

Meeting of:	<b>Standards Committee</b>
Date of Meeting:	<b>Thursday, 23 November 2023</b>
Relevant Scrutiny Committee:	No Relevant Scrutiny Committee
Report Title:	Responses to the Welsh Government Consultation of the Recommendations of the Penn Review
Purpose of Report:	To apprise Standards Committee of the recommendations of the Penn Review
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:	This report does not require consultation to be undertaken
Policy Framework:	This is a matter for decision by the Standards Committee
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>• In March 2023 Welsh Government published a consultation on the Welsh Government's response to the recommendations of the independent review by Richard Penn of the Ethical Standards Framework (the Framework) for Local Government.</li> <li>• On 14<sup>th</sup> November, 2023 the Minister for Finance and Local Government published the summary of the Consultation responses which are attached to this report.</li> </ul>	

## **Recommendation**

1. THAT the Standards Committee note and consider the responses to the Welsh Government consultation.

## **Reason for Recommendation**

1. Having regard to the responses received.

## **1. Background**

- 1.1 In March 2023 Welsh Government published a consultation on the Welsh Government's response to the recommendations of the independent review by Richard Penn of the Ethical Standards Framework (the Framework) for Local Government.
- 1.2 On 14<sup>th</sup> November, 2023 the Minister for Finance and Local Government published the summary of the Consultation responses which are attached to this report.
- 1.3 At its meeting on 8<sup>th</sup> June, 2023 the Standards Committee agreed a response to the Welsh Government Consultation and will also recall that having agreed the response, also agreed following discussions at the All Wales Monitoring Officer Group that the Council's threshold for gifts be amended having regard to the Penn Report, the threshold being subsequently approved by Full Council.

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

- 2.1 The summary of responses to the consultation on Welsh Government's response to the recommendations of the Penn Review that were published on the Welsh Government website on 14<sup>th</sup> November, 2023 and can be found at Appendix 1 to this report.
- 2.2 The written statement from the Minister for Finance and Local Government referring to the summary was also published on 14<sup>th</sup> November, 2023 which advised that overall broad support was expressed for the proposals. A link to the written statement can be found on the Welsh Government's website at [Written Statement: Responses to the consultation on the review of the Local Government Ethical Standards Framework \(14 November 2023\) | GOV.WALES](#)
- 2.3 Standards Committee is requested to consider the responses and make any comments / recommendations as appropriate.

### **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. It is intended that the process adopted within this report will aim to promote that role

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

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

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

#### **Financial**

- 5.1** Members are able to be remunerated for attendance under the allowance scheme agreed by the Independent Remuneration Panel and the Vale of Glamorgan Council's Constitution.

#### **Employment**

- 5.2** Members will be remunerated for attendance under the allowance scheme agreed by the Independent Remuneration Panel and the Vale of Glamorgan Council's Constitution. Independent Members are able to claim for a maximum of 10 days per annum as detailed within the Council's Constitution.

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

- 5.3** The Council has a duty to establish and maintain a Standards Committee as defined by legislation as set out in the Standards Committees Rules and Regulations 2001 and the Standards Committee (Wales) Amendment Regulations 2006.
- 5.4** 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.

### **6. Background Papers**



Llywodraeth Cymru  
Welsh Government

**Number: WG48234**

Welsh Government

## Consultation – summary of responses

Summary of responses to the consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report)

November 2023

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh  
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

## **Overview**

This document provides a summary of the responses to the consultation on the recommendation of the Independent Review of the Ethical Standards Framework (Richard Penn report).

## **Action Required**

This document is for information only.

## **Further information and related documents**

Large print, Braille and alternative language versions of this document are available on request.

## **Contact details**

For further information:

Local Government Policy Division  
Welsh Government  
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CF10 3NQ

Email: [LGPpolicy.correspondence@gov.wales](mailto:LGPpolicy.correspondence@gov.wales)

## **Additional copies**

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Consultation on the recommendations of the Independent Review of the Ethical Standards Framework \(Richard Penn report\) \[HTML\] | GOV.WALES](#)

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## **Introduction**

The Local Government Act 2000 (the 2000 Act) established the local government Ethical Standards Framework (the Framework) in Wales. The Framework extends to county and county borough councils, corporate joint committees, national park authorities, fire and rescue authorities and community and town councils. Where the term council(s) is/are used throughout this document this also extends to all member(s) of the above-named bodies.

