminated its contents.

Secondly, in her role as a councillor, she received an email concerning a theft which was described as 'sensitive' and which itself was stated to have been 'confidential' [115]. Her emailed questions about the theft to the Police and Crime Commissioner, who she obviously thought to have been one in the same as the police, was a further negligent breach of confidentiality. Other Council staff were also copied into the email who had not been privy to the original communication.

Finally, her dissemination of information about her trade union representative's mental health was unauthorised and insensitive and ought reasonably to have been regarded as personal, and confidential, albeit that it did not directly concern the business of the Council itself, albeit that he was a Council employee as well.

(iii) Paragraph 6 (1)(a)

The Tribunal accepted the Ombudsman's submissions in respect of this allegation. The Ombudsman's *Guidance* gives the making 'unfair or inaccurate criticism of your authority in a public arena' as an example of behaviour falling under this paragraph;

(iv) Paragraph 6 (1)(d);

The Respondent's repeated concerns about Mr Brinn were dealt with as a complaint and were dismissed. She was asked not to repeat them thereafter. She was asked to bring evidence forward if she was to repeat them. She did neither. Her conduct therefore became wilful and/or vexatious. She appeared to have become fixated with her points. When they were not accepted, she seemingly became more intransigent and unaccepting of reason, as demonstrated by her conduct at the July Council meeting.

(v) Paragraph 7 (b) (i) and (iv);

The Tribunal accepted that the Respondent's conduct demonstrated unreasonable expectations in respect of the Council's officers and staff, particularly with regard to the number and frequent urgency by which she demanded responses. Her unreasonableness was further demonstrated by her decision to ignore restrictions imposed upon her, both with regard to the use of Ms Jones as a SPOC and the prohibition against contacting others.

What concerned the Tribunal, however, was whether those paragraphs of the Code of Conduct could properly have been applied to the Respondent's conduct. Could a Deputy Monitoring Officer or a Chief Executive Officer be a 'resource' that was 'used' in the sense covered by paragraphs? The *Guidance*

referred to examples of resources as including telephones, computers, other IT facilities and transport. It did also refer to 'support from council employees' but, considering those words *sui generis*, we considered that they related to administrative resources. In that sense, Ms Jones was not being used as an administrative resource. The *Guidance* also appeared to direct the prohibition towards the personal misuse of resources for non-Council means. For example, asking a secretary to type and send a personal letter.

Further, paragraph 7 (b)(iv) prohibited use that was not facilitative of the Respondent's business as a councillor. We concluded that the Respondent's questions and demands for responses were very much in accordance with her *perceived* role as a councillor.

Giving the Respondent the benefit of the doubt, we were not satisfied that the alleged breaches of paragraph 7 were properly made out. We did not, however, consider that it made any significant difference considering the fact that the mischief about which the Ombudsman complained was more than adequately covered in the other allegations considered above, specifically by paragraph 6 (1)(a).

## **6. SUBMISSIONS ON ACTION TO BE TAKEN**

### **6.1 The Respondent's and Ombudsman's submissions**

6.1.1 The Respondent made no submissions on this issue.

6.1.2 The Ombudsman's submissions were set out in its letter of 5 June 2023 [2523-5].

### **6.2 Case Tribunal's Decision**

6.2.1 The Case Tribunal considered all the facts of the case and, in particular, the following aggravating factors;

- (i) That the Respondent failed to alter her course of conduct after repeated warnings and/advice from senior officers, including the Monitoring Officer and the CEO;
- (ii) That the conduct undoubtedly caused personal disadvantage to Mr Brinn in particular, whether it had been intended or not;
- (iii) That the breaches of confidentiality had been abusive of the trust that had been placed in her as a Councillor;
- (iv) That her behaviour was not a 'one off'. She had embarked upon a pattern of conduct over many months;
- (vi) She appeared to have been driven by a personal agenda. There was little evidence that she was pursuing concerns that had been raised by constituents in the manner in which she had raised them.

- 6.2.2 The Tribunal considered the following mitigating factors;
- (i) The Respondent's personal circumstances, including the physical and mental ill-health;
  - (ii) Her past record of good service;
  - (iii) The fact that she cooperated with the Ombudsman in relation to the investigation;
  - (iv) The Tribunal's conclusion, based upon the beliefs of others, was that she had been misguided in the content and frequency of what she had said, but had probably not intended the level of upset and harm that was nevertheless caused.
- 6.2.3 The Case Tribunal unanimously concluded that the appropriate sanction in all of the circumstances was for the Respondent to be **disqualified for a period of 18 months** from being or becoming a member of authority or of any other relevant authority within the meaning of the Local Government Act 2000.
- 6.2.4 The authority and its Standards Committee is notified accordingly.
- 6.2.5 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

## 7. CASE TRIBUNAL RECOMMENDATIONS

- 7.1 No recommendations are made.



Signed.....  
John Livesey  
Chairperson of the Case Tribunal

Date.....7 July 2023.....

Dr G Jones  
Panel Member

Ms S Hurds  
Panel Member



**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/015/2022-023/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT**

**RESPONDENT:** Former Councillor Chris Evans

**RELEVANT AUTHORITY:** Newport City Council

**1. THE ADJUDICATION**

1.1. A Case Tribunal was convened by the President of the Adjudication Panel for Wales ('APW') to consider a reference in respect of the above Respondent which was made by the Public Services Ombudsman for Wales ('the PSOW').

1.2 On 21 March 2023, the Tribunal Registrar wrote to the Respondent and, in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the letter required the Respondent to send written acknowledgement, indicating whether he wished the reference to be determined by way of written representations or oral hearing. The Respondent indicated that he wished the matter to be determined by way of written representations.

1.3 On 16 May 2023, the Case Tribunal issued Listing Directions which, amongst other matters, afforded the opportunity for either party to apply for leave to attend or be represented at an oral hearing. Neither party lodged any application to this effect.

1.4 The Case Tribunal therefore exercised its discretion to determine its adjudication on the papers only. The adjudication duly proceeded in the absence of the relevant parties at 10.00am on 23 June 2023, and was conducted by means of remote attendance technology.

## **2. THE ALLEGATION**

2.1 The PSOW's report and reference to the APW dated 20 March 2023 outlined the allegation to be adjudicated upon by the Case Tribunal as follows.

2.2 It was alleged that the Respondent had brought his office and the Council into disrepute when he pleaded guilty and was convicted of the criminal offence of soliciting. The PSOW noted the nature of the Respondent's criminal offence, which was contrary to the Sexual Offences Act 2003, and the significant publicity surrounding the conviction, which referred to both the Council and the Respondent's role as an elected member. The PSOW said this suggested that the Respondent's actions may have brought his office and the Council into disrepute and that the Respondent's conduct may amount to a breach of paragraph 6(1)(a) of the Relevant Council's Code of Conduct.

## **3. FINDINGS OF FACT**

### **Submissions on the Undisputed Material Facts**

3.1 There being no relevant Disputed Material Facts, the Case Tribunal's Listing Directions dated 16 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Material Facts.

3.2 The PSOW referred to the report dated 20 March 2023 and offered no further written submissions. The Respondent's representative made the following points in further written submissions dated 26 May 2023.

3.2.1 With regard to paragraph 3.3.2 below, he said that the Respondent couldn't recall making any mention of 'kerb-crawling' and he was merely representing the views of various bodies such as the World Health Organisation which have an interest in this issue. He had further suggested that local charities be consulted to seek their views. He said that the Respondent's engagement in the Committee meetings had been fully investigated by the Police and Crown Prosecution Service and no further action was deemed necessary.

3.2.2 As to paragraph 3.3.6 below, he said that the Respondent's Solicitor for the criminal proceedings had referenced the Respondent's councillor role during those proceedings, only to the extent of highlighting his excellent record as an elected representative, as evidenced by comments on social media. He had also referenced the impact the whole affair had on his standing, wellbeing and mental health.

3.2.3 As to paragraph 3.3.7 below, he said that the Respondent was seriously ill at the time. His Solicitor in the criminal proceedings had agreed a basis of plea, namely that the Respondent agreed to plead guilty in order to minimise the impact on his family, friends, community and the person involved. The Respondent's representative said that

the relevant magistrate credited the Respondent with his willingness to bring matters to a swift and reasonable end.

3.2.4 With regard to paragraph 3.3.8 below, the Respondent wanted it recorded that the main reporting came from a news agency he previously worked for, and with whom he was in dispute. The Respondent felt that he was not responsible for the media reporting and referred to the findings of the Leveson Report and its recommendations as to press intrusion and misreporting.

3.2.5 With regard to paragraph 3.3.9 below, the Respondent's representative said that relevant medical reports and doctor's notes clearly record that after the case, the Respondent suffered serious ill-health. He was receiving intense medical attention and was in no position to refer himself to anybody.

3.2.6 As to paragraph 3.3.10 below, he agreed that this was correct. However, the representative considered it important to note that the Respondent only effectively remained a Councilor for approximately two months, as the local elections were in early May. He said that after attending one meeting in January 2022, in which he was clearly unwell, he removed himself from all committees, political parties and council business. The representative said that retrospectively, the Respondent also donated his Councilor's allowance to various good causes. This was reported in the press.

3.2.7 Finally, as to paragraph 3.3.11 below, the Respondent's representative said that this description was wholly inadequate. In this context, he provided detailed and sensitive information about the medication, support and monitoring which the Respondent was receiving.

### **Case Tribunal's Determination as to the Facts**

3.3 There being no relevant Disputed Facts, The Case Tribunal noted the detailed further written representations on the Undisputed Material Facts made by the Respondent's representative. It also considered the PSOW's report, together with the evidence in the Tribunal Bundle. The Case Tribunal acknowledged the contextual background provided by the Respondent's representative. On the balance of probabilities however, and having considered all these matters, it found the following Undisputed Material Facts: -

3.3.1 The Respondent was a member of the Relevant Council from 2012 until May 2022.

3.3.2 The Respondent attended meetings of the Committee to discuss the proposed Public Spaces Protection Order ('PSPO') in Pill on 19 February and 30 April 2021. He made comments about the provisions of the PSPO.

3.3.3 The meetings took place before the Respondent's offence.

3.2.4 The Respondent pleaded guilty and was convicted on 6 January 2022 of an offence of soliciting, contrary to section 51A of the Sexual Offences Act 2003. The offence occurred in Pill on 22 May 2021.

3.3.5 The Respondent received a 12-month conditional discharge. He was ordered to pay a £22 victim service surcharge and £85 costs to the Crown Prosecution Service.

3.3.6 The Respondent's role as a member of the Council was referenced by his representative during the Court hearing.

3.3.7 The Council had not been informed in advance of the hearing that the Respondent intended to plead guilty.

3.3.8 The Respondent's conviction received significant press interest, which referred to his role as a member of the Council. The press articles reported that the Respondent's representative in the criminal proceedings had referred to his Council role (and that he was 'resigned' to losing it), that the Judge had taken this into account when making his judgment, and that the Council had no powers to disqualify the Respondent.

3.3.9 The Respondent did not refer himself to the PSOW's office following his conviction.

3.3.10 The Respondent remained a member of the Council until 9 May 2022 and attended a meeting of the Full Council on 25 January 2022.

3.3.11 The Respondent has been prescribed both antidepressant and anxiety medication since 7 June 2021.

#### **4. FINDINGS OF WHETHER THE MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE.**

4.1 The Listing Directions dated 16 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether, in the light of the Facts, there had been a failure to comply with the Relevant Authority's Code.

4.2 The Case Tribunal considered the parties' submissions, the Respondent's interview responses, the contextual background in relation to the Undisputed Material Facts, as provided by the Respondent's representative in paragraph 3.2 above, as well as the evidence within the Tribunal Bundle.

