

The Vale of Glamorgan Council

Standards Committee: 22nd November 2018

Report of the Monitoring Officer / Head of Legal and Democratic Services

Update on Review of the Vale of Glamorgan Council's Local Dispute Resolution Procedure

Purpose of the Report

1. To advise the Standards Committee of the decision of Full Council on 26th September, 2018 following the review of the Vale of Glamorgan Council's Local Dispute Resolution Procedure.

Recommendation

That the report be noted.

Reason for the Recommendation

To inform the Standards Committee of the decision of Full Council of the Vale of Glamorgan Council's Local Dispute Resolution Procedure.

Background

2. On 11th April, 2014, the Standards Committee considered and agreed a Local Dispute Resolution Procedure to address certain complaints and breaches of the Members' Code of Conduct (the Code) and Protocol - Standards of Conduct Expected by Members, in response to Welsh Government and the former Public Services Ombudsman for Wales' concerns. The Public Services Ombudsman guidance on the Code of Conduct for Members of Local Authorities had stated there was an expectation that Local Authorities throughout Wales would implement a Local Dispute Resolution Procedure to deal with certain complaints which were made by a Member against a fellow Member.
3. At the Full Council meeting on 25th June, 2014, a Local Dispute Resolution Procedure ('the Procedure') was duly approved and was incorporated into the Council's Constitution. As with the Council's Constitution generally, the Procedure was subject to review and changes could be proposed if considered appropriate (either by the Monitoring Officer or the Standards Committee itself).

4. Following a Local Dispute Resolution hearing, at its meeting in July 2016 the Standards Committee considered a few minor changes to the Procedure however following discussion it was subsequently resolved:
 - "(1) That Stage 2 of the Local Dispute Resolution Procedure should not become mandatory.
 - (2) That internal procedures relating to the Members' Code of Conduct be revised to provide that any complaint lodged under the Procedure be brought to the attention of the Member against whom the complaint has been lodged within seven working days of it being received by the Monitoring Officer. Furthermore, if a Member, in lodging a complaint, has identified a specific witness(es) whom they wish to call to give evidence, details of the complaint (redacted if considered necessary) should also be forwarded to the witness(es), the contents of the Guidance be noted.
 - (3) That a future report be submitted to a future Standards Committee meeting following a review of the Welsh Local Authorities Local Dispute Resolution Procedures."
5. On 25th January, 2018, the Committee received a copy of a proposed revised procedure for consideration which included a copy of a procedural document to be used at Local Dispute Resolution Hearings and an administrative procedure for dealing with Local Dispute Resolution process (Local Dispute Resolution Procedure - Procedure for Dealing With Paperwork and Timescales) and recommended consultation with Group Leaders.
6. Following the consultation with Group Leaders a number of comments were received as outlined below.
 - Councillor John Thomas, Leader of the Council and Conservative Group Leader advised that he was in agreement with the documents.
 - Councillor Gwyn John, Llantwit First Group Leader advised he was happy to accept the documents.
 - Councillor Neil Moore, Labour Group Leader following a meeting continued to be concerned regarding a number of aspects and was of the view that:
 - the submission of witness statements should not be mandatory;
 - the attendance of witness(es) should only be required if a statement is disputed;
 - if a legal representative is to be in attendance at the Hearing the complaint should be referred to the Public Services Ombudsman for Wales and not dealt with under the Council's Local Dispute Resolution Procedure;
 - Paragraph 28 be amended to make it clear that the representative or person accompanying a Member is entitled to speak on behalf of the Member that they are representing/accompanying including asking questions and summing-up;
 - that a representative or person accompanying a Member be permitted to provide evidence to the Hearing;
 - Paragraph 30 – an apology to a Complainant should take the form of a formal apology and made in the same way as the dispute arose. It should be in writing to the Complainant; it should not be private and confidential unless the Complainant wishes that to be the case.
7. In view of the above a meeting was subsequently held with the Labour Group Leader, Labour Deputy Group Leader, the Monitoring Officer and Democratic

Services Officer to discuss issues of concern. Following the meeting, some responses to queries were accepted by both the Labour Group and Deputy Labour Group Leader. The remaining concerns were brought to the attention of the Standards Committee and were subsequently considered at the Standards Committee meeting on 12th July, 2018.

