

CITY AND COUNTY OF SWANSEA

NOTICE OF MEETING

You are invited to attend a Meeting of the

STANDARDS COMMITTEE

At: Committee Room 3, Civic Centre, Swansea

On: Friday, 29 August 2014

Time: 9.30 am

AGENDA

	Page No.
1 Apologies for Absence.	
2 Disclosures of Personal and Prejudicial Interests.	1 - 2
3 Minutes. To approve as a correct record the Minutes of the Standards Committee meeting held on 18 July 2014.	3 - 8
4 Matters Arising from the Minutes (for information).	
5 Public Services Ombudsman for Wales Annual Report 2013/14.	9 - 21
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Patrick Arran
Head of Legal, Democratic Services & Procurement
Thurs 21/08/14

Contact: Jane Tinker 636820

STANDARDS COMMITTEE (4)

Councillors

Labour Councillors: 3

J C Bayliss	Clive E Lloyd
Phil Downing	

Liberal Democrat Councillor: 1

L Graham Thomas	
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Name	Term of Office	Name	Term of Office
Jill Burgess	19.10.2012 to 18 10.2018	Clive Walton *	22.02.2005 to 21.02.2015
Meirion Howells *	01.08.2008 to 31.07.2016	Jennifer Gomes *	05.12.2008 to 04.12.2016
Adrian Novis *	22.02.2005 to 21.02.2015		

Others:

Executive	One copy
Patrick Arran	Head of Legal, Democratic Services & Procurement – Electronic
Tracey Meredith	Deputy Head of Legal, Democratic Services & Procurement
Huw Evans	Head of Democratic Services
Mike Hawes	Head of Financial Services
Janet Hooper	Directorate Lawyer
Democratic Services	1 Copy
Archives	

Total Copies Needed – 27

NOTE:

1. * Denotes that the **period of office cannot be extended further.**
2. The **term of office for Independent Members** can be for not less than 4 nor more than 6 years. They can be reappointed for one further consecutive term but that term cannot be for more than 4 years.
3. **Members of the Local Authority** who are members of the Standards Committee will have a term of office of no more than 4 years or ending at the next ordinary local government election following their election, whichever is the shorter.
4. The Standards Committee **shall not sit if the Independent Members are outnumbered by Councillors.** A Councillor shall remove him/herself from the meeting in order for the business to be transacted.

Disclosures of Interest

To receive Disclosures of Interest from Councillors and Officers

Councillors

Councillors Interests are made in accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea. You must disclose orally to the meeting the existence and nature of that interest.

NOTE: You are requested to identify the Agenda Item / Minute No. / Planning Application No. and Subject Matter to which that interest relates and to enter all declared interests on the sheet provided for that purpose at the meeting.

1. If you have a **Personal Interest** as set out in **Paragraph 10** of the Code, you **MAY STAY, SPEAK AND VOTE** unless it is also a Prejudicial Interest.
2. If you have a Personal Interest which is also a **Prejudicial Interest** as set out in **Paragraph 12** of the Code, then subject to point 3 below, you **MUST WITHDRAW** from the meeting (unless you have obtained a dispensation from the Authority's Standards Committee)
3. Where you have a Prejudicial Interest you may attend the meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, **provided** that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. In such a case, you **must withdraw from the meeting immediately after the period for making representations, answering questions, or giving evidence relating to the business has ended**, and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration (**Paragraph 14** of the Code).
4. Where you have agreement from the Monitoring Officer that the information relating to your Personal Interest is **sensitive information**, as set out in **Paragraph 16** of the Code of Conduct, your obligation to disclose such information is replaced with an obligation to disclose the existence of a personal interest and to confirm that the Monitoring Officer has agreed that the nature of such personal interest is sensitive information.
5. If you are relying on a **grant of a dispensation** by the Standards Committee, you must, before the matter is under consideration:
 - i) Disclose orally both the interest concerned and the existence of the dispensation; and
 - ii) Before or immediately after the close of the meeting give written notification to the Authority containing:

- a) Details of the prejudicial interest;
- b) Details of the business to which the prejudicial interest relates;
- c) Details of, and the date on which, the dispensation was granted; and
- d) Your signature

Officers

Financial Interests

1. If an Officer has a financial interest in any matter which arises for decision at any meeting to which the Officer is reporting or at which the Officer is in attendance involving any member of the Council and /or any third party the Officer shall declare an interest in that matter and take no part in the consideration or determination of the matter and shall withdraw from the meeting while that matter is considered. Any such declaration made in a meeting of a constitutional body shall be recorded in the minutes of that meeting. No Officer shall make a report to a meeting for a decision to be made on any matter in which s/he has a financial interest.
2. A “financial interest” is defined as any interest affecting the financial position of the Officer, either to his/her benefit or to his/her detriment. It also includes an interest on the same basis for any member of the Officers family or a close friend and any company firm or business from which an Officer or a member of his/her family receives any remuneration. There is no financial interest for an Officer where a decision on a report affects all of the Officers of the Council or all of the officers in a Department or Service.

