

RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2015/2016

STANDARDS COMMITTEE

28 APRIL 2016

REPORT OF THE MONITORING OFFICER

AGENDA ITEM NO. 3(d)	
Public Services Ombudsman for Wales – Summary of Complaints against Members – 1st April 2015 – 31st March 2016	

1. PURPOSE OF THE REPORT

- 1.1 To provide Members with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st April 2015 – 31st March 2016.

2. RECOMMENDATIONS

- 2.1 To note the contents of the report.

3. BACKGROUND

- 3.1 Members will note below the summary of complaints made against Members and submitted to the Ombudsman for the period 1st April 2015–31st March 2016.

Date Complaint Received	Complaint Re; County Borough or Community/Town Councillor	Nature of Complaint	Ombudsman Investigation Y/N
11/6/15	Community/Town Councillor	Non-declaration of interest	N
7/7/15	County Borough Councillor	Bringing Council into disrepute	N
13/7/15	Community/Town Councillor	Bringing Council into disrepute	N
30/3/16	Community/Town Councillor	Failing to show respect and consideration & bringing Council into disrepute	N
30/3/16	County Borough Councillor		Pending
30/3/16	County Borough Councillor		Pending
30/3/16	Community/Town Councillor	Relate to same complaint	Pending
30/3/16	Community/Town Councillor		Pending
30/3/16	Community/Town Councillor		Pending

- 3.2 For Members information attached at Appendix 1 to this report is a copy of the current procedures adopted by the Ombudsman with regards to how his office investigates Code of Conduct complaints. Of particular interest is a non-exhaustive list of factors his investigating officers are asked to consider when applying the public interest test and whether an investigation is required.

Code of Conduct Complaints Procedure (Version 14)

Contents

0.0 Principles	2
1.0 Workpro	4
2.0 Assessment	4
3.0 The investigation	6
4.0 Concluding the investigation	8
5.0 Challenges to decisions	9
6.0 Enquiries	10
7.0 Publication of reports	11

Principles

The Public Services Ombudsman for Wales (PSOW) is committed to offering a high standard of customer service and to assessing and, when appropriate, investigating complaints that members have breached their authority's Code of Conduct. Members who are the subject of a complaint may find it stressful. Therefore it is important that the decision whether to investigate a complaint is made and conveyed as speedily as possible.

We will comply with the duties imposed upon us by the Equality Act 2010, Article 6 of the European Convention on Human Rights (ECHR) and the FREDA¹ Principles.

Special care needs to be taken when responding to vulnerable people and our communications with them need to be sensitive and appropriate to their needs. Examples of steps we have taken to assist people in dealing with us include Easy Read, transcribing conversations, face to face visits, Braille, referring complainants to advocates and the provision of material on CD or tape.

The Ombudsman has encouraged local authorities across Wales to implement local resolution procedures to deal with low level complaints which are made by a member against a fellow member. Typically these complaints will be about alleged failure to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d). Any such complaints involving County Council members should generally be closed at step 2 and referred back to the Council's Monitoring Officer for consideration under this process.

The decision to investigate a complaint is one which requires careful consideration. Investigations have potentially significant implications for the member. However we need to be mindful of our role in building confidence in local government in Wales by promoting standards in public life.

In determining whether to investigate a complaint; or whether to continue an investigation of a breach of the Code to the stage of referring the matter to the Adjudication Panel for Wales ("the Adjudication Panel) or a standards committee the Ombudsman initially applies a two stage test. First the evidential test, followed by the public interest test.

1. The evidential test is whether there is direct evidence that a breach of the Code actually took place.
2. The public interest test. This requires consideration as to whether an investigation or a referral to the Adjudication Panel or a standards committee is required in the public interest.

