

Local Resolution Protocol for Cwmllynfell Community Council

Background

The Public Service Ombudsman has agreed to the principle of referring some complaints against Members back to Community and Town Councils for a local resolution. However to date there has not been a common process for Community and Town Councils to follow in dealing with such matters. To assist the sector, One Voice Wales has drawn up the following as a model protocol which any Community and Town Council can use in dealing with such complaints.

This model protocol is meant as a starting point for Community and Town councils. Individual councils may wish to add or amend this model to suit their particular needs. Councils wishing to use this process should first of all be clear about its purpose and intention, formally adopt it in its current or in a revised form and ensure that all Councillors are provided with a copy for their attention. The Council should then determine the framework through which it is operated which may require the establishment of a Committee or Panel or an extension of the terms of reference of an existing Panel or Committee such as a Complaints Panel or Committee. In the case of establishment of a new Panel it is important that terms of reference are prepared and approved by the Council. In either case it will be important for Councils to document in the terms of reference as to what will happen if there is a lack of co-operation shown by the member concerned or a breakdown occurring during the operation of the process. For example, in such cases the default position might be that the matter is referred to the Public Ombudsman for Wales.

The Local Resolution Process

Issues which should be considered under this process

Low level complaints about Members, including:

- Minor complaints from Members about Members
- Minor complaints from Officers about Members
- Members alleged to have not shown respect and consideration for others – either verbally or in writing

Issues which should not be considered under this process

Complaints which must be directed to the Public Services Ombudsman for Wales, including:

- Complaints instigated by a member of the public
- Serious complaints – breaches of the Code of Conduct/failure to disclose interests/bullying/abuse of position or trust/repeated breaches
- Complaints made by the Clerk/Proper Officer
- Vexatious, malicious or frivolous complaints
- Members' complaints about officers which should be dealt with using the Council's internal complaints process
- Repetitive low level complaints

The Process

The complaint

The complaint would need to be sent to the Clerk/Proper Officer of the Council to undertake a first sift to ensure that the complaint is at a low level and should not be dealt with by way of a complaint to the Ombudsman. If appropriate, therefore, the Clerk/Proper Officer should firstly seek an early resolution of any such dispute by liaising informally with the individual members concerned prior to the resolution process described below. It is vitally important that the 'accused' member is given full details of the complaint against them so that in the interests of natural justice they are in a position to prepare their response to the accusation.

Resolution Process

The involvement of the Chair/Vice Chair of the Council in the following process is not to adjudicate on the complaint, but to attempt to get the members/officers involved to come to an agreement as to how the issue(s) could be resolved on an amicable basis.

The Clerk/Proper Officer will act as a facilitator for the resolution process below.

If the complaint is between Members other than the Chair of the Council, the Clerk/Proper Officer and the Chair will meet individually with the complainant and Member subject of the complaint to seek an agreed resolution.

If the complaint is between Members, one of whom is the Chair of Council, but not the Vice Chair, the Clerk/Proper Officer and the Vice Chair will meet with the complainant and Member subject of the complaint to seek an agreed resolution.

If the complaint has been made by an officer/employee, but not the Clerk/Proper Officer, against a Member other than the Chair of Council, the Clerk/Proper Officer and the Chair of Council will meet with the officer and the Member subject of the complaint to seek an agreed resolution.

If the complaint has been made by an officer/employee, but not the Clerk/Proper Officer, against the Chair of Council, the Clerk/Proper Officer and the Vice Chair of Council will meet with the officer and the Chair to seek an agreed resolution.

If the complaint has been made by the Clerk/Proper Officer, then it is likely to be best practice that this complaint is forwarded by way of a complaint to the Ombudsman.

Possible results of the process

If an agreement is reached by Members and/or officers during this Stage then no further action is required.

If agreement cannot be reached the aggrieved Member/officer would always have the opportunity of referring the matter to the Ombudsman.

Examples of agreements might include issue of a letter of apology, a written undertaking or commitment not to breach the Code of Conduct in the future, a commitment to undertake training or an agreement that on the basis of the evidence that no further action should be taken and the matter be closed.