As the Framework has remained largely unchanged over the last 20 years an independent review (the review) was commissioned in March 2021 and undertaken by Richard Penn. The review concluded the current Framework is 'fit for purpose' and works well in practice. However, it suggested a few amendments which could lead to a greater emphasis in the Framework on prevention of complaints, improve the handling of complaints and result in already high ethical standards being further enhanced.

Extensive stakeholder engagement took place following the publication of the review, including monitoring officers, the Public Services Ombudsman for Wales (PSOW) and her office, the Welsh Local Government Association (WLGA) and One Voice Wales. Discussion on the review's recommendations at the All-Wales Standards Conference in February 2022 were carefully listened to and standards committees wrote in with their views.

The consultation paper built on the review's recommendations and took the thoughts and comments raised during engagement into account.

### **About the consultation process**

Views were invited as part of a formal three month consultation between 24 March 2023 and 23 June 2023. The consultation document was published on the Welsh Government's website. The consultation sought views on Welsh Government responses to the review and considerations of the recommendations, along with a number of further issues raised during stakeholder engagement.

The consultation included an introduction to the Framework, the terms of reference of the review and links to the review.

Details of the consultation can be found [here](#).

### **About the responses**

31 responses were submitted either online or by e-mail within the timeframe of the consultation. One of the e-mail respondents did not submit any answers, however appreciated the opportunity to have done so. Three further responses were submitted following consultation closure. Whilst these responses have not been

included in this summary of responses it was noted that points raised were broadly in line with other respondents.

As part of the consultation process respondents were asked whether they were content for their details to be disclosed. Four respondents wished to remain anonymous and two did not answer the question. We have therefore not released details of respondents' identities.

The 31 respondents to the consultation can be grouped as follows:

- 12 principal councils and principal council committees
- 8 town and community councils
- 6 organisations, including societies, panels, associations
- 2 non principal council local government authorities (fire rescue authorities/national park authorities)
- 2 members of the public
- 1 anonymous online submission, grouping unknown

16 responses were completed online and 17 submitted via e-mail. No responses were received in hard copy.

## Summary of responses

This document is a summary of the responses received. The report does not aim to capture every point raised by respondents, instead it draws out key messages.

22 questions were asked in the consultation document and a summary of the responses is set out below.

Not all questions were answered by all respondents and some gave a general response to the consultation rather than answering specific questions. Where a general response has been provided we have included the response under the most appropriate question or provided a summary of points raised under question 22.

Respondents' comments have been included in the summary where a respondent has not specifically agreed or disagreed with a question.

**Question 1.** *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))?*

Of the 31 consultation responses received, 29 responded to this question. 2 did not express an opinion either way.

100% of the 29 respondents to this question agreed with this proposal. Many commented that the proposal was logical and supported ensuring consistency across Wales. One principal council confirmed they had already undertaken this



alignment and considered it would send a strong message that councillors are expected to promote and maintain the highest standards of conduct.

There were no adverse comments to this question.

**Question 2.** *Should the Adjudication Panel Wales (APW) be able to issue Restricted Reporting Orders?*

Of the 31 consultation responses received 26 responded to this question. 5 did not express an opinion either way.

85% of the 26 respondents to this question agreed the APW should be able to issue Restricted Reporting Orders. Whilst some respondents commented on the need for transparency in proceedings, some raised issues regarding hearings which may, for example, relate to minors. In such circumstances restricted reporting was considered appropriate. It was noted by one respondent that well established procedures are in place in other organisations which could be adopted.

Some respondents commented that restricted reporting orders could remove barriers to reporting complaints by providing a secure environment for complainants, witnesses, officers and panel members. It was suggested the restrictions could be in place for the period of a hearing and lifted following the hearing. It was felt this could support the removal of “trial by media”.

15% of the 26 respondents did not agree the APW should be able to issue Restricted Reporting Orders. Some respondents suggested this approach would not be in the interest of openness, transparency and the Nolan principles. Some respondents also considered that as similar restrictions are not imposed in other areas this approach could set a precedent. One respondent suggested the lack of evidence for such orders set out within the consultation failed to justify the restrictions.

**Question 3.** *Should there be express legal provision to enable the APW to protect the anonymity of witnesses?*

Of the 31 consultation responses received 23 responded to this question. 8 did not express an opinion either way.

96% of the 23 respondents to this question agreed the APW should have express legal provision to protect the anonymity of witnesses. Respondents were consistent in their comments that protecting witnesses would increase the willingness of witness participation. Respondents raised the importance of ensuring those involved in an investigation are aware of the identity of witnesses in order to be able to fully defend themselves. There was a strong consensus that transparency should still apply to the proceedings.

