

## PSOW CODE OF CONDUCT COMPLAINTS PROCEDURE

### Introduction

#### Effective date

1.1 Code of Conduct complaints (CCCs) require at all times to be dealt under this procedure not under the procedure for handling complaints of maladministration or service failure.

1.2 This procedure guide is effective from 28 January 2008. There is separate guidance for staff on the procedure for registering new CCCs.

#### Legislative framework

1.3 The Ombudsman's powers to look into complaints about the conduct of local authority members derive from the Local Government Act 2000 ("the LG Act"). He can consider complaints about members of:

- County & County Borough Councils
- Community Councils
- Fire Authorities, Police Authorities and National Park Authorities.

All these authorities are required by the LG Act to have a code of conduct which sets out in detail how members must comply with recognised principles of conduct in public life. All authorities' codes must incorporate the mandatory provisions of a model code laid down in National Assembly legislation under the LG Act (except for police authorities, whose model code is laid down by the Home Secretary).

### CHAS

1.4 The electronic case management system (CHAS) is an essential tool in handling CCCs. All actions, including the receipt, acknowledgement and dispatch of letters, e-mails or documents, must be entered on CHAS as those actions happen. The officer to whom the case is currently allocated on CHAS is always responsible for making sure that CHAS is updated.

### Files

1.5 Throughout this document "file" refers to the paper file and "record" refers to CHAS entries. All files must be dealt with in accordance with the policy on file management.

### Template letters and reports

1.6 A number of templates are available in CHAS to cover routine situations. These can save time and effort, but standard wording should never be used without thinking whether it is fully appropriate.

### New code of conduct complaints

2.1 On the day of receipt, Administration Officers register the new complaint on CHAS and open a file. The file is then passed immediately to Investigation Managers.

2.2 Investigation Managers will normally meet every morning to allocate the previous day's new cases to Assessment Officers in a way that shares work efficiently between them. They have discretion as to which officers receive which cases. Normally however allegations against members of county councils, fire, police and national park authorities will only be sent to Team Katrin. Cases may also be allocated to Investigators for assessment.

2.3 Team Managers will be responsible during the daily sift for identifying any cases which appear potentially high profile and drawing them to the immediate attention of the Director of Investigation, who will involve the Ombudsman as appropriate.

### Assessment

2.4 Immediately on receipt of a new CCC where the complaint is made on the standard code of conduct complaint form, the Assessment Officer should send letters (taking care where the member is a member of more than one council to ensure that the correct council's code is referred to)

- To the complainant, acknowledging receipt
- To the member informing them of the complaint made against them
- To the Monitoring Officer
- Where relevant, to the Clerk to the Community Council.

These letters will make it clear that no view has yet been taken on the merits of the allegation, and that a decision on whether the Ombudsman is going to investigate will be forthcoming in due course. The letter to the member against whom the complaint is made will make clear that they do not need to comment at this stage, but that any comment they do make will be taken into account and could be disclosed in any subsequent proceedings.

2.5 Where the CCC has been made by letter, not on the standard form, the Assessment Officer will send a standard letter to the complainant only, explaining that if they wish the Ombudsman to consider the complaint they must confirm that they are content for us to communicate their identity and details of the complaint to the accused member. The letter will make clear that if such confirmation is not forthcoming we will treat the CCC as having been withdrawn. Once this confirmation has been received, the Assessment Officer proceeds as in the preceding paragraph.

2.6 The decision to investigate an allegation of misconduct is not one to be taken lightly: it has potentially significant implications for the councillor concerned. The Assessment Officer to whom a file has been referred should accordingly be looking to recommend rejection of an allegation which does not satisfy the following criteria:

- it must be clear that the matters alleged represent or are strongly suggestive of a significant breach of the code i.e. one which would be likely to lead to a sanction being imposed on the accused member if a standards committee or adjudication panel found the alleged breach to be proven.
- the allegation must put forward apparently substantial evidence, rather than resting on mere assertions.

2.7 The Assessment Officer will need to bear in mind that the purpose of the code is to require and enforce appropriate standards of conduct. It is not intended to inhibit robust political debate, nor is it intended as a weapon which one politician or political group can use to score points off another (although allegations which may appear to be politically motivated still have to be considered on their merits). A number of the allegations which come to us are about rude or controversial things that members have said. The law attaches great importance to freedom of speech. It would very rarely be appropriate to consider investigating a member's expression of political views, or criticism of political opponents, as a potential breach of the code. On the other hand a member's legitimate freedom of speech does not excuse verbal bullying or threats.

