

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2015/2016

**STANDARDS COMMITTEE
28 APRIL 2016**

**REPORT OF THE MONITORING
OFFICER**

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| AGENDA ITEM NO.3(e) | |
| PUBLIC SERVICES OMBUDSMAN FOR WALES – CODE OF CONDUCT CASEBOOKS & FACT SHEETS | |

1. Purpose of Report

To receive the Code of Conduct Casebooks (Issues 5,6 & 7) and Fact Sheets produced by the Public Services Ombudsman for Wales.

2. Recommendation

To note the contents of the Code of Conduct Casebooks and Fact Sheets published by the Public Services Ombudsman for Wales.

3. Background

3.1 The Public Services Ombudsman for Wales publishes regular editions of his Code of Conduct Casebooks and copies of Issues 5, 6 & 7 are attached as Appendix 1, for the Committee's information.

3.2 Also attached as Appendix 2 are copies of Fact Sheets produced by the Ombudsman explaining:

- how to complain about the conduct or behaviour of elected members or co-opted members;
- what the Ombudsman does on receiving a complaint about an elected member's conduct;
- the procedures followed in dealing with conduct or behaviour complaints; and
- the approach taken by the Ombudsman's staff when carrying out interviews with elected members who are subject of investigation under the code of Conduct complaints procedure.

Local Government Act 1972

As Amended by

The Local Government (Access to Information) Act 1985

Standards Committee

28 April 2016

Report of Monitoring Officer

BACKGROUND PAPERS

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| PUBLIC SERVICES OMBUDSMAN FOR WALES – CODE OF CONDUCT CASEBOOKS AND FACT SHEETS | Mr.P.Lucas Monitoring Officer Te: 01443 424105 |
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Freestanding Matter

The Code of Conduct Casebook

Issue 5 July 2015

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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).

(Continued overleaf)

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 April to June 2015, 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

Torfaen County Borough Council – Promotion of equality and respect

Case reference 201406095 – Report issued June 2015

The Ombudsman received a complaint that a member of Torfaen County Borough Council (“the Councillor”) had breached the Code of Conduct by making a comment on a social media which the complainant felt implied that he had retired early because of a link to paedophilic activity.

The Councillor explained that it had not been his intention to imply that the subject of the posting had been the complainant and that the individual in question had been one of his family members. The Councillor also maintained that the link to paedophilic activity had been a misinterpretation which he had sought to clarify by amending the reference.

The Ombudsman concluded that there was no evidence that the Councillor had breached the Code.

Penmaenmawr Town Council – Integrity

Case reference 201306326 – Report issued April 2015

A number of individuals complained that a member of Penmaenmawr Town Council (“the Councillor”) had breached the Code of Conduct for members by arranging for false information to be included in the Council’s financial accounts and by failing to declare an interest and taking part in discussions about council business relating to a local Community Transport Group (“the Group”) and a community centre. The complainants said that the Councillor’s company audits the accounts belonging to the Group and Community Centre.

The Ombudsman determined that it was appropriate to investigate whether the Councillor had breached a number of parts of the Code. Evidence was obtained from the Clerk to the Council, from the Treasurer of the Group and a member of the public involved in the running of the community centre. The Councillor also submitted his comments on the complaint.

Having considered the evidence, the Ombudsman found that there was nothing to suggest that the entry included in the Council’s financial accounts was unusual. Furthermore, the Ombudsman was not satisfied that the Councillor had an interest in the matters due to the lack of a formal business relationship between his company and the Group and community centre. The Ombudsman therefore concluded that there was no evidence that the Councillor had breached the Code.

No action necessary

Tywyn Town Council – Integrity

Case reference 201400682 – Report issued June 2015

The Ombudsman received a complaint that a member of Tywyn Town Council (“the Councillor”), who was also the Chairman of the Tywyn & District Chamber of Tourism and Commerce (“the CTC”), had breached the Code of Conduct by using his position to obtain a pecuniary advantage for himself and another through his membership of the Gwynedd Experience Group (“the Group”). He complained that the Councillor had breached the Code on a number of occasions during Council and Finance Committee meetings by failing to declare a prejudicial interest and leave the room during discussions of Group matters and the financial donation to the CTC. He also complained about the Councillor’s behaviour towards the members and two guest speakers during a Council meeting.

The Ombudsman determined that it was appropriate to investigate whether the Councillor had breached paragraphs 4(b), 4(c), 6(1)(a), 7(a), 10(1), 11(1), 14(1)(a), 14(1)(c) and 14(1)(e) of the Code of Conduct. Evidence was obtained from the Clerk to the Council, members of the Group and members of the Council present at the relevant meetings. A formal interview was carried out with the Councillor.