##### **Paragraph 6(1)(a) of the Code of Conduct**

4.3 The alleged Code breach relates to Paragraph 6(1)(a) of the Code of Conduct. This Paragraph states that '*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*'.

##### **The Parties' submissions**

4.4 The parties' submissions as to whether there has been a failure to comply with Paragraph 6(1)(a) of the Code of Conduct can be summarised as follows.

##### **The PSOW's Submissions**

4.4.1 The PSOW's submissions as contained in the Report dated 20 March 2023 are that the Respondent's conduct was suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct for the following reasons.

4.4.2 The PSOW's Report referred to the fact that the Respondent had pleaded guilty and was convicted on 6 January 2022 of an offence of soliciting in his private capacity, contrary to section 51A of the Sexual Offences Act 2003.

4.4.3 The Report also made the point that the Respondent did not resign following his conviction and attended a full Council meeting on 25 January 2022 and had not referred his actions to the PSOW's office for consideration. The PSOW considered that this indicated a lack of recognition by the Respondent of the seriousness of his actions and as to the impact his behaviour and conviction might have on the reputation of his office and the Council.

4.4.4 The PSOW noted that whilst the Respondent disputed the accuracy of the press articles in relation to the quotes attributed to his representative, he had nevertheless confirmed at interview that his Council role was referenced by his solicitor during the hearing.

4.4.5 The Report referenced the PSOW's Guidance which states that a Member's actions and behaviour are subject to greater scrutiny than those of ordinary members of the public, and that a criminal conviction may amount to a breach of paragraph 6(1)(a) of the Code of Conduct.

#### The Respondent's Submissions

4.4.6 The Case Tribunal again noted the written submissions made by the Respondent's representative as dated 26 May 2023 in relation to the Facts, in considering whether those Facts and the evidence in the Tribunal Bundle amounted to a breach of Paragraph 6(1) of the Code of Conduct.

4.4.7 The Respondent's representative also added general comments about the criminal proceedings. He said that relevant testimony in the proceedings had confirmed that no money changed hands on the night in question and no sexual relations took place. He also explained the lengthy, historical, complex and multi-layered context. He said that communications had been friendly and non-exploitative and that there was a relationship of respect with the person in question.

4.4.8 During his interview with the representatives of the PSOW, where his own legal representative was present, the Respondent had also made the following points: -

- that he had a previous history of raising the issues which were subject to the PSPO, and which pre-dated the meetings specifically referenced by the PSOW.

- that 'resigned to' losing his Councillor role, as referenced by his Solicitor in the criminal proceedings, was misinterpreted to imply that he had already 'resigned'.

- he said that the matter had been reported on the front page of one particular local newspaper for three days.
- he felt he was dealing with hostile media, with respect to the way that they reported it, in comparison with the case of another Councillor.
- The Respondent considered that the question of how the matter impacted on the Council and his role was; *“totally and utterly out of my control.”* He did not consider that he was responsible for the way that certain organisations chose to use him as *“clickbait”*.
- The Respondent’s representative thought that this offence was *“fairly low down the food chain”* in terms of such matters. He said; *“I’d submit it’s not necessarily caused any damage...a conditional discharge is a very, very, very lenient sentence.”*

4.4.9 During various written exchanges with the PSOW and the APW, the Respondent or his representative also made the following points; -

- It was Respondent’s view that the PSOW Report was unbalanced, relying essentially on evidence provided by the Relevant Authority, and did not portray the Respondent in a fair or reasonable light and was somewhat dismissive of his diagnosed mental and physical health conditions.
- He reiterated that in Committee meetings, he had expressed opinions that were not necessarily his own, by referencing various policies and opinions of organisations, such as the World Health Organisation. He said he was able to produce the research that he had carried out prior to the meetings. He did not consider that the comments he made at these meetings could bring the Council into disrepute, as he was merely representing the views of others.
- He said that the newspaper ‘clippings’ failed to include a report in one newspaper which stated that the Respondent intended to donate his Councillor allowance to various local good causes.
- He reiterated that the concept of being resigned to the notion that he would lose his position was clear throughout the reporting and may have been misunderstood by the presiding magistrate.
- He was not responsible for shares or comments made by a councillor who had a history of opposing his views and politics.
- He considered that there had been no requirement to resign. In addition, his failure to resign and self-report was due to illness, not failure to recognise the consequences of his actions. He had not been in a fit state *“to consider perceived impact of his behaviour”*.
- The Respondent felt that he had received overwhelming support, with countless requests for him to continue representing his community.

- The Respondent said that the police themselves withdrew the relevant part of the proposed PSPO. He thought that this suggested that they shared the views, and it was the Council itself that reintroduced the provision.
- He considered that where the Monitoring Officer was aware of the situation, then there was no need to self-report the matter and he referenced the PSOW Guidance in this respect.
- Apart from being unwell, he said that there was absolutely no obligation upon him to inform the Council as to whether he intended to plead guilty or not guilty. He said that he pleaded guilty on the relevant date; *“to move on with his life and limit the impact on family.”*
- He was not responsible for his solicitors’ actions in the criminal proceedings if he referenced the Respondent’s Council role.
- He considered that his actions were in line with his diagnosed medical conditions

### **Code of Conduct Guidance and the Welsh Principles.**

4.5 The Case Tribunal carefully considered all of the evidence and the parties’ submissions. It also had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code of Conduct. As to paragraph 6(1)(a), the Guidance states that: -

*‘2.31 ...As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.*

*2.32 When considering whether a member’s conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their council into disrepute.*

*2.33 Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.*

4.6 The Guidance then provides a list of case examples where a breach of paragraph 6(1)(a) has been found to have occurred. One such case was of a Member acting in a private capacity, who received a conditional discharge for common assault due to the unsolicited touching of the leg of a female, which caused her distress. The Member had

accepted that his behaviour was unacceptable and had pleaded guilty to the offence. In that case, the Panel found that the conviction and negative publicity that surrounded the case had brought the Member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

4.7 The Case Tribunal also considered the Respondent's behaviour in the context of the Welsh Principles governing the conduct of elected Members in Wales which encompass the 'Nolan Principles'. These include the following Principles which underpin the Code of Conduct in Wales.

4.7.1 'Integrity and Propriety' which the relevant Regulations further explain as follows; *'Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour'*.

4.7.2 'Duty to Uphold the Law', further explained as follows: *'Members must act to uphold to law and act on all occasions in accordance with the trust that the public has placed in them.'*

4.7.3 'Accountability', further explained as follows: *'Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.'*

4.7.4 'Leadership', further explained as follows: *'Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.'*

#### **Case Tribunal's determination as to alleged breach of paragraph 6(1)(a) of the Code of Conduct.**

4.8 Having considered the Guidance and Principles, the Case Tribunal turned to the question of whether the Respondent was acting in his private capacity at the time of the offence. It considered that he was indeed acting in his private capacity. It nevertheless noted that the Code of Conduct, as embodied in the relevant Welsh Regulations, made it clear at Paragraph 2(1)(d) that, a Councillor was required to observe the Code; *'at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7'*.

4.9 With reference to the PSOW Guidance, the Case Tribunal noted that the criminal behaviour to which the Respondent pleaded guilty did not amount to an offence involving dishonest, threatening or violent behaviour. The Case Tribunal also took into account the fact that the offence in question attracted a modest maximum penalty. It noted that the Magistrates Court may have taken into account the Respondent's likely loss of elected role and income in imposing sentence, however it considered that a conditional discharge following a guilty plea was relatively unusual.



4.10 The Case Tribunal concluded that pleading guilty and being convicted of an offence of this nature would inevitably attract interest and concern, even setting aside any unreasonable or salacious media interest. This was in light of the fact that the Respondent held a trusted leadership role as a Councillor and would be expected by reasonable members of the public to lead by example. The Case Tribunal noted that the Respondent had, for instance, been a Council nominated school Governor and his admitted behaviour was wholly at odds with that expected of an individual who had a role in representing the Council and/or a school. The Case Tribunal considered that public office attracted greater scrutiny than for ordinary members of the public. It was of the view that the Respondent, as an experienced Councillor, would have been fully aware of the likely consequences of his behaviour and its impact on his public role and Council. It considered that the Respondent's actions, albeit in a private capacity, failed to promote public confidence in the role of Councillor and in the work and efforts of the Relevant Authority. The Case Tribunal was therefore satisfied that the Respondent's conduct led to a breach of Paragraph 6(1)(a) of the Code.

4.11 With reference to the Welsh Principles, the Case Tribunal also considered that pleading guilty to the offence in question went hand in hand with a finding of failure to uphold the law and to maintain integrity, propriety and the responsibilities of public office in a leadership role. The Case Tribunal considered that Councillors would be expected to have carefully and consciously signed up to these Principles, as well as to the Code requirements when signing their undertakings on taking up office, and that the Respondent's actions had showed failure to uphold the Welsh Principles and that this further supported a finding of breach of Paragraph 6(1)(a) of the Code.

4.12 The Case Tribunal further considered that the Respondent would have been acutely aware of the focus on the issue of prostitution in the locality in which his offence occurred, as he had been particularly vocal on the PSPO issue in Committee meetings. He was also aware that the Police and his Authority had been working together to address the issue of prostitution as well as other anti-social behaviour in the locality. It considered that in committing this offence, the Respondent would inevitably 'stir up a hornet's nest'. Whereas a conditional discharge for such an offence may not ordinarily have attracted this level of interest, in this case it was undoubtedly the Respondent's role as elected politician which attracted additional attention. His actions had been exceptionally foolhardy in the circumstances.

4.13 With regard to the significant press interest associated with such proceedings, the Case Tribunal considered that individuals entering public life would be fully aware of this unfortunate reality. The Case Tribunal considered that it couldn't ignore that fact and reality in reaching its decision. The nature of the offence and the Respondent's status made it likely that the offence to which the Respondent pleaded guilty would attract such press attention following conviction and sentence and would inevitably make the role and Council a 'laughingstock'. The Respondent agreed that his solicitor had highlighted the Council role during his representation in the proceedings. The Case

Tribunal also noted that the media interest had undoubtedly included social media interest so was likely to have reached a wide range of constituents including children and would provide an unfortunate portrayal of local politics.

4.14 Whilst the Case Tribunal noted the Respondent's comments about a hostile media element due to a dispute with his former employer, it nevertheless considered that press reporting would have occurred in any event. The significant volume and variety of newspaper articles within the Tribunal Bundle showed that there was a degree of consistency in the reporting of the criminal proceedings. This was unlikely to have been exclusively connected to the former employer. In conclusion, whilst the Case Tribunal noted the dispute, as the reporting came from several different sources, it considered that it was more likely that the manner of reporting was due to the nature of the incident itself rather than the dispute. The articles also included material which recorded the Respondent's offer to donate his Councillor allowance to local good causes.

4.15 The Case Tribunal noted that the solicitor representing the Respondent in the criminal proceedings had, during the proceedings, stated to the effect that the Respondent was resigned to losing his role, rather than stating that he had already resigned. The Case Tribunal also noted that in correspondence from the Respondent's representative to the Relevant Authority, that he recognised that the outcome of the criminal proceedings might trigger a standards referral, and he sought information about the next steps, protocols and procedures associated with the same if this was the case. In the circumstances the Respondent demonstrated some awareness that the admitted behaviour was unacceptable, and that his actions might well constitute a breach of the Code of Conduct.

4.16 As to the Respondent's role at the relevant Scrutiny Committee meetings, the Case Tribunal considered that, whether or not the Respondent's comments reflected his own views as well as those of named organisations, and whether or not he had advocated against 'criminalising' customers as well as prostitutes when discussing the proposed PSPO, the meetings pre-dated his conviction, and he was exercising his right to freedom of expression.