One respondent did not agree the APW should have express legal provision to protect the anonymity of witnesses based on the view that there could be significant disadvantage to the respondent of anonymous complaints. However, they did support proportionate and selective anonymity to protect the welfare and safety of witnesses if there is high risk to that witness, for example, in the case of minors.

Respondents consistently felt that complaints should not be anonymous to allow fairness and transparency in the proceedings, but witnesses should be protected where necessary.

**Question 4.** *Do you support the proposed changes to the permission to appeal procedure outlined in this recommendation. If not, what alternatives would you suggest?*

Of the 31 consultation responses received 22 responded to this question. 9 did not express an opinion either way.

86% of the 22 respondents to this question supported the principle of the proposed changes to the permission to appeal procedure outlined in the recommendation.

Positive comments included that regulations should give the President of the APW power to extend the time for a councillor to make an application for permission to appeal if it is in the interests of justice to do so. It was also felt that it would be appropriate for the Public Services Ombudsman for Wales (PSOW) to be able to comment on requests for permission to appeal and that the process should allow time to comment. In addition it was suggested that provision for private hearings should be made.

However the positive responses, in some cases, were qualified with comments about the need for sufficient time being allowed for appellants to provide appropriate documentation, especially when working within a process they may not be familiar with. Some respondents felt that 7 days would be insufficient and that there needed to be clarity about the definition of days i.e whether it refers to working days or all week days. It was felt that the APW should work to a deadline like other parties in the process. This would help to manage expectations, and avoid long delays that are not considered to be in the public interest.

Comments from the 14% of respondents to this question who did not support the proposed changes focussed on the whole process not taking more than a certain period of time. One respondent suggested a reasonable deadline for the APW to reach a decision would be 56 days.

**Question 5.** *Should there be an express power for the APW to summon witnesses to appeal tribunals?*

Of the 31 consultation responses received 25 responded to this question. 6 did not express an opinion either way.

88% of the 25 respondents to this question agreed there should be an express power for the APW to summon witnesses to appeal tribunals. Respondents suggested that compensation such as travel expenses and salary recovery should be in place. However, it was felt that the consequences of non-attendance should be made clear with guidance issued. Respondents wanted to be made aware of potential sanctions that could be considered for breaching a summons.

There was agreement amongst respondents that it would be contrary to the interests of justice if a witness were not to attend a hearing, and some felt that there is a duty of the witness to attend for legal transparency.

12% of the 25 respondents to this question did not agree. Comments focussed on the view that summoning witnesses would represent an excessively adversarial approach, and it should be recognised that the procedure was an appeal tribunal not a criminal court.

**Question 6.** *Should there be any changes in the procedure for referring appeals decisions back to standards committees?*

Of the 31 consultation responses received 22 responded to this question. 9 did not express an opinion either way.

The majority of respondents, 68%, felt there should not be any changes in the procedure for referring appeals decisions back to standards committees. Respondents felt the current procedure works well and that standards committees, as the local body dealing with standards, should continue to be entitled to take a different, considered, view from the recommendation of an appeal tribunal.

A key comment reflected by the majority of respondents was that it is an established practice that appeals tribunals should remit cases back to the primary decision maker for reconsideration. One respondent commented that “whilst it would be a “brave” Standards Committee that disagreed with the APW, a change removing the right for them to choose to do so would be a diminution of their freedom of action”.

32% of the 22 respondents confirmed they would like to see changes to the procedure for referring appeals decisions back to standards committees. Their comments centred on standards committees having the responsibility for promoting standards of behaviour, and that they therefore should remain the arbitrator and decision maker of matters which are referred to them.

It was suggested there should be clarity provided on the circumstances where the APW can refer a matter back to a standards committee and it was felt this should be limited to where a standards committee may have erred in law in its decision, or has made a decision that is irrational or procedurally unfair.

**Question 7.** *Do you agree there should be an express provision to enable part or all of tribunal hearings to be held in private?*

Of the 31 consultation responses received 24 responded to this question. 7 did not express an opinion either way.

83% of the 24 respondents to this question agreed there should be an express provision to enable part or all of tribunal hearings to be held in private. One respondent suggested there is already a power to hear evidence in private, but that it is less clear, given the wording of the regulations, whether the whole hearing has to be in private and suggests this is the point that requires further clarity.

Several respondents linked their responses to this question with responses to question 3 stating the anonymity of witnesses could increase the likelihood of witness participation and that the vulnerable can better be safeguarded.

