

STANDARDS COMMITTEE – 4TH DECEMBER 2009

**REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES
AND MONITORING OFFICER**

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ITEM No. 1
PART 1 SECTION A

1. **Grant of Dispensations under Section 81(4) Local Government Act 2000**

1.1. **General**

1.1.1. Under Section 81(4) of the Local Government Act 2000 Standards Committees may grant dispensations to a Member of a relevant authority (including a Community Council) allowing the Member to participate in any business where that participation would otherwise be prohibited by the mandatory provisions of the Members' Code of Conduct.

1.1.2. The National Assembly for Wales in the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI No: 2279) sets out the circumstances in which these dispensations may be granted. The Standards Committee may only grant dispensations in the circumstances set out in the Regulations.

1.1.3. The form of the report will generally set out the dispensation, the circumstances in which it may be granted, details of the applicant for the dispensation and whether it is a re-application or a new application.

1.1.4. Under Paragraph 18 of The Code of Conduct (and the relevant Regulations) The Standards Committee may not consider granting a dispensation to an individual Member unless the Member seeking it has previously notified the Monitoring Officer of that interest together with the relevant details.

1.1.5. In accordance with previous practice, it is suggested that all dispensations be granted until the first meeting of the Standards Committee following the Council Annual General Meeting in 2010 in order to ensure that they all come up for renewal at the same time.

1.2. **Employment**

- 1.2.1. Council is probably the largest employer in the County Borough. Hence, it is not uncommon for both Officers and Members to have family members employed by Council. Unfortunately, this can cause some problems in dealing with Council business especially for members who have to act under the Members' Code of Conduct. There is often disruption particularly in full Council Meetings when Members make declarations of interest in this respect.
- 1.2.2. The form of application for dispensation is intended to try to cover the situation when, although strictly required in law under the Members' Code of Conduct, serial declarations affect the smooth running of Committee business in circumstances where the general public would not draw any inference from the relationships being declared.
- 1.2.3. Often Members have family whose employment position within the organisation puts them far away from the ability to influence Council Policy and are certainly not considered decision makers. Sometimes, family members are in relatively low paid jobs which are part time or temporary in nature.
- 1.2.4. Hence all the applications for dispensations request the ability to speak and vote on issues relating to the business of Neath Port Talbot County Borough Council, including personnel matters, when the same do not directly financially advantage or disadvantage, or give other direct benefit or dis-benefit to a member of a Councillor's family who is employed by Council. The reasons given for this is that the person employed is not a senior manager of Council (i.e. by that I mean not an Accountable Manager or above) and is not charged with being involved in assisting with the determination of Council Policy.
- 1.2.5. The Member using the form appreciates that the dispensation cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect the Member's ability to act purely on the merits of the case and in the public interest if the Member were to take part in the discussion.

Standard form of Dispensation: Employment

1.2.6. “To speak and vote on issues relating to the business of Neath Port Talbot County Borough Council including relevant personnel matters which do not directly financially advantage or disadvantage or give other direct benefit or disbenefit to a Member or the Member’s family who is employed by the County Borough Council provided that the employment is not as a senior manager nor is it involved in assisting with the determination of Council policy. This dispensation will not apply in circumstances where a member of the public might reasonably conclude that the employment would significantly affect the Councillor’s ability to act purely on the merits of the case and in the public interest.”

Note: A Senior Manager is an officer or Accountable Manager or equivalent and above.

Circumstances for granting the Dispensation: Employment

1.2.7. The circumstances are:-

“(d) the nature of the Member’s interest is such that the Member’s participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority’s business”

1.2.8. Note: this paragraph derives from Regulation 2 of the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 and was the circumstance under which applications for dispensations of this sort were previously approved.

Grant of Dispensations under Section 81(4) Local Government Act 2000 : Employment – Application

1.2.9. The Application received is as follows:-

| Councillor | Employment Dispensation |
|-------------------|--|
| H. Bebell | His niece is employed in Environment Services as a Project Co-ordinator. |

1.2.10. **Recommendation**

That the application for dispensation be approved in the circumstances set out in Regulation 2 (d) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 in the standard form to speak and vote.

1.3. **List of Background Papers**

Application for Dispensation.

