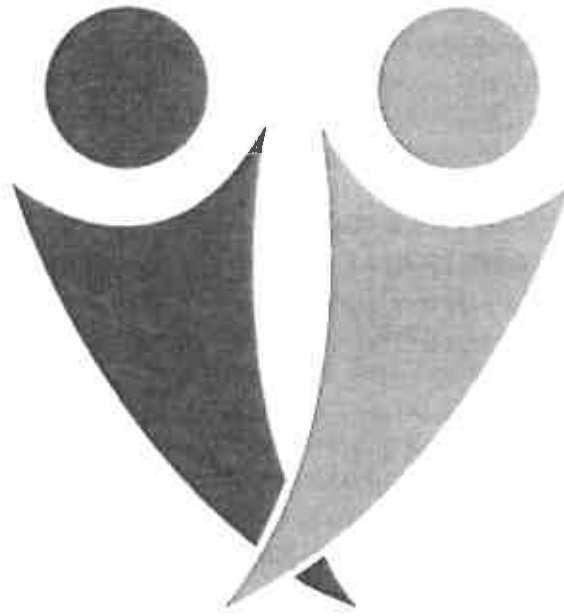


Un Llais Cymru



One Voice Wales

**Model Local Resolution Protocol
for Community and Town Councils**

ONE VOICE WALES

Model Local Resolution Protocol for Community and Town Councils

Background

The Public Service Ombudsman has agreed to the principle of referring some complaints against Members back to Community and Town Councils for a local resolution. However to date there has not been a common process for Community and Town Councils to follow in dealing with such matters. To assist the sector, One Voice Wales has drawn up the following as a model protocol which any Community and Town Council can use in dealing with such complaints.

This model protocol is meant as a starting point for Community and Town councils. Individual councils may wish to add or amend this model to suit their particular needs. Councils wishing to use this process should first of all be clear about its purpose and intention, formally adopt it in its current or in a revised form and ensure that all Councillors are provided with a copy for their attention. The Council should then determine the framework through which it is operated which may require the establishment of a Committee or Panel or an extension of the terms of reference of an existing Panel or Committee such as a Complaints Panel or Committee. In the case of establishment of a new Panel it is important that terms of reference are prepared and approved by the Council. In either case it will be important for Councils to document in the terms of reference as to what will happen if there is a lack of co-operation shown by the member concerned or a breakdown occurring during the operation of the process. For example, in such cases the default position might be that the matter is referred to the Public Ombudsman for Wales.

The Local Resolution Process

Issues which should be considered under this process

Low level complaints about Members, including:

- Minor complaints from Members about Members
- Minor complaints from Officers about Members
- Members alleged to have not shown respect and consideration for others – either verbally or in writing

Issues which should not be considered under this process

Complaints which must be directed to the Public Services Ombudsman for Wales, including:

- Complaints instigated by a member of the public
- Serious complaints – breaches of the Code of Conduct/failure to disclose interests/bullying/abuse of position or trust/repeated breaches
- Complaints made by the Clerk/Proper Officer
- Vexatious, malicious or frivolous complaints
- Members' complaints about officers which should be dealt with using the Council's internal complaints process
- Repetitive low level complaints

The Process

The complaint

The complaint would need to be sent to the Clerk/Proper Officer of the Council to undertake a first sift to ensure that the complaint is at a low level and should not be dealt with by way of a complaint to the Ombudsman. If appropriate, therefore, the Clerk/Proper Officer should firstly seek an early resolution of any such dispute by liaising informally with the individual members concerned prior to the resolution process described below. It is vitally important that the 'accused' member is given full details of the complaint against them so that in the interests of natural justice they are in a position to prepare their response to the accusation.

Resolution Process

The involvement of the Chair/Vice Chair of the Council in the following process is not to adjudicate on the complaint, but to attempt to get the members/officers involved to come to an agreement as to how the issue(s) could be resolved on an amicable basis.

The Clerk/Proper Officer will act as a facilitator for the resolution process below.

