

Joint Report of the Head of Democratic Services and Monitoring Officer

Standards Committee – 13 February 2015

COUNCILLORS LOCAL DISPUTE RESOLUTION

Purpose:	To consider how to raise the profile of the Councillors Local Dispute Resolution mechanism and whether it could be used for Community / Town Councils.
Policy Framework:	None.
Reason for Decision:	To consider what work needs to be carried out with regard to the purpose outlined above.
Consultation:	Finance, Legal.
Recommendation(s):	It is recommended that:
1)	The views of the Committee are sought.
Report Author:	Huw Evans
Finance Officer:	Carl Billingsley
Legal Officer:	Tracey Meredith
Access to Services Officer:	Euros Owen

1. Introduction

- 1.1 Council at its meeting on 9 June 2011 agreed an innovative process of dealing with Councillor Complaints about other Councillors. This process is generally referred to as the Councillors Local Dispute Resolution mechanism. The report and procedure are appended as **Appendix A**.
- 1.2 During the period 18 March and 10 October 2014, the Standards Committee held individual discussions with the Chief Executive, Political Group Leaders, Chairs of Regulatory Committees and the Chair of the Scrutiny Programme Committee.
- 1.3 At the Standards Committee on 9 January 2015, a workplan for 2015-2016 was created and prioritised. Work relating to the Councillors Local Dispute Resolution mechanism topped the list.

2. Councillors Local Dispute Resolution

- 2.1 Whilst this is recognised as an excellent and innovative system; it is interesting that to date it has never been used. It is generally believed that this is mainly due to the fact that a large number of regular complaints ceased when it was introduced and periods after Local Government Elections appear more stable.

2.2 Despite this, the Standards Committee are keen to raise its profile and encourage its use. It was also suggested that the local dispute resolution be adopted by Community / Town Councils and that Standards Committee may wish to investigate how the various Community / Town Councils operate and if correct procedures are adhered to.

2.3 Standards Committee are asked to consider the report appended as Appendix A and to consider what actions they wish to take to promote the mechanism.

3. Equality and Engagement Implications

3.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

4. Financial Implications

4.1 This will be met from within existing budget.

5. Legal Implications

5.1 These are set out in the Report.

Background Papers: None.

Appendices:

Appendix A	“Dealing with Complaints by one Councillor against another” - Council – 9 June 2011
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Item No. 10 (2)

Report of the Acting Monitoring Officer

Council – 9th June 2011

DEALING WITH COMPLAINTS BY ONE COUNCILLOR AGAINST ANOTHER

Summary	
Purpose:	To seek Council's approval to a process of dealing with Councillor complaints about other Councillors
Policy Framework:	None
Reason for Decision:	To agree a new process
Consultation:	Chief Executive, Group Leaders, Finance, Chairman of Standards Committee

1.0 Introduction

1.1 Over the last two years the Standards Committee in Swansea has given detailed consideration to its role in improving Standards in the Council. As part of that consideration each political Group Leader, the Presiding Officer (for the relevant period), the Chief Executive and the Public Services Ombudsman for Wales (PSOW) attended at meetings of the Standards Committee in order to discuss their views on the current and future role of the Committee. The views expressed were recorded and set out in a matrix to show common themes and the differences of view which arose.

1.2 The Standards Committee also received a report from the Welsh Audit Office (the WAO) (dated July 2010), which included recommendation "P4", which read as follows:-

"Explore ways of strengthening accountability for member behaviour and reducing the role of referral to the Ombudsman. This might include consideration of a more active role for the Standards Committee and/or developing internal mechanisms for resolving complaints".

1.3 The Standards Committee agreed that a meeting should be convened, to involve the political Group Leaders, the Chairman of Standards Committee, the Chief Executive and the Acting Monitoring Officer, to discuss the views set out in the matrix mentioned in paragraph 1.1 above and the recommendation from the WAO.