¹ FREDA = Fairness; Respect; Equality; Dignity; Autonomy

The application of this public interest test requires consideration of the following factors:

- the seriousness of the breach, for example, has the member brought their authority seriously into disrepute?
- has the member deliberately sought personal gain for himself or another person at the public expense?
- are the circumstances of the breach such that a member has misused a position of trust or authority and caused harm to a person?
- was the breach 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?
- is there evidence of previous similar behaviour on the part of the member?
- is the breach such that an investigation or referral to the Adjudication Panel for Wales or a standards committee is required to maintain public confidence in elected members in Wales?
- is investigation or referral to the Adjudication Panel for Wales or a standards committee a proportionate response? Namely, would the cost of an investigation or hearing by the Adjudication Panel for Wales or a standards committee be regarded as excessive when weighed against any likely sanction?

These factors are not exhaustive, and not all may be relevant in every case. The weight to be attached to each of these factors, and the factors identified, will also vary according to the facts and merits of each case.

In reaching the decision whether an investigation is required, the investigator should base the decision on the information available. The complaint must be supported by direct evidence as opposed to assertions.

The level of proof required for a breach of the Code is the balance of probability. It is important that any investigation is proportionate to the breach of the Code alleged.

Many complaints received are politically motivated or vexatious. Whilst it is necessary to be mindful of this the decision to investigate or not must be taken on the merits of the evidence presented and the application of the two stage test.

Our decisions will be made openly and transparently. The reasons for decisions not to investigate will be conveyed in a way that meets the recipient's particular requirements, and will be given to those whom we are required to inform. Decisions taken under delegated authority are subject to review by the Review Manager or the Ombudsman.

At all times we should avoid bias and also be mindful of the need to avoid giving the appearance of bias. Our process is to gather all the evidence available, proportionately to the breach involved, and to make decisions on the basis of the evidence gathered.

The Ombudsman has provided statutory guidance on the Code of Conduct² which will need to be considered when making a decision.

1. Workpro

1.1. Workpro is the means by which complaints are recorded and progress of the complaint monitored and managed. There are four distinct steps relevant to Code complaints:

- Step 1 – Enquiry
- Step 2 – Assessment
- Step 3 – Investigation
- Step 4 – Report

1.2. All actions taken and written documents prepared during the course of an assessment or investigation of a complaint must be recorded and stored within the complaint record on Workpro. Each record should be appropriately titled and categorised to aid identification of key documents.

1.3. Throughout this procedure “file” refers to the paper file and “record” refers to the Workpro record.

1.4. A number of templates are available on Workpro and should be used at all steps where possible. Whilst these templates can save time and effort care must be taken to ensure that the final document is appropriate to the circumstances of the case.

2. Assessment

2.1. When the duly made complaint (i.e signed confirmation of disclosure), is received in the Complaints Advice Team (CAT) the following will be notified in writing:

²“The Code of Conduct for members of local authorities in Wales – Guidance from the Public Services Ombudsman for Wales”

- (a) The Monitoring Officer
- (b) The Clerk to the Community Council, if appropriate
- (c) The accused member
- (d) The complainant

2.2. A copy of the complaint should also be provided to the persons listed in paragraph 2.1(a) to (c). A copy of the “Factsheet for Local Authority Members: What we do when we get a complaint about your conduct” must also be sent to the accused member for information purposes.

2.3. We will aim to tell all persons listed in paragraph 2.1(a) to (c) above within twenty working days whether or not the Ombudsman intends to investigate.

2.4. The investigator will assess the information contained in the complaint against the two stage test. If the first stage is not met, the investigator will reject the complaint and will notify the complainant in writing and via their preferred method of communication (if different). That letter will set out the reasons in full for the decision and will be copied to those persons set out in paragraph 2.1(a) to (c). The complaint file and workpro record will be closed.

2.5. Where the decision to investigate, or the complaint itself, is likely to have a high public profile the file must be referred to an Investigation Manager (IM).