8. Following further consideration by the Standards Committee on 12th July, 2018 it was recommended that the Draft Local Dispute Resolution Procedure and appendices be amended as outlined below and the documents re-shared with Group Leaders, with delegated authority being given to the Monitoring Officer to amend any typographical errors in consultation with the Chairman in order that the final report could be presented to Full Council in September 2018 -
 - That support to witnesses in preparing statements be provided by officers of the Council as appropriate
 - That for paragraph 25 - should both parties agree that witnesses do not need to attend the hearing this must be made in writing to the Monitoring Officer
 - The reference to paragraph 27 to that Members will have the right to be accompanied by a representative which may be a legal representative or otherwise this meant that only one representative to accompany the Members
 - That a representative should not be a witness and a representative
 - Paragraph 30 - if an apology was recommended this to take the format of a formal apology and made in the same way including the place as the dispute arose with failure to apologise in a specified manner being referred back to the Standards Committee for consideration.

Relevant Issues and Options

9. The Procedure was subsequently presented to Full Council on 26th September, 2018 with it being resolved (Minute No. 344) that the revised Local Dispute Resolution Procedure as set out in Appendix 1 to this report, the Application Form at Appendix A and the Local Dispute Resolution Procedure Conduct of Stage 3 Hearings set out at Appendix B be approved and replace the existing Procedure in the Council's Constitution.

Resource Implications (Financial and Employment)

10. None as a direct result of this report.

Sustainability and Climate Change Implications

11. None as a direct result of this report.

Legal Implications (to Include Human Rights Implications)

12. The Procedure forms part of the Council's Constitution.

Crime and Disorder Implications

13. None as a direct result of this report.

Equal Opportunities Implications (to include Welsh Language issues)

14. None as a direct result of this report.

Corporate/Service Objectives

15. The report relates to the role of Standards Committee to provide and maintain high standards of conduct of Members as detailed in the Council's Constitution.

Policy Framework and Budget

16. Any changes to the Council's Local Dispute Resolution Procedure requires Full Council approval.

Consultation (including Ward Member Consultation)

17. Standards Committee Members and Group Leaders were consulted on the proposed revisions to the Council's Local Dispute Resolution Procedure.

Relevant Scrutiny Committee

18. N/A

Background Papers

The Procedure
Reports to the Standards Committee and Full Council

Contact Officer

Karen Bowen, Principal Democratic and Scrutiny Services Officer

Officers Consulted

N/A

Responsible Officer:

Debbie Marles, Monitoring Officer / Head of Legal and Democratic Services



LOCAL DISPUTE RESOLUTION PROCEDURE

Implemented 25 June 2014 (Council minute no 132)