2.8 Assessment Officers need to be aware which are the paragraphs of the code of conduct of which it is possible to be in breach. They are paragraphs 4, 5, 6, 7, 8, 9, (10 - unlikely unless there is also a breach of paragraph 16), 16, 17, 20 and 21. NB Paragraph 2 of the code provides that most of these paragraphs only apply to those activities which a member undertakes "in an official capacity" as defined in paragraph 1 of the code. The only exceptions are paragraphs 6(a) and (b) and 7(a). However, following the judgement of the court in the "Livingstone" case, it is now clear that even these paragraphs do not apply to conduct in a purely private capacity where the councillor has not sought in any way to

rely upon or exploit their position as a councillor. (This may be the case even where the conduct has resulted in a criminal conviction).

2.8 Assessment Officers should submit their analysis and recommendation in respect of all new CCCs to their Investigation Manager in the first instance, using the standard assessment form. The Assessment Officer will identify which area(s) of the code are relevant to the complaint and make an entry on the CHAS record.

2.9 Investigation Managers may authorise an outright rejection in cases where it is absolutely clear that investigation would not be appropriate. It will often be appropriate for the Investigation Manager to authorise the issue of a “minded not to investigate” letter to the complainant, giving them the opportunity to present further evidence or further arguments in favour of investigation before a definitive decision is taken. Investigation Managers will refer the assessment of CCCs to the Director of Investigation whenever

- The case is a high-profile one
- The case is borderline or raises interesting issues
- There remains a difference of view after discussion
- There is a recommendation for investigation
- There has been a strong response to a “minded not to investigate” letter.

The Director of Investigation will normally refer such cases for discussion by the Evaluation Panel. All decisions to investigate must be individually authorised by the Ombudsman unless a Director is acting in his absence.

2.10 Evaluation Panel membership comprises the Ombudsman and the Directors of Investigation. The Panel will normally meet once a week. Investigation Managers, Investigators and Assessment Officers will attend as appropriate to discuss their team’s cases. The Director in putting the case to Panel should ensure that other Panel members have an opportunity to look at the case file before the meeting.

2.11 Following discussion of a case at a meeting of the Evaluation Panel, any necessary decisions will be taken and recorded by the Ombudsman or, as the case may be, by the Director of Investigation having regard to any guidance given by the Ombudsman.

## **Investigation**

3.1 Once it has been decided to conduct an investigation, it is of the greatest importance that the manner in which the investigation is carried out is fair and is seen to be fair.

3.2 The Investigator should start by reviewing the CCC and deciding from whom evidence should initially be sought. It will often be appropriate to seek information from the Monitoring Officer. In the case of a CCC against a community councillor, the Clerk to the Council should always be asked for any relevant information. It will generally be useful to ask the Monitoring Officer / Clerk whether the member has received training on the code of conduct; it may often also be useful to seek information which would corroborate that the member was acting in an official capacity when the conduct complained of took place e.g. did they claim expenses for attending the meeting/event in question? It will usually be appropriate to seek evidence from any persons named by the allegor as witnesses, and it will sometimes be necessary to seek supplementary information from the person who has made the allegation.

3.3 It is **not** in general appropriate to put questions to the accused member at this early stage, unless exceptionally there is no-one else from whom information can usefully be sought. However, unless the Ombudsman specifically directs otherwise, the Investigator must write to the accused member immediately **before** undertaking any element of investigation, to put the member on notice of the decision to investigate the complaint which has been made against them and to specify either that the Ombudsman is investigating the CCC as made to him, or if not, which potential breaches of the code are to be looked into. A copy of the letter should also be sent to the complainant.

3.4 In general, questions to people who may be able to help with the initial stage of the investigation should be put to them in writing. Conducting interviews will not generally be an effective use of time. However where exceptionally an Investigator thinks there would be merit in interviewing one or more people at the initial stage, they should consult their Director.

3.5 Once the Investigator has received responses from all those from whom information has been sought (or as the case may be is satisfied that no useful response will be elicited), they should review all the evidence available. It may sometimes be the case that, even in the absence of any input from the member concerned, it will appear that there is no longer a case to answer or that no further action is appropriate. If so, a recommendation should be made via the Investigation Manager to the Director of Investigation to terminate the investigation with the appropriate finding at that point.

3.6 On the other hand, it may be the case that the evidence received will suggest other lines of enquiry. If these would amount to investigation of other potential breaches of the code than those which the member has been notified that the Ombudsman is looking into, the Investigator should,, via the Investigation Manager, seek agreement from the Director of

Investigation to notify the member that the scope of the investigation is being widened.