If the complaint is between Members other than the Chair of the Council, the Clerk/Proper Officer and the Chair will meet individually with the complainant and Member subject of the complaint to seek an agreed resolution.

If the complaint is between Members, one of whom is the Chair of Council, but not the Vice Chair, the Clerk/Proper Officer and the Vice Chair will meet with the complainant and Member subject of the complaint to seek an agreed resolution.

If the complaint has been made by an officer/employee, but not the Clerk/Proper Officer, against a Member other than the Chair of Council, the Clerk/Proper Officer and the Chair of Council will meet with the officer and the Member subject of the complaint to seek an agreed resolution.

If the complaint has been made by an officer/employee, but not the Clerk/Proper Officer, against the Chair of Council, the Clerk/Proper Officer and the Vice Chair of Council will meet with the officer and the Chair to seek an agreed resolution.

If the complaint has been made by the Clerk/Proper Officer, then it is likely to be best practice that this complaint is forwarded by way of a complaint to the Ombudsman.

Possible results of the process

If an agreement is reached by Members and/or officers during this Stage then no further action is required.

If agreement cannot be reached the aggrieved Member/officer would always have the opportunity of referring the matter to the Ombudsman.

Examples of agreements might include issue of a letter of apology, a written undertaking or commitment not to breach the Code of Conduct in the future, a commitment to undertake training or an agreement that on the basis of the evidence that no further action should be taken and the matter be closed.

Time for the process

It is the intention that all of the processes can be completed as quickly as possible to resolve the issue. However exact timing will depend on the availability of individuals to attend the meetings.

Important Points to Note in preparing a process for use by the Council

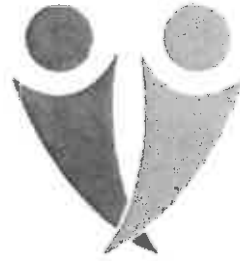
The Clerk/Proper officer, Chair and Vice Chairs of Councils should consider receiving appropriate training in facilitation and mediation to be in a position to maximise the benefit of this process. Councils wishing to pursue this route should contact One Voice Wales for guidance.

Councils might want to include some guidance where complaints which are most appropriately dealt with under this process are referred back to the Council by PSOW. The PSOW could actively do this if the Council has an approved process.

It is suggested that any meetings held with a view to discussing the issues of complaints and/or resolving matters are at the very least minuted, if not recorded. This is to ensure that agreements are captured. This will also be useful in the event that matters break down or escalate and need to be referred to the PSOW. It may also be useful as evidence in the event of further similar breaches of the conduct and future conduct.

Councils need to be clear on their powers in respect of code of conduct matters. The Ombudsman has seen examples of councils who have deemed it appropriate to fully investigate a code complaint, decide that there has been a breach and some have even thought it appropriate to consider the issue of a sanction. Investigations of possible breaches of the Code are matters for the Ombudsman. The Local Government Act 2000 gives him the authority to carry out such investigations. The Council has no legal authority to undertake such investigations or to make findings of a breach of the Code of Conduct, which are decisions that can only be reached by a Standards Committee or the Adjudication Panel for Wales.

Un Llais Cymru



One Voice Wales

ABOUT ONE VOICE WALES

One Voice Wales is the national representative organisation for Community and Town Councils throughout Wales. The vision subscribed to by One Voice Wales is:

"Working with local councils in Wales to shape places communities want to live in"

One Voice Wales aims to support Community and Town Councils in achieving this vision and has adopted the following Mission Statement to guide its work:

"To represent the interests of Community and Town Councils; raise awareness and understanding of this primary tier of government; and work collaboratively with our partners to ensure the sector contributes fully to the goal of developing dynamic and sustainable communities in Wales."