Other respondents commented that in prescribed circumstances it would be fair and reasonable for all or parts of a tribunal hearing to be held in private, for example where personal or commercially sensitive information is disclosed. This would be in line with standards committees being able to exclude the press and public in limited situations.

Of the 17% of respondents to this question who did not agree, one qualified their response on the basis that they felt that there should only be an express provision to enable part or all of tribunal hearings to be held in private where it contravenes common law.

A further comment was that the President of the Welsh Tribunals should be consulted on how the proposal interacts with the unification of the Welsh Tribunals system in order that a more informed response can be provided.

**Question 8.** *Do you agree that the requirement to provide not less than seven days' notice of the postponement of a hearing should be retained?*

Of the 31 consultation responses received 22 responded to this question. 9 did not express an opinion either way.

84% of the 22 respondents to this question agreed the requirement to provide not less than seven days' notice should be retained with the remaining respondents disagreeing.

Those who agreed commented it should be retained for clarity to all parties and enable steps to be taken in reasonable timescales. Further points included that a maximum notice of postponement possible should be provided, with seven days being a minimum. One respondent who agreed not less than seven days' notice should be retained suggested that a minimum of 20 days would be more appropriate and practical.

The 16% of respondents to this question who did not agree that the requirement to provide not less than seven days' notice should be retained, felt consideration should be given to the need to postpone at shorter notice for reasonable reasons such as the illness of a key party to a hearing. It was felt that decisions to postpone due to unforeseen circumstances, which could be at very short notice, were not taken lightly.

There was a wide range of suggestions within the 9 comments received from both those who agreed and disagreed on what they felt an appropriate timescale for notice of postponement should be. Some respondents expressed that a minimum of seven days' notice appeared reasonable. Other responses ranged from 3 days' notice to a minimum of 20 days.

**Question 9.** *Should there be a wider range of sanctions available to the APW, and if so, what should they be?*

Of the 31 consultation responses received 23 responded to this question. 8 did not express an opinion either way.

83% of the 23 respondents to this question agreed there should be a wider ranges of sanctions available to the APW.

Respondents suggested that locally, i.e. within principal councils, there should be more sanctions available and those sanctions should be more consistent for breaches of the code of conduct and other policies. Issues of inconsistencies between councils were raised, along with standards committees needing to be strong and more supportive to protect councillors and officers from bad behaviour, bullying, intimidation and harassment.

Suggestions were provided for a wider range of sanctions such as those set out below.

- Training / prescribed training within a set time period
- Restorative action
- Suspension period, with guidelines, and the length of a suspension determined by the panel to reflect the circumstances/severity of the case.
- Conditional suspension, for example suspended unless an apology is issued within 30 days / training undertaken / partakes in conciliation
- Restricted access to resources
- Being unable to stand for future re-election
- Partial suspension, examples included for failing to disclose a personal interest in a planning matter, allowing the member to continue with local duties but suspended the Planning Committee for say three months. Or, for senior salaried roles, where local member duties continue but a member is suspended from undertaking a leadership role and receiving that element of their allowance.

18% of respondents to this question disagreed. They considered the current sanctions are broadly adequate and appropriate as they stand. One respondent suggested the addition of suspension covering 12 months or until the end of the current term of office should be added.

A further respondent commented that generally, the sanctions available to APW are appropriate, unambiguous and reflect the more serious cases that it deals with. They felt that greater flexibility in sanctions sits more appropriately with the standards committee.

**Question 10a.** *Do you support the proposed amendments to the process for interim case tribunals outlined in this recommendation? If not, could you please explain.*

Of the 31 consultation responses received 23 responded to this question. 8 did not express an opinion either way.

96% of the 23 respondents to this question supported the proposed amendments to the process for interim case tribunals. There was a wide variety of comments and considerations from respondents who supported the proposal.

Respondents felt current difficulties in applying for an interim suspension order creates a serious risk in a small number of cases, such as where there are safeguarding concerns.

Several respondents expressed reputational concerns for an elected representative to be suspended in the interim and who may be subsequently cleared. It was suggested that strong evidence would be required for interim suspension, and that it might be inappropriate to continue to remunerate a councillor facing charges. However, other respondents felt that suspension should be a neutral act and not a determination of wrongdoing/guilt. Limited reporting powers were flagged as a potential mitigation of this risk.

One respondent suggested a process could be implemented to provide the APW with the power to apply an interim suspension akin to the 'neutral' act of suspension which applies in employment situations. This would ensure that public confidence is maintained and the public are protected if, for example, safeguarding concerns have been raised in relation to a member's conduct, and there is prima facie evidence that they may misuse their position as a member if they are not suspended on an interim basis.