2.6. Occasionally, the information in the file may suggest that the complaint has merit but the complainant has not been able to supply direct evidence³ of the matter being complained about or has not named witnesses to the event being complained about. In these circumstances a “minded to” letter should be sent to the complainant giving them an opportunity to provide further information. This letter should explain the investigator’s thinking and why the first stage of the two stage test has not been met. Ten working days should be allowed for a reply. If no reply is received the complaint should be rejected (see paragraph 2.3). If a reply is received, the investigator will re-assess the complaint and decide if:

- (a) It should be rejected; in this case paragraph 2.3 should be followed; or
- (b) It should be investigated; in this case paragraph 2.5 should be followed.

If the investigator concludes that the first stage of the two stage test is met but not the second stage the investigator will refer the file to the IM for consideration. If the decision is agreed by the IM the investigator will reject the complaint and the actions specified in paragraph 2.3 followed.

2.7. If after initial assessment of the complaint the investigator concludes that the two stage test has been met the investigator should prepare a detailed assessment note setting out the reasons for the decision and which provisions of the Code are engaged. Where the complainant has accused the member of breaching more than one paragraph of the Code an evaluation of each potential

³ Direct evidence may include evidence witnessed by the complainant or where the complainant has provided the names of a witness or witnesses who can provide evidence on the matters complained about.

breach should be included in the assessment note. If the investigator has identified areas of the Code where there are potential breaches not identified by the complainant, these too should be contained in the assessment note. The investigator should include in the assessment note an investigation plan setting out the nature of the enquiries to be made, identifying any potential witnesses and what other evidence to gather.

2.8. The decision to begin an investigation must be approved by the Ombudsman (or in his absence, the DOI).

3. The investigation

3.1. Once the decision has been made to investigate the complaint, the IM (in conjunction with the DOI in complex or high profile cases) may re-allocate the file to another investigator.

3.2. Once the scope of the investigation has been agreed, those identified in paragraph 2.1 will be informed in writing of the start of the investigation. The accused member will be told that his/her comments are not required at this stage. The Monitoring Officer and Clerk to the Community Council (if appropriate) will be asked for relevant information within 10 working days.

3.3. Code of Conduct investigations are generally conducted in private. In the interests of fairness care should therefore be taken during the investigation particularly when sharing information with the complainant, member or any other relevant persons to maintain confidentiality where appropriate. Information which has been obtained by the Ombudsman during his investigation must only be disclosed for one of the purposes permitted in the Local Government Act 2000 (for example, information may be disclosed to a witness or an accused member for the purpose of conducting the investigation).

3.4. Evidence from witnesses asking for their account of events can be obtained in several ways, for example:

- (a) Face to face interviews⁴
- (b) Telephone interviews⁵
- (c) Written questions

The investigator with their IM's agreement will identify the most appropriate way for witness evidence to be gathered, but as a general rule, face to face or telephone interviews with formal written statements being obtained are favourable evidentially. Written questions may be appropriate if specific factual information is being sought from a witness but they will not otherwise be appropriate.

⁴ Digitally recorded

⁵ ibid

3.5. Insofar as possible any witness evidence obtained during a face to face or telephone interview will be incorporated into or appended to a Witness Statement document⁶ bearing a statement of truth.

3.6. The investigator must periodically review the progress of an investigation with their IM to ensure that the scope and investigation plan remain appropriate. Continual consideration should also be given as to whether there are any additional lines of enquiry to be pursued in consequence of or arising from the information and/or witness evidence obtained. Evidence of these reviews must be recorded on the Workpro record and paper file.

3.6. During the course of an investigation, other potential breaches of the Code may be identified, either involving the member under investigation or another member. When this happens, the investigator will prepare a written brief for the IM, who will refer the file to the DOI for a decision. The DOI may decide what action to take or to refer the decision to the Ombudsman. If the scope of the investigation is to be widened, the steps set out at paragraph 3.2 are to be taken. However if the extended investigation is against another member, a new record and file are to be opened before that member, the Monitoring Officer and, where appropriate, the Clerk to the Community Council are informed (see paragraph 3.2).

