

Pecyn Dogfen Gyhoeddus



Swyddog Cyswllt:
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At: Robert Dewey (Cadeirydd)

Y Cynghorwyr: Patrick Heesom, Paul Johnson ac Arnold Woolley

Aelodau Cyfetholedig:

Jonathan Duggan-Keen, Phillipa Earlam, Julia Hughes, Kenneth Molyneux a Mark Morgan

Dydd Mawrth, 27 Hydref 2020

Annwyl Gynghorydd

HYSBYSIAD O GYFARFOD ANGHYSBELL
PWYLLGOR SAFONAU
DYDD LLUN, 2AIL TACHWEDD, 2020 AM 6.30 PM

* Bydd y sesiwn hyfforddiant ar gyfer aelodau'r Pwyllgor Safonau a chynrychiolwyr y Cyngor Tref/Cymunedol yn cael ei chynnal o 6.00pm tan 6.30pm

Yn gywir

Robert Robins
Rheolwr Gwasanaethau Democrataidd

Sylwch: Oherwydd y cyfyngiadau presennol ar deithio a'r gofyniad am gadw pellter corfforol, ni chynhelir y cyfarfod hwn yn y lleoliad arferol. Bydd hwn yn gyfarfod rhithiol a bydd 'presenoldeb' yn gyfyngedig i Aelodau'r Pwyllgor yn unig. Bydd y cyfarfod yn cael ei recordio.

Os oes gennych unrhyw ymholiadau, cysylltwch ag aelod o'r Tîm Gwasanaethau Democrataidd ar 01352 702345.

R H A G L E N

1 YMDDIHEURIADAU

Pwrpas: I dderbyn unrhyw ymddiheuriadau.

2 DATGAN CYSYLLTIAD (GAN GYNNWYS DATGANIADAU CHWIPIO)

Pwrpas: I dderbyn unrhyw ddatganiad o gysylltiad a chynghori'r Aelodau yn unol a hynny.

3 COFNODION (Tudalennau 3 - 8)

Pwrpas: I gadarnhau, fel cofnod cywir gofnodion y cyfarfod ar 21 Medi 2020.

4 GODDEFEBAU

Pwrpas: Derbyn unrhyw geisiadau am oddefebau.

Bydd aelodau'r wasg / y cyhoedd yn gallu aros yn y cyfarfod tra bydd cais am ryddhad yn cael ei gyflwyno i'r Pwyllgor a bydd yn gallu dychwelyd i glywed penderfyniad y Pwyllgor. Fodd bynnag, o dan Baragraff 18C Atodlen 12A Deddf Llywodraeth Leol 1972 bydd y Pwyllgor yn gwahardd y wasg a'r cyhoedd o'r cyfarfod tra bydd yn ystyried unrhyw gais am ryddhad.

5 EITEMAU A GODWYD GAN Y CYNGHORAU TREF A CHYMUNED

Pwrpas: I drafod unrhyw faterion moesol neu waith y Pwyllgor Safonau a godwyd gan y Cyngorau Tref a Chymuned.

6 CYFARWYDDIADAU GAN LYWYDD PANEL DYFARNU CYMRU (Tudalennau 9 - 26)

Pwrpas: Ystyried y cyfarwyddiadau a gafwyd gan Lywydd Panel Dyfarnu Cymru ar rôl y Swyddog Monitro yn nhrefodion, datgeliad a thystiolaeth ddiennw Panel Dyfarnu Cymru.

7 TROSOLWG O GWYNION MOESGOL (Tudalennau 27 - 34)

Pwrpas: Bod y Pwyllgor yn nodi'r nifer a'r mathau o gwynion.

8 LLAWLYFR OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU (OGCC) RHIFYN 23 (HYDREF 2019 - RHAGFYR 2019) A'R LLYTHYR BLYNYDDOL GAN Y OGCC (Tudalennau 35 - 48)

Pwrpas: Hysbysu'r Pwyllgor am gyhoeddiadau diweddaraf Llyfr Achos Cod Ymddygiad Ombwdsmon y Gwasanaethau Cyhoeddus ac i rhannu Llythyr Blynyddol yr Ombwdsman ar gyfer 2019/20.

9 RHAGLEN GWAITH I'R DYFODOL (Tudalennau 49 - 50)

Pwrpas: Er mwyn i'r Pwyllgor ystyried testunau i'w cynnwys ar y Rhaglen Gwaith i'r Dyfodol.

Eitem ar gyfer y Rhaglen 3

STANDARDS COMMITTEE **21ST SEPTEMBER 2020**

Minutes of the meeting of the Standards Committee of Flintshire County Council held remotely via Webex on Monday 21st September 2020.

PRESENT: Rob Dewey (Chairman)

Councillors:

Patrick Heesom, Paul Johnson and Arnold Woolley.

Co-opted members:

Jonathan Duggan-Keen, Phillipa Earlam, Julia Hughes, Ken Molyneux and Mark Morgan.

IN ATTENDANCE:

Monitoring Officer, Deputy Monitoring Officer, and Team Leader – Democratic Services.

1. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None.

2. MINUTES

The minutes of the meeting held on 2nd March 2020 were submitted and approved as a correct record.

RESOLVED:

That the minutes be approved and signed by the Chairman as a correct record.

3. DISPENSATIONS

The Monitoring Officer explained that one dispensation request had been received following despatch of the agenda. The dispensation was a re-application for a dispensation granted to Councillor Clive Carver the previous year.

Details of the original application were that Hawarden Rangers Football Club had applied to Flintshire County Council for planning permission (060060) to erect a 100 seat stand on the Herbert Gladstone Recreation Ground which was managed by Hawarden Community Council. By virtue of being a Hawarden Community Councillor, he was a trustee of the Herbert Gladstone Recreation Ground. He had been advised that the exemption provided normally by Paragraph 12(b) of the Code of Conduct did not apply in respect of planning applications.

As one of the three Hawarden Community Councillors for Hawarden Ward and the sole County Councillor for Hawarden, he wished to be able to communicate with planning officers and speak at the Flintshire Planning Committee. He also sought to be able to communicate in email, in writing and verbally with planning officers.

The original application had been determined in July 2019 so had lapsed. A renewal was being sought to allow Councillor Carver to correspond with officers should he need to. There were no material changes to the original application that had been determined, and approved, by Committee.

It was approved that the application be granted on the same terms as the previous application.

RESOLVED:

That Councillor Carver's re-application to be granted on the same terms as in July 2019, which was: That Flintshire County Councillor and Hawarden Community Councillor Clive Carver be granted dispensation under paragraphs (a), (d) and (f) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak at Flintshire County Council and Hawarden Community Council Planning Committee, but leave before the debate and vote on planning application 060060 or any application, which, in the opinion of the Monitoring Officer, is similar. This allows for making verbal and written communications on the matter to officers of Flintshire County Council provided there is at least one witness when speaking to officers, thereby ensuring that there are at least three people involved in the conversation which should be minuted. The dispensation is to be granted for 12 months, ceasing on 20th September 2021.

