

STANDARDS COMMITTEE

Date of Meeting	Monday 3 June 2019
Report Subject	Public Services Ombudsman for Wales (PSOW) Casebook Issue 19 (October - December 2018)
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The 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. This edition covers October to December 2018.

This edition highlights that eleven complaints were investigated by the PSOW during this time, of which there were three findings of no evidence of breach and eight findings of no action necessary (although one complaint related to two incidents of which one was a finding of no evidence of breach and the other a finding 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.

RECOMMENDATIONS

1	To note the findings of those complaints that were investigated by the PSOW during October to December 2018, as summarised in issue 19 of the Casebook.
---	---

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 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 19) covers October to December 2018. 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 evidence of breach</u></p> <p><u>Blaenau Gwent County Borough Council – Promotion of equality and respect Case Number 201707024</u></p>
1.05	<p>The complaint was that a Councillor (“the Councillor”) may have breached the Code of Conduct by setting up a page on Social Media which the complainant said unfairly targeted her business. She also complained that the Councillor had intercepted an email she would not otherwise have been entitled to and shared the content of the email on the Social Media page. The PSOW found that the Councillor set up the Social Media page in her private capacity, there was no reference to her work as a Councillor and it was not in any way associated with the Council. The email referred</p>

to had been sent directly to the Councillor. The email was not marked confidential and the Council confirmed that it was the type of information it would share with anyone who made a complaint.

Rhondda Cynon Taf County Borough Council - Duty to uphold the law Case Number: 201802132

- 1.06 The complainant complained that a Councillor (“the Councillor”) breached the Code of Conduct when she signed a police statement indicating she had seen an altercation between “Mr B” and another person. Mr B said the Councillor retracted the information in court and that were it not for the statement he would not have gone to court. The PSOW found that the statement appeared to have been given in good faith and the account given in court was so similar that it appeared to be the Councillor’s version of events.

Powys County Council – Accountability and openness. Case Number: 201706713

- 1.07 The complaint was that the behaviour of a Member (“the Councillor”) of Powys County Council (“the Council”) misled a local resident (“the Complainant”) when the Councillor commented on raising objections to a planning application. The Complainant said the Councillor was attempting to secure an advantage for the applicant and to deter local residents from objecting. An investigation was commenced to consider whether the Councillor had breached parts of the Code which concern disrepute and using their position to create an advantage for themselves or another person.

- 1.08 The PSOW determined there was no evidence to suggest that the Councillor had breached the Code during a telephone conversation with the Complainant.

No action necessary

- 1.09 Beguildy Community Council – Disclosure and registration of interests Case Number: 201801874

- 1.10 The complaint was that a Councillor (“the Councillor”) failed to declare an interest at a meeting, when a discussion took place about survey work on damaged drains on land next to land owned by the Councillor. The complainant also said that the Councillor failed to show her respect and consideration. The Councillor acknowledged a heated discussion with the complainant but said it was not personal and he did not bear her any malice. The PSOW found that the matters raised by the Councillor were of legitimate political concern and it is not the PSOW’s role to inhibit robust political debate. Whilst the matter discussed did directly affect the Councillor’s land and therefore might amount to a technical breach of the Code the issue was of wider significance to the community and therefore his finding was that no action needed to be taken in respect of the matters investigated.

City and County of Swansea – Duty to uphold the law. Case Number: 201802771

1.11 The PSOW investigated a complaint that a Councillor (“the Councillor”) may have breached the Code of Conduct by over claiming mileage expenses.

1.12 Having considered the information available to him, the PSOW concluded that whilst there was evidence that the Member had incorrectly over claimed expenses, consideration had to be given to the Member’s inexperience and unfamiliarity with the process; the fact that the Member had also under claimed expenses on a number of occasions; the value of the overpayments and, the Member’s apology and readiness to repay the overpaid money. In view of the above the PSOW found that no further action should be taken.

Powys County Council – Promotion of equality and respect
Case Number: 201706847

1.13 The PSOW investigated a complaint that a Councillor (“the Councillor”) may have breached the Code of Conduct by failing to honour an undertaking given to the APW that he would send a written letter of apology to two colleagues.

1.14 Having considered the information available to him, including the Member’s comments that he had written and posted the letters, the PSOW concluded that, since the Member had agreed to rewrite and send the letters again, no further action should be taken.

Sully and Lavernock Community Council – promotion of equality and respect. Case Number: 201705246

1.15 The PSOW received a complaint that, during a meeting of Sully and Lavernock Community Council (“the Council”), a Member (“the Member”) had breached the Code. It was alleged that the Member made ageist and discriminatory comments about a candidate that had applied to be co-opted to the Council.

1.16 Information was sought from the Council and interviews were undertaken with witnesses who were at the meeting as well as the Member.