Amended September 2018

INTRODUCTION

1. The Public Services Ombudsman for Wales' Guidance on the Code of Conduct for Members of Local Authorities in Wales (September 2012) expects Local Authorities throughout Wales to implement a Local Dispute Resolution Procedure to deal with complaints which are made by a Member against a fellow Member which may not otherwise be investigated by the Public Services Ombudsman for Wales ('the Ombudsman') having regard to the Ombudsman's two-stage test.
2. The Vale of Glamorgan Council ('the Council') introduced a Local Dispute Resolution Procedure ('the Procedure') in 2014 to meet the Ombudsman's above expectations, and the Procedure was amended in 2018.
3. Typically the following complaints will fall within the category of complaints dealt with under this Procedure:
 - failure to show respect and consideration for others contrary to paragraph 18.2.4(b) of the Members' Code of Conduct ("the Code") and
 - making vexatious, malicious or frivolous complaints against other Members under paragraph 18.2.6(d) of the Code.
4. Other breaches of the Code may also be determined by the Monitoring Officer to be appropriate complaints to be dealt with under the Procedure.
5. The Procedure is to be read in conjunction with the Code and the Council's Protocol - Standard of Conduct Expected by Members ("the Protocol").
6. The Protocol establishes the behaviour which is acceptable and unacceptable between Members. It sits alongside the Code and fills the gap between behaviour which possibly in itself is not serious, but creates unpleasantness between Members, and behaviour that is approaching the threshold and serious enough for the Ombudsman to hold an investigation. Breaches of the Protocol will also be dealt with under this Procedure.
7. The Ombudsman assumes that where a Member repeatedly breaches this Procedure, the Monitoring Officer will refer the matter to the Ombudsman.
8. Members will continue to be able to complain directly to the Ombudsman where a breach of the Code has occurred. Should the complainant exercise that right then this Procedure will not be used, and any efforts to resolve a complaint using this Procedure will be stopped. The process will only resume if the matter is referred back for local resolution.
9. The Procedure applies to Vale of Glamorgan Council Member complaints against a fellow Vale of Glamorgan Council Member, and not Members of

Town and Community Councils. Complaints made by the public and staff will not be dealt with under this Procedure.

10. The key objectives of the Procedure are to:
 - resolve allegations of breaches of the Code and Protocol locally and quickly,
 - avoid unnecessary escalation of the situation which might impact on personal relationships within the Council and damage the Council's reputation,
 - avoid unnecessary involvement of the Ombudsman so that his resources are devoted to the investigation of more serious or repeated complaints.

GENERAL PRINCIPLES

11. Members will make all reasonable efforts to resolve disputes via the Procedure.
12. Group Leaders individually and collectively will work to ensure compliance with the Procedure.

WORKING TO AVOID PROBLEMS

13. To minimise the number of instances of alleged breaches the Council has committed to:
 - a Member Development Strategy; and
 - providing relevant Member training events.

STAGE 1 OF THE PROCEDURE

14. Any Member who wishes to submit a complaint under the Procedure (“the Complainant”) is to complete the pro-forma Local Dispute Resolution Procedure Complaint Form (‘the Complaint Form’) attached at Appendix A to this Procedure and send it to the Monitoring Officer. Following receipt of the Complaint Form, the Monitoring Officer or the Deputy Monitoring Officer will indicate whether the complaint may be dealt with under this Procedure, whether it should be referred to the Ombudsman or whether it is rejected on the basis that there is no case to answer. A decision to reject a complaint by the Monitoring Officer or Deputy Monitoring Officer will be subject to consultation with the Chairman of the Standards Committee or in his absence an Independent Member of the Standards Committee as nominated by the Chairman of the Standards Committee.
15. If the complaint is to be dealt with under this Procedure the Monitoring Officer or Deputy Monitoring Officer will forward the complaint (including the identity

of the Complainant) to the Member who is the subject of the complaint within **seven working days** of submission of the complaint.

16. The Complainant will submit to the Monitoring Officer in writing within **ten working days** of the submission of the Complaint Form any further details relating to the complaint which are not already detailed in the Complaint Form. The Monitoring Officer will forward the same to the Member who is the subject of the complaint.
17. The Member who is the subject of the complaint will submit to the Monitoring Officer a written response to the complaint within **ten working days** thereafter (having been advised by the Monitoring Officer of the commencement date of the ten working days period) and the Monitoring Officer will forward the same to the Complainant.
18. The Monitoring Officer or Deputy Monitoring Officer will determine whether a Mediation Meeting is convened or whether the complaint is referred directly to a Hearing at Stage 3 of the Procedure.

