

AWDURDOD TÂN AC ACHUB GOGLEDD CYMRU



NORTH WALES FIRE AND RESCUE AUTHORITY

A meeting of the STANDARDS COMMITTEE will be held WEDNESDAY 4TH MARCH 2015 at the Fire and Rescue Headquarters, St Asaph at 2pm.

Yours faithfully

Colin Everett
Clerk

AGENDA

1. Apologies

2. Declaration of Interests

3. Notice of Urgent Matters

Notice of items which, in the opinion of the Chairman, should be considered at the meeting as a matter of urgency pursuant to Section 100B (4) of the Local Government Act, 1972.

4. Minutes of the meeting held on 29 January 2014

5. Matters arising

6. Standards Committee Annual Report

7. Update on Ethical Issues

8. Urgent Matters

To consider any items which the Chairman has decided are urgent (pursuant to Section 100B (4) of the Local Government Act, 1972) and of which substance has been declared under item 3 above.

PART II

It is recommended pursuant to Section 100A (4) of the Local Government Act, 1972 that the Press and Public be excluded from the meeting during consideration of the following item(s) of business because it is likely that there would be disclosed to them exempt information as defined in Paragraph(s) 12 to 18 of Part 4 of Schedule 12A of the Local Government Act 1972.

None



AGENDA ITEM: 6

NORTH WALES FIRE AND RESCUE AUTHORITY STANDARDS COMMITTEE

4 March 2015

THE STANDARDS COMMITTEE'S ANNUAL REPORT TO THE FIRE AND RESCUE AUTHORITY

Report by Colin Everett, Clerk to the Authority

Purpose of Report

- 1 Members are asked to approve the attached report which will be presented to the Authority at its March meeting.

Background

- 2 As a matter of good corporate governance the Standards Committee provides the Fire and Rescue Authority with an annual report on its activities during each financial year.
- 3 Consequently the Committee's tenth annual report is attached for Members' consideration.

Recommendation

- 4 Members are asked to approve the Standards Committee's Annual Report to be presented to the Authority at its March meeting.

ANNUAL REPORT OF THE STANDARDS COMMITTEE OF NORTH WALES FIRE AND RESCUE AUTHORITY

Background

This is the Standards Committee's tenth annual report to the Fire and Rescue Authority and spans the period from April 2014 to March 2015. Legislation requires that Standards Committees meet at least annually.

The Terms of Reference of the Standards Committee provide a remit to promote and maintain high standards of conduct by members of the Authority and to oversee the whistle-blowing policy for complaints against members of the Authority. Also, where statute permits, to receive reports and complaints about members and to conduct or oversee investigations and to make recommendations to the authority.

Membership

David Morris' term of office on the Standards Committee came to an end on 31 August 2014. Following the introduction of the Standards Committees (Wales) (Amendment) Regulations 2006, an independent member can be reappointed for a maximum of one further term of up to four years. There is no legal requirement to advertise a vacancy if it is intended to make a reappointment.

Mr Morris indicated that he wished to be reappointed and at the Authority meeting on 15 December 2014, Members agreed to the reappointment.

Therefore, the current membership is as follows:

Independent members

Celia Blomeley 01/01/2014 - 31/12/17

Jane A Eyton-Jones 01/01/2014 - 31/12/17

David Morris 01/09/14 - 31/08/18

Antony P Young 01/04/12 - 30/03/16

Fire and Rescue Authority members

Councillor Brian Dunn (18/06/12 onwards)

Councillor Jim G Evans (18/06/12 onwards)

Attendance and Issues

The Standards Committee met on 4 March 2015 and the following members attended:

Jane A Eyton-Jones (Chair)
David Morris (Deputy Chair)
Celia Blomeley
Antony P Young
Cllr Brian Dunn, Flintshire County Council.

At that meeting, members received an update on recent case law relating to the code of conduct and the new guidance issued by the Public Service Ombudsman for Wales (PSOW). The report was duly noted.

Complaints against members of the Fire and Rescue Authority

During the period of this report, one complaints was received about FRA member and this was dealt with under the local resolution procedure. No matters have therefore been referred to the Committee for investigation or decision.

Financial Implications

The budget for the Standards Committee is part of the committee services heading which covers all Authority costs. Following the approval of the members' remuneration scheme on 18th June 2012, independent members are now entitled to claim remuneration based on meetings and events attended. To date, no such claims have been made. Travel allowances amounting to £50.90 have been paid to independent members.

Conclusion

The Standards Committee recommends that the North Wales Fire and Rescue Authority notes its report.



AGENDA ITEM: 7

NORTH WALES FIRE AND RESCUE AUTHORITY STANDARDS COMMITTEE

4 March 2015

UPDATE ON ETHICAL ISSUES

Report by Gareth Owens, Deputy Clerk to the Authority

Purpose of the Report

- 1 To update the Committee on recent case law relating to the code of conduct and the new guidance issued by the Public Service Ombudsman for Wales (PSOW).

Background

- 2 At its meeting in January 2014 the committee was informed that Welsh Government (WG) was considering amending the code of conduct to remove paragraphs
 - 6(1) c which imposes an obligation on members to report suspected breaches of the code of conduct
 - 10(2)b which creates a personal interest where ward matters conflict with a councillors duty to the authority

Information

- 3 Since the date of the last report no progress has been made although the issues are apparently still under consideration.
- 4 In May 2014 the High Court decided the case of Heesom v PSOW [2014] EWHC 1504 which gave important guidance on the interaction between the code of conduct and the right to political expression. The councillor had been disqualified by a case tribunal on 19 July 2013 for 2 ½ years in respect of 14 breaches of the Council's Codes of Conduct by failing to show respect and consideration for Council officers, using bullying behaviour,

attempting to compromise the impartiality of officers and conducting himself in a manner likely to bring his office or the Council into disrepute.