4. ETHICS AND GOVERNANCE DURING LOCKDOWN

The Monitoring Officer introduced the report and explained that until this year, local authority meetings operated under legislation that required the majority of Members to be physically present. As well as being unsafe, the coronavirus restrictions on movement and assembly effectively made such meetings impossible.

On 17th March 2020 the Council was forced to cancel all of its Council, Cabinet and Committee meetings for the remainder of the month, and then again for the whole of April. Town and Community Councils likewise cancelled their Member meetings.

Member meetings were gradually restored from May as new models of governance were put in place and later legislation was passed that enabled meetings to be held without any physical attendance. Meetings were now taking place via video conference and a full calendar of meetings had been restored from September.

The requirement on Councillors to observe the Code of Conduct and, in particular, to declare interests, had been operated continuously throughout the temporary governance arrangements.

Information was provided on the arrangements that had been put in place, such as Individual Cabinet Member decisions and the process undertaken to determine urgent planning applications.

Weekly telephone briefings also took place with Group Leaders on key issues which they were able to comment on.

Mr Robert Dewey thanked all staff for the work involved in the temporary change to procedures.

Councillor Johnson referred to the exercise undertaken the previous year whereby independent members of the Standards Committee undertook visits to Town and Community Councils and reported back on those visits. He said they were all working in different ways during this time so he felt it would be useful if that exercise could be undertaken again via virtual means. The Monitoring Officer said that could be looked into and added that as the rules of allowing members of the public to attend council meetings were being relaxed, this could also provide the opportunity for the independent members to attend Flintshire meetings if they so wished.

RESOLVED:

That the Committee be assured that ethical arrangements have been maintained during the response phase of the emergency.

5. REVIEW OF DISPENSATION PROCEDURE AT ANGLESEY AND GWYNEDD COUNCILS

The Deputy Monitoring Officer introduced the report and explained that there were no statutory procedures in place for dealing with applications for dispensations and every Standards Committee implemented its own arrangements.

Flintshire's Standards Committee considered that it would be useful to explore what processes other Councils in North Wales had for dealing with applications for dispensations. The report reviewed the processes and procedures for dealing with dispensations at Anglesey County Council and Gwynedd County Council with a focus on applications during 2019/20, including the numbers dealt with by each authority.

Anglesey County Council was very similar to Flintshire County Council, but they had a Sub-Committee of Standards Committee to deal with dispensations. At full Standards Committees, a specific report was submitted to explain any dispensations that had been considered.

In response to a question from Julia Hughes as to how each authority promoted the process to encourage individuals to submit applications for dispensation, the Deputy Monitoring Officer said the information outlined in the report had been sourced from the websites of each authority. A discussion ensued and it was agreed that other authorities would be contacted with that specific question being asked.

RESOLVED:

- (a) That the processes and procedures for dealing with applications for dispensations by County Councillors and Town and Community Councillors at Anglesey and Gwynedd be noted; and
- (b) Other local authorities be contacted to gather the same information as Anglesey and Gwynedd, with the specific question of how did they promote the process to encourage individuals to submit applications for dispensation, being asked.

6. FORWARD WORK PROGRAMME

The Monitoring Officer introduced the report and explained that the Standards Committee regularly tended to receive reports on a cyclical basis which enabled it to complete scheduled work over a period of time, or allowing it to build up and maintain its knowledge. That work fell into the following categories:

- Promoting compliance with the Code;
- Reviewing codes, protocols and processes;
- Information about the operation of the ethical process; and
- Decisions on the effective running of the Committee itself.

Those reports could be scheduled so that the work programme gave due attention and weight to each aspect of the Committee's functions during the course of a year. Structuring the work programme also gave an opportunity to re-examine the frequency of meetings which was unusually high within Mid and North Wales.

The table outlined in Appendix 1 showed the items considered by the Committee at each of its meetings since June 2017. In addition to the items listed, every meeting considered dispensations and the Forward Work Programme. It was possible to categorise the work as follows:

1. **Promoting compliance with the code** e.g. deciding dispensations, the annual meeting with Town and Community Councils, the liaison meetings with the Chair and Leader of the Council, planning training for Councillors etc;
2. **Reviewing codes, protocols and processes** e.g. the rolling review of the codes/protocols within the Constitution, visits to Town and Community Councils meetings etc;

3. **Information about the operation of the ethical process** e.g. the overview of ethical complaints, the annual report from the PSOW/APW and the PSOW case book etc; and
4. **Decisions on the effective running of the Committee itself** e.g. managing recruitment to the Committee, briefing/de-briefing for the NMWW Standards Forum, agreeing the Forward Work Programme etc.

Using those categories of work it was possible to compile a Forward Work Programme that addressed the Committee's full terms of reference in six principal meetings through the year. At each meeting the Committee could consider 2/3 items of work. Additionally it could also consider dispensation requests and any reports relating to the running of the Committee which, by their nature, tended to be quicker to write and consider. Meetings could be scheduled every two months, with a slot reserved in the intervening months in case of requests for dispensation. A suggested Forward Work Programme based on that approach was attached at Appendix 2 for consideration.

A discussion took place and all members supported the approach as suggested. In response to a question from Julia Hughes, the Monitoring Officer confirmed the items on the Forward Work Programme could be moved around.

Following a question on the logistics of a meeting with Town and Community Councils in November, the Monitoring Officer said either a briefing session would be offered before the meeting, or a training session could be arranged on the use of webex. Members then discussed the Zoom platform which they understood was used by many Town and Community Councils. The Monitoring Officer said if Zoom was the application of choice then that could be used.

RESOLVED:

- (a) That the Committee schedules its principal meetings every other month with reserved dates in the intervening months in case it needs to determine any requests for dispensation; and
- (b) That the Forward Work Programme at Appendix 2 be approved.

7. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

There were no members of the press or public in attendance.

(The meeting started at 6.30pm and ended at 7.35pm)

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Chairman

Mae'r dudalen hon yn wag yn bwrpasol

Eitem ar gyfer y Rhaglen 6



STANDARDS COMMITTEE

Date of Meeting	Monday, 2 November 2020
Report Subject	Directions from the President of the Adjudication Panel for Wales
Report Author	Chief Officer (Governance)

EXECUTIVE SUMMARY

Early in 2020 the Monitoring Officer wrote on behalf of Lawyers in Local Government (LLG) to the President of the Adjudication Panel for Wales (APW) raising concerns about disclosure during a tribunal process. Following discussion with the President she has issued directions to clarify the role of the Monitoring Officer during a tribunal hearing and also to create a new disclosure process where one did not exist before.

The President has also issued a direction on the circumstances in which anonymity will be afforded to witnesses and third parties (never to the accused Member).