4.17. Nevertheless, the Case Tribunal considered that the Respondent's passionate contribution to both publicly accessible meetings, in the context of the offence to which he pleaded guilty a few weeks later and in the locality being discussed in the PSPO, was a relevant factor. The combination of this contribution, together with the offence, was conduct which could reasonably have been regarded as bringing the office or the Council into disrepute. It could cause concern for anyone who had attended or watched the recorded meeting in the light of the subsequent offence. The Monitoring Officer candidly stated in his referral on behalf of the Relevant Authority; "*more by luck than judgement, this element has not been a major issue in regard to media and public criticism...*" The Case Tribunal was satisfied that, whatever his motivation or intention in speaking, the Respondent's involvement in the debate on the PSPO prior to his arrest was relevant to the extent that it could well have increased the potential embarrassment

and reputational harm for the Councillor and the Relevant Authority in the light of the subsequent criminal offence.

4.18 The Case Tribunal did not consider that it was significant that the Respondent had not informed the Council or Monitoring Officer in advance of the hearing that the Respondent intended to plead guilty. Whilst this may have left the Council in a difficult position in facing press enquiries, it was mindful that pleas often change on the first day of trial, that the Respondent was suffering from significant ill-health issues and that he said his guilty plea was entered to minimise the impact of the proceedings on other individuals.

4.19 The Case Tribunal noted that the Respondent did not self-report the potential breach of the Code of Conduct to the PSOW. It noted that there was some indication in the evidence that he or his representative were in contact with the PSOW and that the Respondent may have considered that he had done enough to self-report the matter to the PSOW. The Case Tribunal considered that the Monitoring Officer had acted fairly and reasonably in allowing the Respondent time to voluntarily refer the matter to the PSOW's office. The Case Tribunal was nevertheless satisfied that a duty to report conduct involving criminal behaviour and breach of the Code to the proper authority or the Monitoring Officer respectively, was defined as a duty placed upon Members other than the Respondent. It therefore did not consider that failure to self-refer was an additional factor leading to breach of Paragraph 6(1)(a) of the Code.

4.20 Again the Case Tribunal considered whether the Respondent's failure to immediately resign amounted to an additional breach of Paragraph of Paragraph 6(1)(a) of the Code. It noted that the Respondent attended one Council meeting relatively soon after the proceedings, however it was mindful of the fact that he then relinquished other Council duties and attended no other meetings. It accepted that, at the time, the Respondent was suffering from exacerbated ill-health symptoms following conviction and sentence and following intense media interest and newspaper reporting on the case. It also noted his representative's submission that the Respondent had not been in a fit state to consider the impact of his behaviour. In the circumstances, the Case Tribunal did not consider that the Respondent's continuation in office for a further four months was an additional factor in its determination as to breach of Paragraph 6(1)(a) of the Code.

4.21 Finally, the Case Tribunal considered the Respondent's right to respect for his private life (Article 8 of the ECHR). It noted that there should be no interference by a public authority with the exercise of this right except in certain circumstances. This includes where this is in '*accordance with the law*' and '*necessary for the prevention of... crime [and] for the protection of health or morals...*' In the light of the Respondent's guilty plea for the offence of soliciting, the Case Tribunal concluded that a finding of breach of the Code of Conduct for Members was not precluded by Article 8.

4.22 In conclusion therefore, the Case Tribunal considered that the nature of the criminal conviction under the Sexual Offences Act 2003, together with the significant

publicity surrounding it, which referred to both the Council and the Respondent's role as an elected member, reflected poorly on himself and his role and brought both his office and the Council into disrepute. The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 6(1)(a) of the Code.

## **5. FINDINGS IN RELATION TO SANCTION**

5.1 The Listing Directions dated 16 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceeding was reached.

### **The Parties' submissions**

5.2 The parties' submissions as to any sanction to be imposed in the event of a finding of breach of Paragraph 6(1)(a) of the Code of Conduct can be summarised as follows.

#### **The PSOW's Submissions**

5.2.1 The PSOW's representative made the following general submissions. He noted that the purpose of the ethical standards framework was to promote high standards of conduct amongst members of councils in Wales and maintain public confidence in local democracy. He also noted that the purpose of sanction was to;

- Provide a disciplinary response to an individual member's breach of the Code.
- Place the misconduct, and appropriate sanction, on public record.
- Deter future misconduct on the part of the individual and others.
- Promote a culture of compliance across the relevant authorities.
- Foster public confidence in local democracy.

5.2.2 The PSOW's representative also highlighted some of the mitigating and aggravating factors from the APW's Sanctions Guidance which he considered applied in this case. He suggested that the breach was serious in nature, and a sanction would be fair, proportionate, and necessary in the public interest in order to maintain confidence in local democracy. He maintained that the conduct was such that it called into question the Respondent's fitness for public office and brought the Council into serious disrepute.

#### **The Respondent's Submissions**

5.2.3 The Respondent's representative made the following general submissions. He said that from a historical perspective the Respondent had, over the last 30 years, rebuilt his life and described the hardships he had faced. The representative said that the Respondent had provided sterling public service for many years in the ward of Rogerstone as a County and Community Councillor. He said he was held in high esteem by the people he represented. When this matter became known, the

representative said that the Respondent had *“enormous support and goodwill towards him from the community, testimony to the high regard and respect in which [he] was held because of the causes he had championed for local people in assisting them as a diligent Councillor with their various issues/complaints that needed attention”*.

5.2.4 The representative said that following the Court appearance, the Respondent's life had been in *“free fall”*, previous health issues had been exacerbated and he had required a great deal of input from health professionals. He explained that the Respondent had clearly been unwell at the time of interview with the PSOW representatives and suffering health challenges. The Respondent said he had *“no intention whatsoever of standing for election again.”*

### **Case Tribunal's determination as to Sanction.**

5.3 The Case Tribunal considered all the facts and evidence and in particular, the detailed evidence supplied by the Respondent's Representative as to his significant ill-health issues. It also had regard to the Adjudication Panel for Wales' current Sanctions Guidance. It noted the public interest considerations as follows in paragraph 44 of that Guidance; *‘The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.’*

5.4 The Registrar to the Tribunal notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct by the Respondent.

5.5 The Case Tribunal considered that the breach was serious, as a conviction of this nature would inevitably attract significant media and public attention. Nevertheless, as the offence in question attracted a modest maximum penalty, and the Respondent received a conditional discharge only, the Case Tribunal considered that had the Respondent remained in office, a moderate period of suspension would have been appropriate. In the circumstances, the Case Tribunal was mindful of paragraph 47 of the Guidance which states; *‘In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate...This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected.’*

5.6 In the circumstances, the Case Tribunal considered that disqualification for a moderate period would be appropriate, to ensure that the Respondent had the opportunity to reflect upon the requirements of the Code of Conduct before

contemplating a return to public office in future, notwithstanding his currently expressed view that he had no intention of standing for election again.

5.7 The Case Tribunal then considered any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration as follows.

#### Mitigating Factors

5.7.1 The Case Tribunal concluded that the following mitigating factors applied to the Respondent:

- a previous record of good service over a long period of time. The behaviour had been described by the Respondent's representative as a moment of madness or a lapse of judgement.
- the evidenced misconduct was a one-off or isolated incident.
- the Respondent's confirmation that he had donated his Council allowance to local good causes following conviction and sentence.

#### Aggravating factors

5.7.2 The Case Tribunal also considered that the following aggravating factors applied to the Respondent:

- the long service and position of responsibility in the community should also have alerted the Respondent to his responsibilities and the need for accountability.
- a lack of acceptance of responsibility for the consequences of his actions or contrition regarding the misconduct and its inevitable consequences. The Respondent had failed to grasp the impact of his actions, his criminal conviction and subsequent reporting would have on his own role and that of the Council. It was his view that the question of how the matter impacted on the Council and his role was totally and utterly out of his control.
- reckless conduct with little or no concern for the Code and the ethical standards regime in Wales, despite having received detailed training upon it in 2018 and which emphasised the '*Need to restore public confidence and high ethical standards in public office*'.
- the absence of any regret or apology for the consequences of his actions as regards his elected role and the Relevant Authority

5.8 The Case Tribunal had regard to the public interest and the overarching purposes of the Code to uphold standards of conduct in public life and maintain confidence in local democracy. It also had regard to the mitigating and aggravating factors as above. In all the circumstances, it remained of the view that disqualification was the appropriate sanction. As the Respondent had not stood for office in the local government elections in Wales in 2022, it had carefully considered whether '*No Action*' or '*Disqualification*' as detailed in the Sanctions Guidance was the most appropriate outcome.

5.9 Paragraphs 39.1 and 39.2 of the Guidance were noted by the Case Tribunal in particular, which recognised that no action might be appropriate where there had been resignation or ill health which rendered a sanction unnecessary and/or disproportionate. The Case Tribunal noted however that the Respondent had chosen not to resign following his conviction in the criminal proceedings and that he had remained in office for a further four months. Whilst he was undoubtedly suffering from ill health at the time, he had nevertheless felt it appropriate to attend a Council meeting in January 2022 and had been able to instruct his legal representative to act on his behalf. In the light of the over-arching purpose of the standards regime and sanctions, the Case Tribunal considered a short period of disqualification to be necessary and proportionate to allow a further period of reflection.

5.10 The Case Tribunal accepted that the Respondent had been suffering from acute stress and mental ill-health throughout the considerable period from the night of the offence to this current adjudication. Nevertheless, the Case Tribunal was satisfied that a finding of *'No Action'* would not be an appropriate response in this case. There was an expectation that members would act with integrity, act in accordance with the trust that the public placed in them and promote public confidence by leading by example and upholding the law. It considered that a sanction should be imposed in order to underline the importance of the standards regime in Wales, to promote a culture of compliance across the relevant authorities and foster public confidence in local democracy. The Case Tribunal was satisfied that the only alternative to a finding of no action for a former Member was a moderate period of disqualification.

5.11 In all the circumstances, in the light of the evidence and the wider purpose of sanctions as outlined in the Guidance, the Case Tribunal considered that the sanction of disqualification was appropriate to reflect the question of fitness for public office. It considered that this was necessary to underline the importance of the Code and the need for members to carefully reflect upon its purpose when undertaking to abide by the Code on taking office. Whereas the Guidance indicated that a disqualification of less than 12 months was unlikely to be meaningful, it considered that disqualification for a shorter period was a proportionate and necessary sanction in this case. It noted that whilst the Respondent had continued in office for 4 months after conviction, he had already been away from politics for over a year by the date of this adjudication

5.12 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified for 9 months** from being or becoming a member of the Relevant Authority or any other relevant authority within the meaning of the Local Government Act 2000.

5.13 Newport City Council and its Standards Committee are notified accordingly.

5.14 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed.....

**Date:** 7 July 2023

C Jones

Chairperson of the Case Tribunal

Dr G Jones

Panel Member

Mr H E Jones

Panel Member



**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/001/2023-024/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT**

**RESPONDENT:** Former Councillor Donald Jenkins

**RELEVANT AUTHORITY:** St. Harmon Community Council

**1. INTRODUCTION**

1.1. A Case Tribunal was convened by the President of the Adjudication Panel for Wales ('APW') to consider a reference in respect of the above Respondent, which was made by the Public Services Ombudsman for Wales ('PSOW').

1.2 On 3 April 2023, the Tribunal Registrar wrote to the Respondent and, in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the letter required the Respondent to send a written acknowledgement, indicating whether he wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.

1.3 On 23 May 2023, the Case Tribunal issued Listing Directions which, amongst other matters, afforded an opportunity for the parties to apply for leave to attend or to be represented at an oral hearing. Neither party lodged any application in this respect.