5 The councillor claimed that his actions were covered by the right to freedom of political expression under Article 10(1) European Convention on Human Rights and that the findings of breach and the penalty imposed interfered with that right.

6 Article 10 of the European Convention provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others..."

7 Thus, the right is not absolute: it may be restricted if (and insofar as) restriction is prescribed by law and "necessary in a democratic society for the protection of the rights and interests of others".

8 While freedom of expression is important to everyone, the European Court has recognised the importance of expression in the political sphere. It has long-recognised that what is said by elected politicians is subject to enhanced protection", i.e. a higher level of protection, under article 10.

9 The judge, Mr Justice Hickinbottom, analysed the case law and identified the following principles:

- that enhanced protection applies to all levels of politics, including the local.
- article 10 protects the form as well as the substance of expression, therefore immoderate, offensive, shocking or evocative expression that would not be acceptable is tolerated if it is political. However this does not apply to a statement which the maker knows to be false.

- politicians are expected to have thicker skins and have more tolerance to adverse comments than ordinary citizens.
- enhanced protection applies to those who comment upon politics as well as the politicians themselves.
- what amounts to "political expression" is a broad concept that extends:
 - "to all matters of public administration and public concern, including comments about the adequacy or inadequacy of performance of public duties by others".
 - [NB this does not extend to gratuitous personal comment]
 - comments on matters of public interest involving value judgement are tolerated even if untrue so long as they have some/any factual basis.
- public servants can likewise be subject to scrutiny and challenge, however;
- "it is in the public interest that they are not subject to unwarranted comments that disable them from performing their public duties and undermine public confidence in the administration".
- "where a critical comment is made of a civil servant such that the public interest in protecting him as well as his private interests are in play, the requirement to protect that civil servant must be weighed against the interests of open discussion of matters of public concern".
- if a court or tribunal finds a councillor to be in breach of the Code of Conduct that in itself amounts to interference with Article 10(1) and any penalty would be a further interference with that right that also needs to be proportionate and justified.
- imposing a sanction upon a councillor who has breached the Code of Conduct has a proper objective, namely the public interest in good administration and fostering public confidence. Therefore it is potentially justified provided that the minimum necessary penalty is imposed and the benefits of the sanction outweigh the adverse impact on the rights of the member concerned.

10 Having reviewed the case law the judge decided that only 11 of the 14 breaches should be upheld and that the disqualification should be reduced to 18 months.

- 11 The PSOW consulted the Lawyers in Local Government Group (LLG) on draft revised guidance. That group was concerned to avoid the risk that the case could potentially be used to excuse poor behaviour, and suggested revisions. The final guidance is at Appendix 1 and the paragraph in underlined italics was inserted to reflect the concerns of LLG.
- 12 Incidences of poor behaviour that come close to breaching this part of the code are few in number. In conjunction, with the local resolution procedure adopted by the Authority last year it is hoped that any issues could be resolved however it must be noted that the law now provides a very low "safety net" in terms of poor behaviour.

Recommendaiton

- 13 That officers report back should action be needed to address any unacceptable behaviour.

Treating others with respect and consideration
See Paragraph 4(b)

Political groupings in authorities are expected to campaign for their ideas, and they may also seek to discredit the policies and action of their opponents. Criticism of ideas and opinion is part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code of Conduct for failing to treat someone with respect and consideration.

Furthermore, a member's freedom of expression attracts enhanced protection when his comments are political in nature. "Political" comments are not confined to those made within the Council chamber and, for example, include comments members may generally make on their authority's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate complaints made in this context and councillors need a "thicker skin" in dealing with, and responding to, politically motivated comments.

Likewise, when members raise "political" issues with officers, particularly those holding senior positions, for example Chief Executives or Heads of Services, depending on the circumstances of the case I may also decline to investigate if I take the view that the member was entitled to question the officer concerned and the conduct was not sufficiently serious to amount to a failure to show respect and consideration.

However, I do expect members to afford colleagues, opponents and officers the same courtesy and consideration as they show to others in their everyday lives. Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of councillor in the eyes of the public.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should always treat members of the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectation and confidence in its elected representatives. This is the case in face to face settings such as meetings as well as when communicating by phone, letter, e-mail or other electronic means.

Example

The Adjudication Panel upheld a finding of a Standards Committee for failing to show respect and consideration for others by posting comments about other councillors and the way in which the Council was run.

The member sought judicial review of this decision. The Court found that whilst the comments which were posted were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the councillors, the comments were "Political Expression". The ruling said no account

had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights. The Standards Committee’s decision to censure the member was therefore set aside.

Bullying and harassment **See Paragraph 4(c)**

You must not use any bullying behaviour or harass any person including other councillors, council officers or members of the public.

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

I will always consider allegations of bullying and harassment from the perspective of the alleged victim. The question to be answered is whether the individual was reasonably entitled to believe they were being bullied rather than whether the person accused of bullying thought that he or she was doing so. Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

You need to ensure that your behaviour does not cross the line between being forceful and bullying.

There can be no hard and fast rules governing every set of circumstances but the relative seniority of the officer will be a factor in some cases. As outlined under paragraph 4(b) very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member the greater the likelihood that the officer will consider behaviour to constitute bullying.

It’s also evident that there are appropriate channels for expressing concern about the performance of an officer, and doing so in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is

not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means.

It is important that you raise issues about poor performance in the correct way and proper forum.

However, if your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

Compromising the impartiality of officers of the authority
See Paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your authority.

...

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.