Further concerns were identified about the potential democratic impact of a suspension which might leave a single member ward unrepresented and the potential for political instability within the balance of the council. It was felt that the ability to issue a partial suspension could mitigate this risk.

It was suggested there is merit in establishing broad parameters/examples, through legislation or guidance on when an interim suspension would be appropriate for consideration and a simplified interim case tribunal process would be welcomed.

One respondent to this question stated both yes and no to supporting the proposed amendment. The respondent felt the process needs to be more streamlined and not have interpretations that disadvantage the complainant or the respondent. The respondent commented that there is a general lack of information provided to properly respond to this question and they did not have the relevant facts.

**Question 10b.** *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?*

Of the 31 consultation responses received 19 responded to this question. 12 did not express an opinion either way.

89% of the 19 respondents to this question agreed that an intermediate arrangement should be put in place, by shortening and streamlining the process for interim case tribunals.

Respondents felt that a quicker outcome for all parties, and a more simplified process with the use of plain English would be beneficial. It was also felt that a system similar to that of Medical Practitioners Tribunals would be appropriate.

Of the 11% who disagreed that an interim arrangement should be put in place, it was suggested that the limited resources would be put to better use by concentrating efforts on the long-term strategy for long-term change rather than developing an interim arrangement.

One consultation respondent, who did not express an opinion either way to this question, commented that there was not enough information and that the aspirations of the APW are not clear.

**Question 11.** *Do you have any further views on the recommendations made in relation to the operation of the APW?*

Of the 31 consultation responses received 24 responded to this question. 7 did not express an opinion either way.

83% of the 24 respondents to this question advised they had no further views on the recommendations made in relation to the operation of the APW.

The remaining 17% of respondents who answered this question expressed views on the recommendations. It was felt by some that decisions should be made more quickly. Others suggested consideration should be given on whether the APW's notices must be published in local newspapers, and also that the regulations currently require a hard copy of the reference is sent to the councillor by the APW and that the option to serve a reference by other means should be available to the APW.

A further respondent felt that the President of the Welsh Tribunals should be consulted and a written view obtained for a more informed response to be provided.

**Question 12.** *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?*

Of the 31 consultation responses received 23 responded to this question. 8 did not express an opinion either way.

The 23 respondents to this question provided a range of suggestions on who could take this forward and how, with several themes being raised.

Respondents focused on increased media promotion, including social media and websites with easy read formats, to generate understanding on: 1) how code breaches are addressed through an open and independent process with effective

sanctions; and 2) that councillors who breach the code are held to account. However it was emphasised that digital exclusion must be taken into account for those living in rural and economically disadvantaged areas.

Other respondents suggested the inclusion of a written agreement to promote and uphold the Ethical Standards Framework on the election papers and declaration of acceptance form, along with mandatory training for elected members to include workshops and open days.

It was also felt that independent members should be vetted and trained to a similar standard expected of leaders of political parties to ensure adherence to the Public Sector Equality Duty and an understanding of protected characteristics. E-learning modules should be available for elected members.

One respondent commented that, whilst increasing awareness of the framework was positively received, there is concern about managing the public's expectations. The respondent identified the PSOW's public interest threshold, and local resolution not applying to complaints from the public, meant that expectations were not always met.

Respondents offered a wide range of suggestions on who should carry out the work to raise awareness and how awareness should be raised. Approaches varied from a centralised approach by a single body or organisation to lead on the production of publicity material for an efficient approach and consistency of message, to each individual local authority providing information about the framework.

One respondent suggested that standards committees should work in conjunction with principal council equality officers to look at ways to further promote awareness. They felt the visibility of the standards committee and promotion of roles and responsibility of elected members were crucial in this regard. Another respondent felt it important that the National Forum of standards committees discuss and agree a consistent approach.

In addition it was identified that work to raise awareness of the Ethical Standards Framework, particularly for people with protected characteristics as described in the Equality Act 2010, should be undertaken by specific representative groups.

It was felt by one respondent that there should be provision of direction to all 732 Community and Town Councils and other public bodies to have a section of their website explaining the Ethical Framework, with standard text to be provided by Welsh Government for consistency.

Another respondent suggested the potential for a working group consisting of representatives from, for example, the Equality and Human Rights Commission, Public Services Ombudsman for Wales, One Voice Wales and Lawyers in Local Government who could prepare a Wales wide set of materials as well as determine in what format they are best published/communicated.

