

STANDARDS COMMITTEE – 25TH NOVEMBER 2011

FINANCE AND CORPORATE SERVICES

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

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ITEM 1
PART 1 SECTION A

1. **RESPONSE FROM THE PUBLIC SERVICES OMBUDSMAN FOR WALES TO APPROACH FROM POWYS COUNTY COUNCIL**
- 1.1. Members will recall I brought a report to the Standards Committee as a result of an approach from the Chair to Powys Standards Committee.
- 1.2. Before deciding to refer a complaint either to a Standards Committee or to the Adjudication Panel for Wales the Ombudsman applies a two stage test; firstly, whether there is evidence of a breach and secondly, whether that breach would be likely to attract a penalty. Powys advocate the position that all complaints should be referred to either the Standards Committee or to the Adjudication Panel regardless of whether the Ombudsman thought that the breach would be likely to attract a penalty.
- 1.3. Our response to the Powys approach was to indicate our support for a two stage test but suggest to the Ombudsman that there should be a review as to how that test is applied.
- 1.4. I have now received a copy of an email from Claire Jones of the Association of Council Secretaries and Solicitors Wales branch forwarding a message from the Ombudsman's office. The Peter referred to is the Ombudsman Mr. Peter Tyndall.

"Dear Claire,

Peter has been contacted by some of the Monitoring Officers recently in relation to their authorities proposals for their Standards Committees to deal with low level members vs member code complaints. Although we've responded to the specific enquiries he thought it would be helpful if we updated everyone generally on the issue.

As you may know he has sought the views of the Welsh Government and the WLGA on the possibility of enhancing the role of standards committees within the current legislative framework. He is supportive of the proposal that whenever possible issues are resolved locally in the first instance, and only referred to him if

they are not capable of local resolution. The extent to which it is feasible to do so is dependent upon the Welsh Government's view on the future of the Code and whether legislation is proposed in the near future.

As the Code is currently drafted, Peter could not require members to utilise any local protocol before complaining to him, but subject to the Welsh Government's position he would strongly encourage them to do so and consider any complaints where members had not sought to resolve issues first in this context, and it would in all likelihood inform his decision as to whether or not to investigate. This is analogous to Peter's approach in cases of maladministration where we often seek to achieve local resolution where this is possible, to avoid the need for a formal investigation.

Where any complaints are of a more serious nature, for example, if a failure to declare an interest had allegedly tainted a planning decision or where there is an accusation of bullying supported by evidence to that effect, Peter is of the view that it would be most appropriate for such complaints to be referred to this office.

We will update the ACSeS group more generally when the Welsh Government gives a view on the way forward.

Regards

Katrin Shaw"

- 1.5. The email is interesting since it confirms that the Welsh Government is looking at the Code and the Ombudsman's procedure. The reference to "a local protocol" is a reference to local procedures adopted by some Councils for internal resolution of disputes which have given rise to Code of Conduct complaints. Quite simply the County Borough Council has had so few of these complaints that it has not been worthwhile considering a protocol. Most of the complaints that are submitted in the locality have related to Community Council business.
- 1.6. The Welsh Government is now considering its position on the draft code.

1.7. **RECOMMENDATION**

1. That the email be noted.
2. That pending a decision by the Welsh Government the Monitoring Officer obtain copies of local protocols from other authorities.

1.8. **BACKGROUND PAPERS**

Email from the Ombudsman's office to ACSeS.

1.9. **WARDS AFFECTED**

All

1.10. **OFFICER CONTACT**

For further information on this report please contact:-

Mr. D. Michael, Head of Legal and Democratic Services and
Monitoring Officer Tel. No. 763368 or e-mail
d.michael@npt.gov.uk

ITEM 2

PART 1 SECTION A

2. TRAINING SESSIONS FOR COMMUNITY/TOWN COUNCIL COUNCILLORS

- 2.1. On 11th and 13th October I held a training session for Town and Community Councillors at Civic Centre Neath and a further training session was held at a location in Rhyd y Fro Pontardawe on 2nd November. The sessions were attended by Councillors from Neath and Glynneath Town Councils and Onllwyn, Resolven, Cilybebyll, Cwmllynfell and Gwaun Cae Gurwen Community Councils. There were a mix of Community Councillors present but a number of them were Members with comparatively little service.
- 2.2. The level of attendance was disappointing but this may reflect the fact that the training was taking place late on in the “cycle” of Community Council life with elections taking place next year. Certainly the attendance was down on previous events.
- 2.3. I will have to give priority to training County Borough Members after the elections next year but I will make arrangements for further Town and Community Council events next year also. It may be that it is best to target the newer Members elected then. A draft schedule for training events for County Borough Members has been prepared for next May and I will bring the timetable back to Standards Committee both for County Borough and Town and Community Council Members at our next meeting.

RECOMMENDATION

- 2.4. That the Monitoring Officer bring a report to the next meeting on the timetable of training events for County Borough and Town and Community Council Members at the next meeting

2.5. BACKGROUND PAPERS

Training materials.

2.6. **WARDS AFFECTED**

All

2.7. **OFFICER CONTACT**

For further information on this report please contact:-

Mr. D. Michael, Head of Legal and Democratic Services and
Monitoring Officer Tel. No. 763368 or e-mail

d.michael@npt.gov.uk

ITEM 3
PART 1 SECTION A

3. ADJUDICATION PANEL FOR WALES REPORT 2010/2011

- 3.1. The Adjudication Panel for Wales has issued its annual report for the year 2010/2011. The role of the Adjudication Panel is to consider more serious cases of a breach of the Code of Conduct sent to it by the Public Services Ombudsman for Wales. It also has a role in considering appeals from decisions of Standards Committees.
- 3.2. Members may find the case reports of interest. Certainly I have used case reports of complaints in relation to Town and Community Councillors when providing training recently. I think it is fair to say that, of this batch of cases, more related to principal authorities i.e. counties and county boroughs as opposed to Town and Community Councils whereas in previous years more of the reported cases related to the latter.
- 3.3. I have previously made the point to the Ombudsman and the Adjudication Panel that the one set of decisions which is not collated and reported more widely is that made by the various Standards Committees. All the Committees need to produce a brief summary of their decision and publish it. This note goes back to the Ombudsman and it would seem to me a simple matter for that office to produce some statistics overall.
- 3.4. Although this report is for information only it would be worthwhile to comment on some of the cases brought before the Adjudication Panel insofar as they illustrate an important point or make a decision of general relevance.