### **Putting questions to the accused member**

3.7 Once the Investigator is satisfied that we have all the evidence we are going to obtain other than that of the accused member, and that there is a case to answer, it is time to put that evidence to the accused member and ask him or her in writing any appropriate questions. This is a **key stage** in the investigation and it is essential that the letter and the questions it contains are formulated with care and precision. The letter should summarise the evidence gathered so far which appears to show that the Member has breached the code of conduct, and should enclose copies of any evidential statements (other than the original CCC, which the member already has) upon which the case against the member relies. Questions must be directly relevant to the case against the member, and should be designed to elicit unambiguous factual responses. The questions should cover each of the material facts which appear to emerge from the evidence gathered to date. The questions should be clear and specific but not be so narrowly drawn that it would be possible to give a correct answer with misleading effect. (For example, in relation to an allegation that a member had failed to declare an interest when considering a planning application, it might be better to ask “do you or any member of your family own or have a beneficial interest in land at Llareggub?” rather than “do you own land at Llareggub?”). The member should normally be given three weeks in which to respond, and requests for extension of time should be granted unless unreasonable. The letter should contain a specific warning that a non-response may lead the Ombudsman to infer in his report that the member has not answered the questions because there were no satisfactory answers which could be given.

3.8 It may well be necessary to put supplementary questions to the member in the light of the response received. If the member fails to respond after a reminder has been sent by the Investigator, the Director should write to the member to say that if no response is forthcoming within a further specified period of time, the Ombudsman will (in accordance with the warning given in the earlier letter putting questions to the member) report on his investigation drawing the inference that the member has not answered the questions because there were no satisfactory answers which could be given.

3.9 The member’s evidence may well necessitate some further investigation in order to confirm or otherwise what has been said. If so, the member must be informed of any further evidence which is obtained and given an opportunity to respond to it.

## Interviews

3.10 Interviews do **not** form a mandatory part of any investigation, even where the CCC is a serious one. They should be used only where the Director of Investigation agrees that they are likely to elicit important evidence which would be less likely to be forthcoming through written enquiries.

3.11 If interviews are to be used, it is essential that they are properly planned and administered. The modalities of the interview must be agreed in advance with the prospective interviewee (time, place, who is to be present, method of recording). Areas of questioning must be carefully thought through and prepared and the prospective interviewee must be given advance notice of the areas which questions will cover. The interviewee must be allowed to be accompanied by a friend, colleague, or legal representative. That person must if present be allowed to speak and to play an appropriate role in the interview.

3.12 If an interview is to have evidential value it is essential that what is said is recorded in a way that cannot later be reasonably disputed. Either legible longhand notes must be taken during the interview, or the interview must be tape-recorded with the prior agreement of the interviewee. Any interview with the accused member should normally be tape-recorded. Where manuscript notes are taken during the interview, the interviewee should be asked to read and sign the notes at the end of the interview. A photocopy of these signed manuscript notes should be sent to the interviewee together with a stamped addressed return envelope and two copies of a typed fair version, one of which the interviewee should be asked to sign as a true record and return in the SAE. NB The original manuscript notes must be retained on file even when the fair version has been returned. Where an interview has been tape-recorded, the interviewee should be provided on request with a copy of the tape recording and of any transcript which has been made.

## Preparing a report on the investigation

4.1 Section 69 of the LG Act provides that the purpose of the Ombudsman's investigation is to reach one of the following findings:

- (a) that there is no evidence of any failure to comply with the code of conduct
- (b) that no action needs to be taken
- (c) that the matters which are the subject of the investigation should be referred to the monitoring officer of the authority concerned (for consideration by the authority's Standards Committee)

- (d) that the matters which are the subject of the investigation should be referred to the president of the Adjudication panel for Wales for adjudication by a tribunal

4.2 Where his finding is (a) or (b) above, the Ombudsman has power to prepare a report on the investigation but need not do so in all cases. The minimum requirement is to inform the councillor concerned, the relevant monitoring officer, and the complainant of the outcome of the investigation. Thus in very straightforward low profile cases it may be possible to conclude the investigation by a brief letter from the Ombudsman. However in the majority of cases it will be in the interest of the councillor concerned and/or in the public interest to produce a report on the investigation which can be made publicly available. The report will normally be brief. Appendices will not normally be required. Standard report templates are available on CHAS. The Investigator prepares a draft report of the investigation, including suggested conclusions and finding, and submits it via the Investigations Manager and the Director to the Ombudsman for approval. The Ombudsman will normally proceed to sign the report in final form immediately. The Investigator is responsible for ensuring that copies of the report are sent to the interested parties with a covering letter and for alerting the Ombudsman's Executive Assistant if there may be media interest.