CITY AND COUNTY OF SWANSEA

MINUTES OF THE STANDARDS COMMITTEE

HELD AT THE CIVIC CENTRE ON FRIDAY, 18 JULY 2014
AT 9.30 AM

PRESENT: A Novis (Chair) Presided

Councillor(s)	Councillor(s)
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J C Bayliss	C E Lloyd
P Downing	L G Thomas

Independent Members:-

J Burgess	M Howells
J Gomes	C Walton

Also Present:

Councillor R Francis – Davies – Chair of Development Management and Control Committee

Councillor P M Matthews - Chair of Statutory and General Licensing Committees

Officers:

J Hooper – Directorate Lawyer
H Evans – Head of Democratic Services
J Tinker – Democratic Services Coordinator

1 **APOLOGIES FOR ABSENCE.**

No apologies for absence were received.

2 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTEREST.**

In accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

3 **MINUTES.**

RESOLVED that the Minutes of the Standards Committee held on 4 April 2014 , be accepted as a correct record.

4 **MATTERS ARISING FROM THE MINUTES (FOR INFORMATION).**

None

5 **UPDATE ON CASES.**

An update of the current outstanding cases of the Code of Conduct investigations was given. The Head of Democratic Services suggested that in future rather than submitting this update to the Standards Committee the matrix be e mailed to members instead, which would allow further details regarding the cases to be given. It was also suggested that this approach be followed in respect of the matrix in relation to Community Councillors.

RESOLVED that this approach as outlined above be adopted.

6 **MEETING WITH CHAIRS OF REGULATORY COMMITTEES.**

The Chair stated that the Chairs of the Regulatory Committees had been invited to the meeting in order to give their views regarding the role of the Standards Committee and how the work undertaken by this Committee could ensure high standards of behaviour. The Chair explained that the role of the Standards Committee was both proactive and reactive. The Chair indicated that views would be sought regarding the following:-

- How you see the role of the Standards Committee
- Your understanding of this role
- How could you help promote standards and good governance?
- How do you see the future role of the Standards Committee?
- Your views in respect of the Swansea Pledge.
- Your views regarding the possible merger of the Standards Committee with the Community/ Town Council Standards Sub – Committee
- Do you think that incorporating the Community Council would/could bring benefits?

The Chair indicated that the views of the Chief Executive and other political Group Leaders had been received.

Councillor R Francis - Davies outlined the following in response:-

- Considered that the role of the Standards Committee was to ensure that good governance was maintained.
- He noted that the Standards Committee dealt with Code of Conduct Issues for Members, but had no experience of dealing with officer's code of conduct.

- The Head of Democratic Services clarified that there were 2 different codes for Members and Officers and it was not in the remit of Standards Committee terms of reference to deal with the Officers Code of Conduct.
- Councillor R Francis Davies expressed concern in protecting officers and how things are perceived by the public.
- In his role as Chair he tried to keep Members to adhere to the code and avoiding predetermination.
- He considered that training on the Code was good, but as there were a large number of new members after the last election they had been inundated with training so it was difficult to take in everything so, refresher training was considered to be more beneficial.
- The Head of Democratic Services responded regarding the future training proposals together with personal development.
- He considered that the Swansea Pledge was a good idea and felt that the signing of this reassured the public.
- He considered that it would be beneficial if the Standards Committee merged with the Community /Town Council Standards Sub Committee.
- He also suggested that the Standards Committee be known as the Standards Board and the its remit be widened to deal with code of conduct matters in relation to the Assembly as well.
- Independent members sitting as observers on various committees should be encouraged and it was considered that attending Area Development Control Committees was encouraged
- Appraisals should be undertaken and the need to attend committees be part of this.

Councillor R Francis - Davies was thanked for his views.

The Chair then welcomed Councillor P M Matthews. He explained that she had also been invited to give her opinion regarding various aspects in relation to the potential role of the Standards Committee.