- 3.5. The Ceredigion County Council and Henfynyw Community Council cases (APW002/2009-10/CT and APW/12/2009-10/CT) illustrates an important point in relation to Member interests. Traditionally these interests have been declared at formal meetings of Local Authorities. However, the current code has an extended definition of meeting which encompasses any meeting however informal at which officers and/or Members are present. The Tribunal here found that the Member had failed to make a declaration when he made oral and written representations to Council officers on the Planning Application which was the subject of the complaint.
- 3.6. Two cases i.e. that of Isle of Anglesey County Council (APW/010/2009-010/CT) and that of Torfaen (APW/004/2010/11/CT) illustrate points about the way in which information is treated by Members. In the Anglesey case the Member had written a letter to the Wales Audit Office on behalf of the Council's Executive i.e. the Cabinet of the Authority. The Member was asked to provide a copy of the letter following receipt of a formal Freedom of Information Act request but refused to do so. The Tribunal concluded that this was a breach of the code. In the Torfaen case the Member had disclosed confidential/exempt information amongst other things and the Tribunal concluded that this also was a breach of the code. The code contains specific provisions about compliance with duties of disclosure and the reverse i.e. duties to respect confidentiality.
- 3.7. There are a number of reports relating to complaints at Isle of Anglesey County Borough which relate in whole or in part to how the advice of the Monitoring Officer is to be treated. These cases are APW/009/2009-010/CT, APW/010/2009-010/CT and APW/001/2010-011/CT. Various, a Member failed to have regard to advice given by the Monitoring Officer, the content of discussions with the Council's Monitoring Officer was misrepresented and the Monitoring Officer had been prevented from giving legal advice to Members during a debate which followed a Wales Audit Office presentation. In all of these cases the Tribunal found that there had been a breach of the code.

3.8. One interesting aspect of the Torfaen County Borough case referred to above is that the Member was found to have broken the code where he had made in the public domain serious unfounded allegations against the Local Authority. He was found to have brought his office and that of the Authority into disrepute. It has long been established that personal misconduct by a Member may be a breach of the code in bringing his office and, indeed, his Authority into disrepute but in this case the member was said to have made a statement calculated to cause controversy and disruption and circulating it to the general public and press whilst being reckless as to whether the statements could be substantiated and also posting comments about a fellow Councillor on a website making an incorrect implication about him. I will comment on this case further at the meeting.

3.9. Lastly, I would refer Standards Committee to the Ceredigion case (APW/007/2009/10/CT) this case partly rested in paragraph 10 (2) (b) of the Code. This provision operates to define as a personal (and potentially prejudicial) interest a situation where a member of the public may reasonably perceive that the Member was more swayed by ward interest rather than wider public interest. In a previous Standards Conference the Ombudsman had indicated that this clause had originally been interpreted as relating to executive functions i.e. those functions carried out by a Cabinet of a Local Authority rather than matters such as scrutiny or planning and licensing. This case establishes that the relevant paragraph does in fact apply to planning matters. There is subsequently been some discussion between Monitoring Officers and the Ombudsman. Again I will refer to this matter in my oral presentation at Standards Committee.

3.10. **BACKGROUND PAPERS**

The Adjudication Panel for Wales Annual Report 2010/11

3.11. **WARDS AFFECTED**

All

3.12. **OFFICER CONTACT**

For further information on this report please contact:-

Mr. D. Michael, Head of Legal and Democratic Services and
Monitoring Officer Tel. No. 763368 or e-mail

d.michael@npt.gov.uk

Adjudication Panel for Wales Annual Report



2010 - 2011

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Foreword

This report reviews the work of the Adjudication Panel for Wales during the financial year 2010-11.

During 2010-11, the Panel received 10 new referrals from the Public Services Ombudsman for Wales and 2 appeals against the decisions of local authority standards committees. Though numerically small, this was on a par with the comparatively high case numbers of the previous year. A further 9 cases were brought forward from 2009-10.

This has presented quite a challenge for the Panel and its limited staff resource. However, I am pleased that 12 cases were completed by the end of the financial year and, at the time of writing, only 3 cases carried over to the current financial year remain ongoing.

With the terms of office of the first members of the Panel ending in September 2012, a phased appointment process for new members is underway. In November last year the then Minister for Social Justice and Local Government appointed three new legal members: Kate Berry, Emma Boothroyd and Gwyn Davies; and two new lay members: Andrew Bellamy and Susan Hurds to serve on the Panel.

I am delighted to welcome them all to the Panel. Their early appointments will enable them to gain valuable experience sitting alongside experienced members of the Panel. This will help facilitate the business continuity of the Panel in the transitional period. Induction and training has been undertaken and they have all now sat on tribunals.

As far as training is concerned, an excellent joint training event for both new and current members was held in December 2010. Members were joined by Peter Tyndall, who gave a talk on the model code of conduct and his role as the Public Services Ombudsman for Wales; and by Sarah Williams from the Judicial Studies Board, who ran a session on tribunal skills and how to conduct an effective tribunal hearing. Other training and group sessions, facilitated by members of the Panel, provided opportunities for sharing knowledge and experience and ensured that the process of integrating the new members into the team got off to an excellent start.

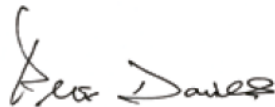


I was again this year pleased to be asked to speak at the Standards Conference Wales 2010 in Cardiff to give my perspective on the operation of the code of conduct. This event provided an excellent opportunity for those involved with the code of conduct and the promotion of high standards to meet and share experiences.

Looking forward, the Localism Bill will make radical changes to the ethical framework in England and for police authorities in Wales. Although the Welsh Government does not intend to introduce such radical reforms in Wales, it is committed to reviewing the process for making a complaint under the code of conduct to ensure that the code is used only for the purpose for which it was intended. Although no timeframe has been announced for this work, the Adjudication Panel has an obvious interest in any changes to be made and I look forward to contributing to the review in due course.

The Welsh Government also continues to progress the recommendations of the report of the Welsh Committee of the Administrative Justice and Tribunals Council following its 'Review of Tribunals Operating in Wales.' The challenge for the Panel will be to ensure that anticipated changes to administrative support arrangements within the Welsh Government do no impact adversely on the delivery of our functions.