2.0 Progress of the Group

- 2.1 The group mentioned in paragraph 1.3 above has met twice.
- 2.2 The most recent meeting of the group took place on March 8th 2011. At that meeting the group agreed that the Council should be asked to adopt an informal system of dealing with complaints by members against other members. The process involved with this method is set out as Appendix 1 to this report, as a flow chart. The main features for members to note with regard to the proposed process are as follows:-
 - 2.2.1 The process is aimed at resolving matters informally, so in the first instance a member who has a complaint should approach the Group Leader of the member who the complaint is about.
 - 2.2.2 If the approach outlined in paragraph 2.2.1 is not effective the complaint is forwarded to the Monitoring Officer/Democratic Services Manager. A meeting of the Councillor Mediation Panel (CMP) will be arranged. This group will consist of the Group Leaders.
 - 2.2.3 If the complaint relates to a failure to declare an interest, the CMP process will not be available.
 - 2.2.4 The CMP will aim to reach an agreed way forward to resolve the complaint. Decisions of the CMP must be unanimous.
- 2.3 The group at its meeting on 8th March asked the Acting Monitoring Officer to contact the PSOW on various points relating to the suggested process. Attached at Appendix 2 are a letter to the PSOW dated 12th April 2011, a response from the PSOW dated 21st April 2011 and a further letter to the PSOW dated 4th May 2011. Members will note the positive response from the PSOW in his letter dated 21st April to the suggested process.
- 2.4 For the process to work it is important that all the members agree to use the process before they consider making a complaint to the PSOW.
- 2.5 Council will note that in his letter dated 21st April 2011 the PSOW suggested that the change should not be brought into force until such time as the PSOW had consulted the Adjudication Panel, Monitoring Officers and others. The PSOW telephoned the Acting Monitoring Officer on May 25th to advise that he has made contact with various officials who have a role in the process.

The PSOW is strongly in support of the scheme. He is trying to clear the path for the adoption of the system in Swansea. His advice is that the proposed process should not be implemented until he is able to confirm to the Council, following his discussions, that there will be no problems in implementing the scheme.

3. Financial Implications

- 3.1 The administration of the process will be dealt with through Legal and Democratic Services and any costs will be contained within existing budgets.

4. Legal Implications

- 4.1 There should be no Legal implications in adopting this process.

5. Recommendations

- 5.1 That Council adopts the mediation process set out on the flowchart in Appendix 1 in principle and authorises the Acting Head of Legal and Democratic Services and Procurement to make all necessary arrangements to deal with the administration of the process, subject to the receipt from the Public Services Ombudsman for Wales of confirmation that the use of the process will not cause any issues for members and subject to consultation with the Group Leaders following the receipt of that response.
- 5.2 That all members agree to attempt to resolve any grievances they may have with other Councillors through the internal mediation process whenever possible, before referring an issue to the Public Services Ombudsman for Wales, once the process has been implemented.
- 5.3 That a copy of this report is sent to the Standards Committee.