Councillor P M Matthews outlined the following in respect of the views sought as indicated above.

- She considered that Standards Committee was necessary and helpful and prevents cases being referred to the Ombudsman.
- She recognised that Standards were promoted by being guided by the Nolan Principles, but some aspects were more challenging than others.
- She stated that training on the code was well thought out, but there was a need for a refresher and update training to be undertaken.
- She considered that the Local Dispute Resolution had prevented some cases being referred to the Ombudsman.
- She felt that the Swansea Pledge was a good thing for Swansea and a positive step forward.
- No firm views were expressed regarding the possible merger of the Standards Committee with the Community / Town Council Standards Sub Committee but it was thought that this could be beneficial.

- She suggested that in order to gain an understanding of Members perception of the Standards Committee, a questionnaire be sent to Members.

Councillor P M Matthews was thanked for her views.

7 **EXCLUSION OF THE PUBLIC.**

The Committee were requested to exclude the public during consideration of the items of business identified in the recommendation of the report on the grounds that they involve the likely disclosure of exempt information as set out in the exclusion paragraph of schedule 12 A of the Local Government (Access to Information) (Variation) (Wales) Order 2007, relevant to the items of business as set out in the report.

The Committee considered the Public Interest Test in deciding whether to exclude the public from the meeting for the items of business where the Public Interest Test is relevant as set out in the report.

RESOLVED that the public be excluded for the following items of business.

(CLOSED SESSION)

8 **REQUEST FOR DISPENSATION.**

The Monitoring Officer submitted a report which sought consideration of an application from Councillor J E Burtonshaw under the Standards (Grant of Dispensation) (Wales) Regulations 2001.

RESOLVED that the Standards Committee grant Councillor J E Burtonshaw dispensation under paragraphs 2 (d) and , due to her role as Cabinet Member, 2 (f) of the Standards Committee (Grant of Dispensation) (Wales) Regulations 2001, as follows:

To stay, speak and vote on any item relating to Education matters, general staff employment, on budget matters and other Education matters other than those that directly affect her sister's daughter in law by specific reference to her post.

9 **REQUEST FOR DISPENSATION.**

The Monitoring Officer submitted a report which sought consideration of an application from Councillor M Thomas under the Standards (Grant of Dispensation) (Wales) Regulations 2001.

RESOLVED that the Standards Committee grant Councillor M Thomas dispensation under paragraphs 2 (d) of the Standards Committee (Grant of Dispensation) (Wales) Regulations 2001, as follows:

To stay, speak and vote on any item relating to Social Services Matters, general staff employment, on budget matters and other Social Services matters other than those that directly affect his mother who is a service user of adult social care.

10 **OMBUDSMAN NON ACCEPTANCE OF ALLEGATION.**

The report of the Monitoring Officer advised the Committee of the decision by the Ombudsman not to investigate the allegation of a breach of the Code of Conduct against the Councillor(s) indicated in the report.

RESOLVED that the decision of the Ombudsman be noted.

11 **OMBUDSMAN NON ACCEPTANCE OF ALLEGATION.**

The report of the Monitoring Officer advised the Committee of the decision by the Ombudsman not to investigate the allegation of a breach of the Code of Conduct against the Councillor(s) indicated in the report.

RESOLVED that the decision of the Ombudsman be noted.

12 **OMBUDSMAN NON ACCEPTANCE OF ALLEGATION.**

The report of the Monitoring Officer advised the Committee of the decision by the Ombudsman not to investigate the allegation of a breach of the Code of Conduct against the Councillor(s) indicated in the report.

RESOLVED that the decision of the Ombudsman be noted.

13 **OMBUDSMAN NON ACCEPTANCE OF ALLEGATION.**

The report of the Monitoring Officer advised the Committee of the decision by the Ombudsman not to investigate the allegation of a breach of the Code of Conduct against the Councillor(s) indicated in the report.

RESOLVED that the decision of the Ombudsman be noted.

14 **OMBUDSMAN NON ACCEPTANCE OF ALLEGATION.**

The report of the Monitoring Officer advised the Committee of the decision by the Ombudsman not to investigate the allegation of a breach of the Code of Conduct against the Councillor(s) indicated in the report.

RESOLVED that the decision of the Ombudsman be noted.

15 **OMBUDSMAN NON ACCEPTANCE OF ALLEGATION.**

The report of the Monitoring Officer advised the Committee of the decision by the Ombudsman in relation to the allegation of a breach of the Code of Conduct against the Councillor(s) indicated in the report.

