

CYNGOR SIR POWYS COUNTY COUNCIL.

**Standards Committee
15th February 2017**

REPORT BY: Solicitor to the Council

SUBJECT: Standards Issues

REPORT FOR: Decision, Information and Discussion

A. General Standards Issues for County Councillors and Co-opted Members

A1 Code of Conduct Training

It has been reported to previous meetings that arrangements were made for the remaining four Members to receive this refresher training by means of the Members providing written responses to 3 or 4 questions considered at the refresher training sessions. The scenarios were sent to the four Members. Due to a lack of a response, following the last meeting the Chair wrote to the four Members. One Member had attempted the scenarios but seems unclear as to what response is required. Officers have agreed to review the questions with the Member on a one to one basis but this has not been arranged to date. Two Members have submitted responses. The final Member has yet to respond.

B. Referral of Councillors to Public Services Ombudsman

B1. County Councillor Referrals

B1.1 The current position regarding existing matters with the Ombudsman is as follows:

6/15/CC	With the Adjudication Panel for Wales
8/15/CC	Referred to the Standards Committee
9/15//CC	Referred to the Standards Committee
04/16/CC	Ombudsman investigating
07/16/CC	Ombudsman investigating
09/CC/2016	Ombudsman investigating
10/CC/2016	Ombudsman investigating
15/CC/2016	Ombudsman investigating
16/CC/2016	Ombudsman investigating
17/CC/2106	Ombudsman investigating

C. Other Standards Issues

None.

D Dispensations

D1. Applications - County Councillors

No applications for dispensation have been received from County Councillors.

E. Attendance

E.1 Member attendance

Member attendance for the period 11th May 2016 to 30th November 2016 will be considered.

F Ombudsman's Casebook

The Ombudsman has published Code of Conduct Casebooks for the following periods:

- July 2016 – September 2016

A copy of this Casebook is attached at **Appendix 1**.

Back copies of the casebooks can be accessed from the website of the Public Services Ombudsman for Wales at:

<http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

G Ombudsman's Annual Report

The Ombudsman has published his Annual Report for 2015-16 which can be accessed from the website of the Public Services Ombudsman for Wales at:

<http://www.ombudsman-wales.org.uk/en/publications/Annual-reports.aspx>

This report covers both service complaints and code of conduct complaints.

This is the second report prepared by Nick Bennett, who took up office as Public Services Ombudsman for Wales in August 2014.

The Ombudsman has two roles; the first is to consider complaints about public service providers in Wales; the second role is to consider complaints that members of local authorities have broken the Code of Conduct. The Ombudsman is independent of all government bodies and the service is provided free of charge.

1. Complaints about Public Service Providers

Under the PSOW Act 2005, the Ombudsman considers complaints about bodies which, generally, are those that provide public services where responsibility for their provision has been devolved to Wales.

When considering complaints, the Ombudsman will look to see whether people have been treated unfairly or inconsiderately, or have received a bad service through some fault on the part of the service provider. Attention will also be given to whether the service provider has acted in accordance with the law and its own policies. If a complaint is upheld the Ombudsman will recommend appropriate redress. The main approach taken when recommending redress is, where possible, to put the complainant (or the person who has suffered the injustice) back to the position they would have been in if the problem had not occurred. Furthermore, if from the investigation there is evidence of a systemic weakness, then recommendations will be made with the aim of reducing the likelihood of others being similarly affected in future.

2. Code of Conduct Complaints

The Ombudsman consider complaints that members of local authorities have breached their authority's Code of Conduct. All authorities have a Code of Conduct which sets out in detail how members must follow recognised principles of behaviour in public life.

If a county councillor wishes to make a complaint about another county councillor within their own authority, the Ombudsman expects them to first of all make their complaint to the authority's Monitoring Officer, as it may be possible to resolve the matter locally without my involvement. (see Local Resolution below)

The Local Government (Standards Committees, Investigations, Dispensations and Referral (Wales) (Amendment) Regulations 2016 made amendments to existing regulations, these include;

- provision has been made to enable a standards committee or a monitoring officer, with the prior written agreement of the Chairperson of the standards committee, to refer the report of a misconduct investigation to another authority's standards committee for determination with a view to overcoming any potential conflict of interest a standards committee may have in dealing with the complaint under consideration
- two or more relevant authorities are now able to establish a joint standards committee
- a member seeking to appeal the determination of a standards committee will in future first need to obtain the permission of the President, or a nominated panel member, of the Adjudication Panel.