These directions are not legally binding but will guide how each case tribunal handles such issues during a hearing. They represent welcome clarity on the issues concerned and will help to ensure the fairness of proceedings.

RECOMMENDATIONS

1	That the Committee welcomes the practice directions and agrees to consider applying similar principles (as appropriate) where required to any hearing before the Committee.
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REPORT DETAILS

1.00	EXPLAINING THE DIRECTIONS
1.01	<p>On 6th April 2020 the Monitoring Officer wrote on behalf of LLG to the President of the Adjudication Panel raising issues of concern about process during tribunal proceedings. The President discussed the issues raised within the correspondence and subsequently issued 3 practice directions covering:</p> <ol style="list-style-type: none">i. Disclosureii. The role of the Monitoring Officer during proceedingsiii. Anonymity for witnesses and third parties
1.02	<p>The statutory rules governing proceedings before a Case Tribunal are very short and give little detail. There is power vested in the President of the APW to determine procedure to ensure that case tribunal proceedings are fair, open and transparent. They also ensure consistency of process between different case tribunal hearings. The directions issued by the President are not legally binding but indicate how each tribunal will act in given situations or in respect of certain issues.</p>
1.03	<p>Evidence is naturally at the heart of a fair hearing process and often evidence is contained within documents. The Ombudsman's office carries out an investigation into each allegation and will receive documents that can trend to:</p> <ol style="list-style-type: none">1) Support the allegation2) Disprove the allegation3) Have no evidential value <p>When issuing a report, the Ombudsman's investigator will always append the documents that support the allegation and, where the number is manageable, will disclose all documents gathered during the investigation. However, until this direction was issued there were simply no rules, beyond those of natural justice, in case tribunal proceedings requiring the Ombudsman's investigator to disclose documents to the accused Member nor was there a process for the accused Member (or their legal representative) to request the disclosure of evidence gathered by the Ombudsman or direct from the Member's Council. That process has now been created by agreement with the Ombudsman's office.</p>
1.04	<p>The Monitoring Officer occupies a statutory role during case tribunal hearings. Although the role is not spelled out in any detail, it is to assist the tribunal's understanding of process within the accused Member's Council and to gather further information/documents/evidence that might be requested during a hearing. The practice direction sets out that role in more detail and also repeats part of the direction in relation to the Monitoring Officer's role in relation to disclosure.</p>
1.05	<p>Case tribunals occasionally receive requests to protect the identity of witnesses and third parties named during hearings. The practice direction issues guidelines on how such requests will be determined. The direction does not apply to the accused Member where legal jurisprudence sets out the principles to determine requests for hearings to be held in private.</p>

2.00	RESOURCE IMPLICATIONS
2.01	There are no cost of human resource implications arising from these directions.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	None are required.

4.00	RISK MANAGEMENT
4.01	These directions resolve perceived gaps in the procedures for case tribunal hearings, and serve to increase the fairness of such proceedings. As such they will reduce the risk of a decision or process being legally challenged.

5.00	APPENDICES
5.01	Appendix 1 – Direction on Disclosure Appendix 2 - Direction on the role of the Monitoring Officer Appendix 3 – Direction on Anonymity

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Email/letter dated 6 th April 2020 to President of Adjudication Panel for Wales. Contact Officer: Gareth Owens, Chief Officer Governance Telephone: 01352 702344 E-mail: Gareth.legal@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	Adjudication Panel for Wales – the body appointed to hear alleged serious breaches of the Councillors’ Code of Conduct President of the Adjudication Panel for Wales – the most senior Member of the APW, Claire Sharp, who is a qualified lawyer and has responsibility vested in her by reason of her office for the smooth running of the APW and the hearings undertaken by case tribunals Case Tribunal – a bench of 3 Members drawn from the APW who will hear the case in respect of a specific Member

Mae'r dudalen hon yn wag yn bwrpasol

Presidential Guidance: Disclosure

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

General

1. Unlike *inter partes* litigation (litigation where one party is suing another), the APW deals with references made by the Public Services Ombudsman for Wales (“PSOW”) and appeals brought by members following a decision by a standards committee on the issue of whether the Code of Conduct for members has been breached (and if so, the appropriate sanction). In all cases, the member and the PSOW are parties and entitled to submit evidence, ask for witnesses to be called, and make representations. However, it is a matter for the tribunal to determine what evidence is before it, provided that a fair hearing is undertaken.
2. The tribunal may receive evidence of any fact which appears to the tribunal to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law. It shall not refuse to admit any evidence which is admissible at law and is relevant. In other words, the tribunal should allow evidence to be adduced if it is fair to do so (in the interests of justice) and the evidence is relevant to the determinations it must make; it can exclude irrelevant evidence.
3. The parties are reminded that disclosure is key to a fair hearing and that evidence should be provided to the other party and the APW in advance and in good time before a final hearing; attempts to “ambush” the other party are not in accordance with the spirit of modern litigation practice. It is also inappropriate to ask those who are approached to give or supply evidence to keep the approach confidential from the other party or the APW, particularly monitoring officers, other officers or members of a relevant authority; this does not mean such a person cannot be asked to generally keep the approach confidential, but not in relation to the other party or the APW.

Before APW proceedings start

4. Prior to the commencement of APW proceedings, in the vast majority of cases the PSOW will have undertaken a full investigation (monitoring officers can conduct

investigations in certain circumstances, but generally they ask the PSOW to do so). The PSOW will have gathered evidence from the member, witnesses and relevant third parties, carried out interviews, and asked the member to comment on the draft report.

5. A final report is issued by the PSOW, setting out the allegations originally made, the evidence gathered, and his conclusions. The evidence relied upon by the PSOW is exhibited to the final report and served upon the member and either the standards committee or APW.
6. The PSOW has agreed to serve upon the member (and the APW when a reference is made) a schedule setting out what unused material exists to its knowledge (this is material not used to prepare the final report), what it is, and its location (as the PSOW may not hold such material; for example, the monitoring officer may hold it) when the final report is issued. The schedule of unused material may be in two sections – ordinary evidence and sensitive evidence. Sensitive evidence is defined for these purposes as evidence relating to national security, given in expectation of confidence, relating to a criminal investigation or proceedings, relating to a minor, or relating to the private life of a witness (not the member) or third party. If the member seeks disclosure of evidence listed within the unused material schedule, it should be sought within 28 days of receipt of the schedule to avoid unnecessary delay by the member or his representatives. The tribunal may also direct disclosure of a document from the unused material schedule, but it is not obliged to do so.