**Question 13.** *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?*



Of the 31 consultation responses received 25 responded to this question. 6 did not express an opinion either way.

Whilst 56% of the 25 respondents to this question agreed that the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed, 44% of respondent did not agree. One principal council advised that all the independent members on their standards committees became aware of the vacancies via adverts placed in a newspaper.

Several respondents agreed that local flexibility for an open recruitment process should include newspapers. It was suggested that individual authorities would be best placed to decide, and would be able to consider the accessibility of the internet in their area.

Respondents who felt the requirement should be removed cited cost as the main restriction. Some respondents commented that a high number of their independent members became aware of the opportunities through sources other than newspapers, which contrasts with the experience of other respondents.

Respondents consistently indicated that wide awareness raising, including a variety of publications, social media and information to stakeholder organisations, provides the best opportunity for the widest pool of candidates to be reached.

Some respondents felt that Welsh Government should issue guidance on inclusive recruitment and appropriate places where adverts should be placed.

**Question 14a.** *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 committees should be removed?*

Of the 31 consultation responses received 26 responded to this question. 5 did not express an opinion either way.

65% of the 26 respondents to this question agreed the ban should be removed. It was commented that the removal of this ban would support standards committees in attracting potentially high quality candidates to their Committees.

However, of those who agreed the ban should be removed, a high number of respondents flagged that the ban should remain in place for those who held politically restricted posts, and this should be a lifelong ban. One respondent suggested a ban for a set period of time for those who held politically restricted posts.

35% of 26 respondents to this question disagreed that the ban should be removed. The consistent comment from these respondents identified that the independence of members must provide assurance that they can, without doubt, be truly independent and politically impartial. The fairness and integrity of the committee and the process must have no hint of bias.

**Question 14b.** *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 held statutory or politically restricted posts?*

Of the 31 consultation responses received, 24 responded to this question with 8 of the 24 commenting either the ban should not be removed or the question was not applicable. 7 respondents did not express an opinion either way.

A small number of respondents advised that there were differing views amongst committee members on this question.

Responses varied from 1 year through to 5 -10 years, depending on whether the role was politically restricted. Respondents suggested the potential for an election term, or a pragmatic but robust process of declaring any interests in the matter.

It was felt by some respondents that time should be spent gaining experience with another authority/employer in order to bring fresh perspectives. Others expressed the view that an ex-employee should not be an independent member for their former council, but could be for a different council.

In relation to politically restricted roles respondents' comments varied. 3 respondents felt those who held a politically restricted role should not be able to serve as independent members on the council for which they were employed. However, suggestions of 2 years and 5 -10 years were considered appropriate by some. A flexible approach was suggested based on multiples of length of service which could include a minimum and maximum period.

**Question 15.** *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?*

Of the 31 consultation responses received, 25 responded to this question. 6 did not express an opinion either way.

Of the 25 who responded to this question 52% agreed that the lifelong ban should be removed and 48% did not agree.

Respondents who considered the lifelong ban is no longer appropriate provided a variety of suggestions for a suitable period of grace. It was again noted that some committees were split in their thoughts regarding the period of grace, and also whether there should be a lifetime ban.

Suggestions of a suitable period of grace ranged from 1 year to 5 years with considerations around whether the period should be longer for members having held senior/cabinet/executive roles. One suggestion included that members should have left office for at least one term before coming back as a member of the standards committee.

Of those who disagreed, several respondents commented that the role of councillor, even those not in national political parties, is always a political one. Several respondents were concerned that independent members have to be seen as independent of local politics and removing this ban removes a key governance safeguard that currently works well. Respondents felt the current make up of committees and structure of membership ensure that independent members are truly seen to be independent of local politics.

**Question 16.** *Standards committees' summoning witnesses and sanctions: Should standards committees have the power to summon witnesses?*

Of the 31 consultation responses received, 26 responded to this question. 5 did not express an opinion either way.

73% of the 26% who responded to this question agreed that standards committees should have the power to summon witnesses.

Respondents who agreed with this question commented that it is in the interest of justice for witnesses to attend hearings to ensure democracy and so that wider ranging evidence is received. One respondent felt the ability to directly interact with the people involved would be more useful than pre-prepared reports. However, there was consideration expressed about whether witnesses should be summoned or invited, and what protection would be provided to them if summoned.