1.4 The Case Tribunal therefore exercised its discretion accordingly to determine its adjudication on the papers only. The adjudication duly proceeded on 4 July 2023 and was conducted by means of remote attendance technology.

## **2. ALLEGATIONS**

2.1 By letter and Report dated 23 March 2023, the PSOW made a referral to the APW in relation to allegations made against the Respondent. The allegations were made in the context of a Report of Audit Wales ('AW') dated October 2021 which was critical of the Relevant Authority as a whole, as well as specific individuals, including the former Clerk, Ms West, and the Internal Auditor, as well as the Respondent. Whilst the AW Report identified irregularities in governance and financial processes, the PSOW Report focused upon certain narrow and specific issues from the AW Report. During the Respondent's interview, the PSOW's representative made it clear; '*...although the Audit Wales report covered a vast range of different topics, this interview will only deal with those two specific allegations...*'

2.2 The specific allegations contained in the PSOW Report were that; -

2.2.1 In relation to a certain tender notice for the refurbishment of bus shelters and an amended annual return and governance statement ('ARGS'), the Respondent attempted to mislead AW. The PSOW alleged that he did so to cover up poor governance at the Relevant Authority and to lessen criticism by Audit Wales about his own conduct. The PSOW alleged that the Respondent did so for his own benefit to create an advantage or to avoid a disadvantage for himself by lessening the impact of the AW investigation findings on his own reputation as Chair of the Relevant Authority. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraph 7(a) of the Code of Conduct.

2.2.2 Members of the public and press attended a meeting of the Relevant Authority on 3 November 2021 in which the AW Report was considered. The PSOW alleged that the strength of public opinion and publicity following the meeting indicated that the Respondent may have brought his Council and/or his office as a Councillor into disrepute. The PSOW considered that the Respondent's actions were therefore also suggestive of breach of paragraph 6(1)(a) of the Code of Conduct.

2.3 The available evidence was contained in the Tribunal Bundle which comprised the PSOW's Report and linked correspondence.

## **3. FINDINGS OF FACT**

3.1 The Listing Directions dated 23 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed and Disputed Material Facts.

### **Undisputed Material Facts**

3.2 There being no further representations made as to the Undisputed Material Facts, the Case Tribunal considered the available evidence within the Tribunal Bundle. It found the following Undisputed Material Facts on the balance of probabilities: -

- 3.2.1 The Respondent was elected to the Council in May 2017.
- 3.2.2 The Respondent was the Chair of the Council between August 2017 and December 2021. Whereas the PSOW Report indicated that the Respondent had been appointed Chair in July 2017, it was clear from the relevant Minutes in the Tribunal Bundle that the appointment took place in August 2017.
- 3.2.3 The Respondent signed a Declaration of Acceptance of Office and an undertaking to abide by the Code of Conduct.
- 3.2.4 The Respondent attended training on the Code of Conduct.
- 3.2.5 The Respondent was the Acting Clerk and responsible financial officer ('RFO') between the resignation of one Clerk in late 2017/January 2018 and the appointment of Ms West in April 2018.
- 3.2.6 The Council was subject to an investigation by AW on the 2018 – 2019 financial year.
- 3.2.7 The Respondent was acting in his capacity as an elected Member during his contact with AW.
- 3.2.8 The AW Report was critical of specific actions taken by the Respondent.
- 3.2.9 The Report identified many irregularities in processes which were instigated by the Respondent.
- 3.2.10 The appointment process for the refurbishment of the bus shelters occurred before Ms West was appointed Clerk.
- 3.2.11 Ms West provided AW with a copy of a tender notice for the refurbishment of the bus shelters in July 2019 on a memory stick containing a number of Council documents.
- 3.2.12 The tender notice provided to AW contained Ms West's contact details for response.
- 3.2.13 Ms West was not in post when the contractor appointment process for the bus shelter refurbishment began.
- 3.2.14 Bus shelter refurbishment work was approved at a Council meeting on 30 January 2018.
- 3.2.15 The Respondent was invited by both AW and the PSOW's office to supply a copy of the correct tender notice that he said he displayed in the community, but he did not do so.
- 3.2.16 AW received a copy of the Council's ARGS on 24 June 2019.
- 3.2.17 The ARGS was certified by the Respondent and dated 28 May 2019.
- 3.2.18 Amendments were made to the ARGS using correction fluid.

3.2.19 Certain amendments made to the ARGs were initialled by the Respondent.

3.2.20 The approval of the amended ARGs was not included in the minutes of the Council meeting on 20 June 2019.

3.2.21 Members of the public attended a public Council meeting on 3 November 2021 and raised concerns about the AW Report, both in writing and orally.

3.2.22 Details of the Report and its criticism of the Respondent were published in the press.

3.2.23 The Respondent made a covert recording of a meeting with the staff from AW.

3.2.24 Although not formally identified in the PSOW Report as an Undisputed Material Fact, the Case Tribunal was satisfied that the parties concurred that the Respondent had resigned as Chair of the Relevant Authority in December 2021 and did not stand for election in May 2022.

### **Disputed Material Facts**

3.3 There were four Disputed Material Facts outlined in the PSOW Report as follows: -

3.3.1 Did the Respondent create and display a tender notice in the community for the refurbishment of the bus shelters?

3.3.2 Was the tender notice for the bus shelter refurbishment provided to AW by Ms West a copy of the actual tender notice that the Respondent said was displayed by him?

3.3.3 Did the Respondent attempt to mislead AW in relation to the bus shelter refurbishment tender notice?

3.3.4 Did the Respondent attempt to mislead AW in relation to whether the ARGs was approved by Council after the amendments were made to it during the June 2019 Council meeting?

### **Submissions**

3.4 The Case Tribunal noted the following submissions by the parties as regards the Disputed Material Facts

#### **The PSOW's submissions**

3.4.1 The PSOW's submissions in this respect were contained in the Report dated 23 March 2023.

3.4.2 The PSOW Report stated that the Respondent informed AW that he created a tender notice regarding work to bus shelters and displayed it on notice boards at some point between December 2017 and January 2018. He also maintained that position on further questioning by AW. He did not provide a copy of the relevant tender notice, and the PSOW was of the view that the tender notice provided to AW was not created and displayed at the time that the procurement process apparently took place, as it required

tenders to be returned to Ms West. However, Ms West was not in post at the relevant time, and as such, the version of the tender notice provided to AW could not have been the version that was allegedly displayed in the community by the Respondent and the Respondent acknowledged this point. The PSOW did not accept that the first the Respondent was aware of the discrepancy was when he was shown the tender notice by AW in October 2019 or that he did not know how it was among the Relevant Authority's documents.

3.4.3 The PSOW Report stated that the Respondent had offered a number of explanations for not being able to provide a copy of the relevant tender notice. The PSOW considered that these were contrary to all previous claims about the notice and lacked credibility as explanations. The PSOW was therefore not persuaded that the Respondent created and displayed a tender notice for this work as claimed. The Respondent also said that he did not provide AW with a copy of the tender notice as he; *"would have stood accused of preparing it after the event"*. He had agreed with the PSOW that he would look through his records, however he was unable produce evidence of any tender notice displayed in the community, whether a copy, or any evidence in a parish magazine.

3.4.4 The PSOW stated that the Respondent later claimed that he did not post a tender notice, and that it was someone else who created the tender notice and posted it. This was at odds with the Respondent's original claims. The PSOW considered that this suggestion, at a late stage, lacked credibility and that the more likely version of events was that he did not create or post a tender notice at all. Finally, as to Ms West's role in the matter, the PSOW considered that the Respondent was responsible for guiding her as an inexperienced Clerk. PSOW considered that production of the tender notice was an attempt to evidence to AW; *"that the bus shelter contract was procured competitively, when it is likely that there was no competitive procurement for the refurbishment of the bus shelters..."*.

3.4.5 As to the ARGs, the PSOW referred to the AW Report conclusions that the Relevant Authority's ARGs was amended after it had been considered by members, and the Respondent had wrongly certified that the amended accounts had been approved by the Relevant Authority. The PSOW said that the Respondent initially conceded that the ARGs had not been approved by the Relevant Authority after it had been amended and told AW in both August and October 2019 that the amended ARGs had not been taken back to Council as there had been insufficient time to do so. The Respondent had also informed the Relevant Authority in December 2019 that the return had not been sent back to Council for approval before being sent to the auditor; *"therefore they had not been approved by council."*

3.4.6 The PSOW stated that in December 2020, some 18 months after the ARGs was submitted for audit, the Respondent informed AW that the amended ARGs had, in fact, been approved by Council at a meeting in June 2019, claiming that he could not have initialled them at any other time, because he had limited contact with Ms West. The PSOW considered that this directly contradicted his previous statement about the matter and that there was no record within the minutes of the June 2019 meeting to indicate that this was the case. The PSOW did not find this most recent account of

events plausible, and the PSOW considered that the amended explanation was most likely to have been an attempt to mislead AW about whether the amended ARGS was approved by the Council.

3.4.7 In light of the above, the PSOW was of the view that the Respondent attempted to mislead AW to cover up poor governance at the Relevant Authority and to lessen the criticism by AW about his own conduct. The PSOW was of the view that he did so for his own benefit to create an advantage or to avoid a disadvantage for himself by lessening the impact of the AW investigation findings on his own reputation as Chair of the Relevant Authority. The PSOW Report also noted that members of the public and press attended the Council meeting on 3 November 2021, in which the AW Report was considered. Details of the Respondent's conduct were reported in the press following the meeting and the PSOW considered that the strength of public opinion and the publicity following the meeting indicated that the Respondent had brought the Relevant Authority into disrepute through his actions.

#### The Audit Wales Report

3.4.8 The AW Report formed the basis of the PSOW investigation and, with regard to the bus shelter contract, it said amongst other matters, that the Respondent had failed to provide a credible or consistent explanation of how the services of a contractor to repair two bus shelters in the community area were procured. It said that the Respondent and Clerk submitted a false document to evidence that a contract had been subjected to competition.

3.4.9 The Report noted that the Respondent had told AW that at some point in December 2017 or January 2018, the Relevant Authority published a tender notice on notice boards in the Council area seeking tenders for the work. AW considered the notice format to be inadequate in several respects. The notice had stated that tenders were to be submitted to Ms West at her postal address although she was not in post at the relevant time, and neither the Respondent nor the Clerk could explain this anomaly. The AW Report said that the Respondent maintained that he had personally posted the tender notice on community notice boards.

3.4.10 The AW Report stated that on 18 November 2020, its auditors wrote to the Respondent to seek confirmation on how the contract was procured and he responded stating that the bus shelter refurbishment had been discussed all through 2017 and 2018, and a contractor had been engaged for this work, but that there was no evidence that tenders had been sought before the Respondent had arrived on the Council and that there was no response from the contractor.

3.4.11 It was concluded in the Report that the Respondent's representations on this matter lacked credibility as he had previously informed the auditors that he had personally fixed tender notices to notice boards in the community. It stated that the latest explanation that tenders were not in fact sought was irreconcilable with the Respondent's earlier account. In further correspondence with the PSOW, AW added that both in December 2020 and March 2021, the Respondent had responded to extracts in the Report and did not suggest that there was a different version of the tender notice.

