

STANDARDS COMMITTEE

Date of Meeting	Monday 4 th November 2019
Report Subject	Public Service Ombudsman for Wales Casebooks: Issue 21 (April 2019 to June 2019) and Issue 22 (July 2019 to September 2019)
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The Public Service Ombudsman for Wales (PSOW) considers complaints that Members of local authorities in Wales have broken 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. These editions cover the periods April to June 2019 and July to September 2019.

These editions highlight that 17 complaints were investigated by the PSOW during this time, of which of 8 investigations led to findings of no evidence of breach, 5 led to findings of no action necessary, 3 led to referrals to the relevant Standards Committees and 1 led to a referral to the APW.

RECOMMENDATIONS

1	To note the findings of those complaints that were investigated by the PSOW during April to June 2019 and July to September 2019, as summarised in issues 21 and 22 of the Casebooks.
---	---

REPORT DETAILS

1.00	BACKGROUND
1.01	<p>The PSOW considers complaints that Members of local authorities in Wales have broken 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;(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. These editions (issues 21 and 20) cover April to June 2019 and July to September 2019.</p>
1.04	<p>The summary of the findings in these editions of the Casebooks, are as follows:-</p> <p><u>Casebook Issue 20 (April to June 2019)</u></p> <p><u>No evidence of breach</u></p>
1.05	<p>Sully and Lavernock Community Council - Disclosure and registration of interests. Case number: 201802547 - Report issued in April 2019.</p>
1.06	<p>The PSOW received a complaint that a Member ("the Member") of Sully and Lavernock Community Council ("the Council") had breached the Code. It was alleged that, despite being aware that a grievance had been submitted to the Council about his behaviour, the Member had failed to declare an interest when those matters were discussed in Council meetings.</p>

1.07	In addition to the evidence provided by the complainant, information was also sought from the Council, the County Council and the Member. Having reviewed the information available, the PSOW found that there was no evidence of a breach of the Code.
1.08	Amlwch Town Council – Promotion of equality and respect Case Number: 201802863 – Report issued in April 2019
1.09	The PSOW received a complaint that a Member (“the Member”) of Amlwch Town Council (“the Council”) had breached parts of the Code in his conduct towards the Council’s Clerk at a meeting.
1.10	The PSOW investigated whether the Member had breached parts of the Code in relation to showing respect and consideration, not use bullying behaviour or harass any person, and not conduct yourself in a manner which could reasonably be regarded as bringing their authority into disrepute.
1.11	The PSOW investigated a selection of those present at the meeting, including members of the Council and members of the public. The evidence did not support the complaint.
1.12	Under Section 69(4) (a) of the Local Government Act 2000, the PSOW concluded that there was no evidence to suggest that the Member had failed to comply with the Code.
1.13	Powys County Council – Promotion of equality and respect Case Number: 201803813 & 201803815 – Report issued in May 2019.
1.14	The PSOW received a complaint that a Member (“the Member”) of Powys County Council (“the Council”) had breached the Code. It was alleged that the Member had continuously made comments to the press about the complainant’s business, which caused the complainant to feel bullied and harassed. During the course of the investigation, information was provided by relevant parties including the complainant and the Monitoring Officer.
1.15	The PSOW found that there was no evidence of a breach of the Code. The matters referred to by the complainant were accurate and in the public domain. There was no evidence which was suggestive that matters had been leaked to the press by the Member.
	<u>No action necessary</u>
1.16	Magor with Undy Community Council – Integrity Case Number: 201807788 – Report issued in May 2019.
1.17	The PSOW received a complaint that a Member (“the Member”) of Magor with Undy Community Council (“the Council”) had breached the Code when he organised the transfer of Council data to an external, electronic storage application. It was alleged that the Member acted improperly to persuade Council staff to grant access to the Council’s files, and inappropriately accessed the information which was available during the file transfer process.