Finally, I hope you will find this report and the case summaries that it contains of interest. As last year, it is being published via the Panel's website only to save on costs.

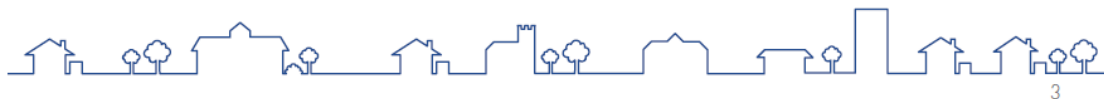


J PETER DAVIES
President of the Panel



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1. Background

1.1 Local Government Act 2000

Part III of the Local Government Act 2000 ("the 2000 Act") established a new framework to promote observance of consistent standards of conduct by local government members in England and Wales. In essence, the framework comprises:

- a set of ten general principles of conduct (derived from the "Seven Principles of Public Life");
- separate statutory codes of conduct for members and officers;
- local standards committees to advise members and relevant authorities on standards of conduct;
- the investigation of alleged misconduct by members in Wales by the Public Services Ombudsman for Wales or local authority monitoring officers; and
- the adjudication of such investigations by local standards committees or, generally in more serious cases, the Adjudication Panel for Wales ("the Adjudication Panel").

"Relevant authorities" under Part III of the 2000 Act in relation to Wales are county, county borough councils, community councils, fire and rescue authorities, national park authorities and police authorities.

1.2 Principles of Conduct/Code of Conduct

Following commencement of the Government of Wales Act 2006, the Welsh Ministers are empowered under the 2000 Act to specify general principles of conduct and to make a model code of conduct for elected members and co-opted members with voting rights. The principles draw on the 'Seven Principles of Public Life' which were set out in Lord Nolan's report 'Standards of Conduct in Local Government in England, Scotland and Wales.'



The general principles are encapsulated in the current model code of conduct prescribed by the Welsh Government in 2008. All local government bodies in Wales (with the exception of police authorities) - i.e. county and county borough councils, town and community councils, national park authorities and fire and rescue authorities - are required to adopt a code of conduct encompassing the provisions of the model code. All elected and co-opted members (with voting rights) must give a written undertaking to observe their authority's adopted code of conduct.

The Localism Bill, currently before Parliament, will abolish the statutory ethical framework in England and for police authorities in Wales. In its place, the Bill introduces a criminal offence for councillors who deliberately withhold or misrepresent personal interests in relation to council business. The Bill will also enable local authorities to adopt non-statutory codes of conduct and standards committees if they wish.

1.3 Role of the Public Services Ombudsman for Wales/ Standards Committees

Under the 2000 Act, any person may make a written allegation to the Public Services Ombudsman for Wales ("the Ombudsman") that an elected or co-opted member of a relevant authority in Wales has failed or may have failed, to comply with their authority's code of conduct.

Where the Ombudsman considers that an allegation warrants investigation the Ombudsman may arrange for the investigation to be undertaken by his/her office. Alternatively, the Ombudsman may refer the matter to the relevant monitoring officer for investigation and report to the local standards committee.

The Ombudsman may conclude upon investigation that there was no breach of the code or that no further action needs to be taken. However, where there is prima facie evidence of a breach of the code, the Ombudsman will produce a report on the completed investigation and send it either to the monitoring officer of the relevant authority concerned or to the President of the Adjudication Panel for Wales for final determination.



1.4 Role of the Adjudication Panel for Wales

The Adjudication Panel has two statutory functions:

- To form case or interim case tribunals to consider reports from the Ombudsman following the investigation of allegations that a member has failed to comply with their authority's code of conduct; and
- To consider appeals from members against the decisions of local authority standards committees that they have breached the code of conduct.

Case and Interim Case Tribunals

Where the Ombudsman sends a report to the President of the Adjudication Panel, a "case tribunal" formed from the Panel will be convened to consider the report, to receive evidence and to determine whether there has been a breach of the code of conduct.

If the tribunal determines that a failure to comply with an authority's code of conduct has occurred, it has powers to suspend, or partially suspend, a member for up to one year; or it can disqualify a member for up to five years.

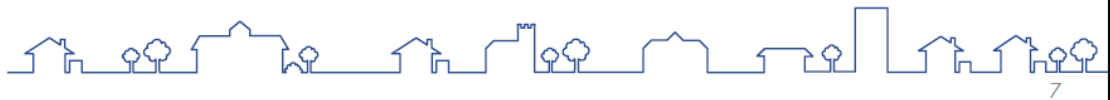
Where a case tribunal decides that a person has failed to comply with an authority's code of conduct, that person may seek the permission of the High Court to appeal that decision, or any decision of the tribunal as regards the sanction imposed.

Where the Ombudsman considers it necessary in the public interest, the Ombudsman may make an interim report to the President of the Adjudication Panel recommending that a member be suspended while an investigation is ongoing. An interim case tribunal will decide whether the member should be suspended or partially suspended for up to six months.



Appeal Tribunals

Where the Ombudsman has referred the matter to a monitoring officer and the standards committee has determined that there has been a failure to comply with the code of conduct, the member concerned has a right of appeal to the Adjudication Panel. This right must be exercised within 21 days of the member's receipt of notification of the standards committee's determination. Where an appeal tribunal agrees that there has been a breach of the code, it may endorse the penalty set by the standards committee, or refer the matter back to the committee with a recommendation that a different penalty be imposed. An appeal tribunal can also overturn the determination of a standards committee that a member has breached the code of conduct.



2. Members of the Adjudication Panel for Wales

The current members of the Adjudication Panel are shown below. Between them, the members have a wide range of relevant knowledge and experience which they bring to the work of the Panel and its tribunals. They are located around Wales which facilitates the appointment of tribunals on a geographical basis.

The President, four legal members and one of the lay members are Welsh speakers.

President and Legal Members



2002-
2012

The President of the Adjudication Panel, **Mr J Peter Davies** runs his own legal practice in Cardiff specialising in civil and commercial litigation and, in particular, regulatory matters. He is a Deputy District Judge and chair of the Solicitors Disciplinary Tribunal.