STAGE 2 OF THE PROCEDURE

MEDIATION MEETING

19. A Mediation Meeting will be held between the Complainant, the Member who is the subject of the complaint, the Leader(s) of the political group for the Complainant and the Member who is the subject of the complaint (for Members that are not in a group they may be accompanied by a colleague or friend) and the Managing Director (or a nominated Director as determined by the Managing Director) within **thirty working days** of the Complaint Form being sent to the Member who is the subject of the complaint. The purpose of the Mediation Meeting will be to attempt to resolve the matter. If deemed necessary the Managing Director or the nominated Director may call on the Monitoring Officer or the Deputy Monitoring Officer for advice and assistance.
20. Where the complaint is made by or concerns a Group Leader the Mediation Meeting will be attended by the Complainant, the Member who is the subject of the complaint, the Managing Director (or a nominated Director as determined by the Managing Director) and the Monitoring Officer or the Deputy Monitoring Officer.
21. If the matter is not resolved at Stage 2, the Complainant may elect to stop the Procedure or proceed to Stage 3 of the Procedure subject to notifying the Monitoring Officer in writing within **seven working days** of the Mediation Meeting.
22. Anything said at the Mediation Meeting is privileged and cannot be referred to at Stage 3 of the Procedure.

STAGE 3 OF THE PROCEDURE

HEARING

23. The Hearing will be before three Independent Members of the Standards Committee nominated by the Chairman of the Standards Committee. The designated Democratic Services Officer (“the Democratic Services Officer”) will arrange for the Hearing to take place within **six weeks** following the Complaint being referred to Stage 3 of the Procedure
24. Members involved in the complaint have the right to appear before the Independent Members and call witnesses. Once names of witnesses are provided to the Democratic Services Officer the witnesses will be given an overview of the complaint.
25. Only witnesses who have given statements will be able to give evidence at the Hearing and witnesses that provide statements will be required to attend the Hearing, unless both parties agree with the content of the witness’ statement and that the witness is not required to attend (the Monitoring Officer is to be advised in writing in such circumstances). The parties if calling witnesses must let the Democratic Services Officer know not less than **five working days** prior to the Hearing of the name of the witness(es) and provide a copy of any witnesses statements to the Democratic Services Officer not less than **five working days** prior to the Hearing, who will provide copies of the witness statement(s) to the other party in advance of the Hearing. Further evidence may be submitted within 5 working days of the Hearing at the discretion of the Panel. Support for witnesses in formatting and typing statements may be provided by officers of the Council as appropriate.
26. The procedure to be followed during the Hearing is set out in Appendix B to this Procedure. It being noted that the Independent Member chairing the Hearing has discretion to vary or supplement the procedure as deemed appropriate.
27. The parties will have the right to be accompanied by only one representative which may be a legal representative or otherwise a colleague, friend, family member or Group Leader. It will be for each of the parties to make their own arrangements regarding representation. The Council will not meet the costs of representation. If either party decides to have legal representation at the Hearing, the Monitoring Officer is to be notified in advance of the Hearing in order to inform the other party to ensure that the opportunity is available to seek legal representation.
28. Neither a representative nor person accompanying a Member will be permitted to give evidence as a witness at the Hearing. However for the avoidance of doubt, a representative or person accompanying a Member will

be permitted to speak on behalf of the Member that they are representing/accompanying including asking questions and summing up.

29. If either side wishes not to be present or fails to attend the Hearing the Hearing may be held and determined in their absence.
30. The Independent Members may in determining the matter on the balance of probabilities come to one of three conclusions, namely:-
 - there is no basis to the complaint.
 - there is a basis to the complaint but that no further action is required .The Independent Members may also make recommendations to the Council regarding changing any procedures or taking any further action and/or may also direct that an apology be offered to the Complainant and that the Member who is the subject of the complaint attends further training within a specified timescale.
 - There is a basis to the complaint and that the Member be censured. The Independent Members may also make recommendations to the Council regarding changing any procedures or taking any further action and/or may also direct that an apology be offered to the Complainant and that the Member who is the subject of the complaint attends further training within a specified timescale. Should an apology be directed, this to take the form of a formal apology and to be made in the same way (including the place) as the dispute arose (an apology will only be made in private and confidentially if the Complainant so wishes). A failure by the Member, who is the subject of the complaint, to make an apology in the specified manner is to be referred back to the Standards Committee for consideration.

