

## APPENDIX 14 ETHICS AND STANDARDS COMMITTEE

### **PROCEDURE FOR DEALING WITH ALLEGATIONS MADE AGAINST COUNCILLORS AND REFERRED TO THE ETHICS AND STANDARDS COMMITTEE**

#### **INTRODUCTION**

1. The process used by the Ethics and Standards Committee for dealing with matters relating to the conduct of councillors should be the same for all councillors, no matter what political party they represent or what level of local government they represent. This document sets out the procedure that the Council's Ethics and Standards Committee will follow where it is called to make decisions about the conduct of members of the local authorities for which it is responsible.
2. The decisions, which the Ethics and Standards Committee may make, and the actions it may take are governed by legislation and if there is any conflict between this document and any statutory requirements then those statutory requirements will prevail.

#### **INTERPRETATION**

3. In this document certain words and phrases have the meanings hereby ascribed to them as set out in the Schedule unless the context otherwise requires

#### **BACKGROUND**

4. Under section 69 of the Local Government Act 2000 the Public Services Ombudsman (the Public Services Ombudsman) may investigate any alleged breach by members or co-opted members (or former members or co-opted members) of the code of conduct of the Council or one of the Community Councils in the area of the Council.
5. Where the Public Services Ombudsman ceases such an investigation into allegations that a councillor has breached the code of conduct before it is completed (under section 70(4) of the 2000 Act) he or she may refer the matter subject to the investigation to the Council's Monitoring Officer.
6. Alternatively, where the Public Services Ombudsman decides after investigating (under section 71(2) of the 2000 Act) that it is appropriate, he or she may produce a report on the outcome of the investigation and send it to the Monitoring Officer and the Council's Ethics and Standards Committee.
7. The Local Government Investigation (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 provide that the Monitoring Officer:

- (a) will investigate matters referred under section 70(4) before reporting and, if appropriate, making recommendations, to the relevant authority's Ethics and Standards Committee, or
  - (b) where a matter has been referred under section 71(2), he or she will consider the report of the Public Services Ombudsman, before, if appropriate, making recommendations to the relevant authority's Ethics and Standards Committee.
- 8. In carrying out an investigation the Monitoring Officer may follow such procedures as he or she considers appropriate in the circumstances of the case and in particular may:
  - (a) make such enquiries of any person as he or she thinks necessary for the purposes of carrying out the investigation,
  - (b) require any person to provide him or her with such information, explanation or documents as he or she considers necessary,
  - (c) require any member or co-opted member or officer of the Council to appear before him or her for the purposes of paragraph (a) and (b) above.
- 9. In conducting the investigation, the Monitoring Officer may be assisted by any person and may obtain expert or other advice. In certain cases expenses may be paid to persons attending or assisting the Monitoring Officer or providing advice to him or her.
- 10. After concluding an investigation, the Monitoring Officer must:
  - (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Ethics and Standards Committee,
  - (b) send a copy of the report to any person who is the subject of the investigation, and
  - (c) take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.
- 11. The Ethics and Standards Committee must consider a report from the Monitoring Officer on his or her investigation or a report from the Public Services Ombudsman together with any recommendations of the Monitoring Officer. It must then make an initial determination either:
  - (a) that there is no evidence of a failure to comply with the code of conduct, or

- (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
12. Where the Ethics and Standards Committee decides that an opportunity to respond needs to be given and after considering any response made by any such person, the Committee must come to one of three conclusions:
- (a) there is no evidence of a failure to comply with the code of conduct and no further action should be taken,
  - (b) there is evidence of a failure to comply with the code of conduct but no further action should be taken, or
  - (c) there is evidence of a failure to comply with the code of conduct and a member or co-opted member (or former member or co-opted member) should be censured or suspended,
13. The Ethics and Standards Committee must take any appropriate action arising from the conclusions it has drawn.
14. The decision of the Ethics and Standards Committee is subject to a right of appeal to an appeals tribunal drawn from the Adjudication Panel for Wales.
15. An appeals tribunal may endorse the decision of the Ethics and Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the decision.

## **INITIAL DETERMINATION**

16. After the Monitoring Officer has
- (a) produced a report on the findings of his or her investigation, or
  - (b) considered the report of the Public Services Ombudsman; and
  - (c) sent a copy to the person who is the subject of the investigation, and taken reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation
- he or she will ask the Democratic Services Officer to call a meeting of the Ethics and Standards Committee as soon as possible and will send a copy of the report together with his or her recommendations (if any) to each of the Members of the Committee.
17. Where the report is that of the Public Services Ombudsman the Monitoring Officer will advise the Ethics & Standards Committee. Where the report is that of the Monitoring Officer, the Deputy Monitoring Officer or some other suitably qualified person will advise the Ethics and Standards Committee.

