

The Code of Conduct Casebook

Introduction

The Public Services Ombudsman for Wales considers complaints that members of relevant authorities in Wales have breached the Code of Conduct. The Ombudsman 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 Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman 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 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 Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

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

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers January to December 2020.

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Case summaries

No evidence of breach

There are no summaries in relation to this finding.

No action necessary

Wrexham County Borough Council – Duty to uphold the law Case Number: 201804590 – Report issued in January 2020

The Ombudsman received a complaint about a Member of Wrexham Council. It was alleged that the Members' conduct and behaviour had brought the Council into disrepute in breach of the Code of Conduct. The Ombudsman investigated the matters complained about. Information was provided by relevant parties including the Council. After careful consideration of the evidence obtained during the investigation the Ombudsman determined that it would not be in the public interest to pursue matters further and that no action should be taken in respect of the matters investigated.

Pembrey & Burry Port Town Council – Promotion of equality and respect Case Number: 201906707 - Report issued in March 2020

The Ombudsman received a complaint that a Member ("the Member") of Pembrey & Burry Port Town Council ("the Council") had breached the Code of Conduct. It was alleged that the Member did not show respect and consideration for others, used bullying behaviour, and behaved in a manner which could reasonably be regarded as bringing the Council into disrepute. During the early stages of the investigation, the Member provided an account. He said that he believed his actions to have been justified and offered an apology if his assertiveness had been perceived differently by the Complainant. The Ombudsman considered the Member's response and his offer of an apology to be sufficient to resolve the complaint. The Ombudsman, therefore, considered that no action needed to be taken in respect of the matters investigated.

St Donats Community Council – Disclosure and registration of interests Case Number: 201905525 – Report issued in March 2020

The Ombudsman received a complaint that a Member ("the Member") of St Donats Community Council ("the Community Council") had breached the Code of Conduct. It was alleged that the Member failed to declare a personal and prejudicial interest when she sat on the Interview Panel during an interview for the role of Co-opted Member of the Community Council. The Ombudsman found that the Member had a personal interest in the interview by virtue of her relationship with the applicant's estranged brother and admittance that there was tension between them. It was the Ombudsman's view that a member of the public, with knowledge of the circumstances, would regard the Member's interest as so significant as to prejudice her judgement of the public interest. The investigation established that the Member was advised by the Clerk that she was not required to declare an interest in the interview. Whilst a decision

to declare an interest is the responsibility of each individual member, it was not unreasonable for the Member to have acted upon the Clerk's advice. The investigation considered whether the Member's failure to declare a personal and prejudicial interest caused any harm and whether it affected the decision to appoint to the role of Co-opted Member. There was no documentary evidence or written record of the interviews. Therefore, the Ombudsman's decision was guided by the fact that the decision to appoint the successful applicant was taken unanimously by the Interview Panel. On the basis of the information available it was not considered that the applicant's application was adversely affected by the Member's presence and involvement in the interview process. In view of these factors it was concluded that the Ombudsman did not need to take further action in the public interest. However, he recommended to the Clerk of the Council that training on members interests and their obligations under the Code of Conduct is provided to the Council.

St Harmon Community Council – Disclosure and registration of interests Case Number: 201903933 – Report issued in March 2020

The Ombudsman received a complaint that a member ("the Member") of St Harmon Community Council had breached the Code of Conduct for members ("the Code"). It was alleged that the Member had failed to show respect and consideration to others, and that he had failed to take appropriate action in respect of a personal and prejudicial interest he had in a co-option process the Council undertook.

During the course of the investigation, information was sought from the Council as well as from a number of witnesses. The evidence gathered did not substantiate that the Member's behaviour had demonstrated a failure to show respect and consideration to others such that could be considered a breach of the Code.

The evidence suggested that the Member had failed to take appropriate action in relation to a personal and prejudicial interest he had in the co-option process. However, the Member did not influence the decision taken on co-option in any way, he had already acknowledged, accepted and apologised for his actions and he had taken steps to seek training on his obligations under the Code.

Therefore, the Ombudsman determined that no action needed to be taken in respect of the matters investigated.

