

THE VALE OF GLAMORGAN COUNCIL

CABINET: 22<sup>ND</sup> JUNE, 2023

REFERENCE FROM STANDARDS COMMITTEE: 8<sup>TH</sup> JUNE, 2023

“ RESPONSE TO THE WELSH GOVERNMENT CONSULTATION ON THE RECOMMENDATIONS OF THE INDEPENDENT REVIEW OF THE ETHICAL STANDARDS FRAMEWORK (RICHARD PENN REPORT); AND THE HARMONISATION OF GIFTS AND HOSPITALITY THRESHOLDS TO ALIGN WITH AN ALL WALES APPROACH (MO/HLDS) –

The Welsh Government Minister announced in March 2021 the commissioning of a review of the Ethical Standards Framework in Wales and Richard Penn consultant was commissioned to undertake the review.

The report before the Standards Committee detailed the suggested response to the recent Welsh Government consultation paper on the recommendations of the Richard Penn review Ethical Standards Framework and attached at Appendix 1 to the report was the suggested response to the consultation for the Committee’s consideration and / or approval.

Having regard to the response at Appendix 1, in relation to Question 5, although it was agreed that there should be an express power for the Adjudication Panel for Wales (APW) to summon witnesses to appeals tribunals, concern was expressed by Committee Members as to the service arrangements and practicalities if people did not adhere to the summons, and the avenues open to the APW in such instances, with it being recommended that this statement be included in the response. With regard to the response to Question 7, it was accepted that the general rule was that hearings be held in public and for Question 9, although Members queried the advantages of an apology being provided as in many instances this may not be given with the right intentions, following further discussion it was accepted that the response remain as is.

In referring to Question 10a the Monitoring Officer suggested an amendment to the response having discussed the matter with the Director of Social Services, that the words “ even where there are very serious safeguarding concerns” be added to the sentence. The sentence therefore to read “ No such similar provision exists in relation to members even where there are very serious safeguarding concerns”. The Committee considered that an extra paragraph be included that when a Councillor was charged with a specified category of an offence and particularly offences which carried a custodial sentence an interim suspension would be appropriate. With regard to Question 13 all the Independent Members advised that they had applied to become Members following reading of the advert for the position in a local newspaper. It being subsequently agreed that the response be amended from Yes to No and the response paragraph deleted with a new sentence to read “It is

important to ensure that potential candidates from a wide range of backgrounds are attracted to the role and all channels including newspapers, websites or existing networks are utilised”.

The Committee also considered that the reason for the response to Question 16 be the same as the response to Question 5 should a summons not be adhered to.

Within the report and having regard to the response to Question 21 it was noted that every Monitoring Officer in Wales had committed to the harmonisation of the threshold for declaring gifts and hospitality at a proposed level of £25 and to take that change through their Standards Committees. It was therefore requested that the Standards Committee recommend to the Vale of Glamorgan Council’s Cabinet that the threshold be amended to £25 in line with this approach and having regard to paragraph 1.5 of the report.

It was subsequently

RESOLVED –

(1) T H A T the draft response at Appendix 1 to the report in respect of the Welsh Government Consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn Report), with the additional amendments as below, be agreed:

Question 5 – What avenues would be open to the Adjudication Panel for Wales if a summons was not adhered to and the implications.

Question 7 – That the following words be added to the end of the response “...albeit it is noted that the general rule is that hearings are to be held in public.”

10a – That the words “... even where there are very serious safeguarding concerns” be added to the second sentence of the second paragraph of the response i.e. the sentence to read as “ No such similar provision exists in relation to members even where there are very serious safeguarding concerns”. That an extra paragraph be included relating to when a Councillor was charged with a specified category of an offence and particularly offences which carried a custodial sentence an interim suspension would be appropriate.

Question 13 – The response be amended to No and the response paragraph deleted with a new sentence inserted as “ It is important to ensure that potential candidates from a wide range of backgrounds are attracted to the role and all channels including newspapers, websites or existing networks are utilised”.

Question 16 – The additional response be added as agreed for Question 5 above.

(2) T H A T it be recommended to Cabinet that the Vale of Glamorgan Council's threshold for Gifts be amended in line with paragraph 1.5 of the report as follows: Gifts, material benefits or advantages – £25.00 or totalling £100.00 over a year from a single source.