3.4.12 AW concluded that the tender notice had been provided to it with the intention of misleading the auditors that the contract had been awarded on a competitive basis. In summary, it said that; *“In providing a false document for the purpose of audit and in failing to provide accurate explanations to my auditors, I consider that the conduct of the Chairman and former Clerk in respect of this matter fall well short of the standard the public has a right to expect.”* The relevant recommendation in the Report was; *“...that the Council consider whether there are matters raised in this report that should be referred to the Public Services Ombudsman for Wales as potential breaches of the Council’s Member Code of Conduct.”*

3.4.13 As to the ARGS, amongst other matters, the AW Report stated that it appeared that there was a misapprehension that the ARGS needed to be approved by the Council after the audit process was complete. It stated that this was incorrect as they were required to be approved by the Council before submission for audit. It stated that on 24 June 2019, its auditors received a copy of the Relevant Authority’s annual return as certified by the Respondent and the former clerk, although the accounting statements had been amended using correction fluid. Some of the amendments had been initialled ‘DJ’ and some ‘DWJ’ suggesting the amendments had been approved by the Respondent. AW stated that if amendments are made to the accounts after approval, they must be submitted to a meeting of the Council for re-approval.

3.4.14 AW stated that the Respondent had written to it on 21 August 2019, confirming that he had carried out a final check on the annual return prior to it going to the external auditor, so the alterations were carried out after the Council approved the return, but because of the deadline for the return there would not have been sufficient time to take it back to Council, and that on reflection, perhaps it would have been more appropriate to have sent it unaltered with an explanation as to the discrepancies.

3.4.15 Reference was also made in the AW Report to the fact that, in December 2019, the Respondent submitted a signed statement to a meeting of the Relevant Authority in which he stated that the 2018-19 annual return was altered on the return before sending it to the auditors, and that the auditors were informed of the purported reason why. It also explained that the return was not sent back to the Council before being sent to the auditor, therefore they had not been approved by the Relevant Authority.

3.4.16 The AW Report stated that on 14 December 2020, the Respondent wrote to the auditors contradicting his previous written statements, stating: *“I believe the amended accounts were brought to the council on the 20th of June 2019 and that the Council approved them prior to them going to the external auditor.”* AW considered that the Respondent’s explanations were implausible and inconsistent with his previous representations, and it considered that the evidence that the accounts were not re-approved at the Council’s 20 June 2019 meeting was overwhelming.

3.4.17 The Report concluded that the accounts submitted for audit were not the accounts that the Relevant Authority had considered at its meeting on 28 May 2019 and that the amended accounts should have been submitted to a meeting of the Council for approval before submitting them for audit. The AW concluded that the certification misled its auditors that the accounts presented for audit were those approved by the

Council. It concluded that the conduct of the Respondent and the former Clerk in this matter fell short of the standard the public has a right to expect, and that they had sought to further mislead its auditors with the evidence submitted for audit consideration.

#### The Respondent's submissions

3.4.18 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 3 April 2023, nor to the Listing Directions dated 23 May 2023. During his interview and in correspondence with both AW and the PSOW however, the Respondent provided responses as follows.

#### The bus shelter tender

3.4.19 The Respondent had made a covert recording of a meeting which he, the Clerk and the Vice-Chairman attended with AW representatives in October 2019 and extracts of this 2hour 45minute meeting were transcribed in summary by the PSOW office. The extract recorded that the Respondent said that the tender notice would have gone out before Christmas [2017]. In response to questions, the Respondent said he didn't have a clue why the Clerk's name and address appeared on the tender notice and said it could not have been the tender notice that was put up [on the community notice board] as they did not know that Ms West existed at that stage. He said it "*definitely was not right.*" The Clerk indicated that there had been a second tender exercise, however the Respondent appeared to disagree with her and said that she did not do the tender notice for the bus shelters. When asked about the parish magazine, the Respondent said he was not sure whether the bus shelters tender notice went in the magazine, but said he knew that this did happen for a tender regarding the telephone box.

3.4.20 The transcript recorded that the Respondent said; "*Yeah. I know that it definitely went out for tender but I, I honestly can't explain this. I don't know. I do know, because I put all the notices up, and I know that I put notices up for both the bus shelters and the phone box, you know, and also for the, the fixing the benches.*" The AW representative asked if the attendees could find anything to show this. The Respondent then went on to say that he was almost sure that the tender notice that went up was for both bus shelters and he said that the only name that would have been on tender was his own because he was the Clerk at the time. There was agreement that there was a gap in the document trail and the Respondent said; "*We'll have to go back and have a look*".

3.4.21 In a further response to AW in December 2020, the Respondent said that both the benches and bus shelters had been on the council's agenda for a number of years, with a previous contractor being engaged to repair both. He then said; "*there is no evidence that tenders were sort [sic] for this work which was before I arrived on the council.*" He said that discussion on both was ongoing all through 2017 and into 2018 and referred to unsatisfactory work and failed attempts to engage with the previous contractor at the time. In March 2021, the Respondent again wrote to AW. He referenced the tender notices having been posted in early 2018 for the refurbishment of the bus shelters and fitting of the benches and that this was to seek to appoint a new contractor, but only one tender was received, and this was approved by the Council.



3.4.22 The Respondent then took part in an interview with the PSOW on 9 January 2023. He described historical difficulties which the Relevant Authority had experienced regarding the previous bus shelter contract and which he said had been awarded in 2016 to a contractor who was related to a Councillor. The repair had been deemed unsatisfactory prior to him taking up the post. He said; *“so, that is why we took the decision to go to tender, to get these jobs done. As I said, unfortunately, we were unable to find someone during that tender notice to take on the job that we’d got, that we needed to get done...”*

3.4.23 He made it clear that he had personally never supplied any documents to AW but these were supplied by the Clerk who, he said, held all the files for the Council. He reiterated his previous assertion that *“I prepared the tender notice for the bus shelters...that was posted in January or December of 2017/18. It was not, however, the tender notice that went to the Welsh Audit Office.”* He believed that he may or should have a copy of the one that went and when asked if he could provide it, he said that he believed so and would make every effort to go back through his files to see if he could find it, although he said he had not been through those files for quite a long time. Later in the interview he conceded that the tender notice could be a problem because it was back in 2017/18 and he hadn’t been into the file since then, so did not know whether he still had it. He had also had a new computer since then. As to the tender notice which referenced Ms West’s name and address, he reiterated that until a copy was produced by AW in the relevant meeting, he had *“never seen that notice before”* and did not know where it had arrived from.

3.4.24 The Respondent confirmed that he would have prepared the tender notice. He also said that he would have placed it on the noticeboard. He then said that he was not sure of the date when the tender notice went up and that if the former Clerk was still in office, *“she would have probably prepared it, but I would have still put it up”*. He added however; *“But I don’t think [the former clerk] prepared that notice. I think that I was the one that prepared it.”*

3.4.25 As to the two lever arch files sent to AW, the Respondent said of AW’s representative: *“He listed the documents required, and [Ms West] sent him a file with those documents. I had nothing to do with that.”* The Respondent considered that AW had not asked the Respondent to provide the actual tender notice, as it was not until they met with the Respondent and AW produced the document that AW was made aware of the unfamiliar document. The Respondent had considered providing the correct version to AW but felt that by the time he was made aware that the document AW had was not the document it should have had, *“it was too late to provide it, because I couldn’t prove when that document had been prepared, and I would have stood to be accused of preparing it after the event.”*

3.4.26 As to whether his conduct brought his role and Council into disrepute, the Respondent considered the AW report to be spurious and that anybody reading it, who did not know what actually occurred, may well consider it was the case. He also asked the PSOW representative to take into account the fact that it had been nearly six years since these events took place, and that he had not previously reviewed the 2017 Minutes.

3.4.27 In a letter from the Respondent received by the PSOW on 23 January 2023, he supplied copies of the relevant 2017 Minutes. Those of October 2017 showed that the Relevant Authority asked for a quotation from the contractor who was eventually appointed. The Respondent also said that he had checked files on his computer and laptop and files on external hard drives out of old computers, but unfortunately could not find the tender notice. He said that *“Having found and revisited minutes of 2017, I realised that the tender notice I referred to in my interview, if there is one, would have been produced by [a previous clerk] and put up by [a former councillor]. This would explain why I am unable to find a copy of the tender in any of my files, Before I joined the Council, and up until her resignation in 2018, [the former councillor] put up the notices on the notice boards, not me, I was responsible for posting notices after that event.”* As quotes were requested in September 2017, he said that the previous clerk would have been expected to produce a tender notice.

#### The amended ARGS

3.4.28 In August 2019, in response to a request by AW for a copy of the annual return approved by the Council and for confirmation *“whether the amendments on the form occurred before or after the accounts were approved by the Council”*, the Respondent stated *“whether the copy you have was approved by the council after being altered I am not sure but I will get [Ms West] to confirm”*. In a further letter in August 2019, the Respondent said he had no knowledge of council accounts, was not familiar with all the procedures and regulations required of him at the time and he had been fulfilling the roles of Chairman, Clerk, and RFO along with other commitments outside of the Council. The Respondent said that the Clerk had confirmed that *“the alterations were carried out after the council approved the return but because of the deadline for the return there would not have been sufficient time to take it back to council, on reflection perhaps it would have been more appropriate to have sent it unaltered with an explanation to the discrepancies.”*

3.4.29 As for the meeting with AW on 3 October 2019, AW expressed concerns as to whether a lawful budget had been set. AW's hand-written notes recorded that in response to the question as to whether the accounts were amended pre or post approval, the Respondent answered *“After - not enough time to go back”*. However, the transcribed extract summary of the October meeting does not record this particular response.

3.4.30 In a response dated 13 December 2020 to the draft AW Report, the Respondent said that he had believed that the AGS had been voted upon and approved on 28 May and that this was confirmed by the Minutes, hence his signature and that of the Clerk. He noted that AW had spoken to only two of eight Councillors present and the two had claimed that they were not provided with an opportunity to approve the document. However, he said that the Minutes of the meeting of 20 June 2019 confirmed that the Minutes of 28 May were approved with no amendments and no votes against; *“further suggesting the inaccuracy of this statement.”*

3.4.31 The Respondent also stated that the annual return had not been completed because it had not yet been audited by the external auditor, but that he and the Clerk

were also aware that it needed to be approved by Council before it could go to the external auditor. He accepted that; *“I was under the misapprehension that the Accounts were to be approved at each stage of the audit process...before the internal audit and the AGS brought to council after the internal and external audits respectively for approval before being posted to the Web site.”* He said he did not personally amend the Annual Return and did not recollect initialling them. If he did, he said it would have been at the Council meeting on the 20 June 2019 where the minutes stated that the AGS was to be sent to the Auditors the next day, the 21st of June. He said that if he did carry out the amendments using erasing fluid, it would have been at that meeting in full view of the Council, meaning that the Council was aware of the amendments. He went on to observe; *“if those changes were made before the 20th of June, then they would have been b[r]ought to council for approval but there is no mention in the minutes to suggest that to be the case.”*

3.4.32 He then later stated; *“I believe that the amended accounts were brought to council on the 20th of June and that the council approved them prior to going to the external auditor.”* He said it was clear from the agenda for the meeting of June 2019 that the Council was to discuss the external audit and that the Annual Return had not yet been sent. He said this was also clear from the Minutes. He considered that *“the only purpose for that item was the approval of the annual return prior to it going to the external auditors.”* He stated that he did not make the amendments but had informed the Clerk that the figures were incorrect and suggested that they be altered.

3.4.33 In his interview with the PSOW in January 2023, the Respondent said that he had no experience of the roles he fulfilled and only did so because there was no other person willing to fulfil them and explained the difficulties in taking over the accounts. He said that the Clerk had taken advice from *“the agents for the Welsh Audit Office, that also advised her that she could alter them, so long as they were initialled.”* He went on to say that; *“Those alterations were not initialled until June, the June meeting of 2019, when it was presented to Council, and the Council were informed of the alterations.”* He said that the AW representative had assured him that both ‘DJ’ and ‘DWJ’ appeared next to the amendments. *“So, yes, I signed it. I, I initialled it, but it could not have been done before the June meeting, as I had not had any contact with [the Clerk] face-to-face, only [by] telephone.”* He also said that it was only the Clerk who was in possession of the original annual return, as supplied by AW.