The Ombudsman concluded that there was no evidence that the Councillor had used his position within the Group to gain an advantage for himself or anybody else. The evidence fully explained how he had become involved in carrying out work on behalf of the Group to ensure that it could obtain funding under a local community scheme for the benefit of Tywyn.

The evidence confirmed that the Councillor had failed to declare an interest in Group matters and had participated in discussions on one occasion and failed to withdraw from the room on another occasion when the financial donation to the CTC was discussed. However, the Ombudsman did not consider that the Councillor’s interest in Group matters was so significant that it would have been likely to prejudice his judgement on these matters. Whilst the Councillor had been inconsistent in the action that he had taken when the financial donation to the CTC had been discussed, this may have been due to the advice which he said he received and the fact that he was previously not asked to leave, when having a dispensation to speak in relation to the 2013 donation. For these reasons, the Ombudsman did not believe it would be in the public interest to take any further action on these matters as the use of resources would be excessive when weighed against any likely sanction.

Finally, the Ombudsman concluded that there was insufficient evidence that the Councillor’s behaviour during a Council meeting amounted to a breach of the Code. There was no specific evidence that the Councillor had made any comments that could be considered offensive or that went beyond political expression. There was also insufficient evidence to conclude that the Councillor had put any undue pressure on the members during that meeting.

Carmarthenshire County Council & Llansteffan & Llanybri Community Council – Disclosure of registration and interests

Case reference 201401709 & 201403143 – Report issued June 2015

Various complaints were made that a member of both Carmarthenshire County Council and Llansteffan & Llanybri Community Council (“the Councillor”) had a personal and prejudicial interest in a planning application for a wind turbine. It was said that the Councillor had driven dangerously on his approach to the site visit, attended the site visit and later addressed the planning meeting in relation to the application.

The Councillor was interviewed. He admitted that he had known the applicant for a number of years and he had sought advice from the Monitoring Officer in this matter. He denied that he had driven dangerously and said that the police had not investigated this allegation. The Councillor said he had declared an interest at planning meetings where the application was considered. He admitted that he addressed the planning committee at the site visit, whilst members of the public were excluded. He said that after he addressed the later meeting he left.

In relation to the Councillor’s involvement at the planning meetings it was found that he had not breached the Code of Conduct in accordance with section 69 (4)(a) Local Government Act 2000 (LGA).

Whilst at the site visit, it was considered that the Councillor may have breached the following paragraphs of the Code: 11 (a) failed to declare a personal interest, 14 (1) (a) failed to withdraw from the meeting and 14 (1)(e) made oral representations when having a prejudicial interest. No further action was considered necessary under section 69 (4) (b) of the LGA.

Llanfynydd Community Council – Integrity

Case reference 201403492 – Report issued June 2015

The Ombudsman received a complaint that a member of Llanfynydd Community Council (“the Councillor”) failed to declare an interest in a planning application on five separate occasions between 2010 and 2014, despite living in a property neighbouring the proposed development.

The investigation found that a personal and prejudicial interest existed, and that the accused member not only failed to declare an interest, she also participated in discussions relating to the proposed development.

The Ombudsman, having considered the available information, found that whilst the evidence was suggestive of a breach of the Code, given that the accused member had subsequently attended training on the Code and had a better understanding of her obligations, and it was unlikely that in the event that the Council’s Standards Committee found a breach of the Code existed it would impose a greater sanction, it was not in the public interest to refer the matter further. The Ombudsman therefore concluded that no further action should be taken.

Referred to standards committee

Rhondda Cynon Taf County Borough Council – Promotion of equality and respect Case reference 201304589 – Report issued January 2015

Mr B complained about the conduct of a member of Rhondda Cynon Taf County Borough Council (“the Councillor”). Mr B said that on 12 December 2012, he attended a Development Control Committee meeting to object to his neighbour’s planning application. In response to Mr B’s objection, the Councillor said that Mr B had received an official police caution for firearm offences by threatening a Council officer with a shotgun. Mr B said this was untrue and that he had not been convicted or cautioned for any firearm offence and that this had no bearing on the application. South Wales Police confirmed that Mr B had not been convicted of firearm offences and in particular, he had not been cautioned for such an offence.

On 13 April 2015, the Standards Committee agreed that the Councillor had breached paragraphs 4(b) (treating others with respect and consideration) and 6 (1(a) (brought his office into disrepute) of the code.