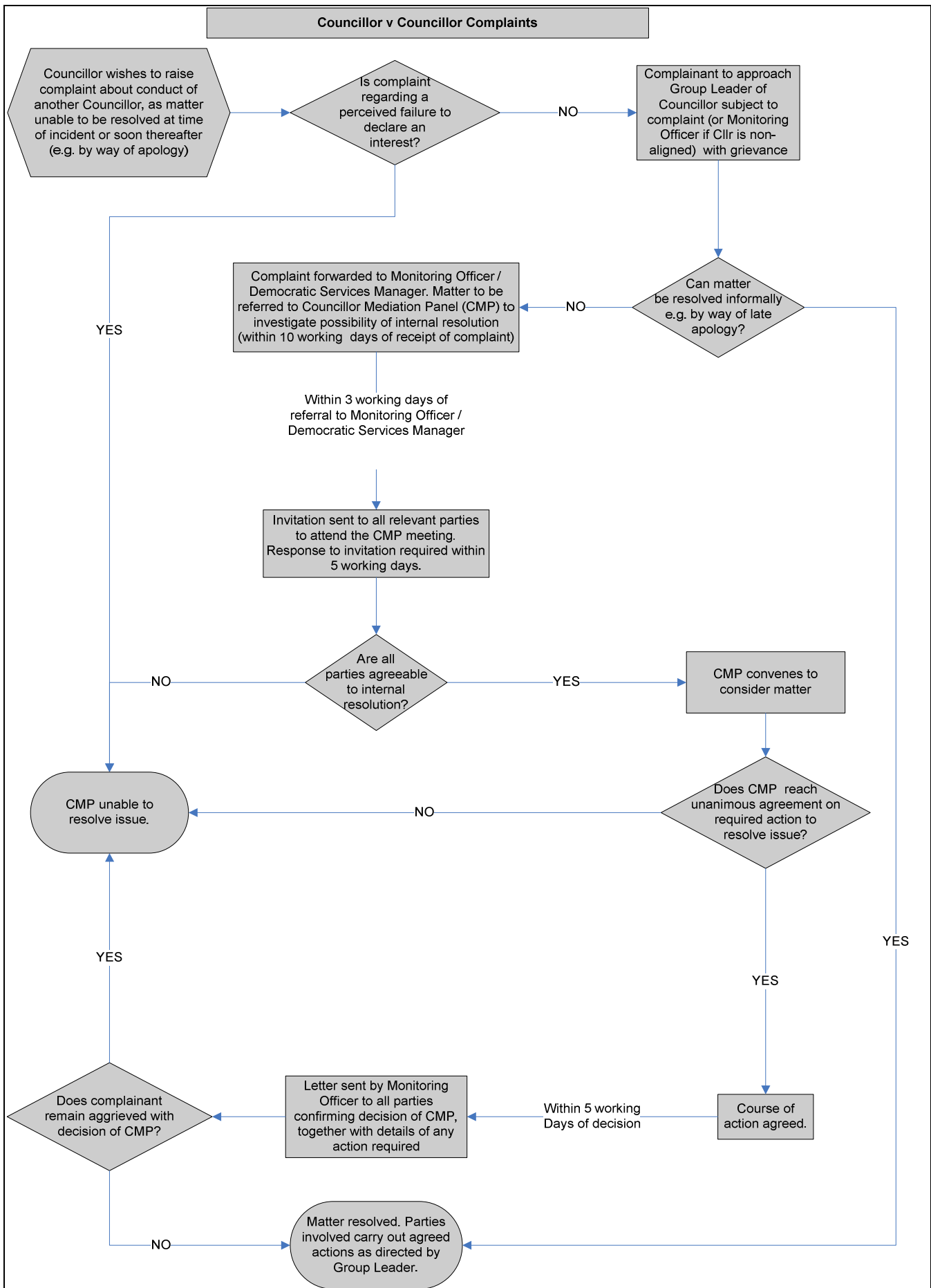
Background Papers:

Welsh Audit Office Report July 2010
Standards Committee Report and Minutes

Contact Officer: Roderic Jones – Acting Head of Legal, Democratic Services and Procurement & Monitoring Officer

Legal Officer: Roderic Jones

Date of Report: 1st June 2011



Mr Peter Tyndall
Public Services Ombudsman for Wales
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RJ/GH

12th April 2011

Dear Mr Tyndall,

Re: AN APPROACH IN THE CITY AND COUNTY OF SWANSEA TO STANDARDS ISSUES

The Standards Committee in Swansea has been working during the last year to investigate how better working relationships can be fostered among the elected Councillors in Swansea. To that end all Political Group Leaders have been invited to attend meetings of the Standards Committee. You will recall attending one meeting of the Committee. Two major issues have emerged which I deal with under the following headings:-

Informal Mediation Process

A process has been developed through meetings involving the political group leaders, the Chair and Vice Chair of Standards Committee, the Chief Executive, the Monitoring Officer and the Democratic Services and Complaints Manager. This group has agreed an approach to manage complaints which an elected member may have against another elected member. I attach for your information a flow chart which sets out the details of the process. You will note that the approach is to try to sort out any issues which may arise through an apology, in the first instance, and then through a meeting of the political group leaders.

The intention is to report to the annual meeting of the Council in May to seek the agreement of Council to use this method of dispute resolution and for all members to agree to use that method. Some queries emerged from the last meeting of the group mentioned above and I was asked to contact you to raise the issues the group would like your guidance on. I hope you will support the general principle of the approach. I set out the two issues in numbered paragraphs below:-

- 1) To make this procedure effective Council may be asked in May to add a paragraph to the Code of Conduct requiring members to agree to resolve any grievances they may have through the informal procedure. Would the Ombudsman's office be prepared to support the process by requiring

Swansea members to use this process before you accept a complaint from any elected member against another elected member?

- 2) In view of paragraph 6(1)(c) of the Code, can the informal process be used in Swansea where a member is concerned about the perceived failure to declare an interest by another member? The feeling of the political group leaders and the Chair of Standards is that it would be useful to use the informal process in these cases to identify and resolve issues. However, elected members have a duty under paragraph 6(1)(c) of the Code to report to you if they reasonably believe there is a breach of the Code and if a failure to declare an interest is identified the scope for informal resolution may be more limited. The group would not wish to place any member in potential breach of 6(1)(c) by requiring them to go through the informal procedure, but, to make the procedure as effective as possible and to avoid unnecessary investigations for you office, the group would wish the procedure to be used. Would you be able to confirm that you will not accept a complaint against a member under paragraph 6(1)(c) of the Code where they have referred their complaint to the informal procedure, even on an allegation relating to the failure to declare an interest?