1.18	<p>Having been informed, during the course of the investigation that the Member had resigned from the Council, the PSOW concluded that the complaint no longer satisfied the public interest requirements of the two-stage test and the investigation was discontinued.</p> <p><u>Referred to Standards Committee</u></p>
1.19	<p>Cwmllynfell Community Council– Promotion of equality and respect Case Number: 201704948 – Report issued in May 2019.</p>
1.20	<p>The PSOW received a complaint that a Member (“the Member”) of the Cwmllynfell Community Council (“the Council”) displayed disrespectful and bullying behaviour towards the Clerk (at the time) at two meetings.</p>
1.21	<p>The PSOW found that there was evidence to suggest that the Member had failed to show respect and consideration to the former Clerk when raising matters of a personal nature, which did not relate to the performance of the Clerk’s duties, during the second meeting which was open to the public. The Member’s actions were considered to be contrary to one of the Council’s Standing Orders. The PSOW found also that there was evidence to suggest that the Member had displayed bullying behaviour towards the Clerk at this meeting.</p>
1.22	<p>The PSOW determined that the matter should be referred to the Monitoring Officer of Neath Port Talbot County Borough Council for consideration by that Council’s Standards Committee.</p>
1.23	<p>The Standards Committee determined that the Member’s conduct in respect of the second meeting was in breach of paragraphs 4(b) and 4(c) of the Council’s Code. In addition, the Standards Committee found that in behaving in this way during this meeting that the Member had also brought the office of member into disrepute in breach of paragraph 6(1)(a). The Standards Committee issued a censure to the Member for the breaches of the Code found.</p> <p><u>Referred to Adjudication Panel for Wales</u></p>
1.24	<p>There are no summaries in relation to this finding.</p> <p><u>Casebook Issue 22 (July to September 2019)</u></p> <p><u>No evidence of breach</u></p>
1.25	<p>Caia Park Community Council - Disclosure and registration of interests Case number: 201805133 - Report issued in July 2019.</p>
1.26	<p>The PSOW received a complaint that a Member (“the Member”) of Caia Park Community Council (“the Council”) had breached the Code for Members, in October 2018, when they submitted an application for funding for a community project, in which they had an interest, which was above the Council’s agreed limit, against the advice of the Clerk. It was alleged that the Member’s behaviour could bring the Council into disrepute.</p>

1.27	The investigation established that the Clerk had advised that the Council could consider an application for funding above the agreed limit. The Member declared an interest and there was no evidence that they sought to influence the decision making. Therefore, the PSOW found that there was no evidence that the Member had breached the Code.
1.28	Powys County Council - Accountability and openness. Case Number: 201803272 – Report issued in August 2019.
1.29	The PSOW received a complaint that a Member (“the Member”) of Powys County Council (“the Council”) had breached the Code (“the Code”) in relation to the connection of water supplies to two of his properties and in respect of his actions in relation to his caravan site.
1.30	An investigation was commenced to consider whether the Member had breached the part of the Code relating to disrepute. Copies of relevant documents were obtained. The evidence found by the investigation was shared with the Member before he was formally interviewed.
1.31	The PSOW determined there was no evidence to suggest that the Member had breached the Code.
1.32	Denbighshire County Council - Promotion of equality and respect. Case Number: 201900044 – Report issued in August 2019.
1.33	The PSOW received a complaint about a Member (“the Member”) of Denbighshire County Council (“the Council”). It was alleged that the Member’s behaviour had been inappropriate and disrespectful and breached the Code.
1.34	During the course of the investigation, information was provided by relevant parties including the complainant, and the Monitoring Officer. The PSOW found that there was no evidence to support the concerns raised and found that there was no breach of the Code.
1.35	Prestatyn Town Council - Promotion of equality and respect. Case Number: 201900045 – Report issued in August 2019.
1.36	The PSOW received a complaint about a Member (“the Member”) of Prestatyn Town Council (“the Council”). It was alleged that the Member’s behaviour had been inappropriate and disrespectful and breached the Code.
1.37	During the course of the investigation, information was provided by relevant parties including the complainant, the Clerk to the Council and the Monitoring Officer.
1.38	The PSOW found that there was no evidence to support the concerns raised and found that there was no breach of the Code.
1.39	Sully and Lavernock Community Council - Duty to uphold the law. Case number: 201900025 - Report issued in September 2019.