SUPPLEMENTARY MATTERS

31. Publicity will not be given to the name(s) of the Complainant(s)
32. Publicity will not be given to the name of the Member who is the subject of the complaint unless the Member is censured. Such publicity will take the form of a notice being posted on the Council's website for not less than twenty eight calendar days detailing the name of the Member who is the subject of the complaint, the fact that the Member has been censured pursuant to the Procedure, when the censure decision was made and a summary of the facts as deemed appropriate by the Independent Members presiding at the Hearing. If a formal apology is to be provided, the date when such an apology is provided will be included in the notice.
33. If a formal apology is not provided as resolved by the Panel the matter will be referred to the Standards Committee for consideration and notification of the same will be posted on the Council's website.

Appendix 1

34. The Monitoring Officer or Deputy Monitoring Officer will provide advice and support at Stages 2 and 3 of the Procedure but will not determine the matter.
35. The Hearing at Stage 3 will be dealt with in private.
36. There is no right of appeal against the decision made by the Independent Members at Stage 3 of the Procedure.
37. The timescales within the Procedure are a guide to ensure that complaints under the Procedure are dealt with quickly in order to minimise the impact of the complaint; Members and Officers are therefore requested to adhere to the timescales.

D When did the incident take place?

**E Are there any witnesses who can confirm what you say?
If so, give their full names and contact details if known.**

I understand and accept that my identify and the details of my complaint will be forwarded on to the Member who I am making a complaint about (within 7 working days of submitting this complaint form to the Monitoring Officer) and such other individuals as referred to in the Council's Local Dispute Resolution Procedure. I also understand and accept that the details of my complaint may become public knowledge. I confirm that I am prepared to give oral evidence in private in support of my complaint.

Signature _____ Date _____

Please send to:

Debbie Marles
Head of Legal Services and Monitoring Officer
Civic Offices
Holton Road
Barry
CF63 4RU

Email: DMarles@valeofglamorgan.gov.uk
Tel: 01446 709402



LOCAL DISPUTE RESOLUTION PROCEDURE CONDUCT OF STAGE 3 HEARING

It is to be noted that:

Hearings are to be held in private.

The Member who is the subject of the complaint ('the Respondent') will have received a copy of the Complaint Form and any further submissions by the complainant in line with paragraph 16 of the Local Dispute Resolution Procedure ('the Procedure').

The parties will have the right to be accompanied by only one representative which may be a legal representative or otherwise a colleague, friend, family member or Group Leader.

Prior to the commencement of the Hearing, the 3 Independent Members of the Standards Committee (nominated by the Chairman of the Standards Committee) will elect a Chairman for the Hearing ('the Chairman').

The Chairman will have the discretion to supplement or vary the procedure to be followed at the Stage 3 Hearing as deemed appropriate.

Witnesses will not be permitted to be present in the Hearing room at the outset but will be called individually to give their evidence at the appropriate time and will be required to leave following their evidence.

Where witnesses are to be called, the parties will be required to notify the Democratic Services Officer not less than **five working days** prior to the Hearing. Both parties will need to ensure that their witnesses are in attendance. If both parties agree the written evidence of a witness, the witness is not required to attend (and the Monitoring Officer will be advised of this in writing). Witnesses are required to provide a statement prior to the Hearing and for the statement to be provided to the Democratic Services Officer not less than **five working days** prior to the Hearing.

The Monitoring Officer or Deputy Monitoring Officer will provide advice and support to the Independent Members but will not determine the matter.

The decision of the Independent Members will be based on the standard of proof of the balance of probabilities.

At the Hearing

Step 1

At the Hearing those present will include the Independent Members, the Monitoring Officer or Deputy Monitoring Officer, a representative from Democratic Services, the Complainant, the Respondent and their representatives or person accompanying each party (if required).

The Chairman will open the Hearing and establish the identity of all present and will outline the order of proceedings for the Hearing.

The Chairman will seek confirmation that all parties have received the relevant documentation and will specify the complaint(s) against the Respondent.