1.4. **Wards Affected**

All

1.5. **Officer Contact**

For further information on this report please contact:-

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ITEM No. 2
PART 1 SECTION B

2. **Standards Committee Conference Wales 15th October 2009**

- 2.1. I attended the recent Standards Committee conference in Cardiff on behalf of the Neath Port Talbot Standards Committee. The conference was addressed by a variety of speakers during the day and divided up for workshop sessions in the morning and afternoon. In common with previous Standards Committee conferences this one was addressed by a member of the Committee on Standards in Public Life which became known originally as the Nolan Committee. The representative this year was Dr. Brian Woods-Scawen who spoke about the general position of standards in public life with particular reference to Parliamentary business currently being considered by the Committee.
- 2.2. Of more specific reference to us Dr. Woods-Scawen went on to compare the approach to standards in England and Wales. He noted particularly that a statutory officer code of conduct was in place in Wales but that no equivalent English statutory code existed.
- 2.3. In England all complaints of breaches of the Members' Code of Conduct came before local Standards Committees who filtered them out before referring more serious cases to the Standards Board for England. In Wales all complaints alleging breaches of the Code go directly to the Public Services Ombudsman. Dr. Woods-Scawen commented that he would favour extending the English practice to Wales. Some delegates expressed the view that the Welsh system was fairer to complainants.
- 2.4. Although Dr. Woods-Scawen was rather complementary about the situation in Wales, he felt that constant attention to ethical issues was required and complacency would be dangerous.
- 2.5. The conference was then addressed by Mr. Peter Tyndall Public Services Ombudsman for Wales. In his address to conference Mr. Tyndall noted some specific issues which had come to his attention regarding the way in which some Members had treated advice from officers. There was obviously no requirement that officers advice be followed in all cases. However, Members should be able to demonstrate that they had properly considered advice in their decision making.

- 2.6. Mr. Tyndall went on to note an increase in the number of complaints of breaches of the Code of Conduct last year although a number of these were complaints against a number of Members arising out of the same set of circumstances. There seemed however to be a continuing increase in this financial year up 23% over April to October last year. Many of these complaints were against Community Councils.
- 2.7. The Ombudsman's office had referred five cases to the Adjudication Panel for Wales and four to local Standards Committees.
- 2.8. Mr. Tyndall promised that a draft guidance on the Members' Code of Conduct would be issued by the end of November. At the date of writing this report it is still awaited.
- 2.9. In the afternoon the conference was addressed by Dr. Richard Cowell of Cardiff University who had been conducting some research on behalf of the Standards Board for England into public perceptions of local authority standards and ethics.
- 2.10. The conference also divided up into a number of workshop groups to look at particular issues. The two workshops which I attended were those relating to Standards Committees and Community Councils. The Standards Committee workshop consisted mainly of presentations by representatives of four Standards Committee from different parts of Wales which illustrated the different ways in which Standards Committees discharged their duties and, indeed, the different functions of Standards Committees.
- 2.11. As an aside, I would mention that the Monitoring Officers of the various local authorities in Wales are compiling a rough list of the functions carried out by Standards Committees. The Neath Port Talbot Standards Committee has broadly stuck with its statutory responsibilities although we have widened this to consultation on certain non core areas over the last year or so. It is fair to say that some other Standards Committees have a wider remit. When the survey is complete I will report back to Standards Committee with some information what is done elsewhere.

2.12. The Community Councils workshop was, by contrast, more participatory in nature; we divided off into smaller groups discussing the issues which affected compliance with the standards regime in various parts of Wales. What struck me in particular was the fact that, although the delegates came from diverse areas, there were many common features. Community Councils were often affected by the personal relationships between Members and officers. Many observed a generational change in the retirement of many experienced Community Councillors who had been schooled in committee procedure by trade union, voluntary organisation or, indeed, church and chapel. Many new Councillors had to learn the basics of committee practice at the same time as assimilating their role as Community Councillors. The role of the Monitoring Officer in providing training to Community Councils varied and it was also noted that some Monitoring Officers refrain from providing advice to Councils for fear of prejudicing their statutory role at a later time.

2.13. Overall the conference was useful in informing us of developments elsewhere. A DVD of the main presentations is available from the host authority Cardiff and I will acquire a copy of Members so wish.

2.14. List of Background Papers

None

2.15. **Wards Affected**

All

2.16. **Officer Contact**

For further information on this report please contact:-

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ITEM No. 3
PART 1 SECTION B

Public Services Ombudsman for Wales Annual Report 2008/09

3. **Adjudication Panel for Wales Report 2008/2009**

3.1. Attached respectively as Annex 1 and Annex 2 are extracts from the Ombudsman's annual report and that of the Adjudication Panel for Wales for the year 2008/2009.

3.2. I have previously raised with the Adjudication Panel and the Ombudsman the lack of reporting of the outcome of cases referred to Standards Committees. I feel that the publication of these decisions would act as useful guidance or at least useful comparisons for Monitoring Officers and Standards Committees. I have not had a response to correspondence but will renew my contact.