The Standards Committee imposed a two month period of suspension for each breach of the code to run consecutively, equating to a four months period of suspension for the Councillor.

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding.

More Information

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The Code of Conduct Casebook

Issue 6 October 2015

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Introduction

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Case Summaries

No evidence of breach

Pembrokeshire County Council – Accountability and openness

Case reference 201404748 – Report issued in July 2015

It was alleged that a member of Pembrokeshire County Council (“the Councillor”), used his position improperly to influence and undermine the functions of a Cross Party Disciplinary Investigation Committee. In particular it was alleged that he used “pressure” and “manipulation” to dissuade another elected member from co-operating with this Committee.

The Ombudsman commenced an investigation to determine whether there was evidence to suggest that the Councillor had breached paragraphs 6(1)(a) and 7(a) of the Code of Conduct for elected members.

Evidence was obtained from the Pembrokeshire County Council and a number of elected members. During the course of the investigation evidence which was suggestive of a further breach of the Code by the Councillor was identified. The Ombudsman decided to extend the scope of the original investigation to determine whether there was evidence that the Councillor had also used his position improperly to influence another elected member.

The Councillor was interviewed in relation to both matters and denied that he had in any way attempted to influence either member.

The Ombudsman found that the direct evidence obtained during the course of the investigation was not sufficient to support the allegation made and concluded that there was no evidence of breach in respect of all matters investigated.

Monmouthshire County Council – Disclosure and registration of interests

Case reference 201405619 - Report issued in July 2015

The Ombudsman received a complaint that a member of both Monmouthshire County Council and Abergavenny Town Council (“the Town Council”) had breached the Code of Conduct for members at a Planning meeting of the Town Council on 8 October 2014. It was alleged that the member had failed to declare an interest in the matter as a former high street shop trader when considering an item relating to an application for consent to operate as a street trader. It was further alleged that the member sought to use his position improperly by influencing the views of the members of the Planning meeting on the merits of the street trader consent. The complainant said that the member’s actions were discriminatory.

The investigation found no evidence that the accused member had an interest in the matter under consideration. In the absence of any evidence to suggest that the accused member, or someone closely associated to him, had any specific dealings with the applicant and/or link to the application,

the Ombudsman was not satisfied that an objective person would reasonably regard the factor of the member's former occupation as so significant that the member would be considered as having an interest in the matter. Furthermore, there was no evidence that the member had spoken on the merits of the application at the Planning meeting. Having considered the available information, the Ombudsman concluded there was no evidence that the member had breached the Code.

Monmouthshire County Council

Case Number: 201405619/201405638 - Report issued in July 2015

The Ombudsman received a complaint that a member of both Monmouthshire County Council and Abergavenny Town Council ("the Town Council") had breached the Code of Conduct for members at a Planning meeting of the Town Council on 8 October 2014. It was alleged that the member had failed to declare an interest in the matter as a former high street shop trader when considering an item relating to an application for consent to operate as a street trader. It was further alleged that the member sought to use his position improperly by influencing the views of the members of the Planning meeting on the merits of the street trader consent. The complainant said that the member's actions were discriminatory.

The investigation found no evidence that the accused member had an interest in the matter under consideration. In the absence of any evidence to suggest that the accused member, or someone closely associated to him, had any specific dealings with the applicant and/or link to the application, the Ombudsman was not satisfied that an objective person would reasonably regard the factor of the member's former occupation as so significant that the member would be considered as having an interest in the matter. Furthermore, there was no evidence that the member had spoken on the merits of the application at the Planning meeting. Having considered the available information, the Ombudsman concluded there was no evidence that the member had breached the Code.

Carmarthenshire County Council

Case reference 201500393/201500441 – Report issued in July 2015

A member of the public complained about a Councillor of Llanelli Rural Council ("the Council"). They said that the Councillor spoke to her in a rude and aggressive manner during a discussion outside the Trallwm Hall on 9 April. The Ombudsman investigated whether the Councillor's alleged behaviour was such that it brought the office or Council into disrepute and whether it could be considered disrespectful or bullying.

As part of the investigation, a Council officer who overheard some of the discussed was interviewed. Whilst the officer said that the nature of the discussion was not cordial, he did not hear the Councillor being disrespectful and their behaviour did not leave cause for concern. There were differing accounts of the discussion given by the Councillor and the member of the public. Independent advice was provided by the Council officer who saw nothing inappropriate in the Councillor's behaviour. The Ombudsman found there had been no breach of the code.