(3) T H A T delegated authority be granted to the Monitoring Officer / Head of Legal and Democratic Services in consultation with the Chair of the Standards Committee, to make the amendments to the response as agreed by the Standards Committee at the meeting.

(4) T H A T the report be referred to Corporate Performance and Resources Scrutiny Committee for consideration.

#### Reasons for decisions

(1) In order to respond to Welsh Government consultation in respect of the recommendations of the Richard Penn Report.

(2) To recommend for approval in line with agreement of All Wales Monitoring Officer Group an All Wales Standards Committee Forum in the interest of harmonisation across all Welsh Local Authorities.

(3) Having regard to the comments made at the meeting.

(4) For pre Cabinet scrutiny and having regard to the deadline for submission of a response on 23<sup>rd</sup> June, 2023."

Attached as Appendix: Report to Standards Committee: 8<sup>th</sup> June, 2023

Meeting of:	<b>Standards Committee</b>
Date of Meeting:	<b>Thursday, 08 June 2023</b>
Relevant Scrutiny Committee:	All Scrutiny Committees
Report Title:	Response to the Welsh Government Consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report); and the harmonisation of gifts and hospitality thresholds to align with an all Wales approach
Purpose of Report:	To contribute to the Welsh Government Consultation and to align the thresholds for gifts and hospitality with an all Wales approach
Report Owner:	D. Marles – Monitoring Officer / Head of Legal and Democratic Services
Responsible Officer:	K. Bowen – Principal Democratic and Scrutiny Services Officer
Elected Member and Officer Consultation:	Political Group Leaders have been consulted regarding the harmonisation of thresholds for gifts and hospitality.
Policy Framework:	This is a matter for consideration by Standards Committee with recommendations referred to Cabinet for Executive decision by Cabinet and if appropriate to Full Council regarding an amendment to the Council's Constitution
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>• The Welsh Government Minister announced in March 2021 the commissioning of a review of the Ethical Standards Framework in Wales and Richard Penn consultant was commissioned to undertake the review.</li> <li>• This report details suggested responses to the recent Welsh Government consultation paper on the recommendations of the Richard Penn review Ethical Standards Framework and attached at Appendix 1 is the suggested response to the consultation for the Committee's consideration and/or approval.</li> <li>• In line with the recommendations of the All Wales National Standards Committee Forum and the view of the All Wales Monitoring Officer Group to ensure consistency across Wales, an amendment to the threshold for gifts is recommended.</li> </ul>	

## **Recommendations**

1. T H A T the draft response at Appendix 1 to this report in respect of the Welsh Government Consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report) be agreed
2. T H A T the Standards Committee recommend to Cabinet that the Vale of Glamorgan Council's threshold for Gifts be amended in line with paragraph 1.5 of this report.
3. T H A T this report be referred to Corporate Performance and Resources Scrutiny Committee for consideration.

## **Reasons for Recommendations**

1. In order to respond to Welsh Governments consultation in respect of the recommendations of the Richard Penn report.
2. Recommend for approval in line with agreement of All Wales Monitoring Officer Group and All Wales Standards Committee Forum in the interest of harmonisation across all Welsh Local Authorities.
3. For pre Cabinet scrutiny and having regard to the deadline for submission of a response on 23<sup>rd</sup> June, 2023.

## **1. Background**

- 1.1 The Welsh Government Minister announced in March 2021 the commissioning of a review of the Ethical Standards Framework in Wales.
- 1.2 Ethical Standards are Standards that Members are expected to follow when they are carrying out Council business or representing the Council. These apply to Local Authorities and Town and Community Councils. For the Vale of Glamorgan Council the Code of Conduct for Members can be found at Section 18 of the Council's Constitution.
- 1.3 The Council's Constitution at Section 8 also details the roles and functions of the Standards Committee as follows :
  - (a) promoting and maintaining high standards of conduct by Councillors, Co-Opted Members and church and parent governor representatives;
  - (b) assisting Councillors, Co-Opted Members and church and parent governor representatives to observe the Members' Code of Conduct;
  - (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
  - (d) monitoring the operation of the Members' Code of Conduct;

(e) advising, training or arranging to train Councillors, Co-Opted Members and church and parent governor representatives on matters relating to the Members' Code of Conduct;

(f) granting dispensations to Councillors, Co-Opted Members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;

(g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that officer by the Public Services Ombudsman;

the exercise of (a) to (g) above in relation to the Community Councils wholly or mainly in its area and the members of those Community Councils;

(h) overview of complaints handling and Ombudsman investigations.