2010-
2015

Ms Kate Berry is the former Solicitor and Monitoring Officer with the City and County of Cardiff. She has a background in private and public sector law and is a former town councillor in Nailsworth.



2010-
2015

Mrs Emma Boothroyd is currently an adjudicator with the Solicitors Regulation Authority. She has a background in private law.



2002-
2012

Mrs Helen Cole is a senior partner in a general practice in rural West Wales specialising in non-contentious private client work.



2010-
2015

Mr Gwyn Davies is a solicitor with experience in a range of legal jurisdictions in the private and public sectors. He is a former Chair of Neath, Port Talbot County Borough Council's Standards Committee.



2002-
2012

Mr Hywel James is a District Judge.



2002-
2012

Mr Stewert Sandbrook-Hughes is a barrister in Swansea and is also an adjudicator for the National Parking Adjudication Service.

Lay Members



2010-
2015

Mr Andrew Bellamy is a non-executive Director with Estyn and peer reviewer with the Health Inspectorate Wales. He has a National Health Service background.



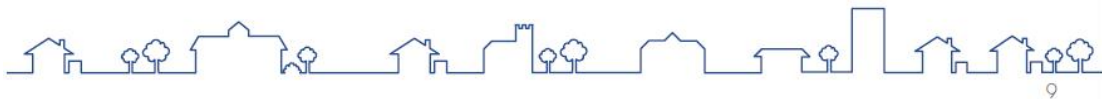
2002-
2012

Mr Ian Blair was County Surveyor with Powys County Council and has been an invited lecturer for the University of Wales, Aberystwyth. He is a member of the Courts Board for Mid and West Wales.



2002-
2012

Cllr Colin Evans is a Labour councillor with Cwmamman Town Council.





2010-
2015

Miss Susan Hurds is a lay member of the Employment Tribunals for England and Wales. She has a background in the National Health Service, latterly with the Ceredigion Local Health Board.



2002-
2012

Cllr Christine Jones is an Independent member of Conwy County Borough Council. She is also a Board member with Cartrefi Conwy Housing Association.



2002-
2012

Ms Juliet Morris runs an organic farm business in Carmarthenshire. Previously, she worked in social and public sector policy for organisations including the Local Government Information Unit, the Wales Consumer Council and independent advice sector in Wales.

3. Allegations of Misconduct

3.1 Overview

In the period October 2002 to 31 March 2011, the Adjudication Panel made determinations on 32 references from the Ombudsman and 8 appeals against the decision of standards committees. Figures 1 to 3 give a breakdown of the outcome of those determinations. A summary of the sanctions imposed is in the Annex to this report.

Figure 1: Case tribunal decisions October 2002 to March 2011

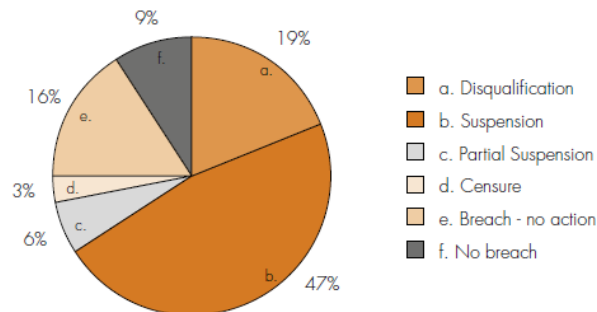


Figure 2: Appeal tribunal decisions - October 2002 to March 2011

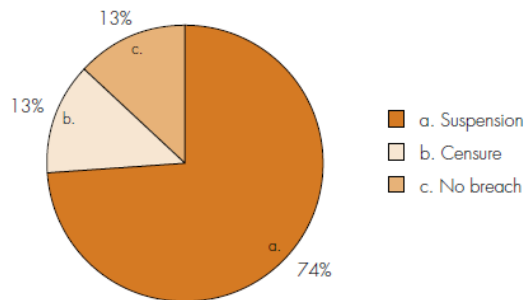
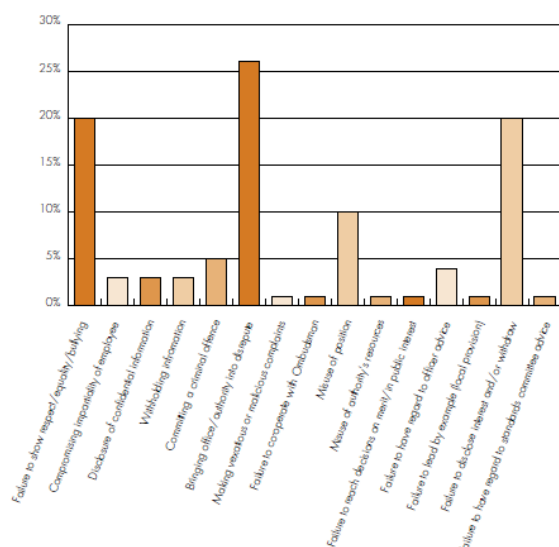


Figure 3: Breaches by type October 2002 to March 2011



3.2 Summary of Case Tribunals

The Public Services Ombudsman for Wales referred 10 cases to the Panel during 2010-11 and 9 cases were carried over from the previous year. Summaries of the 12 cases determined by the Panel during the year are below.

APW/002/2009-10/CT & APW/12/2009-10/CT - Ceredigion County Council and Henfynyw Community Council

There were two separate but related referrals from the Ombudsman which were considered by a single Tribunal. The allegations were that the councillor had breached the Councils' codes of conduct by attempting to misuse his position, failing to declare an interest and, when appropriate, to withdraw from consideration of various planning matters on a number of occasions.

The Tribunal found that by virtue of his ownership of land in the area, the councillor had personal interests in a planning application for land adjacent to his, in the Unitary Development Plan, the Local Development Plan and certain road



improvements in the area. He also had a personal interest in a planning application by virtue of a personal dispute with the applicant. The Tribunal found that the councillor failed to disclose these interests and to withdraw from consideration of these matters as required by paragraphs 16(2) and 16(3) of the 2001 code of conduct.

The Tribunal also found that the councillor failed to comply with paragraphs 7(a) and 14(1) of the 2008 code of conduct when he made oral and written representations to council officers. The Tribunal found these were an attempt to influence matters to his advantage in connection with road improvements adjacent to his land and the development of land in relation to the local spatial plan.