RESOLVED that the decision of the Ombudsman and the Independent Investigation be noted.

16 **MATTERS ARISING IN RESPECT OF NON ACCEPTANCE OF ALLEGATIONS.**

The Head of Democratic Services suggested that in respect of cases of the Ombudsman's non acceptance of allegation and also where there are findings of no breach where these are reported for information only, that these be e mailed to members rather than appearing on the agenda and that a similar procedure be adopted regarding Community Councillors. It was also suggested that the new Ombudsman be invited to a future meeting of this Committee.

RESOLVED that

(1) the procedure in respect of non - acceptance of allegation cases and cases of findings of no breach as outlined above for Standards Committee and Community Town Council Standards Sub Committee be adopted.

(2) The new Ombudsman be invited to a meeting of the Standards Committee later in the year.

The meeting ended at 10.55 a.m.

CHAIR

Report of the Monitoring Officer

Standards Committee - 29 August 2014

PUBLIC SERVICES OMBUDSMAN FOR WALES: ANNUAL REPORT 2013/14

The purpose of this report is to advise the Committee of the publication of the Public Services Ombudsman for Wales' Annual Report for 2013/14.

For information

1 Introduction

- 1.1 Members are advised that the Public Services Ombudsman for Wales has now published the annual report for 2013/14.
- 1.2 A full copy of the report can be found at the following link

<http://www.ombudsman-wales.org.uk/en/publications/annual-reports.aspx>

However, relevant extracts from this Annual Report are contained in Appendix A.

- 1.3 Section 4 of the Report deals with Code of Conduct Complaints. There has been a reduction in the number of complaints to the Ombudsman by 22% on 2012/2013. The Ombudsman attributes the decline in Code of Conduct complaints to the local resolution arrangements in place and will continue to refer 'low level' complaints to authorities' Monitoring Officers to deal with locally.

At Annex C of his Report the Ombudsman provides a statistical breakdown of outcomes by Local Authority. In relation to County Borough Councils, Swansea had 30 total cases closed of which 22 were closed after initial consideration.

In relation to Community/Town Councils, of the 115 cases closed 26 related to Mumbles Community Council which were all closed after initial consideration.

Background papers:

None

Appendix:

Extract of Annual Report of the Public Services Ombudsman for Wales
Annual Report

4. Code of Conduct Complaints

Headline figures

- We received 228 new complaints, **down 22%** on 2012/13.
- We referred 6 investigation reports to either a standards committee or the Adjudication Panel for Wales, **down 70%** on 2012/13.
- We closed 229 cases, **down 38%** on 2012/13.
- We had no investigations older than 12 months open at 31 March 2014.

Complaints received

The table below gives a breakdown of the code of conduct complaints received by type of authority.

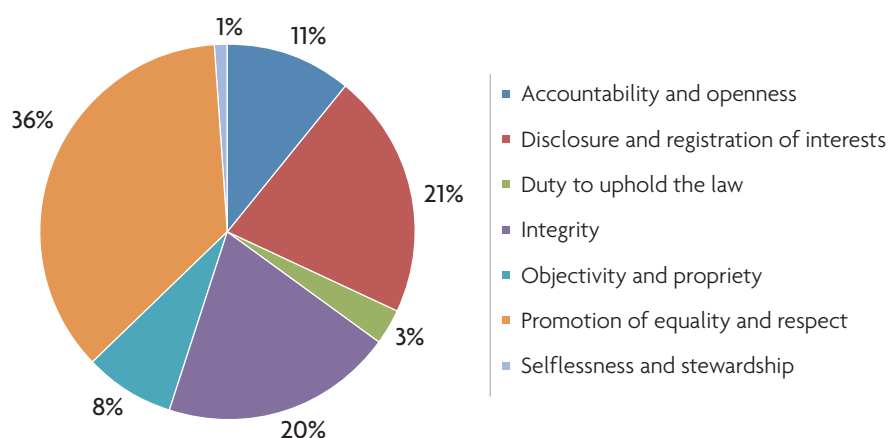
	2013/14	2012/13
Community Council	115	140
County/County Borough Council	111	150
Fire Authority	2	0
National Park	0	0
Police Authority	0	1
Total	228	291

It is particularly pleasing to see that the number of code of conduct complaints have continued to fall. The new local resolution arrangements introduced by local authorities over the past year or so is clearly having the desired effect with the decrease of 22% of complaints to this office compared with the previous year. It is now our practice under these new arrangements to refer 'low level' complaints made by one member against another, such as allegations of failures to show respect and consideration of others under paragraph 4(b) of the code, to authorities' monitoring officers to be dealt with locally.

