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Consultation response

Inquiry into the role, governance and accountability of the community and town council sector

Organisation Name: Local Government and Housing Committee, Senedd

Submitted: 16 October 2024

- We investigate complaints about public services.
- We consider complaints about councillors breaching the Code of Conduct.
- We drive systemic improvement of public services and standards of conduct in local government in Wales.

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Mae'r ddogfen hon hefyd ar gael yn y Gymraeg. This document is also available in Welsh.

General comments

Thank you for the opportunity to respond to this consultation.

As Public Services Ombudsman for Wales (PSOW), we investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in our jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales.

These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

We can consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

We also investigate complaints that elected members of local authorities have breached their Codes of Conduct, which set out the recognised principles of behaviour that members should follow in public life.

Our submission, which is based on our Code of Conduct work, may not directly align with the Inquiry's terms of reference but we would submit that the matters referenced are broadly relevant to any considerations on governance and scrutiny arrangements for this sector.

In 2023/24 we received 518 complaints about the Code of Conduct but only had enough information to assess 328 against our 2-stage test for investigation. Of these, 176 were complaints about Town and Community councillors.

We analyse and report on the subject of the Code of Conduct complaints, based on Principles¹ which are closely aligned with the Nolan Principles, which are designed to

¹ The Code of Members (Principles) (Wales) Order 2001

promote high standards in public life. 55% of the complaints that we could investigate were about the promotion of equality and respect.

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 the complaint is best resolved locally. The complaints that we categorise under 'equality' commonly involve more serious allegations of bullying or discrimination.

In 2023/24 we referred 21 Code of Conduct cases to either the relevant Standards Committee or the Adjudication Panel for Wales. 85% of our referrals were upheld. Of these, 12 of the referrals related to members of Town and Community Councils, 2 to members of both a County Council and a Town or Community Council in its area, and the remaining 7 to County Council or National Park Authority members. As a consequence a range of sanctions from censure to suspension and disqualification from holding office have imposed on Town and Community members.

Through our investigation work we have identified several issues broadly related to governance and accountability of Town and Community Council's which we set out below.

Member behaviour towards staff

A large proportion of the complaints we receive, and which then go on to investigate involving Town and Community councillors fall into the category "Promotion of Equality and Respect". Examples of such complaints often about very low-level conflict between members but increasingly each year we are receiving complaints from members of staff at these councils about behaviour towards them directly. Such behaviour is very often described as disrespectful, bullying and harassing. Our investigations can take some time to conclude and the parties concerned will often need to continue to engage in council business and meetings together which can be extremely difficult for all concerned.

These types of complaints inevitably impact the working relationship between such parties and often the day to day running of the council. Further, because of the time taken to complete the investigation process, the parties are working in these often extremely difficult circumstances for a particularly long period of time. Short of traditional HR and employment routes for staff members, there is, we understand very little that either party can do during such a period to seek support and/or relief from the situation. Quite often matters escalate to the extent that sickness absence is taken, or

members of staff or councillors decide to resign. We consider that it would be beneficial to those who find themselves in this situation and the Council itself, if an additional mechanism, potentially involving the parental local authority, could be put in place to safeguard the wellbeing of both parties during the process and ensure that council business can continue to work for the benefit of the communities they serve.

Use of Local Resolution Protocols

We support the use of local resolution for low level complaints, involving complaints between members. We acknowledge that the One Voice Wales model also provides for resolution of minor complaints from officers. Where used successfully these protocols can prevent these complaints from being escalated to us and allow us to focus our resources on investigating the most serious of complaints where there is a public interest in doing so.

In our experience there has been poor take up of protocols designed to support local resolution of matters between members within the Town and Community Council sector. Further, where there has been an attempt to use a process of this kind, we have seen inconsistent or poor application of it often resulting in the escalation of a matter and/or submission of trivial or low-level complaints to our office.

In the spirit of maintaining good working relationships within such Councils, we would like to see the satisfactory implementation of such protocols in all Town and Community Councils across Wales. As an office we could then be confident in referring any suitable complaints back to the Council for local resolution at a local level. This would assist us in ensuring our resources are safeguarded for the most serious of cases but would also assist in resolving issues arising at a local level more quickly, thus avoiding a breakdown in relationships and maintain a good working standard within such councils.

We believe that there could be a role for wider involvement of some members of the Standards Committee of parental local authorities in aiding the implementation of local resolution. Additionally, the use of mediation would also be beneficial in cases where there are issues which are negatively impacting on the Council's ability to function.

Poor governance & relations between members

Whilst the standards of conduct in most councils is good, when relations between factions within Town & Community Councils break down irretrievably, we see evidence of very poor conduct between members which prevents clerks from performing their

roles properly. Such conduct has, in our view, led to councils becoming dysfunctional with very poor governance. The co-option (as opposed to election) of members onto Councils has been a factor in some instances. We have found that from time to time individual Town & Community Council have featured disproportionately in our workload. These Councils are often also subject to review and scrutiny by the Auditor General.

When we receive a high number of complaints relating to an individual Town & Community Council, we find that we have to devote a significant amount of staff resource to investigating complaints. This impacts upon our ability to progress and close other cases. It also leads to our staff having high & challenging caseloads especially when an individual staff member has a number of cases relating to the same council on their caseload. The poor conduct which has been complained about is often repeated during our investigations with poor conduct being directed towards our staff.

Training for members of Town & Community Council

Considering the PSOW's experience of handling Code of Conduct complaints since the inception of the ethical standards regime in Wales in 2001, we are strongly of the view that training for all members should be mandatory when they take up their role as a member. Anyone undertaking a new role or employment in any other walk of life is expected to undertake training. Furthermore, given the overall purpose of the ethical standards regime, we consider that mandatory training is essential to ensure that those holding public office understand their obligations to act in the public interest and in accordance with the Nolan principles, thus maintaining public confidence in local democracy.

Often in our Town and Community Council casework, there is a lack of understanding of the obligations under the Code not only by the member who has been complained about but more widely across the Council. This is particularly relevant in relation to complaints about the failure to declare personal and prejudicial interests (particularly in the context of members of both a County Council and a Town/Community Councils members).

We would like to see standardised approach to training across the sector and potentially an obligation to renew periodically.

Finally, we consider that it would be appropriate for town and community councils to have training plans and ensure training records are maintained.

Record keeping

When we start an investigation against a member of a town & community council, we routinely write to the Clerk seeking copies of the relevant Codes of Conduct, declarations/acceptance of office and undertakings in respect of the obligations of the Code. We frequently encounter issues where such documents are unavailable often then resulting in protracted correspondence with relevant officers. We consider that an obligation to maintain such records as part of governance arrangements would be beneficial and go some way towards resolving some of these issues we encounter.

Closing remarks

We trust that you will find these comments useful. Should you wish to discuss any of our points further, please do not hesitate to contact Tanya Nash, our Acting Head of Policy (tanya.nash@ombudsman.wales).

A handwritten signature in black ink that reads "M.M. Morris". The signature is written in a cursive, slightly slanted style.

Michelle Morris

Public Services Ombudsman for Wales

October 2024