The councillor was disqualified for 18 months from being or becoming a member of Ceredigion County Council or any other relevant authority within the meaning of the Local Government Act 2000.

APW/005/2009-010/CT - Flintshire County Council

The referral concerned allegations that the councillor had breached the Council's code of conduct by seeking to mislead the Ombudsman's investigation into the alleged conduct of a fellow councillor at a meeting of a recruitment panel. The councillor had also failed to comply with the Ombudsman's request to attend for interview.

At the time of the Tribunal hearing, the Ombudsman's investigation of alleged misconduct by the fellow councillor was ongoing (it has subsequently become the subject of a separate report to the Adjudication Panel). For this reason, the Tribunal was not concerned with the other member's alleged conduct. Its role was to determine whether alleged inconsistencies in emails the councillor had sent following the recruitment panel meeting and a statement she had given to the Ombudsman's investigator amounted to a deliberate attempt to mislead the Ombudsman.

The Tribunal found that there was a discrepancy between the information given by the councillor in her emails and her statement to the Ombudsman. In her emails she had been critical of the behaviour of a fellow councillor at the meeting, while her signed statement did not reflect that view. The Case Tribunal found that the councillor had attempted to mislead the Ombudsman's investigations and thereby brought her office into disrepute in breach of paragraph 6(1)(a) of the 2008 code of conduct. The Tribunal also found that she had unreasonably failed to comply with the Ombudsman's request to attend for interview in breach of paragraph 6(2) of the code.



The Tribunal accepted assurances that the councillor fully appreciated the seriousness of the matter and that there would be no repetition. On that basis, and given the particular mitigating factors of the case, the Tribunal concluded that no sanction was necessary.

APW/007/2009/10/CT - Ceredigion County Council

The referral concerned allegations that the councillor had breached the code of conduct by failing to act objectively and in the public interest in the consideration of a planning application at a meeting of the Council's Development Control Committee and by failing to declare an interest and to withdraw from that meeting.

The allegations arose following views expressed by the councillor in an election manifesto and views attributed to him in the press. The Tribunal accepted that the councillor had not predetermined how he would vote on the planning application. However, the Tribunal concluded that the views expressed by the councillor meant that he had personal interest under paragraph 10(2)(b) of the code of conduct in that a member of the public might reasonably perceive that he was more swayed by his ward interest than the wider public interest. The Tribunal found that he failed to declare such an interest as required by paragraph 11(1) of the code.

The tribunal further found that the councillor's ward interest was so significant that a member of the public could reasonably conclude that his judgement of the public interest was prejudiced. Consequently, in participating in the consideration of the planning application, the councillor was in breach of paragraph 14(1) of the code.

The Tribunal noted that in holding the office of Vice Chairman of the Council the councillor was expected to set an example to other councillors. The Tribunal concluded that the councillor should be suspended from being a member of the Development Control Committee and as Vice Chairman of the Council for 3 months.

APW/008/2009-010/CT - Ceredigion County Council

The referral concerned allegations that the councillor had breached the code of conduct by failing to declare an interest and to withdraw from a meeting of the Council's Development Control Committee when considering a planning application which included proposals for hospital and health care facilities. At the time of the



meeting the councillor was a member Ceredigion Community Health Council (CHC) and an associate member of the Ceredigion Local Health Board (LHB).

The Tribunal found that the councillor's membership of the CHC and LHB amounted to a personal interest under paragraph 10(2)(a)(ix)(aa) of the code, which he failed to declare when he attended the meeting of the Council's Development Control Committee in breach of paragraph 11(1). The Tribunal also found that his interest was such that he also had a prejudicial interest and that he should have withdrawn from the meeting and should not have voted in favour of the application in breach of paragraph 14(1) of the code.

The Tribunal accepted that the councillor was a man of integrity who had served in local government for over 40 years and his assurances that the breaches would not be repeated.

The Tribunal concluded that, following the councillor's undertaking to resign his membership of the Council's Standards Committee, the appropriate sanction was a suspension from acting as a member of the Council's Development Control Committee for 7 weeks.

APW/009/2009-010/CT - Isle of Anglesey County Council

The referral concerned allegations that the councillor had breached the code of conduct when chairing a meeting of the Council by failing to have regard to advice given to him by the Council's Monitoring Officer.

In accordance with the councillor's wishes, the Tribunal determined its adjudication by way of written representations.

The Tribunal found that the councillor had breached paragraph 8(a)(iii) of the code of conduct when proposing a vote of confidence in a fellow councillor and allowing a debate on the matter to continue contrary to the Monitoring Officer's advice that there was no constitutional entitlement to do so.

The Tribunal noted that failure to have regard to the advice of a Monitoring Officer is a serious matter. Previous tribunal decisions gave guidance that the words "have regard" meant following the advice received unless there was good reason for not doing so, such as the advice being incorrect.



The Tribunal gave credit to the councillor for the early acknowledgement of the breach, for apologising and accepting responsibility for his actions rather than seeking to blame anyone else. They also noted his inexperience as a chair and his efforts to improve by undertaking training. But for these factors the Tribunal would have imposed a longer period of suspension.

The Tribunal concluded by unanimous decision that the councillor should be suspended for a period of 2 months.

APW/010/2009-010/CT - Isle of Anglesey County Council

The referral concerned allegations that the councillor had breached the Council's code of conduct by misrepresenting the content of conversations with a representative of the Wales Audit Office and the Council's Monitoring Officer in a subsequent interview with the press; also by refusing to provide the Council's Corporate Information Officer with information when requested to do so.

In accordance with the councillor's wishes, the Case Tribunal determined it's adjudication by way of written representations.

The Tribunal found that, following a formal Freedom of Information Act request, the councillor concerned refused to provide the Council's Corporate Information Officer with a copy of a letter he had written to the Wales Audit Office on behalf of the Council Executive, in breach of paragraph 5(b) of the code. The Tribunal also found that in failing to provide the information requested and in misrepresenting information to the press, the councillor brought his office and the authority into disrepute in breach of paragraph 6(1)(a).

The Tribunal noted that the councillor had stood down from office for health reasons. The Adjudication Panel's sanctions guidance provides that a disqualification may be appropriate where the respondent is no longer a member in circumstances where a suspension would otherwise have been the likely sanction. Consequently, the councillor was disqualified for 12 months from being or becoming a member of the Isle of Anglesey County Council or any other relevant authority within the meaning of the Local Government Act 2000.