We have also continued with the approach adopted last year of writing to the local Monitoring Officer when the Ombudsman is minded not to investigate a complaint, or, having commenced an investigation, is minded to close the case. This will arise when it is judged that even if the Standards Committee did find that there had been a breach of the Code, it would be unlikely to apply a sanction. It will then be for the Monitoring Officer to consider the matter. If they take a different view on the likelihood of the Standards Committee applying a sanction should they decide that there has been a breach of the Code, then the investigation is transferred to them for local consideration. During the past year, 16 such complaints were referred to monitoring officers, of which 1 was called in for local investigation.

Nature of Code of Conduct complaints

As in previous years, the majority of complaints received during 2013/14 related to matters of ‘equality and respect’. In 2013/14 this was 36% of the code of conduct complaints received compared to 35% in 2012/13. The next largest areas of complaint related to disclosure and registration of interests (21%), and integrity (20%).



Summary of Code of Conduct complaint outcomes

Of the Code of Conduct cases considered in 2013/14, the majority were closed under the category shown below as ‘Closed after initial consideration’. This includes decisions such as:

- there was no ‘prima facie’ evidence of a breach of the Code
- the alleged breach was insufficiently serious to warrant an investigation (and unlikely to attract a sanction)
- the incident complained about happened before the member was elected (before they were bound by the Code).

Complaint about a public body	2013/14	2012/13
Closed after initial consideration	176	283
Complaint withdrawn	12	12
Investigation discontinued	8	18
Investigation completed: No evidence of breach	10	23
Investigation completed: No action necessary	17	15
Investigation completed: Refer to Standards Committee	5	15
Investigation completed: Refer to Adjudication Panel	1	5
Total Outcomes – Code of Conduct complaints	229	371

(A detailed breakdown of the outcome of Code of Conduct complaints investigated, by local authority, during 2013/14 is set out at Annex C.)

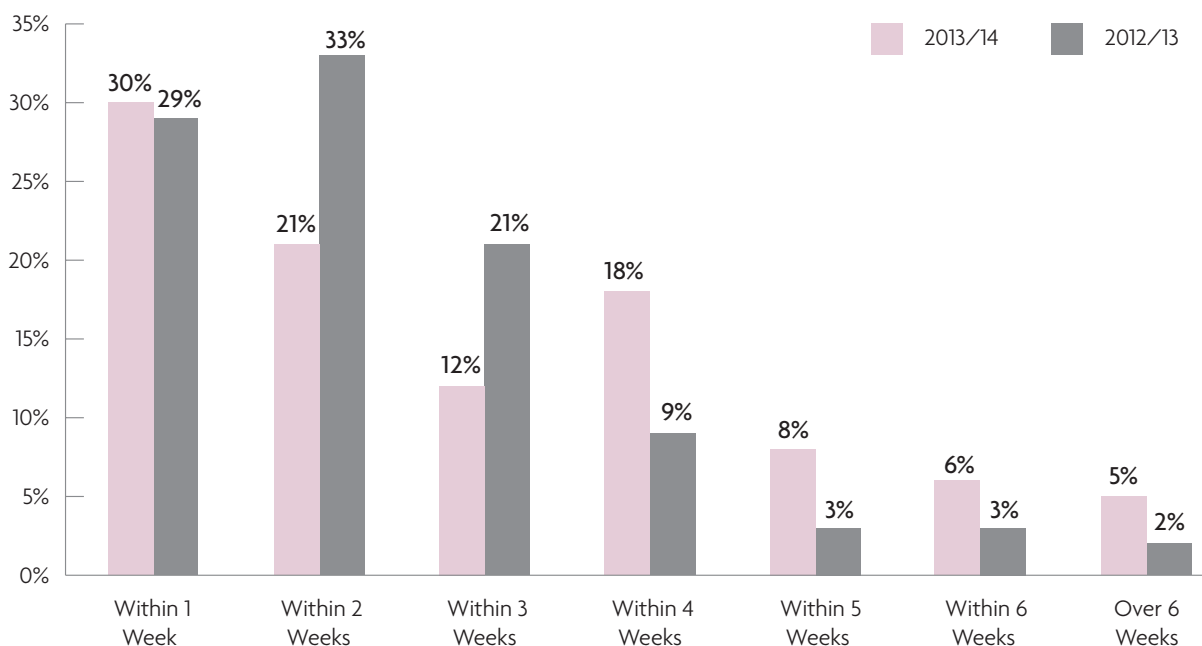
Not only have the number of code of conduct complaints to the office decreased over the past year, notable is the reduction in the number of cases referred to either an authority's standards committee or to the Adjudication Panel for Wales, which fell significantly from 20 in 2012/13 to 6 in 2013/14. This is partly attributable to the effects of the High Court judgement on the Calver case in 2012. The ruling on this case, concerning a member's freedom of expression attracting enhanced protection under the Human Rights legislation when comments made are political in nature, has had an impact on the application of paragraph 4b of the Code of Conduct relating to treating others with respect and consideration. Taking account of the ruling that politicians need to have 'thicker skins, the bar has now been raised on what the Ombudsman refers to a Committee or the Panel.