**Rhondda Cynon Taf County Borough Council – Disclosure and registration of interests
Case reference 201408430 – Report issued in September 2015**

A complaint was received about a member of Rhondda Cynon Taf CBC (“the Councillor”) failing to declare a personal and prejudicial interest in planning applications made by the director of a company. On 14 April 2011, at a Development Control Committee (DCC) meeting, the Councillor did not declare a personal and prejudicial interest in a planning application by the company. On 18 October 2012, an application was considered by the same applicant. The Councillor said the applicant was a family friend, she had a prejudicial interest and left the meeting. On 21 March 2013, another planning application was made by the same applicant. The Councillor said that she knew the applicant’s mother, but did not leave the meeting.

The Councillor said that at the meeting on 14 April 2011, she had not known the applicant and she opposed the application. She said at the meeting on 18 October 2012, she made a personal and prejudicial declaration, as she had publicly opposed the application and left the meeting. The Councillor said that on 21 March 2013, her interest had been personal and not prejudicial. She had not voted as the application was deferred. The Councillor said she had over declared her personal interest as she had known the applicant’s mother who had been her children’s school secretary who are now adults. She had not sought to progress any application by the director.

The Ombudsman determined that there was no evidence that the Councillor failed to comply with the Code of Conduct in accordance with S69 (4) (a).

No action necessary

There are no summaries in relation to this finding

Referred to standards committee

There are no summaries in relation to this finding

Referred to Adjudication Panel for Wales

Llanfihangel ar Arth Community Council - Disclosure and registration of interests Case reference 201305114 Report issued in August 2015

The Ombudsman received a complaint that a member ("the Councillor") of Llanfihangel ar Arth Community Council ("the Council") had breached the Code of Conduct for Local Authority Members during meetings of the Statkraft Alltwalis Wind Farm Community Benefit Fund (upon which she had been nominated to sit in her capacity as a community councillor) and of the Council. It was alleged that the Councillor should have declared an interest and left the room when items relating to her husband's building firm and an application for a wind farm to be built next to land she owned were discussed during the meetings.

The Ombudsman determined that it was appropriate to investigate whether the Councillor had breached the Code of Conduct. Evidence was obtained from the Council, the Statkraft Alltwalis Wind Farm Community Benefit Fund and persons present at the meetings.

The Ombudsman was satisfied that on balance the evidence suggested that whilst the Councillor had a personal and prejudicial interest in Council business relating to her husband's building firm, she had appropriately declared an interest and left the room at the relevant times. The Ombudsman found that the Councillor had not been required to declare a personal interest at a number of Council meetings. However, the Ombudsman did consider that the Councillor had failed to declare a personal and prejudicial interest and to withdraw from the room whilst matters relating to the wind farm were discussed and voted on at the Council meeting of 16 January 2012.

The Ombudsman referred the matter to the Adjudication Panel for Wales for adjudication by a tribunal.

The Tribunal concluded that the Councillor had breached the Code of Conduct. Accordingly, the Tribunal decided that the Councillor should be suspended the Council for a period of three months.

The decision of the Adjudication Panel for Wales can be found [here](#).

More Information

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The Code of Conduct Casebook

Issue 7 January 2016

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Case Summaries

No evidence of breach

Cardiff Council - Promotion of equality and respect

Case reference 201408688 – Report issued in October 2015

A complaint was received that a member of Cardiff Council (“the Councillor”) had breached the Code of Conduct for members by using her position improperly to obtain “confidential” information relating to another member of Cardiff Council and by sharing this information with her political party in order to create a disadvantage for him and for political purposes.

Evidence was obtained from Cardiff Council and a number of elected members.

The Councillor was interviewed and said that she received a request for information from an outside organisation and that her role as councillor required her to seek appropriate advice and act in accordance with that advice.

The Ombudsman concluded that it was not unreasonable for the Councillor to rely on the advice provided to her and on this basis was not persuaded that evidence gathered was suggestive that she had breached the Code of Conduct.

No action necessary

Pembrokeshire County Council – Integrity / Disclosure and registration on interests Case reference 201500279/201500292 – Report issued in December 2015

A complaint was made that a member of Pembrokeshire County Council had breached the Code of Conduct by seeking to influence a decision of the Council over a matter in which he had a prejudicial interest, that he had failed to have regard to relevant advice provided by the Council's Monitoring Officer and that he had conducted himself in a manner which could reasonably be regarded as bringing his authority into disrepute.

Evidence was obtained from the Council and a formal interview was carried out with the Councillor.