Code of Conduct Complaints

Complaints received

It is recorded that the number of Code of Conduct complaints rose by 19% compared with 2014/15 (274 in 2015/16 against 231). The Ombudsman highlights his disappointment to see this figure rise, especially in relation to community councils where there has been a 49% increase.

Outcomes

Members will be pleased to note that of 13 cases referred to the Ombudsman regarding Members Code of Conduct, they were all closed after initial consideration in 2015/16. (Annex C – page 67)

H Local Resolution

In 2013 the Public Services Ombudsman for Wales issued guidance on the Code of Conduct for Members of Local Authorities and recommended that a local resolution procedure was adopted to deal with low level complaints made by a Member against a fellow Member.

The Standards Committee adopted the Local Resolution, as contained within Section 25 of the Constitution on the 25th of June 2014.

The objective of the local resolution procedure adopted by the Council is to engage early and at a relatively informal level with a view to nipping issues in the bud with minimal involvement from the Monitoring Office and Standards Committee.

I. Training and Meeting Dates

To note dates of future training and meetings as follows:

Training.

Tuesday 16th May 2017 10.00am Code of Conduct Training

Wednesday 28th June 2017 10.00am Training for Standards Committee

Meetings.

Wednesday 28th June 2017 2.00pm Standards Committee

Wednesday 4th October 2017 10.00 Standards Committee

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The Code of Conduct Casebook

Issue 10 October 2016

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Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers July to September 2016, but also includes the summaries of older cases for which the standards committee or Adjudication Panel hearings were concluded during this period.

Case summaries

No evidence of breach

Magor with Undy Community Council - Objectivity and Propriety

Case Number 201601530 - Report issued in August 2016

A member of the public complained that a member ("the Councillor") of Magor with Undy Community Council ("the Council") had written to the Council to ask to represent it on external committees. At the time he wrote to the Council he was suspended from Council duties, following a ruling by the Adjudication Panel for Wales (APW), that he had previously breached the Code of Conduct. The complainant said that the Councillor had shown little regard for the decision of the APW and had brought his Office or Authority into disrepute.

The Ombudsman established that the Councillor had written a letter to the Council but that it made clear his intention was to serve on those committees once he returned to his duties following the suspension. There was no evidence to suggest that he had sought to undertake Council duties whilst he was suspended. The Ombudsman found that there was no evidence of a breach of the Code of Conduct.

Flintshire County Council - Duty to uphold the law

Case Number 201501526 - Report issued August 2016

Mr A complained that a member ("the Councillor") of Flintshire County Council ("the Council") may have breached the Code of Conduct for members by attempting to obtain money from him in return for support for his planning applications. Mr A said that when he refused to pay off the Councillor's mortgages or a car loan, she opposed his planning applications and failed to declare an interest in relation to her dealings with him.

Information was obtained from the Council and North Wales Police, including recordings of Police interviews with the Councillor and Mr A.

The Ombudsman found that there was no evidence to substantiate Mr A's allegations, and as such there was no breach of the Code.

Caerphilly County Borough Council - Objectivity and propriety

Case Number 201601317 - Report issued in September 2016

Mr A complained that a member ("the Councillor") of Caerphilly County Borough Council ("the Council") may have breached the Code of Conduct by deliberately providing confidential information to a member of the public (Mr B).

Information was obtained and considered from Mr A, the Councillor, the Council and various witnesses. Mr B was also interviewed.

The Ombudsman found that the information provided by Mr A appeared to be an unintentional misunderstanding and that, overall, the evidence did not suggest that the Councillor disclosed confidential information to Mr B and therefore there was no breach of the Code of Conduct.

Langstone Community Council - Selflessness and stewardship

Case Number 201504048 – Report issued in September 2016

Mr B complained that a member (“the Councillor”) of Langstone Community Council (“the Council”) may have breached the Code of Conduct for members by allegedly improperly using his influence as a councillor and former police officer to cause the Police to visit a resident, Mr A, in an attempt to “warn him off” pursuing concerns about the Councillor.

Mr A and Mr B were interviewed and information was obtained from the Police and the Councillor.

The Ombudsman found that the evidence did not suggest that there was a breach of the Code by the Councillor. The Councillor believed that he and his family were being harassed by Mr A, and the evidence did not suggest that he sought to use his status as a councillor or former police officer to influence how the Police dealt with the matter. The Ombudsman found there was no evidence of a breach of the Code.