Regarding the mechanics of issuing a summons, similar concerns were raised by those who agreed and disagreed to this question. The main concern being that without its own powers of contempt the mechanism to issue a witness summons would need an enforcement route, perhaps the power to seek a warrant from the Magistrates' court. It was felt that further consideration is required on the legal aspect of who can summon a witness and the avenues available if a summons is not adhered to along with the implications. One respondent felt that without any means of enforcement, summoning witnesses would bring the exercise of the power into disrepute.

Further concerns from those who disagreed included the enforcement of the summons, and specifically whether summoning an unwilling witness would assist a case. They felt it would be better to hear from witnesses who are willing to contribute to the proceedings and offer information of their own accord.

It was felt that only a judge or judicial body should be able to issue a summons, particularly given the ability to send the police to enforce it. It was flagged that if it is felt that standards committees need to summon a witness, then the law could be amended to allow an application to be made by the committee to a suitable judge or judicial body e.g. the President of the APW.

**Question 17.** *Do you agree that the sanctions a standards committee can impose should be changed or added to?*

Of the 31 consultation responses received, 25 responded to this question. 6 did not express an opinion either way.

80% of respondents agreed that the sanctions a standards committee can impose should be changed or added to.

Comments received included varying the suspension length to fit the seriousness of the allegation with longer suspensions in severe cases, restorative actions rather than suspension or disqualification, and the power to order training and an apology within a set period. A further suggestion included an ability to restrict access to local authority resources as a sanction.

The issue of suspension was considered by several respondents with suggestions that conditional sentences or suspension could be issued either upon failure to attend training or issue an apology, or suspension until the training or apology was carried out. Partial suspension was also put forward, eg suspension from specific duties.

It was suggested that the aim of sanctions should be to encourage good practice wherever reasonable, rather than to punish, and it was felt that a more refined set of sanctions available to the standards committee would support this. It was suggested that breaches of the code of conduct could be placed on the councillor's profile, along with attendance records and training.

One respondent had concerns that there is no legislation currently available for misuse of social media. Concerns were raised about inconsistency in the approach that monitoring officers took to helping and supporting community councils, and that standards committees need to be stronger to assist local councils.

20% of respondents to this question disagreed, with one respondent stating they felt the question was not clear. The other respondents who disagreed did not provide further thoughts or comments.

**Question 18.** *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.*

*What effects do you think there would be?*

Of the 31 consultation responses received, 22 responded to this question. 9 did not express an opinion.

82% of the 22 who provided comments were of the view that the effects would be neutral or that there would be no effect on the Welsh language, and that opportunities for people to use Welsh Language, and on treating the Welsh Language no less favourably than English, would not be affected.

Other views expressed that the changes would support inclusivity and increase diversity. However, two respondents felt there would be increased costs with translation and another stated that amendment to deadlines, as raised in previous questions, should take into account access to translation facilities.

**Question 19.** *How could positive effects be increased, or negative effects be mitigated?*

Of the 31 consultation responses received, 13 commented on this question. 18 did not express an opinion.

62% of the 13 respondents who commented stated that this question was not applicable.

The remaining 38% of respondents who commented on this question offered similar responses to those in question 18. Further to this one respondent felt the negative effect of costs could be mitigated where documentation would be supplied on request, depend upon the extent of Welsh spoken in the area.

**Question 20.** *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.*

Of the 31 consultation responses received, 16 commented on this question. 15 did not express an opinion.

25% of the 16 respondents who answered this question felt the proposed amendments would be neutral, or the question was not applicable.

75% of the 16 respondents who answered this question provided additional comments.

Respondents felt it should be clear in documentation that communications and hearings can be in either language and the promotion of the use of the Welsh language, and making everything available through the medium, will enhance the equality of any processes. This was supported by other respondents' views in ensuring there is equal opportunity to use either English or Welsh, and that any changes should comply with the Welsh Language Standards and be mindful of local authorities' Welsh language policies.

However, some respondents felt the existing rights for the Welsh language are well developed and already well promoted, and there does not appear that more could be done by the regime to promote the language further.

One respondent asked whether the Welsh Language Commissioner/department had been directly consulted. A further respondent felt it should be ensured sufficient budget is provided for translation.

**Question 21.** *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?*

Of the 31 consultation responses received, 21 provided comments on this question. 10 did not express an opinion.

Some respondents provided comments which related to areas outside of this consultation. Officials will take these into consideration in future work or, where appropriate, future consultations.

Several respondents commented that the local government sector has already taken responsibility and worked to adopt several of the recommendations from the Penn Report where legislative changes were not required, including establishing a National Forum for Standards Committee (in Wales), holding a national standards conference and harmonizing the threshold for declaring gifts & hospitality.