The Councillor declared a prejudicial interest, but it was apparent at interview that he did not believe that his interest in the matter was prejudicial. The Councillor acted against the direction of the Standards Committee and rejected the advice of the Monitoring Officer, both of which were based upon his declaration that he had a prejudicial interest. These actions were not appropriate and may have amounted to a breach of the Code of Conduct. However, had the Councillor fully considered his position at the outset, he may not have declared a prejudicial interest. Since these events, the Councillor has sought and complied with advice from the Monitoring Officer and the Standards Committee.

The Ombudsman determined that it would not be proportionate or in the public interest to take further action against the Councillor.

Llanelli Town Council - Objectivity and propriety

Case Number: 201500965 – Report issued in December 2015

A complaint was made that, due to his conduct at an event, a member of Llanelli Town Council may have breached the Code of Conduct by failing to show respect and consideration for others, using bullying or harassing behaviour towards another, using the resources of his authority imprudently and bringing his authority into disrepute. It was alleged that the Councillor had been drinking excessively at tax payers' expense, had been verbally abusive towards members of staff and had acted in a violent manner towards another guest at the event.

A number of witness statements were obtained and the Councillor was formally interviewed. The Ombudsman determined that the evidence was not sufficiently robust that it would satisfy a Standards Committee or the Adjudication Panel for Wales that a breach of the Code of Conduct had occurred and that a sanction would be appropriate, therefore no further action was necessary.

Referred to standards committee

There are no summaries in relation to this finding

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

More Information

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Code of Conduct Factsheet



This factsheet explains how you can complain about the conduct or behaviour of members and co-opted members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. It should be read together with our factsheet "What we do when we get your complaint about a local authority member's conduct" which provides general information about our service and is available at www.ombudsman-wales.org.uk.

All elected and co-opted members of the above bodies are bound by Codes of Conduct. Each of the relevant authorities is required to adopt a Code of Conduct for its Members based upon the Model Code of Conduct introduced in 2008 (in Wales) ("the Code").

The Code lays down a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity as well. The Code includes provisions which require members to give 'due regard to the principle that there should be equality for all people'; to treat others with respect and not to use bullying or harassing behaviour. There are provisions relating to the disclosure of confidential information, the improper use of the position of member or the resources of an authority and the requirement that members should not behave in a way which could be reasonably regarded as bringing the role of member or the authority into disrepute.

The Code also places responsibilities on members to consider whether they have a "personal interest" (i.e. a potential conflict of interest) in a particular matter and whether the existence and nature of the interest should be disclosed. Where such an interest exists, the Code sets out the extent, if at all, to which a member can continue to participate in business connected with the interest. The Code also provides for the registration of gifts and hospitality.

You can usually find a copy of an authority's Code on its website. Alternatively, copies can be obtained from the Monitoring Officer or Clerk to each authority.

What the Ombudsman can do

If you think that a member has, or may have breached his/her authority's Code of Conduct, the Ombudsman may be able to investigate your complaint.

He can usually look at your complaint if:

- there is direct evidence to suggest that a breach actually took place; and,
- an investigation or referral to the Adjudication Panel or a standards committee is required in the public interest

This involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public expense for themselves or others or misused a position of trust, whether an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the

circumstances. The Ombudsman has discretion as to whether or not to investigate a complaint of this nature. The Ombudsman cannot:

Standards Committee Agenda - 28 April 2016

- impose sanctions such as suspension or disqualification upon a member;
- ask or compel a member to resign from office;
- ask or compel a member to make any form of compensatory payment.

Where the Ombudsman finds that a complaint is justified and where he considers that it is in the public interest to do so, he may refer it either to the Standards Committee of the relevant authority, or to a tribunal convened by the Adjudication Panel for Wales to make a determination on the issues. Where a breach is found, it will be for the standards committee or Adjudication Panel for Wales to determine and impose an appropriate sanction.

Issues to bear in mind

When submitting a complaint to the Ombudsman that a member has breached the Code of Conduct, it is crucial to provide as much evidence as possible in support of any complaint. All complaints must be made in writing. A copy of the Code of Conduct complaint form can be found on our website: www.ombudsman-wales.org.uk.

If you decide to make a complaint, you must understand that your complaint form and all material supplied with it (including your identity) will be disclosed in full to the member against whom you are making a complaint and that this information may become public knowledge. This information will also usually be disclosed to the Monitoring Officer and Clerk (where applicable) of the appropriate Council. You should also be prepared to give spoken evidence in support of your complaint to the authority's Standards Committee, or any case tribunal which may be appointed to consider any report which the Ombudsman may issue if he decides to investigate your complaint.