1.40	The PSOW received a complaint that a Member (“the Member”) of Sully and Lavernock Community Council (“the Council”) had breached the Code when he allegedly physically attacked someone.
1.41	The PSOW’s investigation was suspended pending the outcome of a criminal prosecution made against the Member in relation to the incident. The case was heard by the Magistrates’ Court; there was no direct witness evidence to the alleged incident and the Member was found not guilty. Therefore, the PSOW did not consider that the evidence suggested that the Member had breached the Code in this case.
1.42	The PSOW’s finding under s69 (4) (a) of the Local Government Act 2000 was therefore that there was no evidence that the Member had failed to comply with the Code.
<u>No action necessary</u>	
1.43	Llandrindod Wells Town Council - Promotion of equality and respect. Case number: 201803394 - Report issued in July 2019.
1.44	The PSOW received a complaint that a Member (“the Member”) of Llandrindod Wells Town Council (“the Council”) had inappropriately accessed the Council’s computer, withheld information gathered from it from the Council and failed to declare a personal and prejudicial interest in matters the Council was considering. It also alleged that the Member had engaged in bullying behaviour towards the Clerk at two meetings, in particular.
1.45	The investigation considered whether the Member might have breached paragraphs 4(b) and (c), 5(b), 7(a), 11 and 14 of the Code. Copies of relevant documents, including the approved minutes of the two meetings, were obtained and telephone interviews were conducted with relevant witnesses. The evidence found by the investigation was shared with the Member before he was formally interviewed.
1.46	The investigation found that the evidence did not suggest the Member had acted in a bullying manner, prevented the Council from obtaining access to information to which it was entitled or used his position improperly. The Member was entitled to comment on matters to do with the Council and had legitimate grounds for his actions.
1.47	The investigation found evidence that the Member had failed to show due respect and consideration to the Clerk at one meeting, and that he had failed to take appropriate action in respect of a personal and prejudicial interest. However, the Member had been acting in good faith and in the best interests of the Council. In addition, he demonstrated a reasonable level of personal reflection since the time of the events. The PSOW found that, therefore, no action needed to be taken in respect of the matters investigated.
1.48	Bridgend Town Council - Disclosure and registration of interests. Case number: 201707582 - Report issued in September 2019.

1.49	The PSOW received a complaint about a Member (“the Member”) of Bridgend Town Council (“the Council”). It was alleged that the Member had failed to disclose a personal and prejudicial interest during a meeting of the Council and proceeded to participate in discussions relating to that matter. Additionally, it was alleged that the Member failed to show respect and consideration during the meeting and behaved in a bullying manner towards the Clerk to the Council.
1.50	During the course of the investigation, information was provided by relevant parties including the complainant, and the Council.
1.51	The PSOW found that the evidence gathered was suggestive that the Member had failed to appropriately declare a personal and prejudicial interest at the meeting of the Council. In addition, the Member’s actions in failing to leave the room and making representations were also suggestive of a failure to comply with the relevant provisions of the Code. Further, the PSOW determined that the evidence was suggestive that the Member failed to show respect and consideration to the Clerk during that meeting.
1.52	In deciding what action to take the PSOW considered the custom and practice of declaring interests within the Council at the relevant time, the mitigation provided by the Member and recent evidence confirming a significant improvement in working relationships within the Council. The PSOW concluded that it would not be in the public interest to take matters further and that no action should be taken in respect of the matters investigated.
1.53	Bridgend Town Council - Disclosure and registration of interests. Case number: 201707583 - Report issued in September 2019.
1.54	The PSOW received a complaint about a Member (“the Member”) of Bridgend Town Council (“the Council”). It was alleged that the Member had failed to disclose a personal and prejudicial interest during a meeting of the Council and proceeded to participate in discussions relating to that matter. Additionally, it was alleged that the Member had used his position improperly in an attempt to gain an advantage for himself or his close personal associates.
1.55	During the course of the investigation, information was provided by relevant parties including the complainant, and the Council.
1.56	The PSOW found that the evidence gathered was suggestive that the Member had failed to appropriately declare a personal and prejudicial interest at the meeting of the Council. In addition, the Member’s actions in failing to leave the room and making representations are also suggestive of a failure to comply with the relevant provisions of the Code. However, the PSOW was not persuaded that the evidence was suggestive that the Member used his position in an attempt to gain an advantage as suggested.