Decision times

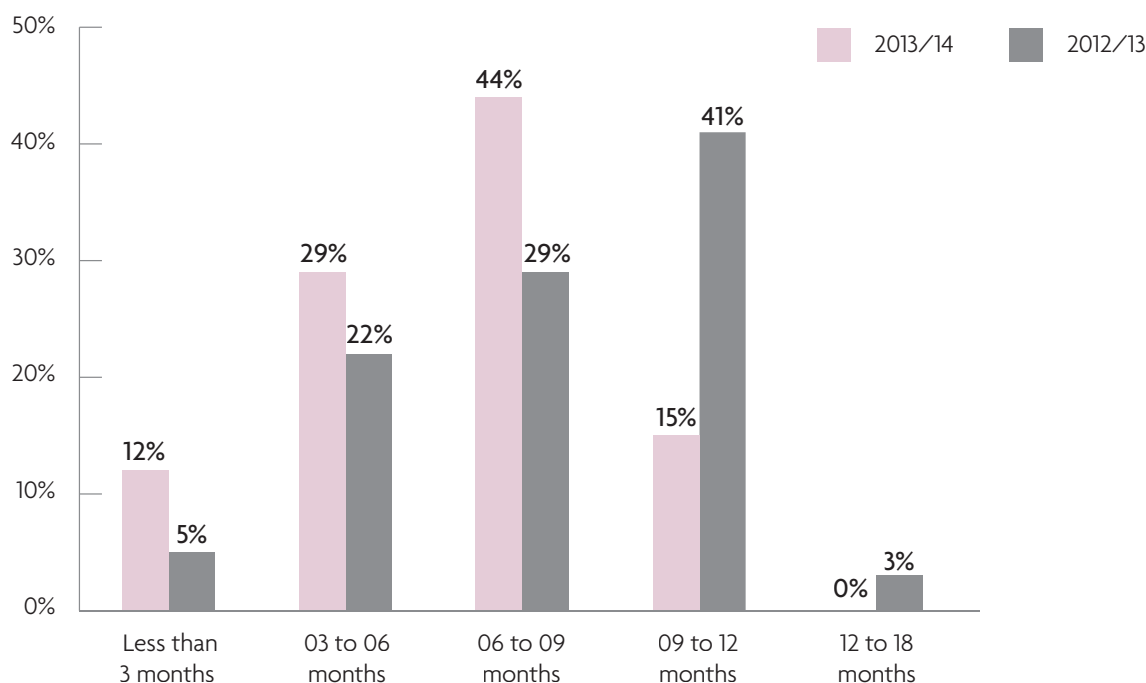
Below are the decision times for code of conduct complaints. The time targets set for code of conduct complaints are similar to those for complaints about public bodies, that is:

- at least 90% of all complainants to be informed within 4 weeks whether Ombudsman will take up their complaint (from the date that sufficient information is received)
- to conclude all cases within 12 months from the point that a decision is made to take up a complaint (that is, to commence investigation of a complaint).

Decision times for informing complainants we will take up their complaint



Decision times for concluding code of conduct investigations



In respect of the first target, we actually achieved this 81% of the time, and it is a little disappointing that we have not been able to achieve the 90% target in respect of code of conduct complaints and that we were unable to sustain our performance in 2012/13. This will be a matter that we will be looking to address in the year to come therefore.

With regard to the second target, and on a much more positive note, we are particularly pleased that we achieved a 100% success rate for completion of code of conduct investigations within 12 months. When looking back on previous Annual Reports it can be seen that our performance on code of conduct cases has been improving year on year. It is especially pleasing when comparing the position to three years ago when only 63% of code investigations were concluded in under 12 months. Against that position, the fact that over the past year 85% of investigations were completed in less than 9 months is even more gratifying.