Where the decision is taken to investigate a complaint, the Ombudsman will usually obtain further relevant documentary evidence, witness evidence and evidence from the member in question. This evidence will be considered in the context of the Code to determine whether it suggests that a breach may have occurred.

If your complaint is about anything other than the conduct of a Councillor, please refer to the Council's complaints procedure.

Further information

The Ombudsman is independent and impartial; Examples of cases that the Ombudsman has looked at can be found on our website [here](#).

If you are unsure whether the Ombudsman would be able to look into your complaint, please contact us:

- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
- **write to:** The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

What we do when we get your complaint about a local authority member's conduct



This factsheet explains what happens after you complain to the Ombudsman about the conduct or behaviour of members and co-opted members of local authorities, community councils, fire & rescue authorities and national park authorities in Wales. It also explains the different approaches the Ombudsman and his staff can take when dealing with complaints of this nature. It does not cover every detail of our procedures, which are available at www.ombudsman-wales.org.uk. This factsheet should be read in conjunction with the Code of Conduct factsheet, which can be found on our website under the 'Publications' heading.

New Complaints

All new complaints are considered by the Ombudsman's Complaints Advice Team, who will acknowledge receipt of the complaint and notify the accused member, the Monitoring Officer of the relevant authority and the Clerk of the relevant Community Council (if appropriate) of it. Any complaint of this nature must be supported by direct evidence, as opposed to assertions. Where necessary we may contact you for more details. In submitting a complaint, you must understand that your details will be disclosed to the member who you are complaining about and, if necessary, you must be prepared to give oral evidence in support of your allegation.

Each complaint, and any supporting information, will then be examined against a two stage test. At the first stage, we will consider whether there is direct evidence that a breach of the Code of Conduct has occurred. At the second stage we consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether a member has deliberately sought a personal gain at the public expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the circumstances. When we have received sufficient information to assess your complaint, we will aim to tell you within twenty working days whether or not the Ombudsman intends to investigate your complaint.

If we cannot accept your complaint

If a complaint does not meet the two stage test, you will be provided with an explanation in writing. A copy will also be sent to all persons previously notified.

If we decide to investigate your complaint

If we decide to investigate your complaint it will be conducted by one of the Ombudsman's investigators. He or she may contact you to discuss your concerns and explain what will happen next. We will always write to you and the parties previously notified confirming our decision to investigate. At this stage the Investigator will usually obtain further relevant documentary evidence, witness evidence and evidence from the accused Member.

Each investigation varies and while it may be necessary to interview those involved, some cases may be concluded through examination of documents alone. We aim to complete all investigations within 12 months but most are concluded sooner. We will keep you informed of how the investigation is progressing. If, for any reason, we consider it necessary to discontinue our investigation, we will write to you explaining this decision. The

Ombudsman's investigations are conducted in private. You are therefore asked not to contact or discuss the details of the complaint or any information that we may share with you with any potential witnesses or persons who may be involved in the matter, whether directly or indirectly, to avoid any prejudice to the investigation. When we have all the information required, we will write a report or letter setting out the evidence we have considered and the conclusions we have reached.

Investigation outcomes

If we conclude there is no evidence of a breach the Code of Conduct, we will close the investigation and provide written reasons for this decision to all parties.

If, having reviewed the evidence, it is suggestive that a breach of the Code has occurred, the Ombudsman may determine in some circumstances that no further action is appropriate.

Where the Ombudsman finds that a complaint and it is also considered to be in the public interest to do so, he may refer it either to the Standards Committee of the relevant authority, or to a tribunal convened by the Adjudication Panel for Wales to make a determination on the issues. A copy of the Ombudsman's report will also be sent to the accused member. You will be notified of the Ombudsman's conclusions, and a summary of the report will be provided for your information. The full version of the report remains confidential until such time as a determination is made on the issues by the Standards Committee or tribunal.

If you are dissatisfied with our decision

Once we have issued a decision not to investigate a complaint against an elected member or to close an investigation or that no further action is appropriate our task is effectively ended and the file is closed. We will not re-open a case solely because you may disagree with our decision but you can ask in writing (within twenty working days) for us to review your case **if**: you have relevant new evidence to show us; or, you are able to demonstrate that information we had was not properly taken into account in making our decision. The elected member will receive a copy of any request received by way of notification. The Ombudsman's Review Manager will consider whether there are grounds to review your complaint and whether further action is required.