Once APW proceedings start

7. Once the reference is made by the PSOW or permission to appeal has been given by the President of the APW (or their delegate), the Panel becomes responsible for deciding what evidence may be adduced. It will give directions where appropriate, but broadly the following principles apply:
 - a) The final report and evidence exhibited with it will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to paragraph *h* below);
 - b) The response of the member or their application to appeal will form part of the hearing bundle;
 - c) Evidence submitted by the member with their response will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to point *h* below);
 - d) Any decision made by the standards committee and supporting evidence where provided by either the parties or monitoring officer (if not already within the PSOW's final report) will form part of the hearing bundle;
 - e) Correspondence between the APW and the parties will form part of the hearing bundle, as will listing and other directions or orders;

- f) Submissions from the parties may form part of the hearing bundle (unless made orally), but is not evidence;
- g) Any additional evidence the parties wish to be considered, apart from paragraphs a – e, must either be the subject of an application made to the tribunal or included by way of directions from the tribunal on its own initiative. Applications should be made in good time before the final hearing commences to allow the tribunal to seek the view of the other party and deliver its decision; such applications should be made no later than 28 clear days before the final hearing commences, but the expectation is that such applications should be made before the listing conference. Applications to adduce evidence made at the final hearing or within the 28 day period preceding the start of the final hearing will be viewed as a late application and good reasons as to why the application could not have been made earlier will be required to be given, as will an explanation as to why late disclosure is in the interests of justice;
- h) The tribunal has the right to exclude irrelevant evidence from the hearing bundle and to determine which witnesses will be called to give evidence. It is expected that the parties will be notified in advance and given reasons if evidence is to be excluded.

Powers of the APW

- 8. The APW has the power to require documents or ask for particulars from any person, whether or not they are a party or interested party to the proceedings. If a party requires evidence or information from any person in order to fairly put forward their case to the APW, and they have not been able to obtain it directly themselves (attention is drawn below to the special position of monitoring officers), they should apply to the APW for directions or an order to obtain the evidence or particulars.
- 9. Applications should be made in good time before the final hearing, and ideally before the listing conference. Such applications should not be made at the final hearing or within the 28 day period before the start of a final hearing as costs will already have been incurred by the parties and the APW which may be wasted (the parties should note that the APW does in certain circumstances have the power to make costs orders). The parties should bear in mind that sufficient time should be given to allow submissions to be made by the other party and for the tribunal to make a decision – this is likely to take at least 28 days.

The monitoring officer

- 10. The monitoring officer is notified of the proceedings and invited to attend the final hearing. The monitoring officer's role is set out in more detail in the Presidential Guidance "*The role of the Monitoring Officer in APW proceedings*". The section relating to disclosure and monitoring officers is repeated below for convenience and to ensure that the parties understand that the monitoring officer is neutral and has a key role in upholding standards.

11. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.
12. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.
13. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.
14. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.
15. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.

16. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Mae'r dudalen hon yn wag yn bwrpasol

Presidential Guidance: The role of the Monitoring Officer in APW proceedings

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand the role of the monitoring officer within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and monitoring officers are reminded that this guidance does not supersede their duties, the requirements of the Code of Conduct for Employees or professional obligations.

The position of the monitoring officer

1. The monitoring officer of a relevant authority whose Code of Conduct is at the centre of APW proceedings is not a party to the proceedings, but is present to assist and inform the tribunal. They are notified of the proceedings and the hearing date, and receive copies of the listing directions and final decision. The monitoring officer normally adopts a neutral role.

Attendance at the final hearing

2. The monitoring officer is invited to attend the final hearing (or to send a deputy) to assist the tribunal and to make an appropriate observation or comment if they so wish at each stage of the proceedings. This is an opportunity for the monitoring officer to clarify any procedural points regarding the business of the relevant authority or to provide factual information to the tribunal in relation to any evidence already before it. It is open to the officer to make no comment.
3. The tribunal’s invitation to speak at the oral hearing is not an opportunity for the monitoring officer to adduce new evidence not previously disclosed; any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the Public Services Ombudsman for Wales (“PSOW”) for his consideration (see the disclosure section below).
4. The monitoring officer may ultimately be asked to provide or arrange further training to the councillor or to action matters relating to the exercise of the authority’s functions, the authority’s Code, or the authority’s standards committee if so recommended by the tribunal. Their attendance at the hearing will also enable the monitoring officer to give a detailed report to the standards committee and Council and to deal with any press enquiries as appropriate.

Information required from the monitoring officer

5. Routine enquiries that may be made of the monitoring officer by either the PSOW or the tribunal through its directions or correspondence through the Registrar include confirmation as to when the councillor agreed to be bound by the Code, when the councillor received training on the Code or if the councillor is also a member of another relevant authority, such as a town or community council or national park authority. They will also be asked to confirm the dates of full council meetings or relevant council business that might affect the listing of the hearing, and their personal unavailability dates.
6. The Registrar of the APW will ask the monitoring officer to confirm if there have been any previous adverse findings made by a standards committee regarding a breach of the Code by the councillor; this information will not be disclosed to the tribunal unless it reaches the sanctions stage of the proceedings. At this stage, the clerk will provide this information to the tribunal but the monitoring officer will be given an opportunity to comment, amplify or update the information supplied orally at the hearing.

Disclosure

7. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.
8. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.
9. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.

10. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.
11. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.
12. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Mae'r dudalen hon yn wag yn bwrpasol

Presidential Guidance: Anonymity

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

Power to anonymise

1. The APW does not have the power to issue restricted reporting orders or control what is reported by the press or through social media. However, it does have the power to control its own proceedings and give directions to the parties, witnesses and third parties.
2. The law on the reporting of sexual offences and the naming of alleged victims (s.1 of the Sexual Offences (Amendment) Act 1992) applies to those publishing information about APW proceedings where relevant; where possible, the tribunal considering such matters will remind those in attendance of these provisions, but they apply whether or not such a reminder is given. The APW will give consideration about how to approach matters involving the possible commission of sexual offences and give the necessary directions to the parties prior to the start of the final hearing.
3. While in appropriate cases, the identity of a complainant, witness or third party may be anonymised at the direction of a APW tribunal or the President for the purposes of the hearing and decision, the identity of that individual will be known to the parties and the tribunal. The identity of the member subject to the proceedings will not be anonymised.

European Convention on Human Rights

4. The paramount object of the APW is to do justice in accordance with the right to a fair hearing, but if it is strictly necessary to withhold either evidence or the identity of an individual from public consideration because it is in the interests of justice to do so, this can be directed following a balanced consideration of the various rights of those involved and the open justice principle. The Convention entitles parties to a fair and public hearing, but the press and public may be excluded from all or part of the hearing where the interests of the parties so require, or to the extent strictly necessary where publicity would prejudice the interests of justice.

5. Rights that may be engaged include the right to privacy and the right to a family life, as well as the right to freedom of expression, which is generally always engaged in APW proceedings. Examples of when such rights may be engaged could include the disclosure of medical information pertaining to a witness (such information being confidential), painful and humiliating disclosure of personal information about a witness where there is no public interest in its being publicised, or disclosure of information affecting minors.