APW/011/2009-10/CT - Cardiff City Council

The referral concerned allegations that the councillor had breached the Council's code of conduct by using language which he knew would offend the Leader of the Council, whom he knew to be Jewish, when comparing the actions of the administration with the actions of Nazi Germany, during a Council meeting.

The Tribunal found that whilst the councillor's conduct did not amount to harassment or bullying, through his comments he had failed to respect the Leader of the Council's beliefs and feelings and sought to goad him, in breach of paragraph 4(b). The councillor had made comments that he knew would cause offence, despite emails from the Leader outlining his personal upset in connection with previous related events. The Tribunal further concluded that the conduct also brought the office of councillor and the authority into disrepute. The Tribunal rejected the suggestion that the councillor's comments were pure political opinion that he was entitled to express in exercise of his rights under Article 10 of the European Convention on Human Rights.

The Tribunal decided that the councillor should be suspended from acting as a member of Cardiff City Council for a period of 2 months.

APW/013/2009-10/CT - Conwy Town Council

The referral concerned allegations that the councillor had breached the Council's code of conduct by using disrespectful, bullying and intimidating behaviour towards civil enforcement officers on four separate occasions. Also, during his investigation, the Ombudsman became aware of further allegations that again, the councillor had behaved inappropriately towards civil enforcement officers and sought to use the position of councillor improperly in relation to a car parking offence.

The councillor made no response to the formal written notice sent to him by the Tribunal. The Tribunal, therefore, dealt with the matter without a hearing.

The Tribunal found the councillor, on five occasions, failed to show respect and consideration for others and used foul and abusive language, aggressive behaviour and insulting comments, in breach of paragraph 4(b) of the code. On several occasions, he sought to initiate confrontation and was guilty of harassing and bullying the officers, including making a threat to the future employment of one enforcement officer, in breach of paragraph 4(c).



The Tribunal found that the councillor had inappropriately sought to use his position as a town councillor to extend the time available to him to park a vehicle, in breach of paragraph 7(a) of the code.

The Tribunal found that the gravity and frequency of the incidents brought both the office of member and the authority into disrepute, in breach of paragraph 6(1)(a) of the code.

The Tribunal had regard to the short length of the councillor's service and ill-health, but decided that a 12-month suspension was appropriate.

APW/001/2010-011/CT - Isle of Anglesey County Council

The referral concerned allegations that the councillor had breached the code of conduct when chairing a meeting of the Council by failing to allow the Monitoring Officer to provide legal advice requested by members during a debate that followed a Wales Audit Office presentation on its Annual Letter to the Council. The Tribunal also considered a further potential breach, of which the Ombudsman became aware during the investigation, that the councillor failed to have regard to the advice of the Monitoring Officer when chairing another Council meeting.

The Tribunal determined its adjudication by way of written representations.

The Tribunal found that the councillor did not allow the Monitoring Officer to give legal advice during a debate that followed the Wales Audit Office presentation.

In regard to the second meeting, the Tribunal found that the Monitoring Officer had advised the councillor not to chair the meeting. The councillor initially relinquished his position as Chair, but resumed the role following a debate in the chamber regarding his position; he chaired the subsequent debate on the Wales Audit Office Annual Letter and took part in the vote at the conclusion of the debate.

The Tribunal found that the councillor had breached paragraph 8(a) of the code of conduct on both occasions. Firstly, by not allowing the Monitoring Officer to give legal advice at the earlier meeting and, secondly, by the decision to Chair the second meeting contrary to the advice of the Monitoring Officer.



The Tribunal gave credit to the councillor for the early acknowledgement of the breach, for apologising and accepting responsibility for his actions rather than seeking to blame anyone else and for his previous good service. But for these factors the Tribunal would have imposed a longer period of suspension. The Tribunal concluded that the councillor should be suspended for 4 months.

APW/003/2010-011/CT - Monmouthshire County Council and Magor with Undy Community Council

The referral concerned allegations that the councillor had breached the code of conduct when, during a recruitment exercise for the post of Chief Executive, the councillor made a discriminatory, racist or inappropriate remark about an applicant. Also, during his investigation, the Ombudsman became aware of a further allegation that the councillor had used inappropriate language during a conversation with a fellow community councillor following a meeting with Magor and Undy Community Council.

The Tribunal found that in making reference to a candidate's colour during the assessment process, the councillor amounted to a failure to have regard to the principle of equality in breach of paragraph 4(a) of the code. The councillor's comments also demonstrated a lack of respect and consideration for the applicant and others involved in the recruitment process, in breach of paragraph 4(b). The councillor's conduct fell short of that reasonably expected of an elected member and that brought his office into disrepute. The subsequent publicity meant that his comments also brought the authority into disrepute in breach of paragraph 6(1)(a).

The Tribunal found that the councillor was not acting in an official capacity during the conversations he had with a fellow councillor following a meeting of the community council. The Tribunal accepted these were private and personal conversations between two individuals. Accordingly, although the language used by the councillor in that conversation reflected badly on him personally, it did not bring his office into disrepute under the code.

The Tribunal considered extensive mitigation submitted on the councillor's behalf. In all the circumstances of the case, the Tribunal concluded that it was neither necessary nor desirable to suspend, partially suspend or disqualify the councillor. However, the Tribunal recommended that the County Council arrange equality training for all its members.



APW/004/2010/11/CT - Torfaen County Borough Council

The referral concerned allegations that the councillor had breached the Council's code of conduct by disclosing confidential/exempt information; sending rude and disrespectful emails to fellow councillors; making a statement calculated to cause controversy and disruption, circulating it to the general public and press whilst being reckless as to whether the statements could be substantiated; and posting comments about a fellow councillor on a website incorrectly implying that he had been given a position attracting a special responsibility allowance as a means of influencing his vote during meetings.

The councillor conceded that he had disclosed confidential information to the press in breach of paragraph 5(a) of the code of conduct. The Tribunal found that the councillor's actions showed no respect for the individuals concerned in breach of paragraph 4(b). Whilst the tribunal found no evidence that the councillor's actions had or were likely to compromise the impartiality of officers, his repeated threats and conduct towards them amounted to bullying in breach of paragraph 4(c). The Tribunal also found that the councillor's actions, including the bringing and pursuing of very serious unfounded allegations into the public domain, brought his office and the authority into disrepute.