If you would like more information about this process, please contact us:

- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
- **write to:** The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

Factsheet for Local Authority Members: What we do when we get a complaint about your conduct

Standards Committee Agenda - 28 April 2016



This factsheet explains what happens when the Ombudsman receives a complaint about the conduct or behaviour of members and co-opted members of local authorities, community councils, fire & rescue authorities and national park authorities in Wales. It does not cover every detail of our procedures, which are available at www.ombudsman-wales.org.uk.

New Complaints

All new complaints are considered by the Ombudsman's Complaints Advice Team, who will acknowledge receipt of the complaint and notify you, the Monitoring Officer of your authority and/or the Clerk of your Community Council (if appropriate) of its existence. A copy of the complaint will also be provided.

You need not respond to this letter if you do not wish to. However if you consider that specific information should be considered by the Ombudsman as part of his initial consideration of this matter please let us know. If you decide to respond or provide any information you should bear in mind that your comments may also be disclosed to the complainant, or used in any subsequent proceedings.

Each complaint, and any supporting information, will then be examined against a two stage test. At the first stage, we will consider whether there is direct evidence that a breach of the Code of Conduct has occurred. At the second stage we consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether you have deliberately sought a personal gain at the public expense for yourself or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the circumstances. When we have received sufficient information to assess the complaint, we will aim to tell you within twenty working days whether or not the Ombudsman intends to investigate.

If we cannot accept the complaint

If a complaint does not meet the requirements of the two stage test, you will be provided with a copy of the explanation in writing.

If we decide to investigate the complaint

If we decide to investigate the complaint it will be conducted by one of the Ombudsman's investigators. We will always write to you and the parties to the complaint confirming our decision to investigate, again you do not need to respond if you do not wish to. However it would be helpful if you could identify any concerns that you may have or identify any witnesses you feel should be contacted early in the course of the investigation so that these may be promptly resolved or considered.

The Ombudsman's investigations are conducted in private. You are therefore asked not to contact or discuss the complaint with any potential witnesses or persons who may be involved in the matter, whether directly or indirectly, this is to avoid any prejudice to the investigation. Conduct of this kind may amount to a breach of the Code.

Where a request is received from the media or a third party for information relating to a complaint received and/or an investigation, confirmation of the existence of a complaint or an investigation will be given. No further details will be shared.

The Investigator will usually obtain further relevant documentary and witness evidence. Each investigation varies and while it may be necessary to interview those involved, some cases may be concluded through examination of documents alone. We aim to complete all investigations within 12 months but most are concluded sooner. If, for any reason, we consider it necessary to discontinue our investigation, we will write to you explaining this decision.

When all reasonable enquiries are completed the Investigator will review the evidence gathered and decide whether it is supportive of a breach of the Code and whether it is in the public interest to continue with the investigation. If so, copies of the relevant evidence gathered will be sent to you together with an invitation to attend an interview. The information provided to you in advance of or during your interview has been disclosed to you for the purposes of the Ombudsman's investigation in accordance with the Local Government Act 2000 and should be held in strictest confidence and should not be shared with anyone other than a legal or other adviser. Further disclosure may amount to a breach of the Code.

In addition you should not discuss the evidence you intend to provide at interview or contained within any witness statement or document provided with persons who may be involved in the investigation, whether directly or indirectly, as such contact may prejudice the Ombudsman's investigation and be construed as a similar breach of the Code.

Interviews will be recorded and will be conducted face-to-face unless there are exceptional circumstances. Detailed information about the interview process can be found in our factsheet 'Factsheet for Member Interviewees'.

At the interview you should be prepared to answer any questions put to you. You will also be given the opportunity to make comments you feel are relevant to the investigation. You may attend with a legal representative or have an independent person present for support. Failure to comply with any request made by the Investigator in connection with an investigation may amount to a breach of the Code.

When we have all the information required, we will write a report or letter setting out the evidence we have considered and the conclusions we have reached.

Investigation outcomes

If we conclude there is no evidence to suggest that a breach the Code of Conduct has occurred, we will close the investigation and provide written reasons for this decision to all parties to the complaint.

If, having reviewed the evidence, it is suggestive that a breach of the Code has occurred; the Ombudsman may determine in some circumstances that no further action is appropriate. Again written reasons for this decision will be sent to all parties.

Where the Ombudsman finds that a complaint is justified and it is also considered to be in the public interest to do so, he may refer it either to the Standards Committee of the relevant authority, or to a tribunal convened by the Adjudication Panel for Wales to make a determination on the issues. You will however be given the opportunity to comment on

draft version of the report within a set timescale. Any comments made will be given due consideration before the report is finalised and may be incorporated into the final report.