No action necessary

Isle of Anglesey County Council - Accountability and openness

Case Number 201505105 – Report issued in July 2016

A complaint was issued claiming that a member (“the Councillor”) of the Isle of Anglesey County Council, had broken the Code of Conduct by taken part in a decision in the Orders and Planning Committee meeting (“the Committee”) even though his nephew lived near the development under discussion.

The investigation considered whether the Councillor had breached paragraphs of the Code of Conduct with regard to prejudice and personal interests.

Whilst the Ombudsman recognises that the Councillor had broken the Code by failing to declare a personal interest in the Committee’s meeting, he didn’t believe that the Councillor had a prejudicial interest based upon the evidence gathered.

The Ombudsman’s conclusion was that no action needed to be taken regarding the matters investigated.

Bridgend County Borough Council - Promotion of equality and respect

Case Number 201503556 - Report issued in July 2016

The Ombudsman investigated a complaint that a member (“the Councillor”) of Bridgend County Borough Council (“the Council”) had breached the Code of Conduct for members when she called another member a “scab” at the conclusion of a Development Control Committee meeting on 8 January 2015. It was also alleged that the Councillor called the member a “b***** scab” in the Council’s Members’ Room about a week later and that she refused to apologise in full for her comments.

The Councillor’s reason for refusing to apologise was that she believed, in the absence of evidence of any dispensation granted to the Member during the miners’ strike of 1984-85, her comment was a statement of fact.

Evidence of the Member’s dispensation was presented to the Councillor during the course of the investigation and she acknowledged that she was therefore wrong to call the Member a “scab” and said that she was willing to publicly apologise to him. The Councillor accepted that her actions had breached the Code of Conduct.

In reaching his finding, the Ombudsman considered the Councillor’s acceptance that her conduct breached the Code and her offer to apologise to the member for her actions. In light of this the Ombudsman concluded that it was not in the public interest to pursue this matter further, and so no action needed to be taken in respect of the matters investigated.

Cwmaman Town Council – Disclosure and registration of interests

Case Number 201504239 – Report issued in August 2016

Councillor A complained that a member (“the Councillor”) of Cwmaman Town Council (“the Town Council”) might have breached the Code of Conduct when he failed to declare an interest at a Town Council meeting

on 30 September 2015 in respect of a planning application (“the application”) and by his behaviour at the end of the meeting.

The Ombudsman investigated whether the Councillor had an interest in the application under discussion and whether his behaviour at the end of the meeting was such that it brought his office or the Town Council into disrepute and whether it could be considered disrespectful.

The Ombudsman found that the Councillor’s conduct might have breached the Code. However, the Ombudsman concluded that the matter was not in the public interest to pursue. The Ombudsman’s finding was that no action needed to be taken in respect of the matters investigated.

Referred to Standards Committee

Manorbier Community Council - Disclosure and registration of interests

Case Number 201408960 – Report issued in February 2016

The owner of a Caravan Park complained that a member (“the Councillor”) of Manorbier Community Council (“the Council”) was improperly involved in discussions at a meeting when it was resolved to recommend to the local planning authority that a planning application relating to the Caravan Park be refused. The Councillor’s house is adjacent to the Caravan Park and she had acknowledged making a number of complaints about the business over the years. The Councillor accepted that she had a personal interest in the matter, but denied that she had a prejudicial interest which would have prevented her from being involved in the decision.

The Ombudsman found that given the proximity of the Councillor’s home to the business, and the history of complaints, it was likely that she had a prejudicial interest in the planning application. He therefore considered it likely that the Councillor had breached the Code of Conduct. He recommended that his report should be referred to the Monitoring Officer of Pembrokeshire County Council, for consideration by the Council’s Standards Committee.

The Standards Committee heard the case on 20 May 2016. It found that the Councillor had breached the Code of Conduct and imposed a two month suspension. The Committee also recommended that the Councillor undertake training on the Code of Conduct within six months.

The Councillor subsequently appealed the Committee’s decision to the Adjudication Panel for Wales. The Panel agreed that the Councillor had breached the Code and increased the period of suspension to three months.

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

More information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to Matthew.Aplin@ombudsman-wales.org.uk or Lucy.Geen@ombudsman-wales.org.uk or sent to the following address:

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