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Un Llais Cymru



One Voice Wales

**Model Brothocol Datrysiadau Lleol ar
gyfer Cynghorau Tref a Chymuned**

UN LLAIS CYMRU

Model Brothocol Datrysiaidau Lleol ar gyfer Cynghorau Tref a Chymuned

Cefndir

Mae'r Ombwdsmon Gwasanaethau Cyhoeddus wedi cytuno â'r egwyddor y dylid cyfeirio rhai cwynion yn erbyn Aelodau yn ôl i Gynghorau Tref a Chymuned i'w datrys yn lleol. Fodd bynnag, hyd yn hyn ni fu proses gyffredin i'w dilyn gan Gynghorau Tref a Chymuned wrth ddelio â materion o'r fath. Er mwyn cynorthwyo'r sector, mae Un Llais Cymru wedi llunio'r model brothocol canlynol y gall unrhyw Gyngor Tref a Chymuned ei ddefnyddio wrth ddelio â chwynion o'r fath.

Bwriedir i'r model brothocol fod yn fan cychwyn i Gynghorau Tref a Chymuned. Efallai y bydd cynghorau unigol yn dymuno ychwanegu at y model neu ei addasu i'w wneud yn addas i'w hanghenion penodol nhw. Dylai cynghorau sy'n dymuno dewis y broses ofalu yn y lle cyntaf fod ganddynt ddealltwriaeth glir o'i bwrpas a'i fwriad, ei fabwysiadu'n ffurfiol ar ei ffurf bresennol neu ar ffurf ddiwygiedig a gofalu fod pob Cynghorydd yn cael copi i'w sylw. Yna dylai'r Cyngor bennu'r fframwaith ar gyfer ei weithredu, a gall hynny olygu sefydlu Pwyllgor neu Banel neu ehangu cylch gorchwyl Panel neu Bwyllgor sy'n bod yn barod, megis Panel neu Bwyllgor Cwynion. Os mai'r bwriad yw sefydlu Panel newydd, mae'n bwysig fod cylch gorchwyl yn cael ei baratoi a'i fod yn cael ei gymeradwyo gan y Cyngor. Yn y naill sefyllfa a'r llall bydd yn bwysig i Gynghorau gofnodi yn y cylch gorchwyl beth fydd yn digwydd os yw'r aelod dan sylw'n dangos amharodwydd i gydweithredu neu os yw pethau'n mynd ar chwâl wrth geisio gweithredu'r broses. Er enghraifft, mewn sefyllfaoedd o'r fath mae'n bosib mai'r drefn ddiodyn yw cyfeirio'r mater at Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

Y Broses Datrysiaid Lleol

Materion y dylid eu hystyried o dan y broses hon

Cwynion lefel isel am Aelodau, gan gynnwys:

- Mân gwynion gan Aelodau am Aelodau
- Mân gwynion gan Swyddogion am Aelodau
- Aelodau yr honnir iddynt fethu dangos parch ac ystyriaeth i eraill – naill ai ar lafar neu'n ysgrifenedig

Materion na ddylid eu hystyried o dan y broses hon

Mae'r cwynion y mae'n rhaid eu cyfeirio at Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn cynnwys:

- Cwynion a wneir gan aelod o'r cyhoedd
- Cwynion difrifol – torri'r Cod Ymddygiad/methiant i ddatgelu buddiannau/bwllo/camddefnyddio swydd neu ymddiriedaeth/torri'r Cod dro ar ôl tro
- Cwynion a wnaed gan y Clerc/Swyddog Priodol
- Cwynion blinderus, maleisus neu wamal
- Cwynion Aelodau am swyddogion, y dylid delio â nhw trwy ddefnyddio proses cwynion mewnol y Cyngor

- Cwynion lefel isel ailadroddus

Y Broses

Y gŵyn

Byddai angen danfon y gŵyn at Clerc/Swyddog Priodol y Cyngor i gynnal didoliad cychwynnol i sicrhau fod y gŵyn ar lefel isel ac na ddylid delio â hi trwy gyflwyno cwyn i'r Ombwdsmon. Felly, os yn briodol, dylai'r Clerc/Swyddog Priodol geisio yn y lle cyntaf i gael datrysiad cynnar i unrhyw anghydfod o'r fath trwy drafod yn anffurfiol gyda'r aelodau unigol dan sylw cyn symud at y broses ddatrys a ddisgrifir isod. Mae'n hollbwysig fod yr aelod 'cyhuddedig' yn cael manylion llawn am y gŵyn yn eu herbyn fel eu bod yn enw cyfiawnder naturiol mewn sefyllfa i baratoi eu hymateb i'r cyhuddiad.