The approach of the APW

6. APW final hearings take place in public, except where the tribunal considers that publicity would prejudice the interests of justice. However, anonymisation can allow all or the majority of the hearing to take place in public, enabling the public to fully understand the proceedings without breaching the rights of the individual whose identity has been concealed. This is compliant with the open justice principle; it is less restrictive to anonymise individuals than to have a private hearing in whole or in part.
7. It is appreciated that some complainants will only make a complaint if anonymisation at the hearing is likely. The quality of the evidence given at a hearing may be diminished due to fear or distress if anonymity is not granted. Only the tribunal hearing the case or the President can make such a direction – no party can guarantee anonymity to a complainant, witness or third party.
8. When considering whether to direct anonymisation, the tribunal will consider and balance the rights of the individual involved against the open justice principle and the right to a fair hearing in public, and the likely effect of anonymisation (or failure to do so) on the evidence to be adduced. It will also consider whether the identity of the individual is already widely known, rendering anonymisation pointless. Reasons will be provided to the parties for its decision.
9. If an interested person, such as the press, wishes to apply to set aside the anonymity order, they may apply to the tribunal for the application to be heard. It is a matter for the tribunal when the application is considered, but the views of the parties will be sought and considered. The view of the individual themselves may or may not be sought, depending on the approach adopted by the tribunal.

Practical measures

10. To guard against inadvertent disclosure, at the outset of the hearing and at the start of a relevant witness' evidence the chair will remind the parties, witnesses and the public that a particular individual's identity has been anonymised and they should be referred to as "Witness A/B/C/ etc" or "Mr/Ms A/B/C etc".
11. The hearing bundle may be redacted or altered to ensure that the name of the anonymised person is as directed, depending on the directions of the tribunal. The witness bundle and any press bundle (if prepared) must be so redacted or altered to avoid disclosure of the identity if inspected by the press or public.

12. The tribunal may direct use of special measures, such as a screen or video link, to enable the witness to give their evidence without disclosure of their identity.
13. Prior to the commencement of APW proceedings, if the parties anticipate that it is highly likely the identity of a witness or third party will be anonymised while gathering evidence, they may submit a suitably redacted version of the evidence (only anonymising the name of the individual and replacing with an appropriate anonymised name) to the APW for inclusion within the bundle. However, the original evidence must be disclosed to the other party, either before the matter is sent to the APW or when the redacted evidence is disclosed to the APW. The redaction must be brought to the tribunal's attention in a covering letter, and the letter must also include the reasons for the redaction and an application for directions permitting the anonymisation as sought.
14. The APW expects the parties to attempt to agree the issue of anonymisation before submitting an anonymised bundle to the panel, but if agreement cannot be reached, provided the process outlined above is followed, one party may request anonymity for an individual/s and submit an anonymised bundle for the approval of the panel or President.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Mae'r dudalen hon yn wag yn bwrpasol

Eitem ar gyfer y Rhaglen 7



STANDARDS COMMITTEE

Date of Meeting	Monday 2 nd November 2019
Report Subject	Overview of Ethical Complaints
Report Author	Chief Officer Governance

EXECUTIVE SUMMARY

This is the sixth such report giving a running total of the ethical complaints alleging a breach of the Code that have been submitted to the Public Services Ombudsman for Wales (PSOW). As per the Committee's resolution, the complaints distinguish between different Councils and Councillors whilst still remaining anonymous.

16 complaints have been received since the last report. 16 complaints have been resolved since the last report.

RECOMMENDATIONS

1	That the Committee notes the number and type of complaints.
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REPORT DETAILS

1.00	NUMBER OF COMPLAINTS
1.01	<p>The attached spreadsheet at Appendix A lists in summary form the complaints received during 2019/20. Each entry lists:</p> <ul style="list-style-type: none">• the Ombudsman's reference number (year/4 digit reference)• the type of Council (Community, County or Town)• the complainant (Councillor, officer, public)• the provisions which are alleged to have been breached• the decision at each of the 3 stages of investigation

1.02	A significant number of complaints have been submitted in respect of one Town Council. Another Council appears to have a large number of complaints but these are all, in reality, a single complaint about a large number of councillors arising out of the same single incident.
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2.00	RESOURCE IMPLICATIONS
2.01	None associated with this report.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	None.

4.00	RISK MANAGEMENT
4.01	None

5.00	APPENDICES
5.01	Appendix A - Number of complaints.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	None Contact Officer: Gareth Owens, Chief Officer Governance Telephone: 01352 702344 E-mail: gareth.legal@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	Public Services Ombudsman for Wales – the Ombudsman investigates service complaints and alleged breaches of the code. The ombudsman will not investigate and alleged breach of the Code unless there is clear evidence of a breach and it is in the public interest to expend public funds investigating.

PSOW Reference	Council	Councillor	Complainant	Alleged breach	Gatekeeper	Investigation	Hearing
16/0483	Town 1	A	Councillor	Disrepute and improper advantage	Not acting in official capacity		
16/1611	County	B	Officer	Bullying, disrespect	Investigate	Evidence of breach	APW disqualified for 14 months
16/6253	Town 1	A	Councillor	Failure to declare an interest, voting with an interest	Investigate	Apology given by councillor. Not in public interest to proceed	
16/7019	Community 1	C	Officer	Bullying, disrespect, disrepute	Insufficient evidence		
16/7020		D	Officer	Bullying, disrespect, disrepute	Insufficient evidence		
16/7053	Community 1	C	Officer	Failure to co-operate with local resolution	Not in public interest		
16/7054	Community 1	D	Officer	Failure to co-operate with local resolution	Not in public interest		
16/7173	Community 1	C	Councillor	Bullying, disrespect, disrepute, making malicious complaints	Insufficient evidence		
16/7174	Community 1	D	Councillor	Bullying, disrespect, disrepute, making malicious complaints	Insufficient evidence		

PSOW Reference	Type of Council	Councillor	Complainant	Alleged breach	Gatekeeper	Outcome by stage	
						Investigation	Hearing
17/0516	County	A	Public	Disrepute, respect	Alleged actions not a breach of the code		
17/2548	County	B	Public	Disrepute	Alleged actions not a breach of the code		
17/7733	Community 1	C	Public	Disrepute	Alleged actions not a breach of the code		
17/7836	Town 1	D	Councillor	Bullying	Duplicate of a complaint that will be investigated		
17/7924	Town 1	E	Councillor	Voting with a prejudicial interest	Duplicate of a complaint already being investigated.		
17/7925	Town 1	E	Councillor	Voting with a prejudicial interest	Investigate	CIr following MO advice so no breach of	
17/7956	Town 1	F	Councillor	Respect	Alleged actions not a breach of the code		
17/7957	Town 1	G	Councillor	Bullying	Alleged actions not a breach of the code		
17/7965	Town 1	E	Councillor	Voting with a prejudicial interest	Duplicate of a complaint already being investigated.		
17/8009	Town 1	E	Councillor	Voting with a prejudicial interest	Duplicate of a complaint already being investigated.		