**1.4** Richard Penn, an Independent Consultant, was commissioned to undertake the review with the aim to report to Welsh Government Ministers by the end of June 2021 with the intention that any agreed changes were to be made ahead of the Local Government elections in May 2022. The review was to be undertaken in two phases and the findings and recommendations of the first phase of the review were reported and considered by the Standards Committee on 25<sup>th</sup> November, 2021.

**1.5** In line with the recommendations of the All Wales National Standards Committee Forum and the view of the All Wales Monitoring Officer Group to ensure consistency across Wales, the following amendment to the threshold for gifts is recommended:

- Gifts, material benefits or advantages - £25.00 or totalling £100.00 over a year from a single source.

## **2. Key Issues for Consideration**

**2.1** Welsh Government has now published its official response to the Penn Review. It sets out what action Welsh Government proposes to take (if any) to implement the recommendations and then seeks views on its proposed response. The consultation can be found [is here](#).

**2.2** A response to the proposals is therefore attached at Appendix 1 to this report. the proposals.

**2.3** The Committee is asked to review and agree the proposed responses to the consultation.

**2.4** In light of discussions at All Wales Monitoring Officer Group meetings and the All Wales Standards Committee Forum it is recommended that as outlined above in paragraph 2.4 that Standards Committee recommend to Council that the threshold for Gifts be -

- Gifts, material benefits or advantages - £25.00 or totalling £100.00 over a year from a single source.

**2.5** Currently the Vale of Glamorgan Council's arrangements are:

- Gifts, material benefits or advantages - £50.00 or totalling £100.00 over a year from a single source;

but to align with the All Wales Monitoring Officer Group approach the threshold for Gifts is to be reduced from £50.00.

**2.6** Political Group Leaders have been consulted on this matter and a view was expressed by one Group Leader that the existing threshold was low in comparison to the levels set by Welsh Government, however all other Political Group Leaders were in agreement with the proposal to harmonise based on the figures.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

**3.1** The role of the Standards Committee is to promote and maintain high standards of conduct by Councillors, Co-opted Members and Church and Parent Governor Representatives.

### **4. Climate Change and Nature Implications**

**4.1** None as a direct result of this report

### **5. Resources and Legal Considerations**

#### **Financial**

**5.1** None as a direct result of this report

#### **Employment**

**5.2** None as a direct result of this report

#### **Legal (Including Equalities)**

**5.3** The Council has a statutory duty to establish and maintain a Standards Committee as defined by legislation as set out in the Standards Committee Rules and Regulations 2001 and the Standards Committee (Wales) Amendment Regulations 2006.

### **6. Background Papers**

## Response to Welsh Government Consultation Richard Penn Review

### Monitoring Officer Vale of Glamorgan Council

#### Consultation Questions

We are not seeking specific responses on all the Recommendations. This is because taking into account discussions held with stakeholders and key partners Welsh Ministers' responses to the Recommendations include a number of suggestions for legislative change, highlights some actions which have subsequently been addressed without the need for legislation since the Report was published, some suggestions for non-legislative action and further suggestions for improvement which have been identified in discussion with stakeholders since the Report's publication. However, there is a general question at the end of the consultation questions where you can add your comments on the Recommendations that do not have a specific question below, or where you wish to make any other comments on the consultation document.

#### Recommendation 4

Q1. Do you agree the relevant regulations relating to the Ethical Standards Framework should be amended to align with the definitions relating to protected characteristics in the Equality Act 2010, and that we should amend the definition of equality and respect in section 7 of The Conduct of Members (Principles) (Wales) Order 2001 ([legislation.gov.uk](http://legislation.gov.uk))?

Yes to ensure alignment with the Equality Act 2010 and to avoid doubt regarding the extent of the applicability of the provisions of the Model Members' Code of Conduct and the associated Principles.