Standards Committee and Adjudication Panel for Wales's Hearings – Indemnity Cap

The PSOW has previously made clear concerns about the levels of indemnity enjoyed by members who are accused of a breach and the need for this to be addressed. This is particularly of concern when considering the best use of public money, especially when all publicly funded organisations are working within a very difficult financial climate. By having unlimited indemnity, it is possible for cases before tribunals to last for months or even longer, with counsel being engaged at very considerable cost. Following discussions with the WLGA a proposed ceiling of £20,000 was agreed. Good progress

has been made by local authorities in introducing such a cap over the past year or so. However, it is disappointing that a couple of councils who have an insurance arrangement in place for indemnity have stated that they are unable to fall in line due to insurance companies resisting such a ceiling.

Welsh Government Ministers had previously indicated that they may consider addressing this matter through legislation if wholesale voluntary agreement could not be secured. This is a matter which may therefore need to be re-raised in the forthcoming year.

Annex C

Code of Conduct Complaints:

Statistical Breakdown of Outcomes by Local Authority

COUNTY/COUNTY BOROUGH COUNCILS

County/County Borough Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Blaenau Gwent	2		1					3
Bridgend	4							4
Caerphilly	4			2			1	7
Cardiff	5		1				1	7
Carmarthenshire	1						3	4
Ceredigion	2							2
Conwy	1							1
Denbighshire	2						2	4
Flintshire	2	2						4
Gwynedd	4							4
Isle of Anglesey	1			1				2
Monmouthshire	1	2						3
Newport	8							8
Pembrokeshire	3			1		1		5
Powys	1		2					3
Rhondda Cynon Taf	14						1	15
Swansea	22	2	5	1				30
The Vale of Glamorgan							1	1
Torfaen	5			1				6
Wrexham	1							1
Total	83	6	9	6	1	1	9	114

COMMUNITY/ TOWN COUNCILS

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Aberffraw Community	1							1
Ammanford Town	1							1
Bangor City	1							1
Bargoed Town	1							1
Blaengwrach Community		1		1				2
Blaenrhaidol Community	1							1
Bridgend Town	1							1
Brymbo Community	1							1
Caldicot Town	1							1
Cefn Community			1	2				3
Coity Higher	1							1
Colwinston Community					2			2
Connah's Quay Town	1							1
Cowbridge with Llanblethian Town	3							3
Cwmbran Community	1							1
Forden Community		1						1
Glynneath Town	1							1
Goldcliff Community	1							1
Gorseinon Town					1			1

COMMUNITY/ TOWN COUNCILS (CONTINUED)

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Gresford Community	2							2
Hay-on Wye Town	1							1
Hirwaun & Penderyn Community	2							2
Holyhead Town	1							1
Kidwelly Town	1							1
Killay Community	1							1
Knighton Town	2							2
Laleston Community	1							1
Langstone Community	2							2
Llanbadrig Community	1							1
Llandrindod Wells Town	2			1		1		4
Llandudno Town	3							3
Llanelli Rural							2	2
Llanfaelog Community					5			5
Llanfynydd Community [Carmarthenshire]	3							3
Llangennith, Llanmadoc & Cheriton Community	2							2
Llangwm Community [Pembrokeshire]	1							1

COMMUNITY/ TOWN COUNCILS (CONTINUED)

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Llantrisant Community	1							1
Llanwrtyd Wells Town	1							1
Mathry Community	1							1
Montgomery Town	1							1
Mumbles Community	26							26
Nelson Community	2							2
Old Radnor Community	1							1
Old St. Mellons Community Council	1							1
Pembrey & Burry Port Town	1							1
Penmaenmawr Town	1			1				2
Pennard Community	2							2
Porthcawl Town	1							1
Prestatyn Town	8						1	9
Rogiet Community	1			1				2
St Florence Community	2							2
Sully Community					1			1
Talgarth Town	1							1
Trellech United Community	1							1
Total	93	2	1	11	4	1	3	115