18/0177	Town 1	E	Public	Bullying	Investigate	Breach but no action necessary	
18/0178	Town 1	H	Public	Bullying	Investigate	Breach but no action necessary	
18/0179	Town 1	I	Public	Bullying	Investigate	Breach but no action necessary	
18/0180	Town 1	D	Public	Bullying	Investigate	Breach but no action necessary	
18/1691	County	J	Public	Disrepute, misuse of position	Investigate	Refer to APW	(1) Member improperly conferred an advantage thereby bringing office into disrepute and (2) Member had an inappropriate relationship thereby bringing his office into disrepute
18/1844	Community 1	C	Public	Disrepute	Allegations not capable of being a breach. Possibly acting in private capacity		
18/2293	Town 1	K	Public	Disrepute	Comments in private capacity and not in public interest		
18/2299	Town 1	K	Public	Disrepute	Comments in private capacity and not in public interest		

18/4124	Town 1	L	Public	Disrepute, respect	Insufficient evidence and complaint not sufficiently serious to warrant investigation		
18/04263	Community 2	M	Public	Disrepute, bullying, respect	Allegations do not relate to official capacity. Insufficient evidence, would need strong evidence to suggest a member has breached the code.		
18/05023	Town 1	D	Councillor	Bullying, respect	Withdrawn by complainant		

PSOW Reference	Type of Council	Councillor	Complainant	Alleged breach	Outcome by stage		
					Gatekeeper	Investigation	Hearing
2019/01539	County	County 1	Public	Disrespect and disrepute	PSOW did not investigate		
2019/01542	Community 1	Community 1	Public	Disrespect and bullying	Not official capacity PSOW did not investigate		
2019/001823	Community 2	Community 2	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001824	Community 2	Community 3	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001825	Community 2	Community 4	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001826	Community 2	Community 5	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001827	Community 2	Community 6	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001828	Community 2	Community 7	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001829	Community 2	Community 8	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001830	Community 2	Community 9	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/001831	Community 2	Community 10	Councillor	Disrespect and bullying	PSOW did not investigate		
2019/03873	Town 1	P	Councillor	Defamation of character and slanderous comments	PSOW did not investigate		
2019/06842	Town 1	D	Councillor	Disorderly conduct at T&CC meeting	PSOW did not investigate		
2019/06280	Town 1	O	Councillor	Inability to control aCouncillor's behaviour during Ciuncil meetings and misreporting of information	PSOW did not investigate		
2019/06288	Town 1	D	Councillor	Disorderly conduct at T&CC meeting	PSOW did not investigate		

PSOW Reference	Type of Council	Councillor	Complainant	Alleged breach	Outcome by stage		
					Gatekeeper	Investigation	Hearing
2020/02107	Comm 3	N	Public	Threatening behaviour towards a member of the public		PSOW did not investigate	

Eitem ar gyfer y Rhaglen 8



STANDARDS COMMITTEE

Date of Meeting	Monday 2 November 2020
Report Subject	Public Services Ombudsman for Wales (PSOW) Casebook Issue 23 (October 2019 – December 2019) and the Annual letter from the PSOW
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The PSOW considers complaints that Members of Local Authorities in Wales have breached the Code of Conduct (the Code). There are four findings the PSOW can arrive at:

- (a) that there is no evidence of breach;
- (b) that no action needs to be taken in respect of the complaint;
- (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 (the APW) for adjudication by a tribunal.

The PSOW summarises the complaints that he has investigated on a quarterly basis in the Code of Conduct Casebook (the Casebook). In reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the Standards Committee or APW have been concluded and the outcome of the hearing is known. This edition covers October to December 2019.

This edition highlights that 2 complaints were investigated by the PSOW during this time, of which both were findings of no action necessary. There were no referrals to Monitoring Officers for consideration by their Standards Committees and there were no referrals to the APW for adjudication by a tribunal.

The PSOW writes an annual letter to all County and County Borough Councils in Wales to set out the number of complaints received both in respect of service complaints and complaints relating to breaches of the Code in respect of County and Town and Community Councils. The letter must be presented to the Council's Cabinet to assist in their scrutiny of the Council's performance and actions related to that are to be reported back to the PSOW by the 30 November 2020.

RECOMMENDATIONS

1	Having reviewed the cases summarised in Issue 23 of the Casebook the Committee is satisfied no action needs to be taken at Flintshire County Council to avoid similar complaints.
2	Having had regard to the PSOW's annual letter and having already considered and acted upon the outcome of the case referred to the APW, and having noted that the other complaints submitted during 2019/20 were not investigated by the Ombudsman, the Committee concludes that no action is needed.

REPORT DETAILS

1.00	BACKGROUND
1.01	<p>The PSOW considers complaints that Members of Local Authorities in Wales have breached the Code. The PSOW 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 PSOW decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the PSOW can arrive at, namely:</p> <ul style="list-style-type: none">(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 APW for adjudication by a tribunal (this is usually only the more serious cases).
1.02	<p>In terms of findings (c) and (d) it is for the Standards Committee or tribunal to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.</p>
1.03	<p>The Casebook contains summaries of reports issued by the PSOW for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the Standards Committee or APW have been concluded and the outcome of the hearing is known. This edition (issue 23) covers October to December 2019. There were no referrals under findings (c) or (d) during this period.</p>
1.04	<p>The summary of the findings in this edition of the Casebook, are as follows:-</p> <p><u>No action necessary</u></p>
1.05	<p>Merthyr Tydfil County Borough Council – Duty to uphold the law Case Number: 201805269 - Report issued in December 2019</p>

	<p>The PSOW received a complaint that a Member (“the Member”) of Merthyr Tydfil County Borough Council (“the Council”) had breached the Code by voting on the setting of the rate of Council Tax at a meeting of Full Council in March 2018 when he was in arrears of Council Tax for a former home. It is an offence under s106 of the Local Government Finance Act 1992 for a Member to vote on setting the rate of Council Tax when they are themselves in arrears.</p>
1.06	<p>The relevant parts of the Code in this case are paragraphs 6(1)(a) relating to bring the authority into disrepute and paragraphs 10(1), 11(1) and 14(1)(a), (b) and (c) about the actions a Member should take if they have a personal and prejudicial interest in a matter the authority is considering. The PSOW obtained relevant documentary evidence, including copies of the Council Tax records for the property involved. He also viewed the webcast for the meeting of Full Council and interviewed the Council’s Monitoring Officer and the Member.</p>
1.07	<p>The Ombudsman considered that the evidence suggested that the Member had breached the Code as he accepted that he had not declared an interest and had voted on setting the Council Tax rate. The Member also accepted that at the time of that meeting he was in arrears of Council Tax for the former property. However, the Ombudsman decided that it would not be in the public interest to pursue the matter given the significant mitigating circumstances in this particular case. These included the personal circumstances that had led to the Member incurring the original debt and the fact that the Member was inexperienced. He had apologised, paid off the arrears and said that it would not happen again. In view of the mitigating circumstances, the Ombudsman concluded that no further action needed to be taken.</p> <p><u>Merthyr Tydfil County Borough Council – Disclosure and registration of interests.</u></p>
1.08	<p>Case Number: 201807334 – Report issued in December 2019. The PSOW received a complaint that a Member (“the Member”) of Merthyr Tydfil County Borough Council (“the Council”) had breached the Code of Conduct. It was alleged that, contrary to the Monitoring Officer’s advice that a conflict of interest existed, the Member accepted a specific Cabinet position. It was also alleged that the Member had failed to declare an interest in such matters.</p>
1.09	<p>During the investigation, information was sought on the Monitoring Officer’s advice, and the Member was interviewed. The Member explained that he had considered the advice of the Monitoring Officer and was confident that an appropriate strategy had been formulated to manage and mitigate any potential conflicts of interest. The Member said that he and the Leader of the Council had undertaken research to identify where similar scenarios had occurred in other Councils and the impact it had on those authorities. The Member also produced evidence of declarations of interest that he had made.</p>
1.10	<p>Although the PSOW was satisfied that the Member had regard to the Monitoring Officer’s advice, the lack of transparency in relation to aspects of the appointment (including the timing of the Member’s resignation from</p>