#### Recommendation 10

Q2. Should the Adjudication Panel Wales (APW) be able to issue Restricted Reporting Orders?

Yes

Although there are legal rulings on reporting which are appropriate there may be instances where restricted reporting orders may be considered appropriate e.g. when matters relate to minors.

The rationale set out in Richard Penn's Report at paragraph 4.8.2 (and appended as Annex A for ease of reference) is supported

Q3. Should there be express legal provision to enable the APW to protect the anonymity of witnesses?

Yes

The introduction of an express legal provision to allow witnesses to testify anonymously would reduce the risk of challenge to the ruling/guidance of the President to the Adjudication Panel for Wales and would reduce the possibility of witnesses refusing to give evidence and thus increase the chance of their participation.

Q4. Do you support the proposed changes to the permission to appeal procedure outlined in this recommendation. If not, what alternatives would you suggest?

Yes

It appears appropriate that the Ombudsman should be able to comment on requests for permission to appeal and that the process should allow time to comment.

Q5. Should there be an express power for the APW to summon witnesses to appeal tribunals?

Yes

It would be contrary to the interests of justice if a witness were not to attend a hearing. However, consideration is required regarding the service of a witness summons (by whom) and the avenues available to the Adjudication Panel for Wales if a summons is not adhered to and the implications.

Q6. Should there be any changes in the procedure for referring appeals decisions back to standards committees?

No

It is important that the provision exists and it affords the relevant Standards Committee to reflect on their earlier decision in light of an appeal decision. This is in line with the established arrangements regarding judgement in a court setting.

Q7. Do you agree there should be an express provision to enable part or all of tribunal hearings to be held in private?

Yes

The reason provided in response to Question 3 in part is also applicable albeit it is noted that the general rule is that hearings are to be held in public.

Q8. Do you agree that the requirement to provide not less than seven days' notice of the postponement of a hearing should be retained?

A view is not expressed one way or another, however seven days' notice does appear reasonable

Q9. Should there be a wider range of sanctions available to the APW, and if so, what should they be?

Yes

It is suggested that there should be the power to order that training be undertaken and/or an apology issued in addition to existing powers. There should also be the ability of conditional suspension upon failure of a councillor to attend training and/or issue a suitable apology within a specified time period

Q10a. Do you support the proposed amendments to the process for interim case tribunals outlined in this recommendation? If not, could you please explain.

Yes (in the main however please see the NB below)

The current provisions in Section 72(3) of the Local Government Act 2000 require a high evidential test to be met by the Public Services Ombudsman for Wales (needing to be satisfied that the prima facie evidence is such that it appears that the 3 tests within the Subsection are met), this is particularly so when a matter is under Police investigation and disclosure of the same would potentially prejudice a Police investigation or court proceedings.

By way of comparison where there is a safeguarding concern about a professional pursuant to Part 5 of the Wales Safeguarding Procedures s/he could be put on administrative suspension pending an investigation in order to protect the vulnerable and the employing organisation. No such similar provision exists in relation to members even where there are very serious safeguarding concerns. Further there might be examples of other serious misconduct such as extreme bullying or corruption where an interim suspension would help to protect witnesses and the public interest. In order to protect evidence, the status quo or the reputation of a council, there may be circumstances where an interim suspension might be appropriate.

Assuming that interim suspension orders came to resemble the administrative suspension that might be applied to employees then any interim suspension order should not also suspend the member's allowances given that the suspension will be a neutral act and not a determination of wrongdoing/ guilt.

There's also merit in establishing through legislation or statutory guidance broad parameters/examples when an interim suspension would be appropriate for consideration should a councillor be charged with a specified category of an offence and particularly offences which carry a custodial sentence.

N.B. Within the Richard Penn Report he refers (in part) to 'if the matters outlined

by the Ombudsman in the interim report are found...’.

The above qualification / condition does not appear in the Consultation Paper and unless included (or words to that effect) there is a concern that the current difficulties outlined above will be repeated.

Q10b. If you do support the changes to the process for interim case tribunals, do you agree that an intermediate arrangement should be put in place i.e., by shortening and streamlining the process for interim case tribunals in The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001?

If yes, do you have any suggestions as to how this process could be streamlined within the regulations?