3.7. When all the evidence has been gathered the investigator will review the information to decide if the evidence is supportive of a breach of the Code and if it remains in the public interest to continue with the investigation. The outcome of this review should be noted on WorkPro and shared with the investigator's IM.

If so, all relevant evidence gathered will be sent to the member informing them that a face to face interview will be arranged.⁷ A copy of the "Factsheet for Member Interviewees" must also be sent. Where the evidence does not support a breach the investigator will consider the most appropriate way to conclude the investigation (see paragraph 4.2).

A face to face interview should be conducted with the member unless there is a very good reason not to do so. The member should be offered the option of conducting the interview in Welsh or English.

The interview with the member should be recorded.⁸ Investigators should ensure that all relevant notices and labels are available at the interview and in the language of choice. A transcript (and translation where appropriate) of the interview should be completed thereafter and a copy sent to the member.

⁶ Template in General section on Workpro

⁷ Investigators should refer to Appendix C of the Information Security Policy for guidance on delivery method to be used.

⁸ Using an Audio Interview Recorder

3.8. When the transcript of the interview or members comments on the evidence have been received the investigator with the knowledge and approval of their IM (where appropriate) consider the most appropriate way forward taking into consideration the factors of the public interest test (see paragraph 4.2).

3.9. During an investigation, it might become apparent that it is appropriate to discontinue the investigation for other reasons (e.g. the serious illness of a key witness or the accused member or where the investigator considers that it is not in the public interest to continue with it). A decision to discontinue an investigation for any reason must be approved by the DOI.

Once a decision to discontinue an investigation is approved written notification should be sent to the parties identified in paragraph 2.3 using the relevant template letters on Workpro. A discontinuation summary must be prepared.

4. Concluding the investigation

4.1. The investigation can be concluded by one of four findings:

- (a) There is no evidence of a breach of the Code;
- (b) That no action needs to be taken in respect of the matters investigated;
- (c) That the report of the investigation be forwarded to the Monitoring Officer for consideration by the Council's Standards Committee; or
- (d) That the report of the investigation be referred to the President of the Adjudication Panel for Wales (APW) for determination by a tribunal established by him.

4.2. Findings will be conveyed in accordance with the following table:

Finding	Letter	Report	Draft	Decision Maker
No evidence of breach	Yes	Yes	No	Ombudsman/DOI
No further action	Yes	Yes	No	Ombudsman/DOI
Refer to Standards Committee	No	Yes	Yes	Ombudsman
Refer to APW	No	Yes	Yes	Ombudsman

The templates on Workpro should be followed for both letter reports and reports.

- If a letter report is appropriate it should fully explain the reasons for the decision. Once approved and where a finding under (a) or (b) is made copies of the letter report should be sent to:

(i) Complainant

Public Services Ombudsman for Wales

- (ii) Member
- (iii) Monitoring Officer
- (iv) Clerk to the Community Council (if appropriate)

- If a finding under (c) or (d) is appropriate the draft report must be referred to the AD & LA and after it has been considered by the Ombudsman (or DOI in his absence) it will be sent to the member⁹ for comments before it is finalised.

Any comments made by the member will be summarised in the final version of the report and given due consideration.

Where a finding under (c) is made copies of the final report should be sent to the:

- a) Member
- b) Monitoring Officer¹⁰

Where a finding under (d) is made copies of the final report should be sent to the:

- a) Member
- b) Monitoring Officer
- c) President of the Adjudication Panel for Wales¹¹

Every letter report/report should include a summary of the complaint and the Ombudsman's findings as a stand-alone document.

The complainant and the Clerk to the Community Council (if relevant) should be informed of the outcome of the Ombudsman's investigation using the relevant template letter. A copy of the summary (only) can be provided where the investigator considers that it is appropriate to do so.

Where a finding under (c) or (d) is made the investigator must ensure that Workpro is updated to record the hearing outcome decision and that an updated version of the summary including the hearing outcome is prepared and saved on Workpro. In cases where an appeal against the hearing outcome is lodged, the investigator must also record this on Workpro.