Time for the process

It is the intention that all of the processes can be completed as quickly as possible to resolve the issue. However exact timing will depend on the availability of individuals to attend the meetings.

Brothocol Datrysiaidau Lleol ar gyfer Cyngor Cymuned Cwmllynfell

Cefndir

Mae'r Ombwdsmon Gwasanaethau Cyhoeddus wedi cytuno â'r egwyddor y dylid cyfeirio rhai cwynion yn erbyn Aelodau yn ôl i Gynghorau Tref a Chymuned i'w datrys yn lleol. Fodd bynnag, hyd yn hyn ni fu proses gyffredin i'w dilyn gan Gynghorau Tref a Chymuned wrth ddelio â materion o'r fath, Er mwyn cynorthwyo'r sector, mae Un Llais Cymru wedi llunio'r model brothocol canlynol y gall unrhyw Gyngor Tref a Chymuned ei ddefnyddio wrth ddelio â chwynion o'r fath.

Bwriedir i'r model brothocol fod yn fan cychwyn i Gynghorau Tref a Chymuned. Efallai y bydd cynghorau unigol yn dymuno ychwanegu at y model neu ei addasu i'w wneud yn addas i'w hanghenion penodol nhw. Dylai cynghorau sy'n dymuno dewis y broses ofalu yn y lle cyntaf fod ganddynt ddealltwriaeth glir o'i bwrpas a'i fwriad, ei fabwysiadu'n ffurfiol ar ei ffurf bresennol neu ar ffurf ddiwygiedig a gofalu fod pob Cynghorydd yn cael copi i'w sylw. Yna dylai'r Cyngor bennu'r fframwaith ar gyfer ei weithredu, a gall hynny olygu sefydlu Pwyllgor neu Banel neu ehangu cylch gorchwyl Panel neu Bwyllgor sy'n bod yn barod, megis Panel neu Bwyllgor Cwynion. Os mai'r bwriad yw sefydlu Panel newydd, mae'n bwysig fod cylch gorchwyl yn cael ei baratoi a'i fod yn cael ei gymeradwyo gan y Cyngor. Yn y naill sefyllfa a'r llall bydd yn bwysig i Gynghorau gofnodi yn y cylch gorchwyl beth fydd yn digwydd os yw'r aelod dan sylw'n dangos amharoddrwydd i gydweithredu neu os yw pethau'n mynd ar chwâl wrth geisio gweithredu'r broses. Er enghraifft, mewn sefyllfaoedd o'r fath mae'n bosib mai'r drefn ddiodyn yw cyfeirio'r mater at Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

Y Broses Datrysiaid Lleol

Materion y dylid eu hystyried o dan y broses hon

Cwynion lefel isel am Aelodau, gan gynnwys:

- Mân gwynion gan Aelodau am Aelodau
- Mân gwynion gan Swyddogion am Aelodau
- Aelodau yr honnir iddynt fethu dangos parch ac ystyriaeth i eraill – naill ai ar lafar neu'n ysgrifenedig

Materion na ddylid eu hystyried o dan y broses hon

Mae'r cwynion y mae'n rhaid eu cyfeirio at Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn cynnwys:

- Cwynion a wneir gan aelod o'r cyhoedd
- Cwynion difrifol – torri'r Cod Ymddygiad/methiant i ddatgelu buddiannau/bwlïo/camddefnyddio swydd neu ymddiriedaeth/torri'r Cod dro ar ôl tro
- Cwynion a wnaed gan y Clerc/Swyddog Priodol
- Cwynion blinderus, maleisus neu wamal
- Cwynion Aelodau am swyddogion, y dylid delio â nhw trwy ddefnyddio proses cwynion mewnol y Cyngor
- Cwynion lefel isel ailadroddus