It appears to the writer that it would be very difficult to bring complaints by members of the public against elected members within the scope of the informal procedure. Any guidance you can offer in this respect would be welcome.

Legal Representation for Members At Standards Committee or the Adjudication Panel for Wales

The other major issue that Standards Committee have requested more investigation into involves legal representation for members when answering complaints involving alleged Code of Conduct breaches. The Regulations require that a member who is found in breach of the Code and receives a sanction must re-pay to the Council (or to any insurer if the Council has insurance in place) any sums which the member has received to pay for his/her legal costs.

You may recall that, during the investigation into Councillor Mary Jones from Swansea, the Council's in house legal department acted for Councillor Jones in the first stages of the matter. You received legal advice from the Solicitors firm which you had instructed to deal with the matter to the effect that it would be ultra vires for an in-house Solicitor to act for a member in these circumstances.

ACSES have now obtained an opinion from James Goudie QC which covers this point. My understanding is that this opinion has been sent to you by ACSES. (Paragraphs 73 to 100 are relevant). In summary Mr Goudie advises that it is not ultra vires to act, though the potential conflict of interest may prevent an in house Solicitor acting for Councillors in his own Council in such circumstances. However, the conflict of interest point can be removed if an in house Solicitor from a neighbouring authority acts for a member in these circumstances.

In view of the potentially heavy legal costs for members in Code of Conduct matters, the Standards Committee have asked me to pursue with neighbouring authorities whether they would be prepared to reach a reciprocal agreement with Swansea for in house lawyers to represent members in Code of Conduct issues. Before such an approach is adopted Standards Committee would like to establish your approach to this matter. It is of no help to members to have to change their legal representation during the process and clearly it is of no help to the process for there to be any disputes between the Ombudsman's office and a Council during a Code of Conduct matter about the legal representation for a member. I appreciate that you may wish to consider taking further legal advice before responding on this point, but I would ask you to respond as soon as convenient.

The Chair of Standards Committee has asked me to invite you to attend a future meeting of the group referred to above – i.e. the political group leaders, the Chief Executive, the Monitoring Officer and the Chair of Standards (and Vice Chair if he can attend). No meeting date is fixed at present. Please can you let me know if you are able to attend a meeting of this group and I can arrange with your office a convenient time and date.

I look forward to hearing from you on the above. It would be very helpful if I could receive your response by May 6th, as that would enable me to report your response to Annual Council.

Please let me know if you require any further details on any of the matters referred to.

Yours sincerely,

**ROD JONES - ACTING HEAD OF LEGAL, DEMOCRATIC SERVICES
& PROCUREMENT**

Our ref: PT/mm

Ask for: Marilyn Morgan

Your ref: RJ/GH

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Date: 21 April 2011

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Mr Rod Jones
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Dear Mr Jones

Thank you for your letter of 12th April received by us on 14th April. Due to work commitments away from the office and annual leave, I have not been able to consider your proposals until now. Consequently, I regret that I will not be able to give a definitive answer before your Annual Council Meeting on 6th May, as you had requested, not least because the matters you have raised would potentially set a precedent for other Councils and have an impact on the work of the Adjudication Panel for Wales. I think it will be important to take the views of other parties into account including Monitoring Officers and the Welsh Assembly Government.

That said, I am happy to give an initial reaction on the two issues you have raised. The proposal for an informal mediation process seems entirely sensible and is one which I will explore with others, with your agreement. If minor matters can be resolved locally, with remarks being withdrawn, an apology and/or a commitment to refrain from breaches in the future, for example, then this is clearly a desirable outcome. As the Code is currently drafted, I could not require members to utilise the process before coming to me, but I would certainly strongly encourage them to do so and consider any complaints where members had not sought to resolve issues first in this context, and it would in all likelihood inform my decision as to whether or not to investigate. This is analogous to my approach in cases of maladministration where I often seek to achieve local resolution where this is possible, to avoid the need for a formal investigation.