4.3 If the proposed finding is a reference to a standards committee or to the Adjudication Panel, the Ombudsman's report serves a quite different function: instead of being the last word on the matter, it forms the evidential basis upon which the Ombudsman is inviting the standards committee or panel to conclude that the member has breached the code of conduct. It is important to bear in mind that there will not normally be an opportunity to submit any further evidence or to "tie up loose ends". The report must be as definitive as we can make it. Accordingly the format of the report will be different from a "no breach of code/no action" report, and the content will need to be very much more extensive. All of the evidence relied upon will need to be appended to the report.

4.4 The draft report should normally contain sections under the following headings:

- The complaint(s) investigated
- My investigation
- Events leading to the allegation as established by my investigation
- Relevant documents
- What the witnesses have said
- What the accused member has said
- Undisputed facts
- Disputed facts

- Analysis of conflicting evidence
- Conclusions
- Finding

4.5 “The complaint(s) investigated” should closely follow the content of the letter sent to the member putting them on notice of the investigation. The code of conduct complaint form or letter received by the Ombudsman should be attached as appendix 1. The code of conduct of the authority concerned should in all cases be appended in its entirety as appendix 2, while the member’s Declaration of Office appended as Appendix 3.

4.6 “My investigation” should set out succinctly the course of the investigation. It should detail the persons from whom the Investigator had obtained evidence. Where the Investigator has been unable to obtain evidence from an apparently relevant person that should be stated and the circumstances should be explained briefly.

4.7 “Events leading to the allegation as established by my investigation” should present a coherent narrative bringing together the disputed and undisputed facts which are established later in the report. The purpose of the section is to present an overview which will help the reader to assimilate the evidence and analysis which will follow.

4.8 “Relevant documents”: Any documentary evidence relied upon e.g. minutes of a council meeting should be introduced in a way which makes its relevance clear and should be included as appendices to the report.

4.9 “What the witnesses said” should set out the **key points** of the evidence gained from the witnesses referred to in the “My investigation” section and should append in respect of each of them the agreed statement of their evidence or interview transcript.

4.10 “What the accused member said” should set out the key points the accused member has made in response to the evidence against them. It should append their written statement and any interview transcript.

4.11 “Undisputed facts” should be presented in a logical order, usually point by point rather than as a coherent narrative (a coherent narrative would in most cases require inclusion of disputed facts as well).

4.12 “Disputed facts” should be presented as a list of questions, again in a logical order.

4.13 The “Analysis of evidence” should then reach a conclusion as to each of the disputed facts through a reasoned analysis of the relevant evidence.

4.14 The “Conclusions” section should present a reasoned analysis of which breaches of the code of conduct have in the Ombudsman’s view been committed by the member, being as specific as possible about the occasions on which the breaches were committed. It may be appropriate thereafter to give the Ombudsman’s view of the severity of the breaches, detailing what are in the Ombudsman’s view any exacerbating or mitigating circumstances for which there is evidence. It will not be appropriate to suggest to the standards committee or tribunal what level of sanction they should impose if they find the breach(es) of code proven.

4.15 The “Findings” section should simply record what the formal finding is and nothing else.

### **Issue of draft report**

4.16 The Ombudsman considers the draft report which is submitted to him via the Investigations Manager and Director of Investigation, and if satisfied that all appropriate enquiries have been carried out, that the accused member has seen and had an opportunity to respond to all of the evidence against them, and that the evidence is fully and appropriately set out in the draft, reaches his proposed conclusions and finding(s). The Investigator then sends a copy of the draft report as approved by the Ombudsman to the accused member and invites them to submit any further comments they may have within two weeks. At the Ombudsman’s discretion other parties to the investigation may also be given an opportunity to comment within the same timescale.

### **Issue of definitive report**

4.17 The Investigator reports to the Ombudsman, via Investigations Manager and Director, any comments which have been received in response to the draft report. The Ombudsman makes any modifications to the report text which appear to him to be appropriate in the light of those comments. He signs the definitive report and the Investigator arranges for copies of the report to be sent to the accused member, the complainant, to the Monitoring Officer and/or to the Adjudication Panel for Wales and where appropriate to the Clerk to the Community Council.

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