3.4.34 The Respondent said that the form was then submitted to the auditors a few days after the June 2019 meeting. When asked about his previous explanation that he did not have time to take back discrepancies to the Council, he said; *“I don’t think that is correct... I may have said to them that on reflection it would probably have been better...not to amend it and alter it, but to send the correct figures with the report...”* He therefore thought it was incorrect that he did not have time to take the alterations back to Council *“because we did take it back to the Council.”* When asked by the PSOW representative about two occasions where AW had been told one version of events, he said he did not recollect telling them that there wasn’t enough time to go back *“so, I really can’t answer that question.”*

3.4.35 As to the June 2019 Minutes, the Respondent could not explain why they did not record any approval of the amended accounts. He referred to various deficiencies in the Minutes of the Relevant Authority, including deficiencies highlighted in the AW Report. He said that he had never said to AW that the accounts were not approved at the June 2019 meeting. He confirmed; *“They went to the June meeting and were approved.”*

3.4.36 The Respondent reminded the PSOW representatives that he had requested them to take evidence from people that would have countered allegations and *“attacks on my person”*. He said that if they had done so, they would have fully appreciated his character and honesty. He therefore considered that as they had chosen not to take any evidence from the people he requested; *“this interview and this investigation is biased and one-sided, because you only have evidence and documents from people that are opposed to myself and the way that the Council was conducted, which wasn’t to their satisfaction and didn’t meet with their agenda.”*

3.4.37 With regards to dealing with the accounts, the Respondent conceded that *“Naivety really is the problem there, in the fact that neither of us really had a great deal of experience in dealing with council accounts. And I suppose, in hindsight, seeking advice would have been a good process.”* He also said that there were lots of things that could have been done differently, had they been aware of them at the time.

### **Case Tribunal's determination as to the Disputed Material Facts**

3.5 Firstly, the Case Tribunal considered the context and certain general background issues in relation to the Disputed Material Facts. It noted that the AW investigations had been ongoing since August 2019 in relation to events which stretched back to 2017, and a final Report was not issued until October 2021. In addition, the PSOW investigations had been ongoing since December 2021 and the final Report was not issued until March 2023. Whilst investigation processes are often unavoidably lengthy, the Case Tribunal was mindful that the factual background was extremely involved and that the Disputed Material Facts formed part of a complex factual picture and that this will inevitably have caused evidential difficulties.

3.6 It also noted that the AW investigations had been extremely wide-ranging, went into great technical detail and referenced historical as well as more recent issues within the Relevant Authority and extended to 64 pages. The First Recommendation in the Report was an action for the whole Council in terms of addressing numerous weaknesses and deficiencies in its governance and financial management arrangements. The Report recognised that the Relevant Authority was a small community council and that it was not unusual for accounts submitted for audit to contain errors and inaccuracies. However, the Second Recommendation nevertheless asked the Relevant Authority to consider whether there were matters within the Report which should be referred to the PSOW as potential breaches of the Code of Conduct. The PSOW Report was limited to two specific and narrow issues raised as a part of the AW Report.

3.7 The Case Tribunal also noted that extracts of a transcript summary had been provided by the PSOW from a recording of a meeting in October 2019 with AW lasting

for 2 hours 45 minutes. Whilst the Case Tribunal did not condone the fact that the Respondent produced a covert recording of the meeting, it nevertheless considered this evidence to be persuasive as to key parts of that meeting. The brief hand-written notes of the meeting as produced by AW appeared to be a summary only of the meeting and there appeared to be little correlation between the two sets of records.

3.8 The Case Tribunal then considered each of the Disputed Material Facts in turn as follows. As to the question; *'Did the Respondent create and display a tender notice in the community for the refurbishment of the bus shelters?'* the Case Tribunal determined that the Respondent had not done so, for the following reasons.

3.8.1 The Respondent had helpfully produced relevant Minutes from 2017 which, it seems, had not previously been requested during investigations. These clearly showed that in a meeting of 31 October 2017, it was agreed that a Councillor; *"was asked to approach her husband for a quote for work on the bus shelters...."* In the Minutes for a meeting on 28 November 2017, it was recorded that the Respondent *"met with another contractor at the bus shelters to examine the work completed which is considered sub-standard. The recommendation is that a new roof is required in addition to other work. The contractor is going to provide an estimate for work to be completed."* The Minutes for a meeting on 19 December 2017 recorded that *"Quotation delayed [due] to adverse weather conditions."* Finally, the Minutes of 30 January 2018 recorded that; *"Quotations were received for repair and refurbishment of the bus shelters...from [the new contractor]. These were approved with work to commence A.S.A.P, Pant-y-Dwr should be dealt with first."*

3.8.2 None of these sets of Minutes made any reference to a tender notice being issued or displayed, whereas Minutes of the Relevant Authority made specific reference to the display of tender notices in respect of other works. The Case Tribunal was satisfied that the above Minutes clearly demonstrated the informal approach which the Relevant Authority had taken to awarding the contract for refurbishment of the bus shelters. Having reviewed the 2017 Minutes, the Respondent also acknowledged that he could not have created and displayed a tender notice in the community for the refurbishment of the bus shelters, as it became clear that the process had commenced in October 2017 when the previous Clerk had been in post.

3.9 With regard to the question; *"Was the tender notice for the bus shelter refurbishment provided to Audit Wales by Ms West a copy of the actual tender notice that the Respondent said was displayed by him?"* the Case Tribunal determined it was not a copy of any purported actual notice for the following reasons.

3.9.1 There was no available evidence to support this notion. The Respondent was clear throughout, that once he had been made aware of the contents of the tender notice for the bus shelter refurbishment provided to AW by Ms West, that it could not be a copy of the actual notice. This was because the tender notice had asked interested parties to return tenders to Ms West at her home address and Ms West had not been appointed as Clerk at the relevant time.

3.9.2 Ms West was unable to explain this discrepancy. She stated in her Witness Statement of October 2022 that; *"I am unable to comment on whether the tender notice*

*was prepared solely for the purpose of supplying it to Audit Wales as I was not the Clerk at the time.*” During her interview with the PSOW representative, she stated that she did not remember when asked whether she had simply facilitated the transfer of documents from the Council to AW or had any involvement in gathering them or preparing them onto a ‘zip file’. She added that she did not; *“actually remember off hand how I came to be in possession of this memory stick...”* She said that this was several years ago, she was fairly new in role at the time and could not remember whether she just facilitated the transfer of the documents or if she had any involvement in gathering or preparing the documents for AW.

3.10 As to the question; *“Did the Respondent attempt to mislead Audit Wales in relation to the bus shelter refurbishment tender notice?”*, the Case Tribunal decided that, on the balance of probabilities, the Respondent had attempted to mislead Audit Wales in certain respects, for the following reasons.

3.10.1 AW alleged that; *“In providing a false document for the purpose of audit and in failing to provide accurate explanations to my auditors, I consider that the conduct of the Chairman and former Clerk in respect of this matter fall well short of the standard the public has a right to expect.”* Whilst the Case Tribunal considered that there was insufficient evidence for it to conclude that the Respondent himself had a role in creating and providing a false document as alleged in the AW Report, it concluded that the Respondent did nevertheless fail to provide accurate explanations to the auditors.

3.10.2 The Case Tribunal accepted that the tender notice sent to AW was not, nor could have been a genuine document for the reasons given above. However, it considered that there was insufficient evidence to conclude that the document was provided by the Respondent to AW with the intention of misleading its auditors that the contract had been awarded on a competitive basis. Neither the Respondent nor Ms West could explain why the document appeared in the two lever-arch files provided to the auditors, nor indeed who drafted it. The Respondent was adamant that it was the Clerk who had supplied all documents to AW. There was no evidence to suggest that the Respondent had drafted or directed drafting and transmission of this document. On the balance of probabilities however, the Case Tribunal concluded that it was the Clerk and responsible financial officer (‘RFO’) who had collated and prepared the paperwork for onward transmission following a specific request to her from AW.

3.10.3 In addition, the Case Tribunal considered that within the transcript of the recorded meeting with AW in October 2019, the flow of the discussion indicated that the Respondent was genuinely surprised and confused about the presence of this document amongst those which had been submitted by the Clerk, and to hear about the contents of the tender notice and he stressed that it could not be correct. As to the PSOW’s suggestion that the Respondent was the guiding hand for an inexperienced Clerk, the Case Tribunal was satisfied that the Council was her employer and not the Chairman. Whilst the Clerk may have been inexperienced, it accepted that the Respondent was also inexperienced and, without further evidence, it could not conclude that the Respondent was the ‘guiding hand’ in producing the document.

3.10.4 Nevertheless, the Case Tribunal noted that in the same transcript the Respondent provided an emphatic statement that; "... *I know that I put notices up for both the bus shelters and the phone box...*" On later occasions the Respondent provided a wholly different account of events. For instance, he later said that providing the correct notice after the event could have led to accusations of it being prepared after the event. On another occasion, he said that having reviewed the minutes, the tender notice, "*if there is one*", would have been prepared by the previous Clerk and displayed by another Councillor rather than himself. He said this explained why he was unable to find a copy of the tender notice that he had previously said he prepared and displayed.

3.10.5 On the balance of probabilities, the Case Tribunal concluded that the Respondent had provided his initial emphatic statement in attempt to mislead AW into thinking that the contract in relation to refurbishment of the bus shelters had been awarded on a competitive basis. In reality, the exercise appears to have been conducted through direct contact with one potential contractor and only one set of 'tenders' was received. In effect, a contractor who was allegedly related to one Councillor was replaced by a contractor related to another Councillor, and who was specifically approached following a decision of the Council to do so.

3.10.6 In addition to these factors, the Case Tribunal noted that the Respondent was provided opportunities both by AW and PSOW to locate and produce the 'correct' tender notice. The Respondent provided various reasons for not having done so despite saying that he thought he could do so. These ranged from the idea that producing them so long after the event could look suspicious, to the fact that he now had a different computer. Ultimately however, despite being provided with opportunities to produce evidence of the tender notice, whether by supply of a copy, photographs of the displayed notice, or a version in the parish magazine, the Respondent did not produce any such evidence. The Case Tribunal considered that there had been many opportunities for the Respondent to admit that the original emphatic response was clearly incorrect.

3.11 With regard to the question; "*Did the Respondent attempt to mislead Audit Wales in relation to whether the ARGS was approved by Council after the amendments were made to it during the June 2019 Council meeting?*", the Case Tribunal decided that, on the balance of probabilities, the Respondent did attempt to mislead AW in this respect, for the following reasons.

3.11.1 The Case Tribunal noted that the Respondent had stated in emphatic terms to AW that there had not been time to take amendments to Council. This appeared to be a reasonable initial concession that amendments had not been dealt with correctly. The AW Report had noted that the Respondent appeared to believe that accounts would need to go to external audit before approval by Council. However, the Respondent then changed his view on what had happened. His altered view was that the amendments had indeed been approved at the Council meeting in June 2019. The Case Tribunal concluded that the only plausible explanation for this complete 'about turn' was as an attempt to mislead AW and to give it the impression that the Respondent had, as Chairman of the Relevant Authority, ensured that amendments to the accounts had been accepted by the full Council.