Where the complaint is a more serious one, for example, if a failure to declare an interest had allegedly tainted a planning decision or where there is an accusation of bullying supported by evidence to that effect, I believe it would be most appropriate for such complaints to be referred to my office. Obviously, complaints that could not be resolved under the informal process would still need to be considered by my office also. In addition, there may be some complaints which, because of the involvement of those charged with the resolution of complaints in the subject of the complaint; it would not be possible for the informal process to be seen to offer an objective consideration. Such complaints could also be referred to my office. However, even given the need to refer some complaints to me, I believe that the vast majority of complaints made by members would be susceptible to local resolution using a system such as that you have proposed.

I can confirm that if, following wider discussions, the process is adopted, I would not regard a decision to use the local informal process in the first instance as a failure to comply with the obligation at 6 (1) (c) in the Model Code that members should report breaches to me.

I agree that there would be difficulty under the current legislation in utilising the proposed mechanism for complaints by members of the public, but can see scope for such complaints also being addressed locally initially, should there be an opportunity for the legislation to be amended in the future.

On the issue of legal representation, I think there are two considerations. The first relates to the straightforward issue of whether or not there is a conflict of interest. On this basis, I do not believe it is appropriate for in-house lawyers to represent members of their own authorities who are accused of breaching the Code. As you say, the advice I have received also suggests that such representation would be ultra vires. I would need to have sight of the opinion you have received in order to respond fully and I know that Mrs Katrin Shaw has contacted you separately regarding this.

My second reason for concern is that staff of councils who are charged with upholding the Code, could find themselves representing members accused of breaching it, and this may undermine the position of Monitoring Officers or their staff who are often involved as witnesses in hearings and might find themselves being questioned by colleagues from another authority. I do not believe these issues are necessarily insuperable, but would suggest that there will be cases where the use of lawyers from another authority would not be appropriate. Ultimately, I believe the decision as to whether to use lawyers from another council is a matter for your Council and the other authorities concerned.

In my view, the use of a cap on indemnity is an alternative solution which would help to contain the escalating cost of hearings, which is of great concern to me in the current financial climate, as it clearly is to your Council. I would favour an all-Wales cap, but in the current situation, you may wish to consider introducing such a cap yourselves. I should say that we will not utilise counsel unless the member chooses to engage one and will keep our legal representation proportionate to that utilised by the member concerned to avoid any suggestion of inequality of arms.

In advising your Council at its annual meeting, you may wish to suggest that the proposed change to your Code is adopted, but that it is not brought into force until such time as Monitoring Officers and others have been consulted. It would be vital also to secure the agreement of the Adjudication Panel as without this, the assurances I am able to offer would not apply in a hearing they convened.

I hope this is a helpful reply and am happy to discuss it in the proposed meeting, or by telephone beforehand if there are matters you would wish to clarify. Should you be unable to reach me directly, Mrs Elizabeth Thomas or Mrs Katrin Shaw would also be happy to discuss matters with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Tyndal', written in a cursive style.

Peter Tyndal
Ombudsman

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RJ/GH/SC1-01

4th May 2011

Dear Mr Tyndall,

Re: AN APPROACH IN THE CITY AND COUNTY OF SWANSEA TO STANDARDS ISSUES

Thank you for your letters dated 20th & 21st April 2011.

With regard to the opinion from James Goudie QC, this opinion was obtained by ACSES and has only be given to me in confidence. ACSES have agreed to send a copy to the Ombudsman, but clearly this has not yet happened. I am not in a position to release the opinion as I only have it on a confidential basis. I have e-mailed ACSES and I understand that due to pressure of work on the ACSES officers they have not yet sent the opinion to the Ombudsman's office. Hopefully this will be done in the near future.

Thank you for confirming that you and Mrs Thomas would be happy to come to a meeting of the Political Group Leaders, Chief Executive, Monitoring Officer and Chair of Standards. Currently such a meeting has not been arranged and it is not likely that one will be arranged before June, but I shall contact you to discuss possible dates in the near future.

May I thank you also to your detailed response of my letter of 12th April 2011. I should refer to your penultimate paragraph (and also your first paragraph). Will you be contacting Monitoring Officers, the Welsh Assembly Government and the Adjudication Panel? If so, do you have a timescale in which to make the relevant contacts?

I look forward to hearing from you.

Yours sincerely,



**RODERIC JONES - ACTING HEAD OF LEGAL, DEMOCRATIC SERVICES
& PROCUREMENT**