18. The Democratic Services Officer will give notice of the time and place of the meeting in accordance with Part VA of the Local Government Act 1972 as amended by the Standards Committees (Wales) Regulations 2001.
19. The business of the meeting will be limited to considering the report and to making a determination either:
  - (a) that there is no evidence of any failure to comply with the code of conduct; or
  - (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, may have failed, to comply with the code of conduct.
20. Where the Ethics and Standards Committee decides that there is no evidence of any failure to comply with the code of conduct the Committee will ask the Democratic Services Officer to notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman accordingly.
21. Where the Ethics and Standards Committee decides that any person who is the subject of the investigation should be given the opportunity to make representations in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the code of conduct, the Committee will ask the Democratic Services Officer to notify the person who is the subject of the investigation of the Committee's decision and of the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

#### **PROCEDURE PRIOR TO CONSIDERATION OF REPRESENTATIONS**

22. The Democratic Services Officer, in consultation with the Chair of the Ethics and Standards Committee, will write to the person who is the subject of the investigation to propose a date for the hearing, outline the meeting procedure and the person's rights.
23. The person who is the subject of the investigation will be required to notify the Democratic Services Officer in writing within not more than 14 days from the date of the communication sent by the said Officer, whether or not he or she
  - (a) wants to make representations and whether orally or in writing;
  - (b) disagrees with any of the findings of fact in the Monitoring Officer's report, including what matters he or she disagrees with and the reasons for any disagreements;
  - (c) wants to be represented at the meeting by a solicitor, barrister or any other person;

- (d) wants to give evidence to the Ethics and Standards Committee, either orally or in writing;
- (e) wants to call relevant witnesses to give evidence to the Ethics and Standards Committee;
- (f) wants any part of the meeting to be held in private;
- (g) wants any part of the Monitoring Officer's report or other relevant documents to be withheld from the public; and
- (h) can come to the meeting.

**24. The Investigating Officer will notify the Democratic Services Officer in writing within 7 days of any comments on the response and whether or not he or she**

- (a) wants to be represented at the hearing;
- (b) wants to call relevant witnesses to give evidence to the Ethics and Standards Committee;
- (c) wants any part of the meeting to be held in private; and
- (d) wants any part of the Monitoring Officer's report or other relevant documents to be withheld from the public.

**25. The Democratic Services Officer in consultation with the legal advisor to the Ethics and Standards Committee, will write to the members of the Committee and to everyone involved at least two weeks before the meeting to:**

- (a) set the date, time and place for the hearing;
- (b) summarise the allegation;
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the person who is the subject of the investigation or the Investigating Officer will go to or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the Investigating Officer's report, any relevant documents, the response from the person who is the subject of the investigation and any further response from the Investigating Officer; and

(h) outline the proposed procedure for the meeting.

## **CONSIDERATION OF REPRESENTATIONS AND FURTHER DETERMINATION**

26. The Ethics and Standards Committee may, in accordance with the requirements of natural justice, conduct the meeting in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings.
27. The person who is the subject of the investigation or the Investigating Officer may be represented or accompanied whether or not legally qualified: but if in any particular case the Ethics and Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.
28. The Ethics and Standards Committee may take legal advice from its legal advisor at any time during the meeting or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the person who is the subject of the investigation and the Investigating Officer if they are present.

## **FAILURE OF PARTIES TO ATTEND**

29. If a party fails to be present or represented at a meeting, the Ethics and Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence-
  - (a) hear and decide the appeal/application or question in the party's absence;  
or
  - (b) adjourn the hearing.
30. Before deciding to dispose of any matter or question in the absence of a party, the Ethics and Standards Committee will consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.
31. Where a party has failed to be present or represented at a meeting of which he or she was duly notified and the Ethics and Standards Committee has disposed of the matter, no fresh appeal/application may be made to the Ethics and Standards Committee.

## **ILLNESS OR INCAPACITY**

32. If the Ethics and Standards Committee is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the meeting and that the party's inability is likely to continue for a long time, the Ethics and

Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter, including:

- (a) for the party to be visited at some convenient place by other persons appointed for the purpose by the Ethics and Standards Committee, for the purpose of recording the party's evidence and any statement he or she may wish to make;
- (b) for taking the evidence of other witnesses on behalf of the party;
- (c) for enabling the party's representative and the other party or parties to comment, whether at a meeting of the Ethics and Standards Committee or in writing, on the evidence so taken and to make a statement in writing or to address the Ethics and Standards Committee;
- (d) for the consideration of the matter to take place at the party's home or elsewhere convenient to the party; or
- (e) for the matter to be decided in the absence of the party:

but any arrangement made must make provision for the other party or parties and their representatives, if they so wish, to be present while the evidence of the party or his or her witnesses is taken and to ask questions of the party or the witnesses.

