

RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2013 – 2014

STANDARDS COMMITTEE

24 January 2014

**REPORT OF
THE MONITORING OFFICER**

AGENDA ITEM NO. 4(b)	
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CODE OF CONDUCT AND LOCAL INVESTIGATIONS – REFERRALS BY OMBUDSMAN TO MONITORING OFFICER
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Author: Andy Wilkins, Corporate and Democratic Services Solicitor

1. PURPOSE OF THE REPORT

- 1,1 To consider how to report to Members cases where the Ombudsman has decided that Member conduct may have breached the Code but has recommended no further action and refers the matter to the Monitoring Officer for consideration whether it should be dealt with by a local investigation

2. RECOMMENDATIONS

That Members:

- 2.1 Agree a procedure/protocol to deal with Ombudsman referrals to the Monitoring Officer in future.

3. BACKGROUND

- 3.1 I reported to the meeting of the Standards Committee on the 3rd December the outcome of a referral to me from the Public Service Ombudsman for Wales [Minute 25 refers].
- 3.2 The Ombudsman had investigated a complaint by a member of the public against a Councillor that they may have breached the Code of Conduct.
- 3.3 The Ombudsman concluded that the Councillor may have brought the office of member into disrepute by being deceitful and dishonest (under paragraph 6(1)(a)) as well as failing to treat an individual with respect and consideration (paragraph 4(b)).
- 3.4 However the Ombudsman was not persuaded that if he did investigate and the Councillor was found by the Standards Committee to have breached the code that a sanction would be imposed. The Ombudsman was therefore not minded to investigate the complaint due to this failure to satisfy his 'two-stage test'.

- 3.5 In accordance with their procedures the Ombudsman referred the matter to me to decide whether I felt local investigation of the complaint was appropriate.
- 3.6 The Ombudsman has revised his procedure regarding local investigations. The relevant extract (at the beginning of September 2012) stated:-

'.. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the code I will use a two stage test. In the first instance, I will aim to establish whether there is evidence that a breach actually took place.

The second test I will apply is whether to investigate or not. I have adopted this test in order to explain how I will usually use my discretion and to secure a degree of consistency. In using my discretion I will take account of the outcomes of previous cases considered by standards committees across Wales and decide accordingly.

*If, whilst assessing a complaint or during an investigation I consider that the second limb of the two stage test has not been met, **I will ask the relevant Monitoring Officer whether they wish to investigate the matter locally ,or, where I have commenced an investigation, whether they wish to continue the investigation at a local level. If the Monitoring Officer wishes to do so, I will formally refer the investigation to them under section 70(4) of the Local Government Act 2000.***

In September 2012 the Guidance was revised to read:-

*If, whilst assessing a complaint or during an investigation I consider that the second limb of the two stage test has not been met, **I will invite the Monitoring Officer (in conjunction with the Standards Committee) to consider whether a local investigation is appropriate. If so, I will formally refer the investigation to them under section 70(4) of the Local Government Act 2000.***

- 3.7 The system now appears to be that the Ombudsman's investigating officer :
- starts and proceeds with an investigation following a complaint
 - reaches a view during that investigation that the Councillor concerned **may** have breached the Code
 - but that he/she is not persuaded that the Council's Standards committee would impose a sanction (and gives reasons)
 - indicates he/she is 'minded to recommend to the Ombudsman that he concludes his investigation by making a finding that no further action is necessary' and writes to the Monitoring Officer (or now to the Monitoring Officer **in conjunction with the Standards Committee**) asking if a local investigation is appropriate, copying that letter to both the complainant and the councillor involved
 - gives a short timescale for a response
 - depending on the response, finds 'no further action required' or refers to the relevant Monitoring Officer for local investigation.

- 3.8 An email received by the Monitoring Officer for Torfaen has further confirmed the Ombudsman's view. In the email the Ombudsman states:

“We take the view that the Monitoring Officer in conjunction with the Standards Committee can take a provisional view on whether it wishes to consider a case without predetermining the case. From our experience since the Ombudsman introduced this process decisions have been taken either by individual Monitoring Officers or in one instance by the Monitoring Officer in conjunction with the Chair of the Standards Committee. As the whole of your Standards Committee wishes to take the decision provided the committee ensures that it makes no determination on the matter then we do not envisage any problem in the members of the committee carrying out this role, and then in the future hearing any case which it accepts for investigation. Officers present at the initial meeting will, no doubt, advise members of the need for caution in this regard. “

- 3.9 Whatever procedure is finally agreed by Committee, consideration should be given to adopt the principle that all cases should continue to remain confidential until it is clear that a breach of the Code has occurred.
- 3.10 Members may therefore now wish to consider how the Standards Committee should respond to any such future provisional conclusions by the Ombudsman and potential local investigations by perhaps setting out a protocol/procedure to be followed.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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24 JANUARY 2014

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INVESTIGATIONS – REFERRALS BY
OMBUDSMAN TO MONITORING
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Officer to Contact:

**Paul Lucas
Monitoring Officer**

Tel: 01443 424105

Background Papers: Freestanding matter