	<p>employment which would have conflicted with the appointment) was of concern and caused others to reasonably question the appointment. As the Member had eventually resigned from his former employment and taken up his role the PSOW found that it was not in the public interest to pursue the matter further and found that no further action needed to be taken. Given the potential for a conflict of interest to arise, the Member was reminded of the need to seek advice from the Monitoring Officer in future matters.</p> <p><u>The PSOW's Annual Letter for the year 2019/20 (the letter)</u></p>
1.11	The letter is attached as Appendix 1 to this report. The Standards Committee is only concerned with the ethical complaints element of the letter with the service complaints being in the remit of the Cabinet and the Overview and Scrutiny Committees of the Council.
1.12	The points to note in respect of the ethical complaints relating to alleged breaches of the Code by County and Town and Community Councillors are contained at Sections E (in respect of County Councillors) and F (in respect of Town and Community Councillors) at page 6 of the letter. The letter also explains that complaints related to breaches of the Code that were referred to the Standards Committee or the APW are down to 2% from 3% in the previous year.
1.13	In respect of Code complaints that were closed during the year relating to County Councillors, there were 2 in total of which one was closed after initial consideration and the other after referral to the APW. The Committee has already considered the actions to be taken following the outcome of the case referred to the APW
1.14	In respect of Code complaints that were closed during the year relating to Town and Community Councillors, there were 14 in total of which all were closed after initial consideration. The 9 complaints at Northop Hall Community Council are actually 1 complaint against 9 Community Councillors.
1.15	Another relevant matter referred to in the letter is that the Public Services Ombudsman (Wales) Act 2019 was passed by the Welsh Assembly (on the 22 May 2019).

2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The letter is reported to the Council's Cabinet.

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Appendix 1 - The Annual Letter from the PSOW for the year 2019/20


6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>PSOW casebook issue 23 https://www.ombudsman.wales/wp-content/uploads/2020/06/CoC-casebook-October-December-2019.pdf</p> <p>Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>APW – The Adjudication Panel for Wales is an independent tribunal whose function is to determine alleged breaches by elected and co-opted Members of Welsh County, County borough and community councils, fire and national park authorities, against their authority’s statutory Code of Conduct.</p> <p>PSOW - Public Services Ombudsman for Wales is independent of other bodies and has legal powers to investigate complaints about public services and independent care providers in Wales and to investigate complaints that Members of local government bodies have broken their authority’s Code of Conduct.</p>


Mae'r dudalen hon yn wag yn bwrpasol

Our ref: NB

Ask for: Communications

 01656 641150

Date: 7 September 2020

 Communications
@ombudsman-wales.org.uk

Councillor Ian Roberts
Council Leader
Flintshire County Council

By Email Only
ian.b.roberts@flintshire.gov.uk

Dear Councillor Roberts

Annual Letter 2019/20

I am pleased to provide you with the Annual letter (2019/20) for Flintshire County Council.

I write this at an unprecedented time for public services in Wales and those that use them. Most of the data in this correspondence relates to the period before the rapid escalation in Covid-19 spread and before restrictions on economic and social activity had been introduced. However, I am only too aware of the impact the pandemic continues to have on us all.

I am delighted to report that, during the past financial year, we had to intervene in (uphold, settle or resolve early) a smaller proportion of complaints about public bodies: 20% compared to 24% last year.

We also referred a smaller proportion of Code of Conduct complaints to a Standards Committee or the Adjudication Panel for Wales: 2% compared to 3% last year.

With regard to new complaints relating to Local Authorities, the overall number has decreased by 2.4% compared to the previous financial year. I am also glad that we had to intervene in a smaller proportion of the cases closed (13% compared to 15% last year). That said, I am concerned that complaint handling persists as one of the main subjects of our complaints again this year.

Amongst the main highlights of the year, in 2019 the National Assembly for Wales (now Senedd Cymru Welsh Parliament) passed our new Act. We are now the first ombudsman's office in the UK to have full and operational powers to drive systemic improvement of public services through investigations on our 'own initiative' and the Complaints Standards role.

Page 1 of 7

During 2019/20, we have engaged intensively with Local Authorities on this issue, starting to exercise our new Complaints Standards powers.

Local Authorities in Wales submitted data about the complaints they handled to the Complaints Standards Authority (CSA) for the first time in 2019/2020, revealing much more about the complaints landscape in Wales.

The data submitted for 2019/2020 shows:

- Over 13,000 complaints were recorded by Local Authorities – 4.25 for every 1000 residents.
- Nearly half (42%) of those complaints were upheld in full or in part.
- About 80% (79.51%) were investigated within 20 working days.
- About 7% (6.91%) of all complaints ended up being referred to PSOW.

The CSA will work with public bodies to ensure the data submitted is an accurate representation of complaints being submitted by service users.

A summary of the complaints of maladministration/service failure received relating to your Council is attached.

Also attached is a summary of the Code of Conduct complaints relating to members of the Council and the Town & Community Councils in your area.

Action for the Council to take:

- Present my Annual Letter to the Cabinet to assist members in their scrutiny of the Council's performance.
- Engage with my Complaints Standards work, accessing training for your staff and providing complaints data.
- Inform me of the outcome of the Council's considerations and proposed actions on the above matters by 30 November.

This correspondence is copied to the Chief Executive of your Council and to your Contact Officer. Finally, a copy of all Annual Letters will be published on my website.