1.57	In deciding what action to take the PSOW considered the custom and practice of declaring interests within the Council at the relevant time and the mitigation provided by the Member. The PSOW concluded that it would not be in the public interest to take matters further and that no action should be taken in respect of the matters investigated.
1.58	Trefeurig Community Council - Disclosure and registration of interests. Case number: 201806748 - Report issued in September 2019.
1.59	The PSOW received a complaint that a Member (“the Member”) of Trefeurig Community Council (“the Council”) had breached the Code. It was alleged that, during a discussion about a planning application for a local development, the Member failed to declare an interest in the matter.
1.60	During the course of the investigation, information was provided by relevant parties including the complainant, and the Clerk to the Council. The PSOW found that no action needed to be taken in respect of the matters investigated.
<u>Referred to Standards Committee</u>	
1.61	Prestatyn Town Council - Promotion of equality and respect. Case number: 201700947 – Report issued in July 2019.
1.62	The PSOW received a complaint that a Member (“the Member”) of Prestatyn Town Council (“the Council”) may have used threatening and abusive behaviour towards a fellow member of the Council and behaved in an aggressive and confrontational manner at two Council meetings in November 2016 and May 2017.
1.63	The PSOW obtained relevant information about the matter from the Council and interviewed a number of witnesses. The Member was interviewed and provided his response to the complaint.
1.64	Having considered the evidence the PSOW found that there was evidence to suggest that the Member may have breached the Code and referred the matter for consideration by the Council’s Standards Committee.
1.65	The Standards Committee determined that the Member failed to show respect and consideration to Police Officers who were in attendance at the meeting in November 2016 and towards his fellow member in the meeting in May 2017. In addition, the Standards Committee found that the Members behaviour at both meetings was capable of bringing the Council into disrepute.
1.66	The Standards Committee decided that on the basis of the findings reached that the Member should be suspended from office of member of the Council for a period of four months.
1.67	Neath Town Council - Promotion of equality and respect. Case number: 201707990 – Report issued in July 2019.

1.68	On 21 March 2018, I received a complaint that a member of the Council (“the Member”) failed to observe the Code for members of Neath Town Council (“the Council”). It was alleged that the Member had commented that a Neath resident had deserved to be murdered.
1.69	The investigation found that the Member’s unsolicited comments about the victim were both disrespectful and distasteful and, whilst it may have been the member’s private opinion, there was no reason for it to have been expressed publicly. In view of the effect of the Member’s comments on the citizens of Neath Town Council, many of whom believe that the Member is no longer a suitable representative, and the effect on the reputation of the Town Council itself, the PSOW concluded that the Member may have breached paragraph 6(1)(a) of the Code.
1.70	The PSOW determined that the matter should be referred to the Monitoring Officer of Neath Port Talbot County Borough Council for consideration by that Council’s Standards Committee. The Standards Committee found that the Member had breached the Code and she was suspended for four months.
<u>Referred to Adjudication Panel for Wales</u>	
1.71	Mathern Community Council - Promotion of equality and respect. Case number: 201802799 – Report issued in July 2019.
1.72	During a public hearing of the Adjudication Panel For Wales held on 19 July 2018, a member of Mathern Community Council (“the Member”) made a statement which he followed up with a letter to the Adjudication Panel. Both the statement and the letter contained language either the same as or similar to language which the Adjudication Panel had advised him would amount to a breach of the Code.
1.73	The PSOW decided to investigate whether the Member’s actions amounted to a breach of paragraph 6(1)(a) of the Code on the basis that the matter had come to his attention as a result of the investigation which was being heard by the Adjudication Panel for Wales on 19 July.
1.74	The PSOW considered that a reasonable person would conclude that the Member actions affected the reputation of both the Office of Member and the Authority of which he is a member and that they may amount to a breach of paragraph 6(1)(a) of the Code. The PSOW also considered that any restriction of the Member’s right to freedom of expression under article 10 of the Human Rights Act, would be necessary for the protection of the rights and interests of others.
1.75	The PSOW referred the matter to the Adjudication Panel for Wales. However, on 17 July 2019 the Adjudication Panel determined that the matter did not come to the PSOW’s attention as a result of the investigation heard on 19 July 2018 as that investigation concluded on 20 December 2017 (when the matter was referred to the Adjudication Panel for Wales) and determined it would therefore not consider the case. No further action was taken.

2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	N/A

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	None

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk

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.</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.</p>