Step 2

The Chairman will commence by requesting the Complainant (or their representative) to present their case following which questions may be asked by the Respondent (or Respondent's representative) and the Independent Members.

Complainant's witness(es) to be called to give evidence following which questions may be asked by the Respondent (or their representative) and the Independent Members. The Complainant (or their representative) may seek clarification from their witness(es) on any points arising from the questioning.

Step 3

The Respondent or their representative will then be afforded the opportunity to present their case followed by questions from the Complainant (or their representative) and the Independent Members.

Respondent's witness(es) to be called to give evidence following which questions may be asked by the Complainant (or their representative) and Independent Members. The Respondent (or their representative) may seek clarification from their witness(es) on any points arising from the questioning.

Throughout the Hearing the Independent Members, Monitoring Officer or Deputy Monitoring Officer may also seek clarification or ask relevant questions of both parties.

Step 4 - Summing Up

The Chairman will then afford both parties (Complainant and Respondent respectively) the opportunity to sum up. A parties representative or person accompanying them may sum up on their behalf.

Step 5

Following the summing up both parties and their representative(s) will be asked to vacate the room in order that the Independent Members can deliberate and decide in private whether the complaint is proved or not proved. The Independent Members will be accompanied only by the Monitoring Officer or Deputy Monitoring Officer and the Democratic Services Officer. The role of officers is to offer advice to the Independent Members but not to determine the outcome of the matter.

The Independent Members' decision will be by majority vote; where necessary the Chairman shall have a casting vote.

Step 6

The parties will be called back in and the Chairman will advise whether the complaint is proved or not proved. If proved, the Respondent will be asked to give any mitigation which might affect the Independent Members' decision.

Step 7 Hearing Decision

The Independent Members will consider the mitigation submitted and come to their decision in private.

It will be at the discretion of the Chairman whether the Independent Members will reach a decision on the day of the Hearing and how the decision will be communicated (either face-to-face or by telephone). The Complainant and Respondent will both be advised orally of the decision.

The Chairman, at the end of the Hearing, will remind parties that there is no right of appeal against the decision made by the Independent Members at Stage 3 of the Procedure.

The Chairman will aim for a written decision to be issued within **seven working days** of the decision being made. The written decision will set out the decision of the Independent Members and the reasons for the decision. A copy of the decision letter will only be sent to the Respondent.

The Independent Members may come to one of three conclusions, namely:

- (i) There is no basis to the complaint;
- (ii) There is a basis to the complaint but that no further action is required. The Independent Members may also make recommendations to the Council regarding changing any procedures or taking any further action and or may also direct that an apology be offered to the Complainant and that the Member who is the subject of the complaint attends further training within a specified timescale;

- (iii) There is a basis to the complaint and that the Member be censured. The Independent Members may also make recommendations to the Council regarding changing any procedures or taking any further action and or may also direct that an apology be offered to the Complainant and that the Member who is the subject of the complaint attends further training within a specified timescale.

Should an apology be directed the apology is to take the form of a formal apology and to be made in the same way (including the place) the dispute arose within the timescale specified by the Panel. An apology will only be made in private and confidentially if the complainant so wishes.

Should the Independent Members determine conclusion (i) or (ii) as outlined above, all parties will be reminded that no publicity will be given to the name of the Members involved in the complaint or any details of the complaint.

Should the Independent Members' conclusion be that there is a basis to the complaint and that the Member be censured, then a statement on the Council's website will be issued ideally within **seven working days** of the decision letter being issued which will detail the name of the Respondent, the fact that the Respondent has been censured pursuant to the Procedure, when the censure decision was made and a summary of the facts as deemed appropriate by the Independent Members presiding at the Hearing. If a formal apology is to be provided, the date when such an apology is provided will be included in the notice, or alternatively if a formal apology is not provided as resolved by the Panel reference will be made in the notice to the date when the matter will be referred to the Standards Committee for consideration. The statement will appear on the Council's website for not less than **twenty eight calendar days**.