1.17 The investigation found that the Member had made such comments, but that there was no evidence to suggest that his comments had a bearing on the outcome for the candidate. Further to this, the Member had only been elected to the Council for six weeks, the Code had not been explained to him and he had not had any training on its content. Additionally, when interviewed, the Member apologised for the comments, said he would not make such comments again and confirmed that he had since had training on the Code.

1.18 Whilst the PSOW suggested that the Member consider attending an equality and diversity training course, he concluded that it was not in the public interest to pursue the matter and that no further action needed to be taken in respect of the matters complained about.

Pembrey & Burry Port Town Council – Disclosure and registration of

interests. Case Number: 201704860

- 1.19 The PSOW received a complaint that a Member (“the Member”) of Pembrey & Burry Port Town Council (“the Council”) had breached the Code by taking part in discussions and a vote at two meetings on matters in relation to a former Member of Council staff who had recently made a complaint about the Member.
- 1.20 The Member was interviewed, as was the Councillor who submitted the complaint and a further Member of the Council. At interview, the Member said he sought advice from the Clerk as to whether he could participate in discussions and he was advised that he could. He also sought his own legal advice on the matter. The Member said that he was unaware that a close personal association could give rise to a personal interest where it related to someone with whom a Member may be “in dispute” with. The Member said that at the time he did not feel that he was in dispute with the Member of Council staff. However, the Member acknowledged that he would handle similar matters very differently in future.
- 1.21 The PSOW concluded that the Member’s conduct in respect of both meetings was suggestive of a breach of the paragraphs of the Code which require him to make a declaration of interest and leave the room as appropriate. However, in view of the Member’s actions being misguided rather than intentional, the PSOW concluded that it would not be in the public interest to refer the matter to the Standards Committee.

**Gwynedd Council - Disclosure and registration of interests
Case Number: 201702769**

- 1.22 The PSOW received a complaint that a Councillor (“the Councillor”) had breached the Code of Conduct for Members. It was alleged that the Councillor had breached the Code when he failed to declare his beneficial interest in properties registered in his name and stated that he had no beneficial interests in land in the Council area. It was alleged that the Councillor failed to sign and return the Council’s declaration of interests form, despite numerous opportunities to do so.
- 1.23 The PSOW investigated whether the Councillor’s actions amounted to a breach of paragraphs regarding the disclosure of interests and the requirements regarding conduct where such interests are also prejudicial interests.
- 1.24 As the Councillor was a new Member at the time the events took place, it was the first time that the Councillor’s conduct had been brought to the PSOW’s attention and as the Councillor had since correctly completed the declaration of interest form, the PSOW decided not to take further action against the Councillor.

Llandegla Community Council – Integrity. Case Number: 201704189

- 1.25 A complaint was about the behaviour of a Member (“the Councillor”) of Llandegla Community Council (“the Council”) at two Council meetings (“the First Meeting” and “the Second Meeting”) and also about his conduct in submitting a funding application without the Council’s authority.

1.26	An investigation was commenced to consider whether the Councillor had breached parts of the Code which concern respect and consideration, bullying and harassment, and disrepute.
1.27	The PSOW determined there was no evidence to suggest that the Councillor had breached the Code at the Second Meeting and in respect of the funding application. He found that no action needed to be taken in respect of his behaviour at the First Meeting.
<u>Guilsfield Community Council – Accountability and openness. Case Number: 201707849</u>	
1.28	The PSOW investigated a complaint that a Member of Guilsfield Community Council (“the Councillor”) may have breached the Code by misleading Members of the public regarding the Council’s consideration of a planning application (“the Application”) and in relation to an interest he declared during particular Council meetings.
1.29	The PSOW concluded that there was no evidence to suggest that the Councillor had advised any Member of the public other than in good faith and there was no evidence that he deliberately set out to mislead any Member of the public. Consequently, he decided that it was not in the public interest to pursue this issue any further.
1.30	The PSOW agreed, given that the Councillor had declared an interest in the Application at the two meetings, that he had a personal interest in it. He further considered that a reasonable Member of the public, who had knowledge of the interest, would be likely to consider it so significant that it would be likely to prejudice his judgement. The Councillor should, therefore, have withdrawn from the room when the business was being discussed. However, although the Councillor remained present, there was no evidence that he used his position improperly, disrupted the democratic process or influenced the Council’s discussion and ultimate decision on the Application. The PSOW therefore decided that no action needed to be taken in respect of the matters investigated, although he recommended that the Councillor should consider carefully his duties under the Code, particularly the obligation to withdraw from a meeting when an interest is prejudicial, and seek advice if he was unsure of its implications.

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	<p>https://www.ombudsman.wales/wp-content/uploads/2019/03/CoC-casebook-February-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>