3.3. It should be noted that the number of complaints submitted to the Ombudsman in fact gave rise to very few complaints which are upheld.

3.4. **List of Background Papers**

None

3.5. **Wards Affected**

All

3.6. **Officer Contact**

For further information on this report please contact:-

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Occasionally, I need to direct that a report should not be made public due to its sensitive nature and the likelihood that those involved could be identified. For technical reasons, such a report is issued under section 16 of the Act, even though it is not a public interest report, and I make a direction under section 17 of the Act. There have been a few such reports issued this year.

The Public Services Ombudsman (Wales) Act 2005 also gives me the power to do anything which is calculated to facilitate the settlement of a complaint, as well as or instead of investigating it. In the right circumstances, a 'quick fix' without an investigation can be of advantage to both the complainant and the body concerned. I am pleased that it has been possible to increase the number of cases settled in this way this year, but I will be looking to make greater use of this power in the future.

Complaints that members of local authorities have broken the Code of Conduct

My role in relation to looking into complaints that allege that members of local authorities have broken the Code of Conduct is slightly different to that in relation to complaints about public bodies.

I investigate this type of complaint under the provisions of Part III of the Local Government Act 2000 and also relevant Orders made by the National Assembly for Wales under that Act.

In circumstances where I decide that a complaint should be investigated, under legislation there are four findings that I can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct
- (b) that no action needs to be taken in respect of the matters that were subject to investigation
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) or (d) above I am required to submit my investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence I have found together with any defence put forward by the member concerned. Further, it is for them to determine whether a breach has occurred and if so what penalty, if any, should be imposed.



4

Code of Conduct Complaints

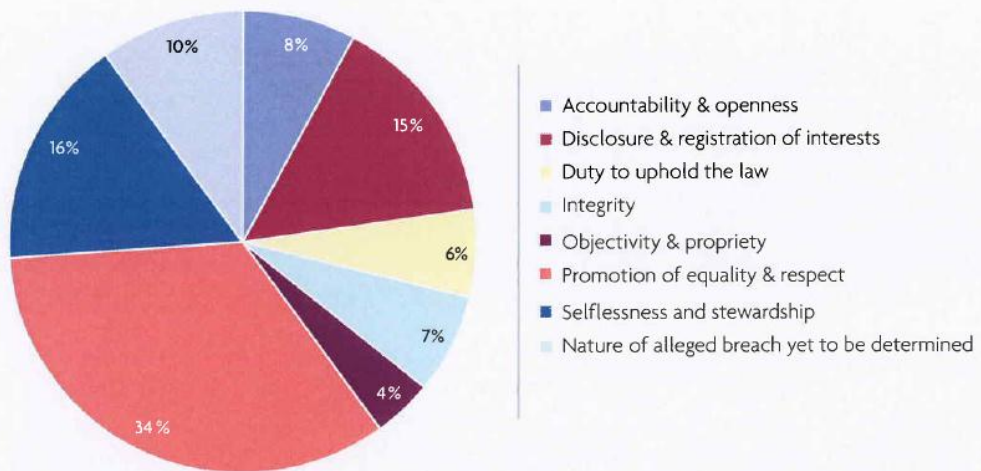
Complaints Received

The table below gives a breakdown of the code of conduct complaints received by type of authority. This shows that overall there has been an increase in the number of complaints received. In particular, it is concerning to see that the decline in the level of complaints made against community councillors that was reported in 2007/08, was reversed during the past year with the number of such complaints having doubled. There is no significant change to the level of complaints received against county councillors.

| | 2008/09 | 2007/08 |
|-------------------------------|------------|------------|
| Community Council | 132 | 65 |
| County/County Borough Council | 153 | 160 |
| National Park | - | 4 |
| Police Authority | - | 1 |
| Total | 285 | 230 |

Nature of Code of Conduct Complaints

Of the areas of the Code that members were alleged to have broken, the most common type of complaint is a failure in relation to 'equality and respect'. As the chart below shows, this accounted for 34% of the complaints received.



