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Code of Conduct - Assessing Public Interest

Introduction

The Model Code of Conduct (“the Code”) for councillors sets out the high standards of behaviour which the public expects from its elected representatives.

Our role is to consider complaints that members of local authorities, community councils, fire and rescue authorities, national park authorities and police and crime panels in Wales have breached their authority’s Code.

Our role is crucial in supporting the Standards Committees of local authorities to help councillors achieve the standards of conduct that meet public expectations. We aim to support proper decision making and the proper use of public resources and to maintain public confidence in local government and in the democratic process itself. Undertaking investigations that do not support these wider benefits is not in the public interest.

We are firmly of the view that our limited resources should not be used to investigate matters which are trivial or which have little or no impact on the public. It is important that we focus our investigations on matters that are serious and are capable of undermining the relationship between councillors and the public they serve, such as corruption, bullying and misuse of power in public office.

The two-stage test

Our process requires the application of a two-stage test. Where we are satisfied that a complaint is supported by direct evidence that a breach has taken place, initially the public interest is considered in deciding whether a complaint against a councillor can and should be investigated. We consider the public interest again during the course of an investigation to ensure that it should continue and, finally, again, when determining whether a matter should be referred to a Standards Committee (SC) or to the Adjudication Panel for Wales (APW) for consideration.

There is no widely accepted definition of public interest, but it has been described as “something which is of serious concern and benefit to the public”. The public interest therefore relates to something which has an impact on the public and is not merely a matter the public finds to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

The public in this context does not necessarily mean the entire population of Wales. It may refer to a distinct section of the public such as a small community or interest group.

The published public interest factors we may take into account are set out below:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to another
- whether the breach was motivated by any form of discrimination against the victim’s ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity

Considerations

When taking any of the above factors into account, relevant considerations can include the circumstances of the complaint; the extent to which the councillor was responsible for, or was to blame for, the alleged breach; whether the alleged conduct was premeditated and/or planned and whether the alleged conduct has caused harm or impacted on another person, group or body. Views expressed by the complainant, or any other person affected by the alleged conduct, relating to the impact and effect should also be considered. Other considerations may be:

- whether there is evidence of previous similar behaviour on the part of the member
- whether the Councillor been the subject of any previous complaints or investigations, or been referred to the SC or APW for a similar matter? Is the alleged conduct ongoing, repeated or is there evidence of escalating behaviour
- whether the investigation or referral to an SC or the APW is required to maintain public confidence in elected members in Wales
- whether investigation or referral to an SC or the APW is a proportionate response. Consider whether it is likely that the breach would lead to a sanction being applied to the member and whether the use of resources in carrying out an investigation or hearing by an SC or the APW would be regarded as excessive, when weighed against any likely sanction.

Public interest should not be decided on the basis of resource alone but this is a relevant consideration when making an overall assessment. A balanced view should be taken and consideration of the outcomes of previous cases considered by SC's across Wales and the APW will be helpful in achieving this.

The list is not exhaustive and not all factors will be relevant to every case.

Contact us

If you would like more information, please [contact us](#) on 0300 790 0203 or ask@ombudsman.wales

Also available in Welsh.