The Tribunal were of the opinion that the councillor acted out of frustration, particularly in the case of email exchanges with other members in response to emails received, which in the opinion of the Tribunal also left much to be desired. The Tribunal accepted that the councillor was entitled to question, challenge and complain where there were grounds to do so. However, the Tribunal were of the opinion that the way the councillor went about things was unacceptable and inappropriate.

In view of all of the circumstances, the Tribunal gave serious consideration to imposing a disqualification. However, given the apology offered by the councillor to those concerned, his acknowledgement of the importance of the code and his undertaking to moderate his behaviour in future, the Tribunal suspended the councillor for 12 months.

3.3 Summary of Appeal Tribunals

There were no appeal tribunal hearings during the reporting year.

3.4 Ongoing Cases

At the time of writing, the Adjudication Panel had determined 5 cases in the current financial year and a further 5 were on going. These cover a range of potential breaches, such as failing to show respect, attempting to misuse their position as a member, intimidating and bullying behaviour towards council employees, making unsubstantiated public allegations about officers, failing to disclose interests when awarding small grants to community organisations.

Further information on completed cases can be found in tribunal decision reports which are published on the Panel's website: www.adjudicationpanelwales.org.uk



4. Overview of Procedures

The work of the Adjudication Panel for Wales is governed by Part III of the Local Government Act 2000 and subordinate legislation made by the National Assembly for Wales/Welsh Ministers and the UK Government (the latter in relation to police authorities).

The overriding aim of the Adjudication Panel is to ensure that all parties are able to have their cases presented and to have them considered as fully and fairly as possible.

Tribunals will normally comprise a legally qualified chairperson, plus two others. This may be varied at the President of the Adjudication Panel's discretion.

Tribunal hearings will normally be held in public except where the tribunal considers that publicity would prejudice the interests of justice, or where the respondent or appellant agrees that the allegations may be dealt with by way of written representatives. There may be other reasons from time to time for not holding a hearing, or part of a hearing, in public.

Hearings will usually take place in the relevant authority's area where suitable accommodation is available. Hearing arrangements take account of any special requirements of those attending, such as wheelchair access, interpreter, hearing assistance etc.

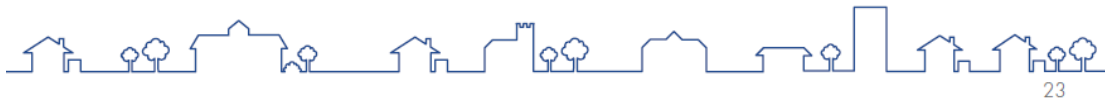
A simultaneous translation service is provided for those who wish a tribunal hearing to be conducted in Welsh.

The person who is the subject of the allegations is entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal on matters pertinent to allegations under consideration.

Details of tribunal hearings and their outcome are published on the Panel's web-site and in the local press as appropriate.

There is a right to seek the permission of the High Court to appeal the decision of interim case tribunals and case tribunals established by the Adjudication Panel. There is no right of appeal against the decisions of appeal tribunals, but, as a public body, the Adjudication Panel and its tribunals are subject to judicial review where appropriate.

Further information on tribunal procedures can be found on the Adjudication Panel's web-site.



5. Support Unit

The Adjudication Panel is supported by:

Stephen Phipps, Registrar to the Panel
John Davies
Carol Webber
Jason Plange

The Panel's address is:

Adjudication Panel for Wales
1st Floor, North Wing (M-08)
Cathays Park
CARDIFF
CF10 3NQ

Tel: 029 2082 6705/6414

Fax: 029 2082 3442

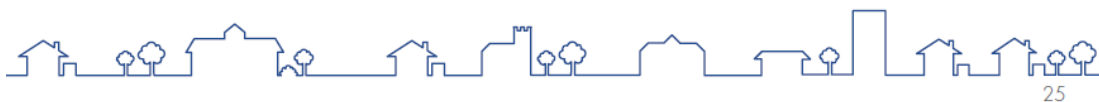
E-mail: adjudicationpanel@wales.gsi.gov.uk

Web-site: www.adjudicationpanelwales.org.uk

Annex

Summary of Sanctions Imposed by Case Tribunals and Appeal Tribunals in the Period October 2002 to March 2011

Sanction	Period	No of decisions
Case and Appeal Tribunals		
Disqualification	2 years 6 months	1
	2 years	1
	1 year 6 months	1
	1 year	3
Suspension	12 months	5
	9 months	3
	6 months	4
	4 months	1
	3 months	2
	2 months	4
	1 month	2
Partial Suspension	3 months	1
	7 weeks	1
Censure	-	2
Breach - no action	-	5
No breach	-	4
Withdrawn	-	2



Appeals	
Breach of code upheld/dismissed	7 (87.5%)/1 (12.5 %)
Sanction endorsed	5
Different sanction recommended	1 increase/1 decrease
Not accepted/withdrawn <ul style="list-style-type: none"> • Out of time • Not in jurisdiction 	1 1

ITEM 4
PART 1 SECTION A

4.1. **STANDARDS COMMITTEE CONFERENCE 2011**

I attach to this report a copy of a note of the Standards Committee conference which was held in Powys this year. I did not attend the conference but thought it worthwhile to obtain a note of the matters discussed.

4.2. **BACKGROUND PAPERS**

Standards Conference notes.

4.3. **WARDS AFFECTED**

All

4.4. **OFFICER CONTACT**

For further information on this report please contact:-
Mr. D. Michael, Head of Legal and Democratic Services and
Monitoring Officer Tel. No. 763368 or e-mail
d.michael@npt.gov.uk

Standards Conference Wales 2011 - Conference Notes

Approximately 150 delegates attended the Hotel Metropole for the Standards Conference Wales 2011 hosted by Powys County Council on Wednesday 5th October 2011.

The theme of the conference was - 'Improving Standards'.

Panel Session

The conference started with a panel session the following panel members spoke on the theme of 'Improving Standards'.

