

STANDARDS COMMITTEE

Date of Meeting	Monday, 7 November 2022
Report Subject	Rolling Review of the Members Code of Conduct
Report Author	Chief Officer (Governance)

EXECUTIVE SUMMARY

The Council must adopt a Code of Conduct that is based on the prescribed national model. It can amend the code provided the provisions are no less onerous than the model.

The Standards Committee keeps all the codes and protocols in the Constitution under rolling review to ensure they are up to date and pertinent. As the code is mandatory, clearly the key question is whether it adequately covers behaviours that would be inconsistent with the Nolan principles/unacceptable.

Welsh Government has not amended the national model code since 2016. The Penn Review recommended some changes to the code. These would require legislation to implement. Welsh Government will consult on what legislation is needed to implement the code next year.

RECOMMENDATIONS

1	That the Committee considers whether the code requires amendment.
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REPORT DETAILS

1.00	EXPLAINING THE REVIEW OF THE CODE
1.01	Under section 51 Local Government Act 2000 the Council must adopt a Code of Conduct for Councillors (“the Code”) based on a national model. All Members must sign to say that they will follow the Code. The Council’s

	current code is based on the national model contained within The Local Authorities (Model Code of Conduct) (Wales) Order 2008 (as amended).	
1.02	The Standards Committee keeps all the codes and protocols within the Constitution under review to ensure that they remain pertinent and up to date. Clearly, as the code is mandatory it is still “pertinent”. The review therefore should be to consider whether it remains up to date and whether it adequately addresses behaviours that might be considered to breach the Principles of Public Life or to be in some other way unacceptable.	
1.03	Experience of complaints does not suggest that there are areas of unacceptable behaviour which aren’t adequately covered by the Code. All of the Principles of Public Life are mapped to requirements under the Code and even Leadership (which hitherto featured least in the Code is now dealt with by the new duty on group leaders). It is possible that the Committee perceives some behaviours that might need to be addressed through amendments of the Code.	
1.04	The Committee will be aware that the Penn review recommended changes to the code (which are listed below). Welsh Government intends to consult on the changes which should be made to the code. Some of the suggested changes could be adopted voluntarily in anticipation of changes to the code, though they might need to be re-amended to reflect the national model in due course.	
	<u>Recommended Change</u>	<u>Commentary</u>
	i. Specify the threshold for declarations of any gift, hospitality, material benefit or advantage to ensure consistency across Wales.	This change would introduce consistency across Wales. The Council cannot achieve that without collective action on the part of other local authorities
	ii. There is agreement that the Code should not require Councillors to disclose their home address	A “work around” is currently available whereby Councillors can give less precision than their full postal address
	iii. Define a ‘person’ either in the 2000 Local Government Act or in the Code so that it is clear whether it includes incorporated bodies and even unincorporated associations	This relates to the ombudsman’s powers of enforcement (e.g. to enforce requests for information) and needs legislation.
	iv. Paragraph 4a of the Code (to have due regard to equality of opportunity for all people) should be extended to include all nine protected characteristics under the Equality Act 2010.	This could be undertaken voluntarily. Such an amendment would ultimately need to be tested in a tribunal to see whether the change was enforceable but might be a worthwhile change now to show that the Council supports people with all protected characteristics.
	v. The guidance on social media published by the	This would engage the right to freedom of political expression

	WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code	(Article 10) and is only possible at all on the basis of clear legislation, and then any restrictions would be unenforceable to the extent that they restrict that right
	vi. 6(1)(b) of the Code of Conduct should be amended to make it an obligation on a member to report their own criminal behaviour as well as that of others (as at present)	This would require legislation. It could be adopted as a voluntary, but unenforceable, amendment.
	vii. Make training on the Code of Conduct mandatory for all members of relevant authorities by including a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004	Although it could not be enforced this has, in effect, been achieved voluntarily by all County Councillors accepting that they need to attend training on the code.
	viii. Increase the use of local resolution of complaints by requiring that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman, in order to speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.	This is achievable voluntarily, but the resources do not exist to offer local resolution on this scale. Local resolution is offered to all complaints from members or officers about County Councillors where those complaints are suitable for local resolution. There are 10 - 15 complaints about town and community councillors each year and, as Monitoring Officer, I do not have resource to offer local resolution for them all. Town and Community Council clerks probably also lack the capacity (and in some cases skills/experience) to offer local resolution.
	ix. Extend the Public Services Ombudsman for Wales' power to refer complaints back for local resolution	This would require legislation plus see note above regarding resources.

2.00	RESOURCE IMPLICATIONS
2.01	The majority of changes to the code above would be manageable within existing resources. As noted above, the reversal of the current process whereby all complaints are assessed centrally (by the Ombudsman) to a system where they are assessed locally first would require significant extra resource. As Monitoring Officer I can prepare a statutory report to Full

	Council to request extra resources but that would only increase the pressure on an already difficult budget setting process for 2023/24.
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3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	None

4.00	RISK MANAGEMENT
4.01	Amending the code on a voluntary basis might help to set a culture of better behaviour that results in positive changes (e.g. all County Councillors have attended training on the code), and the code includes a number of such voluntary amendments. Equally, amending the Code ahead of legislative backing risks any changes being seen or treated by the Ombudsman as unenforceable. Whilst that does not actually cost the council anything it does create the chance that expectations might be built up in a way that is not deliverable with potential consequential reputational damage.

5.00	APPENDICES
5.01	Appendix 1 – the Code of Conduct for Councillors.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>The Review of the Ethical Framework by Richard Penn</p> <p>Contact Officer: Gareth Owens, Chief Officer (Governance) Telephone: 01352 702344 E-mail: gareth.legal@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>Penn Review - a review commissioned by Welsh Government and conducted by Richard Penn looking into the Code of Conduct, how it is enforced, how training is undertaken and all other mechanisms to ensure high standards of ethical behaviour.</p> <p>Principles of Public Life – The Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts etc.</p>