



AGENDA ITEM: 6

NORTH WALES FIRE AND RESCUE AUTHORITY STANDARDS COMMITTEE

10 July 2013

UPDATE ON CODE OF CONDUCT FOR MEMBERS

Report by Gareth Owens, Deputy Clerk to the Authority

Purpose of the Report

1. To keep members informed of proposed changes to the Code of Conduct and actual changes that have taken place to the guidance issued by the Public Service Ombudsman for Wales.

Background

2. A number of changes have recently been proposed to the Code of Conduct for Members though the necessary legislation has not been passed to bring them into effect. These relate to:-
 - i) Paragraph 6(1)(c) under the members obligation to report potential breaches of the Code to the Ombudsman; and
 - ii) 10(2)(b) interests arising out of ward business.
3. At the present moment in time members are under an obligation to report to the Monitoring Officer and the Public Service Ombudsman for Wales anything which they reasonably believe to amount to a breach of the Code by another member. Failure to do so amounts to a breach of the Code on the part of the witness. This not only encourages/facilitates enforcement of the Code but also gives members a measure of protection if they do submit a complaint (because they had no choice).

4. The Welsh Government, WLGA and Public Service Ombudsman for Wales have all supported a process of local resolution for complaints made by one member against another. It is becoming increasingly common for principal authorities to have a procedure for dealing with low level complaints in respect of behaviour, but of course because of this obligation within the Code, it would actually be a breach of the Code to use the local resolution procedure. It is therefore intended to repeal the obligation in order to enable members to use a local resolution procedure without being in breach of their fundamental obligations. However, it is not clear how any change to the Code will affect bodies such as the Fire Authority which do not currently have a local resolution procedure, and which, based on current volumes of complaints, don't appear to need one.
5. Paragraph 10(2)(b) states as follows:

“(2) You must regard yourself as having a personal interest in any business of your authority if –

(b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division;”
6. In effect it creates a personal interest where a member's duty to represent his/her electors might conflict with a legal duty upon the authority of which they are a member. The interpretation and application of this provision has caused some difficulty, not least because it is worded in a very similar manner to the test for a prejudicial interest. It has therefore been very difficult for councillors to declare a personal interest and not also declare a prejudicial interest under this provision. Clearly, if every time a councillor declared a prejudicial interest there was a perceived conflict between ward business and duties owed to the Authority as a whole, councillors would be unable to represent their electors. The Welsh Government has therefore proposed deleting this obligation in its entirety.

7. There has also recently been an update to the guidance published by the Ombudsman on the Code of Conduct in relation to the obligation to treat others with respect. Last year there was a High Court ruling "R (Calver) v the Adjudication Panel for Wales" which found that a councillor's right to political expression under the European Convention on Human Rights had been infringed by a finding that he had breached the Code of Conduct for failing to treat others with respect. Councillor Calver had criticised fellow councillors and the clerk and had initially been found to have breached the Code of Conduct by doing so. However, the Court held that he was expressing political views in relation to both the clerk and fellow councillors so it was therefore a breach of his human rights to find him to be in breach of the Code.
8. As a response the Ombudsman has issued revised guidance on this section of the Code as attached at Appendix 1.
9. This revised guidance makes clear that whilst some speech will be protected, where it is on a political matter, certain behaviour will nevertheless continue to be regarded as a breach of the Code.

Recommendations

10. Members are invited to note the proposed changes to the Code and the recent change to the Public Service Ombudsman for Wales' guidance.