



geldards

Geldards Public Sector— Member Conduct

17 October 2024

Helen Snow, Clare Hardy

Agenda

- Background
 - Law regulating member conduct
 - Arrangements for monitoring and investigating member conduct
- Codes of Conduct for members
- Legislation regulating standards committee hearings
- Natural Justice
- Questions

Law relating to member conduct - England

- Localism Act 2011 – Part 1, Chapter 7 and Schedule 4
- Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Law relating to member conduct - England

- Duty of relevant authority to promote and maintain high standards of conduct
- Duty to adopt code of conduct
- Must have arrangements for investigation of allegations of breach of code of conduct
- Arrangements must include appointment of independent person whose views may be sought by a relevant authority or a member who is the subject of an allegation
- Member found in breach may be censured

Law relating to member conduct - England

- Duty of relevant authority to maintain register of interests
- Duty of members to disclose disclosable pecuniary interests
- Duty of members not to participate in business in which members have disclosable pecuniary interests
- Failure to comply involves a criminal offence

Law relating to member conduct - Wales

- Local Government Act 2000, Part 3
- Conduct of Members (Principles) (Wales) Order 2001
- Local Authorities (Model Code of Conduct) Order 2008
- Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001
- Standards Committees (Wales) Regulations 2001
- Public Services Ombudsman for Wales (Standards Investigations) Order 2006

Law relating to member conduct - Wales

- Duty of relevant authority to adopt code of conduct
- Duty of members to give undertaking to comply with code of conduct
- Allegations of breach made to Public Services Ombudsman for Wales
- After investigation, Ombudsman may find:

Law relating to member conduct - Wales

- After investigation Ombudsman may find:
 - There is no evidence of breach of the code of conduct.
 - No action needs to be taken in respect of the matters which are the subject of the investigation.
 - The matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned, or
 - That the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a tribunal.

Law relating to member conduct -Wales

- Monitoring Officer may report to Standards Committee
- Standards Committee may determine
- If Standards Committee determines that member has breached the Code of Conduct Standards Committee may apply a sanction of censure, suspension or partial suspension

Code of Conduct - England

- Relevant authority must adopt code of conduct consistent with the following principles
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
- Must include provision for registration and disclosure of pecuniary and other interests

Code of Conduct - Wales

- Relevant authority must adopt code of conduct based on model code
- Model code includes provisions on:
 - Interpretation
 - General provisions
 - Interests
 - Gifts and hospitality

Issues relevant to decisions on member conduct

- Freedom of Expression
- When considering comments made by members remember Article 10 European Convention on Human Rights – Right to freedom of expression
- Enhanced protection applies to political debate
- Those holding public office are expected to have a thicker skin

Issues relevant to decisions on member conduct

- Natural Justice
 - Act in a fair and reasonable way
 - Balance the public interest against those of the individual facing the hearing
 - Ensure equality of arms
 - Be, and be seen to be, unbiased, unaffected by conflicts of interests and impartial;
 - Provide a right for written representations to be made
 - Give a reasoned decision;
 - Offer a right to an appeal or a review

Issues relevant to decisions on member conduct

- Local authority decisions must be reasonable and approached with an open mind
- Bias
 - Having an interest which makes a decision maker unable to take an objective view
 - Test for apparent bias: Whether a fair minded and informed observer having considered the facts would conclude there was a real possibility of bias – *Magill v Porter*

Issues relevant to decisions on member conduct

- Predetermination
- Case law since Localism Act 2011
- *R (on the application of TW Logistics Ltd) v Tendring District Council*
- *R (on the application of IM Properties Development Ltd v Lichfield District Council*
- *EU Plants Ltd v Wokingham Borough Council*

Making a determination

- The attributes of a fair-minded and informed observer
- *Helow v Secretary of State for the Home Department [2008] 1 WLR 2416*
 - *being detached but not complacent*
 - *being not unduly sensitive or suspicious*
 - *recognising that fairness requires that an tribunal must be and must be seen to be unbiased*
 - *appreciating that members of a tribunal have their weaknesses*
 - *concluding, without hesitation where objectively justified, that conduct or statements by a member, or his/her or its associations, may make it difficult for a case to be judged fairly before them*

Making a determination

- Appropriately judicial manner
- Comments, tone or body language
- Over frequent or aggressive interventions
- Oppressive forms of questioning
- Avoid accidental contact
- Avoid the use of extraneous information and research conducted with the case
- Avoid delay

Standards Committee Hearing – Making a determination

- Standard of proof
- Level of proof required to persuade the Committee
- Balance of probabilities
 - More likely to have happened than not

Standards Committee Hearing – Making the determination

- Sequence
 - Making findings of fact
 - Determining the issue to be drawn from those facts
 - If any action should be taken as a consequence

Standards Committee Hearing – Making the determination

- Findings of fact
 - Disputed facts
 - Chronological order
 - Evidence
 - Preferred evidence
 - Reasons

Standards Committee Hearing – Making the determination

- Determine the issue in the case
 - Has there been a failure to comply with the Model Code of Conduct?
 - Based on findings of fact
 - Only relevant factors
 - Formulate reasons for the decision
 - Mitigation

Questions

geldards



Helen Snow

Partner

+44 (0) 29 2039 1497
helen.snow@geldards.com



Clare Hardy

Partner

+44 (0) 29 2039 1766
clare.hardy@geldards.com

geldards

Thank You

www.geldards.com
info@geldards.com