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A copy of the Ombudsman's final report will be sent to you. The complainant will be notified of the Ombudsman's conclusions, and a summary of the report will be provided by way of information. The final report will not be disclosed by the Ombudsman until such time as a determination is made on the issues by the Standards Committee or tribunal.

If the complainant is dissatisfied with our decision

Once we have issued a decision, not to investigate a complaint or to close an investigation or that no further action is appropriate, our task is effectively ended and the file is closed.. However you should be aware that a complainant can ask (within twenty working days) for us to review a decision not to investigate the complaint. If a review request is received we will notify you and provide a copy of any request received. We will not re-open a complaint solely because the complainant disagrees with our decision. If however following review a contrary decision is taken we will write to you to explain this.

If you would like more information about this process, please contact us:

- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
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1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

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This factsheet explains the approach taken by the Ombudsman's staff when carrying out interviews with elected members who are subject to investigation under the Code of Conduct complaints procedure.

The nature and format of the interview

Interviews will generally be conducted face-to-face, although in exceptional circumstances you may be asked to provide written answers to a series of written questions.

The Investigator will digitally record the interview to ensure that your evidence is accurately recorded. You should be prepared to answer any questions put to you. You will also be given the opportunity to make comments you feel are relevant to the investigation and which you consider the Ombudsman should take account of when reaching his determination on the complaint.

It would be helpful if you could identify any concerns that you have or identify any witnesses who you feel should be contacted early in the course of the investigation so that these can be promptly resolved or considered. Failure to comply with any request made by the Investigator to attend an interview in connection with an investigation may amount to a breach of the Code.

The Ombudsman appreciates that interviews may sometimes cause anxiety. You are therefore welcome to have someone with you. You may attend with a legal representative or have somebody else present for support. If you wish to have somebody present at the interview to support you, please let the Investigator know who this person will be in good time. It should not be someone who is involved in the investigation; they are allowed to be present simply to offer you support and not to answer questions for you. Interviews will always be on the record.

What you will need for the interview

Make sure that you understand what the interview is about. You should have been given details of the complaint which sets out what the Ombudsman is investigating and copies of relevant evidence gathered. If you have any papers - such as letters or diaries or the formal file to which the complaint relates - which you think might be relevant to the interview, take them with you. If you have any notes you made at the time of the events under investigation, these may help the Investigator.

In addition to relevant documents, you should ensure that you have with you any other items which you might need during the course of the interview, such as reading glasses, hearing aids or medication (inhalers etc.). You should also ensure that, unless absolutely necessary, any mobile phones or tablet devices are turned off for the duration of the interview to avoid any disruption.

Please notify the Investigator before the interview of any special requirements you may have, including any arising from any of the protected characteristics defined by the Equality

Act 2010 (as amended) e.g. any disability or religious considerations. You will be given the opportunity also to conduct your interview in Welsh if you would like to do so.

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Although the Investigator will have a timetable and will try to keep to it, sometimes interviews overrun so you should ensure that this is taken into account when planning anything immediately after the scheduled conclusion of the interview.

Issues to bear in mind

The Investigator may also take handwritten notes of the interview and may ask you to sign and date these at the end of the interview. At the end of the interview the digital recorder will produce two compact discs, one disc will be sealed for evidential purposes and the other will be used by the Investigator as a working version of the recording. You will be asked to sign the sealed version as verification of the interview and given a notice explaining how you can request a copy of the disc.

As soon as reasonably possible after the interview, the Investigator will send you a typed transcript of the interview. This transcript will form the basis of your evidence.

You should bear in mind that all comments made during the interview and detailed in the transcript may be attached to any report on the investigation which the Ombudsman may refer to the Standards Committee, or to the President of the Adjudication Panel for Wales.

Further information

The information provided to you in advance or during your interview has been disclosed to you for the purposes of the Ombudsman's investigation in accordance with the Local Government Act 2000 and should be held in strictest confidence and should not be shared with anyone other than a legal or other adviser. Further disclosure may amount to a breach of the Code.

In addition you should not discuss the evidence you intend to provide at interview or contained within any witness statement or document provided with persons who may be involved in the investigation, whether directly or indirectly, as such contact may prejudice the Ombudsman's investigation and be construed as a similar breach of the Code.

**If you would like more information about this process,
please contact us:**

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- **visit the website at** www.ombudsman-wales.org.uk;
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