5. Challenges to decisions

5.1. There will be occasions when a complainant wishes to challenge a decision not to investigate. The investigator will ensure that any challenges are recorded in Workpro, the request acknowledged and the persons identified in paragraph 2.1(a)-(c) should be notified that a request has been received and provided with a copy of it using the appropriate template letters on Workpro. The

⁹ The report should be marked "Draft in Confidence"

¹⁰ A copy of the report and appendices will also be provided in an electronic format

¹¹ *ibid*

challenge will be referred to the Review Manager who will decide how best to respond by either:

- (a) Reviewing and responding personally;
- (b) Referring the matter to the investigator who dealt with the matter to draft a response for his consideration;
- (c) Commissioning a review and response from a different Senior Investigating Officer or another IM;
- (d) Referring the matter to the DOI;
- (e) Referring the matter to the Ombudsman; or
- (f) Referring the matter to the Ombudsman's Corporate Services Manager (complaints about members of our staff).

5.2. Copies of the review decision should be sent to the persons identified in paragraph 2.1(a)-(c) using the appropriate template letters on Workpro.

5.3. Challenges to a (c) or (d) finding cannot normally be considered as the Ombudsman is "functus officio" which prevents him re-considering a report. However if significant new evidence is presented, such as to amount to a new complaint, or if the finding was clearly perverse, then he may re-consider the matter. In such cases the challenge should be referred to the Review Manager in the first instance.

6. Enquiries

6.1 Where an enquiry is received from the media as to the existence of a complaint and/or investigation this should also be referred without delay to the Policy & Communications Team for response.

6.2 On receipt of such an enquiry the Policy and Communications Team, having ascertained the name of the relevant authority, will confirm whether a complaint has been received and/or whether the office is currently investigating an allegation. The identity of any accused member may also be shared, in the interest of openness and transparency, where this is requested. Requests for further details relating to the complaint made, matters investigated or the identity of the complainant and/or any witnesses will be refused.

6.3 Where an enquiry is received from a third party (i.e. any person other than the complainant or the accused member) whether this is made orally or in writing as to the existence of a complaint and/or investigation this should also be referred without delay to the relevant Team Manager, Assistant Investigation Manager or Code of Conduct Lead Investigation and Improvement Officer for response.

6.4 On receipt of such an enquiry the same process set out in paragraph 6.2 above will be followed.

6.5 Responses to enquiries made pursuant to 6.3 above will normally be issued in writing and will be recorded on the relevant WorkPro record.

7. Publication of investigation reports, etc.

7.1. Decisions not to investigate will not normally be published. However, summaries of cases where an (a) or (b) finding has been made will be made available in the Code of Conduct Casebook. Where a request is received for a copy of a report or decision letter (where an (a) or (b) finding was made), and the accused member has been identified by the requestor, it is our practice to disclose this subject to redaction of all identifiable third party information which will usually include the complainant's details. Advice on redaction is available from the Management Information Officer.

7.2 . Where a (c) or (d) finding has been made and the matter has been referred to a standards committee or for adjudication by tribunal we will refer requests for information to the relevant Monitoring Officer or Registrar of the Adjudication Panel whilst the hearing is outstanding. We will publish the summaries of such cases in the Casebook when the hearing has been concluded and will follow the same practice described in paragraph 7.1 above when requests for copies of reports are received.

7.3. Where requests for information and/or copies of reports or decisions are received from the media, these should be directed immediately to the Policy and Communications Team.

Policy Owner	CMRG
Policy & EIA approved by CMRG	
Due date of next Review	Ongoing
For publication to :	Intranet Yes PSOW website Yes

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

28 APRIL 2016

REPORT OF THE MONITORING OFFICER

Background Papers: Freestanding matter

Contact: Mr.Paul Lucas, Monitoring Officer - Tel: 01443 424105