Y Broses

Y gŵyn

Byddai angen danfon y gŵyn at Clerc/Swyddog Priodol y Cyngor i gynnal didoliad cychwynnol i sicrhau fod y gŵyn ar lefel isel ac na ddylid delio â hi trwy gyflwyno cwyn i'r Ombwdsmon. Felly, os yn briodol, dylai'r Clerc/Swyddog Priodol geisio yn y lle cyntaf i gael datrysiad cynnar i unrhyw anghydfod o'r fath trwy drafod yn anffurfiol gyda'r aelodau unigol dan sylw cyn symud at y broses ddatrys a ddisgrifir isod. Mae'n hollbwysig fod yr aelod 'cyhuddedig' yn cael manylion llawn am y gŵyn yn eu herbyn fel eu bod yn enw cyfiawnder naturiol mewn sefyllfa i baratoi eu hymateb i'r cyhuddiad.

Proses Datrysiad

Rôl Cadeirydd/Is Gadeirydd y Cyngor yn y broses ganlynol yw peidio dyfarnu ar y gŵyn, ond yn hytrach ceisio cael yr Aelodau/swyddogion dan sylw i gytuno sut ellid datrys y mater(ion) mewn ffordd gyfeillgar.

Bydd y Clerc/Swyddog Priodol yn gweithredu'n hwylusydd ar gyfer y broses ddatrys isod.

Os yw'r gŵyn rhwng Aelodau ac eithrio Cadeirydd y Cyngor, bydd y Clerc/Swyddog Priodol a'r Cadeirydd yn cyfarfod yn unigol â'r achwynydd a'r Aelod y gwnaed y gŵyn yn ei erbyn/herbyn i geisio cael datrysiad y gall pawb gytuno arno.

Os yw'r gŵyn rhwng Aelodau, ac os yw un ohonynt yn Gadeirydd y Cyngor, ond nid yr Is Gadeirydd, bydd y Clerc/Swyddog Priodol a'r Is Gadeirydd yn cyfarfod â'r achwynydd a'r Aelod y gwnaed y gŵyn yn ei erbyn/herbyn i geisio cael datrysiad y gall pawb gytuno arno.

Os gwnaed y gŵyn gan swyddog/gweithiwr, ond nid y Clerc/Swyddog Priodol, yn erbyn Aelod ac eithrio Cadeirydd y Cyngor, bydd y Clerc/Swyddog Priodol a Chadeirydd y Cyngor yn cyfarfod â'r swyddog a'r Aelod y gwnaed y gŵyn yn ei erbyn/herbyn i geisio cael datrysiad y gall pawb gytuno arno.

Os gwnaed y gŵyn gan swyddog/gweithiwr, ond nid y Clerc/Swyddog Priodol, yn erbyn Cadeirydd y Cyngor, bydd y Clerc/Swyddog Priodol ac Is Gadeirydd y Cyngor yn cyfarfod â'r swyddog a'r Cadeirydd i geisio cael datrysiad y gall pawb gytuno arno.

Os gwnaed y gŵyn gan y Clerc/Swyddog Priodol, mae'n debyg mai'r arfer gorau fyddai danfon y gŵyn ymlaen ar ffurf cwyn at yr Ombwdsmon.

Canlyniadau posib y broses

Os ceir cytundeb gan Aelodau a/neu swyddogion yn ystod y Cam hwn nid oes angen cymryd unrhyw gamau eraill.

Os na ellir cael cytundeb byddai gan yr Aelod/swyddog a wnaeth y gŵyn y cyfle o hyd i gyfeirio'r mater at yr Ombwdsmon.

Gallai enghreifftiau o gytundebau gynnwys llythyr yn ymddiheuro, addewid neu ymrwymiad ysgrifenedig i beidio torri'r Cod Ymddygiad yn y dyfodol, ymrwymiad i

dderbyn hyfforddiant neu gytundeb na ddylid, ar sail y dystiolaeth, cymryd unrhyw gamau pellach ac y dylid cau'r mater.

Amser ar gyfer y broses

Y bwriad yw y gellir cwblhau'r holl brosesau cyn gyflymed ag y bo modd er mwyn datrys y mater. Fodd bynnag, bydd yr union gyfnod o amser yn dibynnu ar argaeledd unigolion i ddod i'r cyfarfodydd.