Summary of Code of Conduct Complaint Outcomes

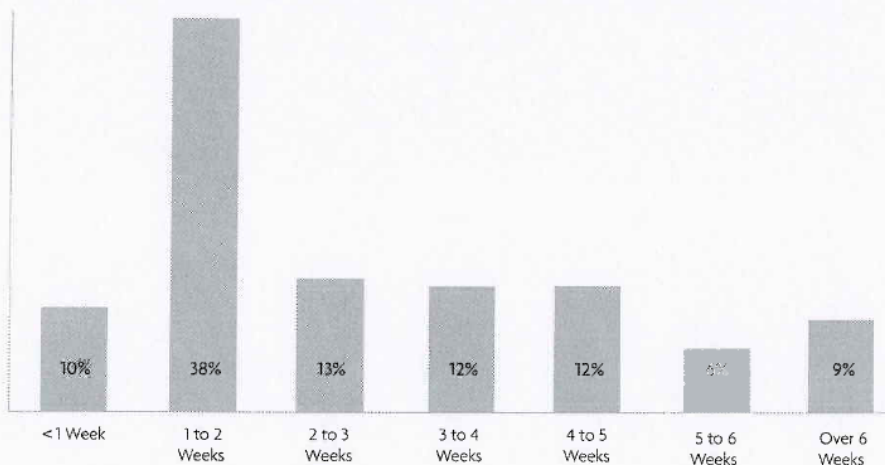
Of the Code of Conduct cases considered in 2008/09 it was decided that the large majority did not call for an investigation. The number of cases that I concluded warranted referral to either an authority's standards committee or to the Adjudication Panel for Wales is similar to that of the previous year, that is: 8 compared to 9 in 2007/08.

| | 2008/09 | 2007/08 |
|---|------------|------------|
| Decision not to investigate complaint | 184 | 153 |
| Complaint withdrawn | 17 | 1 |
| Investigation discontinued | 4 | 28 |
| Investigation completed: No evidence of breach | 3 | 12 |
| Investigation completed: No action necessary | 15 | 8 |
| Investigation completed: Refer to Standards Committee | 5 | 6 |
| Investigation completed: Refer to Adjudication Panel | 3 | 3 |
| Total Outcomes – Code of Conduct complaints | 231 | 211 |

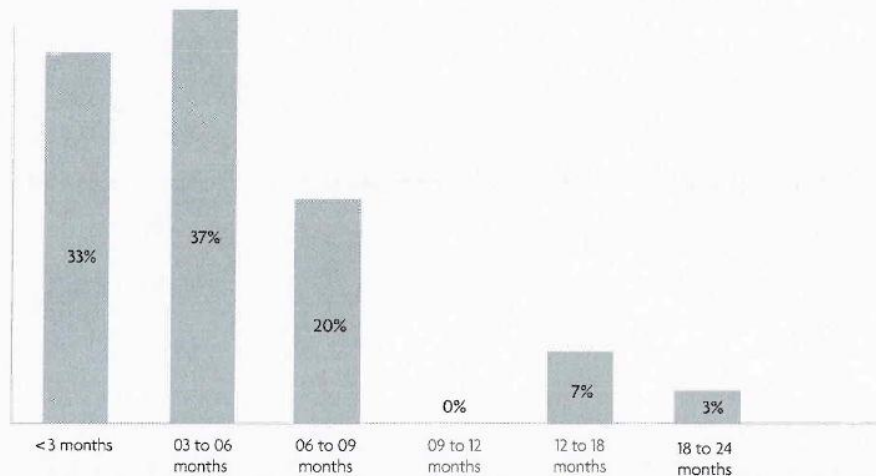
Decision Times

Being the subject of a Code of Conduct complaint is generally a stressful circumstance for a councillor to find themselves in. This is often heightened by the media speculation that frequently surrounds such complaints. I am pleased, therefore, that as the charts below show, in almost half of complaints received, a decision as to whether or not to investigate the complaint was taken within a fortnight; and that 90% of those cases investigated, were concluded within 9 months - the remaining 10% (or 3 cases) took over 12 months.

Decision times for informing complainants if code of conduct complaint will be taken up



Decision Times for concluding Code of Conduct complaint cases



However, investigations of Code of Conduct complaints are becoming more complicated (and more resource intensive). For example, a case that began towards the end of 2008 and, still underway at the time of writing, involves some 70 interviews with members and officers of one particular county council. Furthermore, investigations more and more are being undertaken to criminal investigation standards. This is as the result of members who are the subject of an allegation increasingly engaging legal representation. Thus, my investigations in relation to Code of Conduct complaints are changing in nature. They are now becoming more adversarial rather than inquisitorial. This is, in my view, a regrettable development.

New Code of Conduct for Local Authority Members

Meetings with local authority monitoring officers during the past year suggested that guidance on the new Code of Conduct would be welcomed. Towards the end of the year, I consulted local authorities on which aspects of the Code they would in particular appreciate guidance upon. Responses have now been received and work will be undertaken during 2009/10 to issue guidance.