Annex D

Extract From Strategic Plan 2012/13 to 2014/15

Vision, Values, Purposes and Strategic Aims

Agenda Item 6

Report of the Head of Legal, Democratic Services & Procurement

Standards Committee – 18 July 2014

EXCLUSION OF THE PUBLIC

Purpose:	To consider whether the Public should be excluded from the following items of business.	
Policy Framework:	None.	
Reason for Decision:	To comply with legislation.	
Consultation:	Legal.	
Recommendation(s):	It is recommended that:	
1)	The public be excluded from the meeting during consideration of the following item(s) of business on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Paragraphs listed below of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 subject to the Public Interest Test (where appropriate) being applied.	
	Item Nos.	Relevant Paragraphs in Schedule 12A
	7	12, 13
Report Author:	Democratic Services	
Finance Officer:	Not Applicable	
Legal Officer:	Patrick Arran – Head of Legal, Democratic Services and Procurement (Monitoring Officer)	

1. Introduction

- 1.1 Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, allows a Principal Council to pass a resolution excluding the public from a meeting during an item of business.
- 1.2 Such a resolution is dependant on whether it is likely, in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I of the Local Government Act 1972.

2. Exclusion of the Public / Public Interest Test

- 2.1 In order to comply with the above mentioned legislation, **Council / Cabinet / Committee** will be requested to exclude the public from the meeting during consideration of the item(s) of business identified in the recommendation(s) to the report on the grounds that it / they involve(s) the likely disclosure of

exempt information as set out in the Exclusion Paragraphs of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.

- 2.2 Information which falls within paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.3 The specific Exclusion Paragraphs and the Public Interest Tests to be applied are listed in **Appendix A**.
- 2.4 Where paragraph 16 of the Schedule 12A applies there is no public interest test. Councillors are able to consider whether they wish to waive their legal privilege in the information, however, given that this may place the Council in a position of risk, it is not something that should be done as a matter of routine.

3. Financial Implications

- 3.1 There are no financial implications associated with this report.

4. Legal Implications

- 4.1 The legislative provisions are set out in the report.
- 4.2 Councillors must consider with regard to each item of business set out in paragraph 2 of this report the following matters:
 - 4.2.1 Whether in relation to that item of business the information is capable of being exempt information, because it falls into one of the paragraphs set out in Schedule 12A of the Local Government Act 1972 as amended and reproduced in Appendix A to this report.
 - 4.2.2 If the information does fall within one or more of paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended, the public interest test as set out in paragraph 2.2 of this report.
 - 4.2.3 If the information falls within paragraph 16 of Schedule 12A of the Local Government Act 1972 in considering whether to exclude the public members are not required to apply the public interest test but must consider whether they wish to waive their privilege in relation to that item for any reason.

Background Papers: None

Appendices: Appendix A - Public Interest Test

Public Interest Test

No.	Relevant Paragraphs in Schedule 12A
12	Information relating to a particular individual.
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 12 should apply. His view on the public interest test was that to make this information public would disclose personal data relating to an individual in contravention of the principles of the Data Protection Act. Because of this and since there did not appear to be an overwhelming public interest in requiring the disclosure of personal data he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
13	Information which is likely to reveal the identity of an individual.
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 13 should apply. His view on the public interest test was that the individual involved was entitled to privacy and that there was no overriding public interest which required the disclosure of the individual's identity. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
14	Information relating to the financial or business affairs of any particular person (including the authority holding that information).
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 14 should apply. His view on the public interest test was that:</p> <p>a) Whilst he was mindful of the need to ensure the transparency and accountability of public authority for decisions taken by them in relation to the spending of public money, the right of a third party to the privacy of their financial / business affairs outweighed the need for that information to be made public; or</p> <p>b) Disclosure of the information would give an unfair advantage to tenderers for commercial contracts.</p> <p>This information is not affected by any other statutory provision which requires the information to be publicly registered.</p> <p>On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
15	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the

	Crown and employees of, or office holders under, the authority.
	The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 15 should apply. His view on the public interest test was that whilst he is mindful of the need to ensure that transparency and accountability of public authority for decisions taken by them he was satisfied that in this case disclosure of the information would prejudice the discussion in relation to labour relations to the disadvantage of the authority and inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.
16	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
	No public interest test.
17	Information which reveals that the authority proposes: (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) To make an order or direction under any enactment.
	The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 17 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by the public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.
18	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
	The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 18 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.
18c	The deliberations of a Standards Committee or of a sub committee of a Standards Committee established under the provisions of the Local Government Act 2000 in reaching any finding of a matter referred to it.

Agenda Item 7

By virtue of paragraph(s) 12, 13 of Schedule 12A
of the Local Government Act 1972
as amended by the Local Government (Access to
Information) (Variation) (Wales) Order 2007.

Document is Restricted

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