Yours sincerely



Nick Bennett
Ombudsman

CC: Colin Everett, Chief Executive
Rebecca Jones, Contact Officer

Factsheet

A. Complaints Received

Local Authority	Complaints Received	Complaints received per 1000 residents
Blaenau Gwent County Borough Council	17	0.24
Bridgend County Borough Council	34	0.23
Caerphilly County Borough Council	49	0.27
Cardiff Council*	122	0.33
Carmarthenshire County Council	42	0.22
Ceredigion County Council	31	0.42
Conwy County Borough Council	29	0.25
Denbighshire County Council	32	0.34
Flintshire County Council	61	0.39
Gwynedd Council	37	0.30
Isle of Anglesey County Council	26	0.37
Merthyr Tydfil County Borough Council	13	0.22
Monmouthshire County Council	16	0.17
Neath Port Talbot County Borough Council	22	0.15
Newport City Council	39	0.25
Pembrokeshire County Council	25	0.20
Powys County Council	72	0.54
Rhondda Cynon Taf County Borough Council	39	0.16
Swansea Council	92	0.37
Torfaen County Borough Council	5	0.05
Vale of Glamorgan Council	30	0.23
Wrexham County Borough Council	33	0.24
Wales	866	0.28

* inc 1 Rent Smart Wales

B. Complaints Received by Subject

Flintshire Council	Complaints Received	Complaints Percentage Share
Adult Social Services	3	4.92%
Benefits Administration	1	1.64%
Children's Social Services	2	3.28%
Community Facilities, Recreation and Leisure	2	3.28%
Complaint Handling	2	3.28%
Education	4	6.56%
Environment and Environmental Health	10	16.39%
Health	2	3.28%
Housing	10	16.39%
Planning and Building Control	14	22.95%
Roads and Transport	7	11.48%
Various Other	4	6.56%

C. Complaint Outcomes

(* denotes intervention)

Complaints Closed	Premature/ Out of Time/Right to Appeal	Out of Jurisdiction	Other cases closed after initial consideration	Early Resolution/ voluntary settlement*	Discontinued	Other Reports- Not Upheld	Other Reports Upheld - in whole or in part*	Public Interest Report *	Grand Total
Flintshire County Council	30	3	16	5	0	0	2	1	57
Percentage Share	52.63%	5.26%	28.07%	8.77%	0.00%	0.00%	3.51%	1.75%	

D. Number of cases with PSOW intervention

	No. of interventions	No. of closures	% of interventions
Blaenau Gwent County Borough Council	1	17	6%
Bridgend County Borough Council	1	34	3%
Caerphilly County Borough Council	6	50	12%
Cardiff Council	21	120	18%
Cardiff Council - Rent Smart Wales	-	1	0%
Carmarthenshire County Council	6	46	13%
Ceredigion County Council	4	30	13%
Conwy County Borough Council	6	34	18%
Denbighshire County Council	2	32	6%
Flintshire County Council	8	57	14%
Gwynedd Council	4	39	10%
Isle of Anglesey County Council	3	28	11%
Merthyr Tydfil County Borough Council	2	15	13%
Monmouthshire County Council	2	15	13%
Neath Port Talbot Council	4	25	16%
Newport City Council	4	38	11%
Pembrokeshire County Council	7	29	24%
Powys County Council	14	71	20%
Rhondda Cynon Taf County Borough Council	5	40	13%
Swansea Council	4	93	4%
Torfaen County Borough Council	1	5	20%
Vale of Glamorgan Council	4	27	15%
Wrexham County Borough Council	4	33	12%
Grand Total	113	879	13%

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E. Code of Conduct Complaints Closed

County/County Borough Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Flintshire	1	-	-	-	-	1	-	2

F. Town/Community Council Code of Complaints

Town/Community Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Broughton & Bretton Community Council	1	-	-	-	-	-	-	1
Northop Hall Community Council	9	-	-	-	-	-	-	9
Saltney Town Council	4	-	-	-	-	-	-	4

Appendix

Explanatory Notes

Section A provides a breakdown of the number of complaints against the Local Authority which were received during 2019/20, and the number of complaints per 1,000 residents (population).

Section B provides a breakdown of the number of complaints about the Local Authority which were received by my office during 2019/20. The figures are broken down into subject categories with the percentage share.

Section C provides the complaint outcomes for the Local Authority during 2019/20, with the percentage share.

Section D provides the numbers and percentages of cases received by the PSOW in which an intervention has occurred. This includes all upheld complaints, early resolutions and voluntary settlements.

Section E provides a breakdown of all Code of Conduct complaint outcomes against Councillors during 2019/20.

Section F provides a breakdown of all Code of Conduct complaint outcomes against town or community councils.

Feedback

We welcome your feedback on the enclosed information, including suggestions for any information to be enclosed in future annual summaries. Any feedback or queries should be sent via email to communications@ombudsman-wales.org.uk

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FLINTSHIRE COUNTY COUNCIL – STANDARDS COMMITTEE – FORWARD WORK PROGRAMME 2020/21

Date of Meeting	Topic	Notes/Decision/Action
March 2022	<ul style="list-style-type: none"> • Training • Dispensations • Overview of Ethical Complaints • Forward Work Plan 	
January 2022	<ul style="list-style-type: none"> • Training • Dispensations • Independent member visits to meetings • Forward Work Plan 	
November 2021 Joint meeting with T&CCs	<ul style="list-style-type: none"> • Training • Dispensations • Overview of Ethical Complaints • PSOW Annual Report/Casebook • Items raised by Town and Community Councils • Forward Work Plan 	
September 2021	<ul style="list-style-type: none"> • Training • Dispensations • Standards Forum & ethical liaison pre briefing • Forward Work Plan 	
July 2021	<ul style="list-style-type: none"> • Training • Dispensations • Overview of Ethical Complaints • Independent member visits to meetings • Forward Work Plan 	

May 2021	<ul style="list-style-type: none"> • Training • Dispensations • PSOW Casebook • APW Annual Report • Standards forum & ethical liaison debriefing • Forward Work Plan 	
March 2021	<ul style="list-style-type: none"> • Training • Dispensations • Overview of Ethical Complaints • Review of Protocol for meeting Contractors • Forward Work Plan 	
January 2021	<ul style="list-style-type: none"> • Training • Dispensations • Review Protocol on the Production of Councillor Newsletters • Independent Member visits to meetings • Standards Forum & ethical liaison pre-briefing • Forward Work Plan 	
November 2020 Joint Meeting with T&CC	<ul style="list-style-type: none"> • Training • Dispensations • PSOW Annual Report/Casebook Issue 23 (Oct –Dec 2019) and the Annual letter from the PSOW • Overview of Ethical Complaints • Directions from President of the APW • Items raised by Town and Community Councils • Forward Work Plan 	<p>Report by Matt Georgiou</p> <p>Report by Gareth Owens</p> <p>Report by Gareth Owens</p> <p>Verbal</p>
September 2020	<ul style="list-style-type: none"> • Training on LDP • Dispensations for LDP • Review of Dispensation Procedures • Forward Work Plan 	