Police Authorities

During a meeting held with Police Authorities in Wales, concern was expressed that while Code of Conduct complaints in respect of Police Authority Members were subject to investigation by the Public Services Ombudsman for Wales, the Code which applied was that relevant to local authorities in England. It was pointed out that this is confusing to Police Authority Members who frequently are also county council members in Wales, and thus have to have regard to two different Codes. I undertook to raise this matter with the Welsh Assembly Government.



**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

Your Ref:
Our Ref:

Reply to:

Dear Colleague

ADJUDICATION PANEL FOR WALES - ANNUAL REPORT 2008-2009

I am writing to update you on the activities of the Adjudication Panel for Wales during the last year.

In terms of casework, 2008-09 has been a relatively quiet year for the Panel, with just two referrals from the Public Services Ombudsman for Wales towards the latter part of the financial year and no appeals against the decisions of standards committees. In view of this, and given that there is no statutory requirement for me to produce a formal annual report, I have decided that it would make for better use of resources if I brought you up to date by means of a letter this year.

Of the two referrals from the Ombudsman in 2008-09, one was determined during the year. This case is summarised below.

APW/001/2008-09 – Bridgend County Borough Council

The referral from the Ombudsman related to allegations that the councillor had breached the council's code of conduct by disclosing confidential information.

The alleged breach related to a member surgery held by the councillor during which he shared his experience as a councillor with a third person who was standing at the forthcoming elections. The councillor recounted a case about a girl who had refused a council tenancy in an area where her father lived, because her father had abused her. The councillor referred to the girl by name. The girl was the step-daughter of another person present at the meeting who was married to the girl's father.

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The Case Tribunal found that the councillor had breached the code of conduct in that he disclosed an individual's name to another person in circumstances in which he should not have done so and, in so doing, had brought his office and the authority into disrepute.

The Case Tribunal took into account the councillor's acceptance of his actions, his long service, apologies to any one who may have been affected by the case and all other mitigating factors. The Case Tribunal concluded by unanimous decision that it was neither necessary nor desirable to suspend, partially suspend or disqualify the respondent given the unusual circumstances of the case.

Although 2008-09 was quiet in terms of caseload, the Panel and I have been occupied in other ways. As I reported last year, I was very pleased that David Laverick, President of the Adjudication Panel for England, accepted my invitation for the Adjudication Panel for Wales to host a joint training event between the two jurisdictions.

Feedback from participants suggests that the joint training event, held in Cardiff Bay, was a great success and helped create a positive image of Cardiff and Wales more generally. The event started with a presentation on 'Fair Treatment' by Mark Hinchliffe from the Judicial Studies Board. This was followed by a practical exercise which provoked some very lively discussion amongst the syndicate groups. The first day ended with a visit to the Senedd, which was very kindly hosted by the Presiding Officer, Lord Dafydd Elis-Thomas and the Minister for Social Justice and Local Government Dr Brian Gibbons AM. I would like to record my appreciation to them both for taking time out from their busy schedules in order to address the members of the two Panels.

The visit to the Senedd was enjoyed by everyone and provided an excellent opportunity to highlight the changes that have been made in Wales since devolution.

In April, the Adjudication Panel for England became part of the Tribunals Service, which is an executive agency of the Ministry of Justice created in 2006. The Tribunals Service provides independent administrative support to central government tribunals and organisations and supports 30 tribunal jurisdictions.

In September I attended the Wales Standards Committees Conference in Aberystwyth. This was an excellent conference which enabled participants to share experiences of, and to explore early issues arising from, the new code of conduct which came into effect in 2008. For my part, I was very pleased to be able to update participants on the work of the Adjudication Panel and the outcomes of cases considered by our tribunals.

In October I attended the Seventh Annual Assembly of Standards Committees in Birmingham. While much of the conference was aimed at changes to the ethical framework in England, there was plenty that was relevant to Wales and it was good to share experiences with colleagues from across the border.

December saw the Adjudication Panel for Wales hold its own annual training event. This provided members of the Panel with an opportunity to explore aspects of the new code of

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conduct ahead of actual cases coming before them. In this respect, I was very pleased that Peter Tyndall, who in April 2008 became the new Public Services Ombudsman for Wales, was able to join us to share with members emerging issues arising from the operation of the new code.

I hope that you will find this update of interest. Further information on the Adjudication Panel is available from our website: www.adjudicationpanelwales.org.uk or from the Adjudication Panel for Wales Support Unit at the address below.

J Peter Davies
PRESIDENT OF THE PANEL

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