Peter Davies – President, Adjudication Panel Wales

Peter Davies provided statistics as evidence to support a system that has worked for 8 or 9 years. The Adjudication Panel had received more referrals last year from the Public Ombudsman's office than ever before. Generally, councillors were suspended when sanctions were necessary. There appeared to be trends in the complaints and he cynically was of the opinion that best behaviour was evident in the years that led up to elections. The process used was inquisitive and not adversarial and therefore he questioned the necessity for vast sums of public money to be spent funding legal representation. He stated that recently more people are being represented which he felt was not necessary and tribunals should be taking the heat out of the situation. In the first 5 years councillors seemed to represent themselves or had a fellow councillor to assist them. However, over the last 3 years people have been instructing Counsel. Also, he asked whether it is appropriate to do away with Adjudication Panels leaving councillors sitting to decide on other councillors. Samples of arguments that the panel decide upon include jurisdiction, bias and abuse of process with some points that are valid but many that should not be given any weight.

Peter Tyndall – Public Services Ombudsman for Wales

The Ombudsman stated that 277 new complaints had been received this year- 21% lower than the previous year. 349 cases had been closed and the back log has been sorted. There had been more complaints about County Councillors than Town and Community councillors. The Adjudication Panel had heard 11 cases and breaches were found in all of them.

Many trivial complaints had been received where the code had not been breached. More cases have been going to the adjudication panel and standards committees. The Ombudsman stated that there were a lot of member upon member cases with councillors looking to seek political advantage and the substance is not always there in the complaints. Sometimes there is a case to be made that the Code is being used for political motivation. The Ombudsman agreed that there are elements of the code that could do with review or change however there is no short term plan to change the code.

The Ombudsman stated that there is a need to address issues within the current code. He wants a standard approach across Wales and intends to pilot County Councils regarding a suggestion from Swansea Council to develop a local mechanism to address initial less serious complaints leaving the more serious complaints for the Public Services Ombudsman. An indemnity cost of say £20,000 could be a measure to manage out of proportion legal representation costs.

Reg Kilpatrick – Director of Local Government and Public Service
Department – Welsh Government

Reg Kilpatrick said Wales has a localised agenda and that Carl Sergeant was committed to local representation and to retaining the 22 authorities. There would be no reorganisation of local government. He believed that there should be a National Statutory Framework. He acknowledged that there were issues regarding process – relevance, cost effectiveness and proportionality. He reminded us that the Code 'rests on 10 principles' and challenged us to name them. The system must be used responsibly. The future holds a commitment to review the code but without ability to make laws at present, opportunities must be made to make the system work better. Proportionality – how to deal with these cases? He welcomed Peter Tyndall's approach with WLGA and has an open mind for a clear view of what ought to be done.

Clarence Meredith – Strategic Director for Law and Governance,
Monitoring Officer and Chief Legal Officer for Powys County Council.

Clarence outlined the positive side of the role of Standards committees and gave an example of the recent meeting regarding wind farms that was held at the Livestock Market in Welshpool and that was attended by approx. 2000 people. The standards committee had issued blanket dispensations at an early stage in anticipation of the difficulties that councillors may experience. He outlined the successful monitoring process that Powys Standards committee adopts and when he spoke about the committee inspecting an attendance register, especially in relation to a figure below 60% attendance, I could see many whispering and taking notes. He outlined the practical differences of County councillors and Town and Community councillors when dealing with code issues and suggested the idea of a different code for County Councillors to Town and Community councillors.

Kate Berry – Chair, Association of Council Secretaries and Solicitors
(ACSeS)

Kate Berry was the former Chair of ACSeS and former monitoring officer of Cardiff Council. She was allocated the task of chairing proceedings. She was very clear and concise and summarised issues and points for discussion.

Debate on changes to the members 'Code of Conduct'

The second part of the morning involved a debating session where questions to the panel were invited together with views and opinions from the delegates about what changes should be made to the existing members code.

In summary the points raised included:

- ❖ Indemnity for legal representation and costs
- ❖ Alternative local resolution against Public Ombudsman.
- ❖ Managing vexatious complaints.
- ❖ A separate code for Town and Community and County councillors
- ❖ Using the system responsibly
- ❖ Issues regarding training
- ❖ The impact of budgetary cutbacks.
- ❖ Proposed review of Standards Framework and the role of Standards Committees.

Looking at the debate in more detail, John Morley from Buckley Town Council made the point that people have stood for public office off their own back. He stated that there seems to be a trend in cases pushing for QC's. He felt that there needed to be a limit to cost.

Peter Tyndall stated that there needs to be a sensible limit on indemnities, but there should not be a financial barrier in relation to people being in public office. We wouldn't want a situation where people were running up costs that they can't pay back.

Peter Davies stated that those not having legal representation are not at a disadvantage and that the tribunal system lets people represent themselves.

Reg Kilpatrick commented that large sums of money should not be spent on a case that does not need legal representation.

A comment was made that some authorities do not have insurance.

Peter Keith Lucas gave a very brief account of the present situation in England. He stated that at present the House of Lords have stated that it would be inappropriate to have criminal sanctions, every authority should have a code. Peter commented that it looks like there will be some discretion and local sanctions but the English system has not been scrapped as yet.

The issue of training was also raised, Peter Tyndall stated that one of the first questions asked to a Cllr is whether they attended training? The Ombudsman's office stated they will take into account if the member is new or if training was offered. He made it clear that members need to take into account and advantage of training given. A member of Caernarfon Council stated that training for clerks and Cllrs is needed but people do not take the code of conduct seriously.

An audience show of hands indicated full support for complaints to be heard initially by standards committees before the Public Ombudsman.

Mock Hearing

The afternoon session took the form of a mock hearing. Peter Keith-Lucas from Bevan Brittan presented the scenario and delegates were allocated various parts

and read an informative script. He gave suggestions of good practice for Case Management preparation, for Monitoring Officers and Standards Committees to make functional directions in order to proceed and advance the case. The first purpose of the chairman is to ensure that the hearing is not done on any party political lines, to ensure that the councillor feels comfortable and involved in the process, to make sure that the public know what is going on and to make sure that the panel come to a reasonable decision and not for it to be the chairman's decision alone. The panel are to listen and to ask questions and to reach a reasoned decision on the evidence they have heard. After a sanction has been issued to a councillor, he recommends that the Chair of the standard committee attends the council meeting in order to highlight the current issues that were decided upon.

Peter Swanson, Powys County Council Standards Committee Chairman, closed the conference by thanking all participants.

Susan Jarman & Saira Tamboo

04/11/11