33% of respondents to this question highlighted issues around the self-reporting of criminal behavior by councillors. They felt it should be a requirement to self-report any conviction imposed on the councillor since making their declaration of acceptance of office (excluding anything punishable by way of fixed penalty notice). Appeals were considered an issue; however, it was felt that legally the councillor remains convicted until such time as the appeal has been successful and an investigation by the Public Services Ombudsman could be postponed until the appeal is concluded.

71% of respondents to this question felt that training on the Ethical Framework should be mandatory. Many of the issues identified on training were similar to those summarised in responses to previous questions, such as training being required within set timeframes and penalties for not attending training.

However, other respondents stated that if a councillor were specifically elected on a platform where she/he was not required to undertake training then it would be wrong to impose any punishment for failing to attend.

Additionally, respondents suggested that if mandatory training is not possible, priority and status for training on the Code of Conduct should be increased, with it being in councillor training plans along with scheduled refresher training. It was felt a strong emphasis should be placed on the correlation of adhering to the code and its expectations of good behaviour with council reputation and public confidence. It was suggested that councillors taking up training could be listed in a council's Annual Report so the record is visible.

In addition some respondents felt there should be investment up front to have knowledgeable officers and informed councillors, and training on the Ethical

Framework should be mandatory for Clerks of town and community councils. It was commented that national, digital training materials for town and community councils to view in their own meetings/view remotely would be helpful.

It was suggested there should be evaluation of the costs of poor behaviour in councils, for example on staff turnover. Another respondent felt it would be beneficial to learn from research on how other public sector bodies ensure adherence to codes.

A qualification was suggested demonstrating the transferable skills acquired throughout a term of office, and that training provided by bodies for councillors should be consistent, clear and not undermine the role councillors carry out or the code of conduct. It was raised that there is no process to challenge advice provided by a body, even where it is funded by Welsh Government

#### Other areas raised by respondents

Social media was raised by several respondents. Some suggested either WLGA guidance should be formalised or the Code of Conduct could require councillors to be fair and accurate in any reporting or comment on council business. However, others felt the code should not specifically refer to social media, the focus should be on addressing behaviours. Almost all agreed that social media training should be utilised and wide engagement on this is important.

Respondents felt a clear resolution is required for complaints affecting a councillor who serves on more than one relevant authority. Respondents provided suggestions by which they felt the issue might be brought to clarity.

One respondent felt a procedure should be in place detailing how duty of care is carried out in relation to councillors and staff as part of the expected standards of behaviour.

Further comments on the Code of Conduct included:

- It needs to be more prescriptive in what it wants to achieve.
- The whole process of investigating and determining code breaches needs to be reviewed, with the aim of simplifying and shortening the entire process.
- There should be increased use of local resolution of complaints, and that the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be subsequently referred to the Ombudsman.

One respondent felt that different options for providing mediation services to community councils need to be explored to help ensure that the Ombudsman should only undertake investigations if the local resolution protocol has been used and exhausted.

Disappointment was indicated by a respondent that work undertaken by representatives in the early stages of the review were not referenced and the bullying, intimidation and harassment in some town and community councils appears

to have been overlooked. They felt that it seemed a missed opportunity in the sector to not try to address these issues through the Framework, and raised that these issues are having a very real and continuing effect on not only the recruitment and retention of officers, but also on the number of councillors standing for election.

One respondent suggested that the President of Welsh Tribunals, Sir Gary Hickingbottom should be consulted on questions 2 to 11, 16 and 21 which relate to APW powers and procedures, and also on how the Penn recommendations interact with the plan for a “single, unified tribunal system for Wales”. The respondent stated that this additional information is essential to provide a properly informed response to the consultation.

**Question 22.** *We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:*

Of the 31 consultation responses received, 2 respondents provided comments on this question.

Two respondents commented under this question. One stated that the consultation did not appropriately distinguish between the different scale of bodies, or range of councillors that run them. They further added that there is no distinction between a highly paid employee of a city council and a volunteer member of a small community council but the effects and consequences on them are significant.

One respondent stated that the consultation was too wordy, should be written in plain English and be less repetitive.

### **Comment raised outside of this consultation**

A pertinent comment of note was suggested outside of this formal consultation which relates to the APW procedure for appeals. It was felt there should be a specific requirement to notify a relevant Monitoring Officer immediately of an appeal being accepted by the APW as the existence of an appeal is central to the commencement of a suspension period.