Yes

Q11. Do you have any further views on the recommendations made in relation to the operation of the APW?

No

## **Recommendation 12**

Q12. Do you have any suggestions as to how work might be taken forward to raise awareness of the Ethical Standards Framework, in particular for people with protected characteristics as described in the Equality Act 2010?

Publicity materials could be produced and distributed to bodies representing such groups; all Principal Councils will have a network of such groups. One organisation leading on the production of publicity material would be an efficient approach and ensure consistency of message.

## **Other related matters outside of the Review Report**

Q13. Advertising for independent members of standards committees: Do you agree the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed?

No

It is important to ensure that potential candidates from a wide range of backgrounds are attracted to the role and all channels including newspapers, websites or existing networks are utilised.

Having consulted the Independent Members on the Vale of Glamorgan Council’s

Standards Committee, all became aware of the vacancies via adverts placed in a newspaper.

Q14a. Former council employees sitting as independent members on standards committees: Do you agree that the lifelong ban on former council employees being independent members of their previous employer's standards committee should be removed?

No.

To be an Independent Member the public must be assured that Members can without doubt be truly independent and politically impartial.

Q14b. If yes, what do you think would be a suitable period of grace between employment and appointment to a standards committee, and should this be the same for all council employees, or longer for those who previously holding statutory or politically restricted posts?

Not applicable

Q15. Former councillors sitting as independent members on standards committees:

Do you agree that the lifelong ban on serving as an independent member on the standards committee of the council to which a councillor was elected should be removed? If yes, what do you think would be a suitable period of grace?

No

The current regulations ensure that Independent Members are independent of local and national politics; removing the current prohibition risks weakening that safeguard.

Q16. Standards committees' summoning witnesses and sanctions: Should standards committees have the power to summon witnesses?

Yes

For the same reason in response to Question 5.

Q17. Do you agree that the sanctions a standards committee can impose should be changed or added to?

Yes

If yes, what sanctions would you suggest? See response to Question 9. The same power to impose conditional sentences should apply to Standards Committees as should the ability to require an apology and/or training to be undertaken.

## Welsh language

We would like to know your views on the effects that the above changes to the Framework and Model Code of Conduct would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

Q18. What effects do you think there would be?

None either negative or positive. These proposal would appear to be neutral in effect

Q19. How could positive effects be increased, or negative effects be mitigated?

See response to Question18.

Q20. Please also explain how you believe the proposed amendments could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

See response to Question18.

Q21. Do you have any other comments you wish to make on the matters raised in this consultation, including for those Report Recommendations where no specific question has been posed?

Yes

The local government sector has responded largely positively to the Penn Report. As the consultation recognises, we have taken responsibility for our regulation and have worked collectively since its publication to adopt a number of the recommendations where legislative change is not required. So far we have:

- i. held a further national standards conference (which had simply been delayed by the pandemic);
- ii. established a National Forum for Standards Committee (in Wales) to mirror, and replace, the forum that has existed for some time in North Wales (and which was latterly extended to include authorities from Mid Wales as well); and
- iii. are currently working to harmonise the threshold for declaring gifts & hospitality at a proposed level of £25, and every Monitoring Officer in Wales has committed to take that change through its Standards Committee.

The Vale of Glamorgan Council would wish to see legislative action to support the following recommendations:

- 1) Presently there is no proposal to make it mandatory for a councillor to report their own criminal behaviour, which appears illogical when there is an obligation on others to do so.
- 2) The proposal to incorporate into the Declaration of Acceptance of Office a requirement to attend training on the Ethical Framework is supported, albeit consideration will need to be given to the window for such training and the individual taking up their role as Member.

Given the key role for Proper Officers to Town / Community Councils in advising and supporting their respective Members on matters relating to the Ethical Framework, training should be mandatory for Clerks of Town and Community Councils also in this area.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick

here:

Thank you for taking time to respond to this consultation. A summary of responses will be published in due course.

## **Extracts from Richard Penn’s “Independent Review of the Ethical Standards Framework in Wales” Report dated July 2021**

### **Recommendation 10**

#### **Question 2**

##### 4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel’s work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

#### **Question 3**

##### 4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President’s remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.