## **THE PROCEDURE FOR THE MEETING**

- 33. At the beginning of any meeting the Chair of the Ethics and Standards Committee will explain the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence. The Ethics and Standards Committee may alter the procedure which is set out below if the circumstances of the particular case so require.
- 34. The Ethics and Standards Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report and will also consider whether or not the person who is the subject of the investigation has failed to follow the Code of Conduct.
- 35. If there is a disagreement as to the facts, the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report and whether or not the person who is the subject of the investigation has failed to follow the Code of Conduct. With the Ethics and Standards Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee shall give the person who is the subject of the investigation an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
- 36. The person who is the subject of the investigation will then be invited to make representations to support his or her version of the facts and whether or not he

or she has failed to follow the Code of Conduct and, with the Ethics and Standards Committee's permission, to call any necessary witnesses to give evidence. The Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the person who is the subject of the investigation.

37. At any time, the Ethics and Standards Committee may question any of the people involved or any of the witnesses.
38. If the person who is the subject of the investigation disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the meeting. If the Investigating Officer is not present, the Ethics and Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the explanation of the person who is the subject of the investigation for not raising the issue at an earlier stage, the Committee may then:
  - (a) continue with the hearing, relying on the information in the Investigating Officer's report;
  - (b) allow the person who is the subject of the investigation to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
  - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
39. At the conclusion of the representations the Ethics and Standards Committee will consider them in private and make their findings of fact and confirm whether there has been a breach of the Code of Conduct. The Ethics and Standards Committee will decide whether no further action should be taken or whether the person who is the subject of the investigation should be censured suspended or partially suspended. The Chair of the Ethics and Standards Committee will then announce their findings of fact, whether there has been a breach of the code and whether or not a penalty will be imposed.
40. The Ethics and Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Ethics and Standards Committee will instruct the Democratic Services Officer to send a copy of the written record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation and to the Public Services Ombudsman.



## **SUSPENSION**

41. A period of suspension or partial suspension will commence on the day after which ever is the later of:
- a) The expiry of the time allowed to lodge Notice of Appeal to an Appeals Tribunal (which is 21 days of receiving the Ethics & Standards Committee's determination;
  - b) Receipt of the notification of the conclusion of any appeal;
  - c) A further determination by the Ethics and Standards Committee made after receiving a recommendation from an appeals panel.

## **REFERRAL BY AN APPEALS TRIBUNAL**

42. If
- (a) the Ethics and Standards Committee determines that the person who is the subject of the investigation failed to comply with the Code of Conduct;
  - (b) that person appeals to an appeals tribunal drawn from the Adjudication Panel for Wales; and
  - (c) the said tribunal refers the matter back to the Ethics and Standards Committee with a recommendation that a different penalty be imposed

the Ethics and Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the appeals tribunal and will determine whether it should uphold its original determination or accept the recommendation.

43. After making its determination the Ethics and Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Ethics and Standards Committee will instruct the Democratic Services Officer to send a copy of the written record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation, to the Public Services Ombudsman and to the president of the Adjudication Panel for Wales

## **PUBLICATION**

44. The Ethics and Standards Committee will cause to be produced within 14 days after:
- (a) the expiry of the time allowed to lodge a notice of appeal under Regulation 10(2) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001,

- (b) receipt of notification of the conclusion of any appeal in accordance with Regulation 12(a)(i) or (b) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, or
- (c) a further determination by the Ethics and Standards Committee made after receiving a recommendation from an appeals tribunal under Regulation 12(a)(ii) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Public Services Ombudsman for Wales, the Monitoring Officer of the relevant authority concerned, the person subject to the investigation and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.

45. Upon receipt of the report of the Ethics and Standards Committee, the Monitoring Officer shall:
- (a) for a period of 21 days publish the report on Torfaen County Borough Council's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
  - (b) supply a copy of the report to any person on request if he or she pays such charge as Torfaen County Borough Council may reasonably require, and
  - (c) not later than 7 days after the report is received from the Ethics and Standards Committee, give public notice, by advertisement in newspapers circulating in the area of Torfaen County Borough Council and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

## **COSTS**

- 46 The Ethics and Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

## **SCHEDULE**

<b>Word or phrase</b>	<b>Meaning</b>
Democratic Services Officer	the officer for the time being appointed by Torfaen County Borough Council to provide clerical and administrative assistance to the Ethics and Standards Committee
Investigating Officer	(a) in the case of an investigation undertaken by or on behalf of the Public Services Ombudsman and referred to the Monitoring Officer under section 71(2) of the Local Government Act 2000, the person who conducted the investigation; or (b) in the case of an investigation referred to him or her under section 70(4) of the Local Government Act 2000, the Monitoring Officer
Legal Advisor	the officer responsible for providing legal advice to the Ethics and Standards Committee. This may be the Monitoring Officer, the Deputy Monitoring Officer, another legally qualified officer of Torfaen County Borough Council, or someone appointed for this purpose from outside the authority.
Monitoring Officer	the officer for the time being appointed by Torfaen County Borough Council under section 5 of the Local Government and Housing Act 1989