3.11.2 The Case Tribunal considered the specific wording of the Minutes for the meeting of June 2019 as follows; *“External Audit - The accounts are to be sent to Grant Thornton tomorrow. [A Councillor] requested to see variances on accounts it was advised that these would be issued to all councillors when they are returned.”* This supports the initial explanation provided by the Respondent that he thought that the accounts needed to be sent for external audit before being finally approved by the full Council. Notwithstanding the fact that the AW had identified general deficiencies in the Relevant Authority’s Minutes, the Minutes were very clear in this instance. There is no indication whatsoever that the amended version of the accounts was before the Council for approval. It was quite the opposite, and the wording of the Minutes makes it clear that the ‘variances’ or amendments had not been shown to all Councillors and would only be issued to them *“when they are returned”*.

3.11.3 Whereas it was clear that the Council was aware that amendments had been made to the accounts, the Minutes do not reference approval of the amended accounts. Again, whilst it was clear that there was a discussion about the accounts, the recorded decision does not support the Respondent’s version of events. The wording of the Minutes clearly indicate that the amendments were not before the Council and were not properly approved.

3.11.4 The Respondent maintained a position for some time that he had not initialled any amendments. However once he was informed by AW that some of the initials appeared as ‘DJ’ and others as ‘DWJ’, he appeared to then adopt the position that he may indeed have initialled certain amendments but that he could only have done so at the meeting of 19 June 2019, as he had very limited in-person contact with the Clerk. He did not appear to have been asked to confirm that the initials next to the amendments were his own. He considered that if he had initialled anything, he would have initialled any amendments in full view of all Councillors. The Case Tribunal accepted that it may indeed have been the case that 19 June 2019 was the first opportunity for the Respondent to initial any amendments and this is borne out by the Clerk’s statement that she lived quite some distance from the community. Nevertheless, the Case Tribunal did not consider that this altered the fact that the available written evidence clearly showed that the amendments were not approved by the Council.

#### **4. FINDINGS OF WHETHER THE MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE.**

4.1 The Listing Directions dated 23 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether there had been a failure to comply with Paragraphs 6(1)(a) and 7(a) of the Relevant Authority’s Code of Conduct.

4.2 There being no further representations made in this respect, the Case Tribunal considered the available evidence within the Tribunal Bundle, the submissions outlined in Paragraph 3.4 above and Paragraph 4.7 below, as well as the Material Facts as found above.



### **Paragraph 6(1)(a) of the Code of Conduct**

4.3 Paragraph 6(1)(a) of the Code of Conduct states that ‘*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*’.

### **Guidance**

4.4 In considering this matter, the Case Tribunal also had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code of Conduct (‘The Guidance’). As to paragraph 6(1)(a) it makes it clear that: -

*‘2.31 ...As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.*

*2.32 When considering whether a member’s conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute...*

*2.33 Dishonest and deceitful behaviour will bring your Council into disrepute...’*

### **Paragraph 7(a) of the Code of Conduct.**

4.5 Paragraph 7(a) of the Code of Conduct states that; ‘*Members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves, or any other person, an advantage or create or avoid for themselves, or any other person, a disadvantage*’.

### **Guidance**

4.6 As to paragraph 7(a), the Guidance states: -

*2.54 ‘... You should not use, or attempt to use, your public officer either for your or anybody else’s personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.*

### **Submissions**

4.7 The Case Tribunal noted the following submissions by the parties as to whether the Respondent had failed to comply with the Relevant Authority’s Code of Conduct.

### **The PSOW’s Submissions**

4.7.1 The PSOW's submissions as contained in the Report dated 23 March 2023 are that the Respondent's conduct was suggestive of a breach of paragraphs 6(1)(a) and 7(a) of the Code of Conduct for the following reasons.

4.7.2 The PSOW noted that the AW Report was critical of the Council and specific actions taken by the Respondent as well as other individuals and said that his conduct fell well short of the standard the public had a right to expect from those who represent them. The PSOW considered that the Respondent had been less than candid during the AW and PSOW processes, attempting to cause confusion by offering alternative versions of events and claiming the existence of documents that he then did not present.

4.7.3 As to Paragraph 6(1)(a), the PSOW Report stated that, for a breach to be found, a member's conduct must go beyond affecting their personal reputation. The PSOW Report referred to the fact that members of the public attended the Council meeting on 3 November 2021 in which the Report was considered and expressed dismay at the findings of the Report in writing and during the meeting. Details of the Respondent's conduct were also reported in the press following the meeting. It concluded that the strength of public opinion and the publicity following the meeting indicated that the Respondent's behaviour was suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

4.7.4 With regard to Paragraph 7(a), the PSOW Report concluded that the Respondent attempted to mislead AW and did so to cover up poor governance at the Council and to lessen the criticism by AW about his own conduct. It concluded that he did so for his own benefit to create an advantage or to avoid a disadvantage for himself, by lessening the impact of the AW investigation findings on his own reputation as Chair of the Council.

#### The Respondent's Submissions

4.7.5 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 3 April 2023 nor the Listing Directions dated 23 May 2023.

4.7.6 During his PSOW interview and further correspondence, the Respondent made additional submissions about the surrounding circumstances. He stated in his letter to the PSOW in January 2021 that he considered that certain Councillors had been instrumental in the AW Report and he considered that they should have declared interests. He also referred to argumentative behaviour and relationship issues on the Council. He made the point that there had been no-one else willing to take on the job of Chairman.

4.7.7 The Respondent also stated that, judging by the reaction from residents in St. Harmon, he thought that the impact on his reputation was very little. He remained Chairman of a residents' organisation and trustee and treasurer of a sports club and considered that he was held in high regard by people within the St. Harmon community. Out of 438 electors in the community, he thought that only a small number; *"eleven or twelve, most of which you've got documents from,"* did not hold him in high regard. He

said that he had offered to resign as treasurer of the sports club “...each time, the trustees have refused to accept the resignation and asked that I continue.”

**Case Tribunal's determination as to alleged breach of paragraphs 6(1)(a) and 7(a) of the Code of Conduct.**

4.8 The first question addressed by the Case Tribunal was whether the findings that the Respondent attempted to mislead AW as to the bus shelter tender and the ARGs amounted to conduct which was capable of bringing the Authority into disrepute. The second question was whether the Respondent had attempted to use his position improperly to avoid a disadvantage to himself. The Case Tribunal determined on a unanimous basis that the Respondent's conduct amounted to a breach of both Paragraphs 6(1)(a) and 7(a) of the Code of Conduct for the following reasons.

**Paragraph 6(1)(a) of the Code of Conduct**

4.9 The Case Tribunal considered that the Respondent had breached Paragraph 6(1)(a) of the Code for the following reasons.

4.9.1 By providing misleading information to AW in relation to two separate yet narrow issues, without providing any reasonable excuse or explanation for doing so, the Case Tribunal considered that it was inevitable and self-explanatory that such conduct would bring the Respondent's office and the Relevant Authority into disrepute. This was particularly the case in the light of AW's regulatory role and the expectation that it would be supplied with clear, accurate and consistent answers during its investigations into a public authority's financial affairs.

4.9.2 With regard to the relevant Guidance, the Case Tribunal was also mindful of the Respondent's seniority as Chairman of the Council and the attendant higher public expectations and inevitable greater scrutiny as to his actions than for ordinary Members. It was satisfied that inappropriate behaviour by the Chairman of a Council would be likely to damage public confidence. Deceitful behaviour however, which included providing misleading information to a public body, would clearly bring the Relevant Authority into disrepute.

4.9.3 The Case Tribunal also considered the Principles governing the conduct of elected Members of local authorities in Wales, including the Principle of Selflessness, Honesty, Integrity and Propriety, Openness and Leadership. These principles all underpin the Code of Conduct and require Members to act solely in the public interest and never to use their position as Members to confer advantage on themselves, to be as open as possible about all their actions and those of their authority and to lead by example, so as to promote public confidence in their role and authority. The Case Tribunal did not consider that the Respondent had upheld these Principles in this instance.

4.9.4 The Case Tribunal considered that the Respondent's actions had arisen in a situation where it is likely that the Relevant Authority had already been brought into disrepute in the light of the critical Audit Wales Report. It was a 64-page document

which focused in detail on the inadequacies of governance, financial management and internal control of the Council as a whole, whilst also referencing the role of three individuals connected to that Authority, including the Respondent. Nevertheless, the Case Tribunal considered that the conduct of the Respondent was also of a nature which would bring his role as well as his Authority into disrepute.

4.9.5 On the basis of the available evidence, The Case Tribunal considered that the media reporting of the critical AW Report had been fairly limited. It noted that the newspaper article that was supplied had singled out the Chairman for particular attention as one of the individuals referenced in the Report. It noted the Respondent's view that there had been vindictiveness towards him by certain individuals within the community and the Relevant Authority, as there had been two factions and that this may have accounted for this attention and negative reaction. It also noted that the article did not reference the specific allegations which were the subject of this adjudication. Nevertheless, the Case Tribunal did not consider that this altered the fact that the conduct in question could reasonably be considered capable of bringing the role and authority into disrepute

4.9.6 Finally, whilst the Case Tribunal concluded that there were undoubtedly factions within the community, it was clear that at least some members of the community were concerned, and reasonably so, about the specific issues which are the subject of this adjudication. The Minutes of the meeting of the Relevant Authority of 3 November 2021, record that a Councillor who the Respondent alleged to have been instrumental in the AW Report stated; *"It refers to contradictory or misleading information, false documentation..."* and *"quite serious documentation concerns"*. Members of the public who spoke at the meeting also made comments about the specific allegations such as; *"...the Chairman, has clearly been 'found out' in his attempts to pull the wool over the eyes of Audit Services."*

#### Paragraph 7(a) of the Code of Conduct

4.10 The Case Tribunal also considered that the Respondent had breached Paragraph 7(a) of the Code for the following reasons.

4.10.1 The Case Tribunal was satisfied that the Respondent was acting in his official capacity as Chairman of the Relevant Authority when he provided the information in question to the AW representatives. The AW Report made it clear that it was not unusual for there to be accounting errors. Nevertheless, in the light of its findings on the Disputed Material Facts above, and in the absence of any evidence to the contrary, the Case Tribunal considered that, on the balance of probabilities, the only plausible reason for the Respondent providing misleading information and for obfuscation was to try to present a more positive picture of the Relevant Authority's procurement and accounting practices. It considered that this was to reduce criticism of the Council as a whole and of the Respondent as Chairman in any AW Report. As such, the Case Tribunal found that the conduct had been deliberate conduct. The Case Tribunal noted that the Respondent had stated: *"there is no evidence that tenders were sort [sic] for this work which was*

*before I arrived on the council,*” which implied that he felt that matters had been resolved under his Chairmanship. It therefore concluded that the Respondent acted in this manner to reduce criticism of himself in his leadership role as Chairman. In other words, it considered that he had acted in the way that he did to create an advantage or indeed to avoid a disadvantage for himself.

4.10.2 It was noted that the AW Report referred to a wide range of issues, and that the audit investigation process clearly went into fine detail and would have been an exacting experience which continued for over three years. Nevertheless, even though the allegations related to two specific and narrow issues in the midst of a huge array of significant issues to be answered by the Relevant Authority, the Case Tribunal considered that it had no option but to make a finding of a breach of Paragraph 7(a). Whether a Chairman had provided misleading information in relation to two relatively minor issues which were unlikely to influence an AW opinion, or in relation to several very significant issues which could indeed influence an opinion, the conduct which it was considering involved provision of misleading information and obfuscation to try to limit criticism. Whilst it considered that the Respondent was attempting to minimise criticism in the face of a barrage of criticism on a range of matters, these attempts were nevertheless sufficient to reach a finding of breach of Paragraph 7(a).

4.10.3 The Case Tribunal concluded that the Respondent had tried to mislead AW, the PSOW and indeed his own Council in providing alternative accounts of events to cover governance, financial, and procurement errors.