Proses Datrysiad

Rôl Cadeirydd/Is Gadeirydd y Cyngor yn y broses ganlynol yw peidio dyfarnu ar y gŵyn, ond yn hytrach ceisio cael yr Aelodau/swyddogion dan sylw i gytuno sut ellid datrys y mater(ion) mewn ffordd gyfeillgar.

Bydd y Clerc/Swyddog Priodol yn gweithredu'n hwylusydd ar gyfer y broses ddatrys isod.

Os yw'r gŵyn rhwng Aelodau ac eithrio Cadeirydd y Cyngor, bydd y Clerc/Swyddog Priodol a'r Cadeirydd yn cyfarfod yn unigol â'r achwynydd a'r Aelod y gwnaed y gŵyn yn ei erbyn/herbyn i geisio cael datrysiad y gall pawb gytuno arno.

Os yw'r gŵyn rhwng Aelodau, ac os yw un ohonynt yn Gadeirydd y Cyngor, ond nid yr Is Gadeirydd, bydd y Clerc/Swyddog Priodol a'r Is Gadeirydd yn cyfarfod â'r achwynydd a'r Aelod y gwnaed y gŵyn yn ei erbyn/herbyn i geisio cael datrysiad y gall pawb gytuno arno.

Os gwnaed y gŵyn gan swyddog/gweithiwr, ond nid y Clerc/Swyddog Priodol, yn erbyn Aelod ac eithrio Cadeirydd y Cyngor, bydd y Clerc/Swyddog Priodol a Chadeirydd y Cyngor yn cyfarfod â'r swyddog a'r Aelod y gwnaed y gŵyn yn ei erbyn/herbyn i geisio cael datrysiad y gall pawb gytuno arno.

Os gwnaed y gŵyn gan swyddog/gweithiwr, ond nid y Clerc/Swyddog Priodol, yn erbyn Cadeirydd y Cyngor, bydd y Clerc/Swyddog Priodol ac Is Gadeirydd y Cyngor yn cyfarfod â'r swyddog a'r Cadeirydd i geisio cael datrysiad y gall pawb gytuno arno.

Os gwnaed y gŵyn gan y Clerc/Swyddog Priodol, mae'n debyg mai'r arfer gorau fyddai danfon y gŵyn ymlaen ar ffurf cwyn at yr Ombwdsmon.

Canlyniadau posib y broses

Os ceir cytundeb gan Aelodau a/neu swyddogion yn ystod y Cam hwn nid oes angen cymryd unrhyw gamau eraill.

Os na ellir cael cytundeb byddai gan yr Aelod/swyddog a wnaeth y gŵyn y cyfle o hyd i gyfeirio'r mater at yr Ombwdsmon.

Gallai enghreifftiau o gytundebau gynnwys llythyr yn ymddiheuro, addewid neu ymrwymiad ysgrifenedig i beidio torri'r Cod Ymddygiad yn y dyfodol, ymrwymiad i

dderbyn hyfforddiant neu gytundeb na ddylid, ar sail y dystiolaeth, cymryd unrhyw gamau pellach ac y dylid cau'r mater.

Amser ar gyfer y broses

Y bwriad yw y gellir cwblhau'r holl brosesau cyn gyflymed ag y bo modd er mwyn datrys y mater. Fodd bynnag, bydd yr union gyfnod o amser yn dibynnu ar argaeledd unigolion i ddod i'r cyfarfodydd.

Pwyntiau Pwysig i'w Cofio wrth baratoi proses i'w defnyddio gan y Cyngor

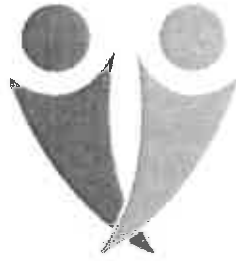
Dylai'r Clerc/Swyddog Priodol, Cadeiryddion ac Is Gadeiryddion Cynghorau ystyried derbyn hyfforddiant priodol ar hwyluso a chyfyngu er mwyn bod mewn sefyllfa i sicrhau bod y broses hon yn gweithio ar ei gorau. Dylai Cynghorau sydd am ddilyn y llwybr hwn gysylltu ag Un Llais Cymru i gael arweiniad pellach.

Efallai y bydd Cynghorau am gynnwys rhai canllawiau pan mae cwynion y mae'n fwy priodol delio â nhw o dan y broses hon yn cael eu cyfeirio'n ôl at y Cyngor gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru. Gallai Ombwdsmon Gwasanaethau Cyhoeddus Cymru wneud hynny'n ddi-gwestiwn os oes gan y Cyngor broses a gymeradwywyd.

Awgrymir fod unrhyw gyfarfodydd a gynhelir er mwyn trafod y cwynion a/neu i ddatrys materion yn cael eu cofnodi. Dylid gwneud hynny er mwyn sicrhau y cofnodir unrhyw gytundebau. Bydd hynny'n ddefnyddiol hefyd os yw pethau'n mynd ar chwâl neu'n gwaethygu ac os oes angen eu cyfeirio at Ombwdsmon Gwasanaethau Cyhoeddus Cymru. Gall fod yn ddefnyddiol hefyd fod tystiolaeth ar gael pe bai achosion eraill o dorri'r Cod a chamymddwyn yn digwydd yn y dyfodol.

Mae angen i gynghorau fod yn glir am eu grymoedd o ran materion cod ymddygiad. Mae'r Ombwdsmon wedi gweld enghreifftiau o gynghorau sydd wedi barnu ei bod yn briodol iddynt ymchwilio cwyn Cod Ymddygiad, penderfynu y torrwyd y Cod ac mae rhai hyd yn oed wedi barnu ei bod yn briodol iddynt ystyried cyflwyno cosb. Mae ymchwilio enghreifftiau posib o dorri'r Cod yn faterion i'r Ombwdsmon. Mae Deddf Llywodraeth Leol 2000 yn rhoi'r awdurdod iddo gynnal ymchwiliadau o'r fath. Nid oes gan y Cyngor unrhyw awdurdod cyfreithiol i gynnal ymchwiliadau o'r fath nac i benderfynu a gafodd y Cod Ymddygiad ei dorri, gan mai penderfyniadau yw'r rheiny sydd ond yn gallu cael eu cymryd gan Bwyllgor Safonau neu Banel Dyfarnu Cymru.

Un Llais Cymru



One Voice Wales

MWY AM UN LLAIS CYMRU

Un Llais Cymru yw'r corff cynrychioliadol cenedlaethol ar gyfer Cyngorau Cymuned a Thref trwy Gymru. Gweledigaeth Un Llais Cymru yw:

"Gweithio gyda chynghorau lleol yng Nghymru i lŵio lleoedd y mae cymunedau eisiau byw ynddynt"

Mae Un Llais Cymru yn anelu at gefnogi Cyngorau Cymuned a Thref i wireddu'r weledigaeth hon a mabwysiadodd y Datganiad Cenhadaeth canlynol i lywio ei waith:

"Cynrychioli buddiannau Cyngorau Cymuned a Thref; codi ymwybyddiaeth a dealltwriaeth o'r haen gyntaf hon o Lywodraeth a chydweithio gyda'n partneriaid i sicrhau bod y sector yn cyfrannu'n llawn i'r nod o ddatblygu cymunedau deinamig a chynaliadwy yng Nghymru."

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