## **5. FINDINGS IN RELATION TO SANCTION**

5.1 The Listing Directions dated 23 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceeding was reached.

### **Submissions**

5.2 The PSOW provided further submissions in a letter dated 5 June 2023. The Respondent did not provide formal submissions in response to the Tribunal’s letter dated 3 April 2023 nor the Listing Directions dated 23 May 2023. However, the Case Tribunal considered submissions which he had made during the AW and PSOW investigations as follows.

#### **The PSOW’s Submissions**

5.2.1 In the PSOW’s letter dated 3 June 2021, the PSOW made the following submissions

5.2.2 The PSOW referred to the purpose of the ethical standards framework being to promote high standards amongst members of councils in Wales and to maintain public confidence in local democracy. The PSOW also referred to the APW Sanctions Guidance and noted that the purpose of a sanction was to provide a disciplinary

response to an individual member's breach of the Code, place the misconduct and appropriate sanction on public record, deter future misconduct on the part of the individual and others, promote a culture of compliance across the relevant authorities and to foster public confidence in local democracy.

5.2.3 The PSOW suggested that a breach, if found in this case, would be serious and the PSOW highlighted certain mitigating and aggravating factors which were considered to be relevant in consideration of the five-stage process for determining sanction.

#### The Respondent's Submissions

5.2.4 The Respondent stated that he believed that *"a small number of individuals including the complainants conspired together to cause disruption and embarrassment to the council, conspired to attempt to intimidate and bully both the clerk and myself into doing their bidding resulting in the clerks resignation."* He went on to describe the behaviour of certain factions involved in applying for community funding awards from the Relevant Authority. He considered that the intention was to; *"disrupt embarrass and build a reason for complaint."* He considered that certain Councillors had complained to AW and had been instrumental in the Report, that they were in breach of the Code of Conduct and had also brought the Council into disrepute. He thought that in the context of a separate element of the AW Report that there had been *"commotion"* and *"intimidation"*, some of which *"was quite frightening"* and the Respondent was not surprised that mistakes were made in the circumstances.

5.2.5 The Respondent did not consider the report to be accurate in certain respects and also referred to it as being *"spurious"* and purely an attack on himself and the Clerk. He said that none of his comments on the two draft versions of the AW Report were taken into consideration and were completely dismissed so that none of the drafts changed in response. He considered that part of the Report was therefore false, and the Council should not have accepted the document. He said that; *"Whilst I accept that this council has never done things correctly for many years if ever and that many of the policies, procedures, and practices may be out-dated and not fit for purpose, the council is making efforts to address the situation."*

5.2.6 During his interview with PSOW representatives in January 2023, the Respondent said that in terms of experience to perform the relevant roles, he replied *"Nothing, really, with regards to Council financial affairs or being a council clerk."* He said that he only fulfilled the roles because there was no other person willing to do them, and he was left with no prepared accounts by the previous Clerk. The Respondent also referred to efforts to recruit a new Clerk which he said was not an easy task these days for any Council.

5.2.7 The Respondent said that since the age of 16, he had been involved in volunteer work helping in the communities in which he lived in unpaid roles and was brought up, to be honest, and plain-speaking. The Respondent said; *"I believe myself to be a good and honest citizen and have never knowingly tried to deceive anyone or any"*

*organisation, my only desire since my teens have been to be of use to the community in which I live more often than not at my financial expense.”*

5.2.8 The Respondent considered that since removal of the previous contractor regarding the refurbishment of the bus shelters and benches, and an altercation between the Clerk and an individual who became a Councillor, that there had been “*a vicious and vindictive attack on members of the council...*” resulting in the resignation of individuals “*due to intimidation*”.

5.2.9 The Respondent said that both he and the Clerk were put under considerable strain. He said that throughout 2018/19, due to “*the abuse and intimidation*”, he was “*not surprised mistakes were made*”. The Respondent gave his age and said that “*my memory is not as sharp as it was,*” however he considered that this was not taken into account in the PSOW report.

5.2.10 The Respondent had made a statement to the Council in December 2019 making a limited apology on behalf of the Council for discrepancies in the accounts. He also did accept responsibility, along with the rest of the Council, for lack of diligence paid to meeting Minutes as he thought that some of those lacked content.

5.2.11 Finally the Respondent made it clear that he no longer wished to engage in the investigation process with the PSOW. Unfortunately, he did not then engage with this separate, independent APW adjudication process. He said that he was caring for his wife who was suffering from serious ill-health issues. He did not therefore provide any specific mitigation, character references or any additional evidence to support his case with regard to any sanction to be imposed by the APW.

### **Case Tribunal's determination as to Sanction.**

5.3 The Case Tribunal went on to consider the question of Sanction. In doing so, it considered all the facts and evidence. It also had regard to the APW's current Sanctions Guidance. It noted the purposes of Sanction which had been highlighted in the PSOW's submissions. It also had regard to the overriding purpose to “*uphold the standards of conduct in public life and maintain confidence in local democracy.*” The Case Tribunal also conducted the five-stage approach advocated in the Guidance.

5.4 In terms of the conduct which led to breach of Paragraphs 6(1)(a) and 7(a) of the Code, it noted that the conduct related to narrow and relatively minor issues in the context of the wider context of the AW Report. In view of the fact that the conduct involved the provision of misleading replies and information to a regulatory body however, and the senior role which the Respondent held, as well as the use of that position to try to limit any criticism of himself personally, the Case Tribunal considered the breach to be very serious and one which would normally attract disqualification or suspension for a significant number of months. In the circumstances, and in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a period of disqualification.

5.5 The Case Tribunal then considered any Mitigating or Aggravating circumstances which might adjust the level of Sanction, including those highlighted in the Guidance as follows.

#### Mitigating Factors

5.6 The Case Tribunal concluded that the following mitigating factors applied to the Respondent's circumstances:

5.6.1 a fairly short length of service and inexperience in the role of Chairman.

5.6.2 a previous record of good service. The Registrar notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

5.6.3 whilst there was more than one example of provision of misleading replies and information, the misconduct all related to the same AW investigation process.

5.6.4 the Respondent had co-operated with the PSOW's investigation officer in attending interview, and in responding to PSOW questions.

#### Aggravating factors

5.7 The Case Tribunal went on to consider any aggravating factors in this case. It concluded that the following factors applied to the Respondent. The Case Tribunal also took care not to duplicate factors which had formed the basis of a finding of breach of the Code of Conduct.

5.7.1 The Respondent was in a senior position of responsibility and trust at the relevant time.

5.7.2 Whilst the provision of misleading information arose from the same AW investigation process, the misleading responses did indicate a pattern of behaviour, where numerous opportunities had been given to the Respondent to provide an accurate account.

5.7.3 Provision of misleading information suggested an element of deception.

5.7.4 There appeared to be a lack of understanding or acceptance of the misleading conduct and its consequences.

5.7.5 The conduct was either deliberate or reckless and showed little or no concern for the Code.

5.7.6 The Respondent continued to refuse to accept the facts despite clear evidence to the contrary. He also showed very little regret for his actions, maintaining the view throughout that he had done nothing wrong in providing alternative accounts of events to cover for financial and procurement errors.

5.8 In addition to these mitigating and aggravating factors highlighted from the Sanctions Guidance, the Case Tribunal noted that there had been a limited apology by the Respondent to the Relevant Authority. It also acknowledged that the Respondent



had willingly taken on unpaid roles and responsibilities to try to assist and contribute to his community and that he may well have felt out of his depth. It appreciated that it was increasingly difficult for community councils to function without individuals willing to step up to these roles. It also accepted that although the Code breaches were serious as they involved misleading a public body, in the context of the all-encompassing AW Report, the breaches related to two narrow and relatively minor elements, where it was highly unlikely that the AW would have been deceived by the differing versions of events given by the Respondent. Finally, it had no reason to doubt the Respondent's reasons for not engaging with the APW process.

5.9 The Case Tribunal also accepted that the AW and PSOW processes over such an extended period would have placed the Respondent under a huge amount of pressure and would have caused the Respondent a considerable amount of stress and anxiety. This was particularly as the AW investigations had been wide-ranging and went into great technical depth as to governance, accounting and procurement requirements. It also considered that generally, the responses to various AW and PSOW correspondence and interviews appeared to be candid and open and that there had been requests for proactive advice and assistance from AW as evidenced in the meeting transcript of October 2019. It appeared that the Respondent was a proud man who may not have wished to admit to any errors on his part.

5.10 The Case Tribunal also noted what the Respondent said about vindictive and abusive attitudes towards him from a faction within the Council who he said wished to oust him through the AW process. Whilst the Case Tribunal had no doubt that the Respondent had to act as Chairman in a difficult and often unpleasant environment which reflected badly on the Relevant Authority as a whole, whatever the trigger for the AW process, this did not excuse the specific misconduct which has been found in this case. The Case Tribunal noted that the Respondent had resigned from the Relevant Authority in December 2021, however the reasons for his resignation were not included in the evidence. It nevertheless acknowledged that the Respondent had already been away from local government for a period of 18 months.

5.11 As the Respondent had not engaged with the APW process, the Case Tribunal could only consider the submissions which were provided during the AW and PSOW processes. The Respondent had provided no explanations whatsoever for giving entirely different accounts of events regarding the bus shelter tender and ARGS amendments. He did not claim ill-health, memory failure, confusion about the various tenders and documents, that he had made a mistake or that he had panicked and lied. In the circumstances the Case Tribunal had no option other than to conclude on the balance of probabilities that the conduct had been deliberate, as the accounts were so markedly different.

5.12 The Case Tribunal went on to consider the level of sanction which would be appropriate in this case. In view of the Respondent's resignation, the sanction of suspension was not a sanction available to the AW. As to former members, Paragraph 47 of the Guidance states '*In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification*

*may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...'*

5.13 The Case Tribunal considered that it was important to emphasise the purposes of sanction as referenced above. A sanction not only provided a disciplinary response to an individual member's breach of the Code but was also intended to deter future misconduct by others and promote a culture of compliance across authorities generally. It considered that it was necessary to reinforce the importance of the Code as well as the principles of honesty and integrity.

5.14 In the circumstances, the Case Tribunal considered whether '*No Action*' or '*Disqualification*' as detailed in the Sanctions Guidance was the appropriate outcome. It noted Paragraphs 39.1 and 39.2 of the Guidance in particular, which recognised that no action may be appropriate where there had been a resignation or ill health which rendered a sanction unnecessary and/or disproportionate. No ill health reasons had been put forward by the Respondent to support a finding of "*No Action*" and the Case Tribunal considered that the nature of the breach did render a sanction necessary in this case. There was an expectation that members and particular those in a senior role such as Chairman would act with complete candour and openness, act in accordance with the trust that the public placed in them, lead by example, and promote public confidence, even if that resulted in personal criticism for any governance, procurement or accounting process mistakes and errors.

5.15 In all the circumstances and bearing in mind the wider purpose of sanctions as outlined in the Guidance, the Case Tribunal considered that the sanction of disqualification was appropriate and necessary. A period of disqualification would allow the Respondent time to reflect upon the purpose and importance of the Code of Conduct and in particular Paragraphs 6(1)(a) and 7(a) of the Code. It was also mindful that the Guidance suggested that disqualification for a period of less than 12 months would be unlikely to have the necessary impact and effect. As the specific breaches involved provision of misleading information to a regulator, it considered the matter to justify a period of disqualification.

5.16 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified for 15 months** from being or becoming a Member of the Relevant Authority or any other relevant authority within the meaning of the Local Government Act 2000.

5.17 St. Harmon Community Council and its Standards Committee are notified accordingly.

5.18 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed *C Jones*

**Date;** 1 August 2023

C Jones

Chairperson of the Case Tribunal

Mr D Morris

Panel Member

Mr H E Jones

Panel Member

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