Carmarthenshire County Council – Integrity Case Number: 201900874 – Report issued in March 2020

The Ombudsman received a complaint that a Member ("the Member") of Carmarthenshire County Council ("the Council") had breached the Code of Conduct. It was alleged that the Member had failed to treat members of staff at the Council with respect and consideration, had breached confidentiality, and had brought the office of Councillor into disrepute in relation to 2 incidents which occurred during the selection process for the Council's new Chief Executive. The first incident was that the Member had deliberately informed the unsuccessful candidate for the post that they had not been successful, thus circumventing the Human Resources ("HR") procedures in place. The second incident was that the Member had ignored a clear instruction that Councillors should not publicise the identity of the successful candidate for 30 minutes.

The Ombudsman interviewed a number of witnesses and found that the evidence suggested the Member had accidentally informed the unsuccessful candidate that they had not been successful and had not intended to circumvent HR procedures. The Ombudsman accepted that the Member had shown remorse and had apologised. The Ombudsman determined that no breaches of the Code had occurred as this had been a genuine error by the Member.

The Ombudsman determined that there was evidence that the Member had ignored a clear instruction not to publicise the identity of the successful candidate, and that this may have amounted to a breach of the Code. The Member had not considered the impact on the candidates, their wider friends and families, or the staff employed by the Council with due respect when publishing the result. Further, the information had been confidential until the proper procedures to publicise it had been completed, which the Member had pre-empted. The Ombudsman determined that these actions were capable of bringing the office of Councillor into disrepute.

However, the Ombudsman was not persuaded that it would be proportionate and in the public interest to make a referral to the Standards Committee, due to the short period of time the information was disclosed before the official announcement and taking into account the opinions of the candidates that the effect on them was limited; however, he considered that it had been appropriate for the matter to be referred to him. The Ombudsman found that no action needed to be taken in respect of the matters investigated.

Llantwit Fardre Community Council – Promotion of equality and respect Case Number: 201904216 - Report issued in May 2020

The Ombudsman received a complaint that a Member (“the Member”) of Llantwit Fardre Community Council (“the Council”) had breached the Code of Conduct.

It was alleged that the Member made several accusations against serving Community Councillors during a Community Council meeting on 24 September 2019. It was further alleged that the Member then shared a written copy of his address, in which he accused Community Councillors of bullying the former Clerk of the Community Council, with members of the press and public.

The investigation considered the following paragraphs of the Code:

- Paragraph 5(a) – disclosing confidential information.
- Paragraph 6(1)(a) – disrepute.
- Paragraph 6(1)(c) – reporting breaches of the Code to the Monitoring Officer.
- Paragraph 6(1)(d) – vexatious, frivolous or malicious complaints.
- Paragraph 8(a) – having regard to the advice of the authority’s officers.

The investigation established that the Member addressed the Community Council at its meeting on 24 September 2019, where members of the press and public were present. There was no evidence to suggest that the Member disclosed confidential information during the meeting.

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The investigation found that during his address, the Member made several accusations against other members of the Council. Rather than airing his concerns in public the Member should have raised his concerns through the proper processes available for doing so. Raising accusations in such a public forum when those being accused did not have a fair opportunity to respond could amount to a breach of paragraph 6(1)(a) of the Code of Conduct. The investigation found that the Member disregarded advice from the Clerk of the Council and that his actions were in breach of paragraph 8(a) of the Code.

When deciding whether to take further action in relation to these possible breaches of the Code of Conduct, the Ombudsman carefully considered whether it was in the public interest for him to do so. The Ombudsman considered recent steps taken by Rhondda Cynon Taf's Monitoring Officer and the Chair of the Council's Standards Committee to meet with the majority of the members of the Council in February to encourage better working relationships within the Council. It was understood that a collective agreement was reached on taking a fresh approach on how to deal with situations where disagreement had previously escalated into personal attacks. The Member was present at this meeting. As the events which were considered as part of this investigation took place some months before the meeting with the Monitoring Officer and Chair of the Standards Committee, it was not in the public interest to pursue this investigation further.

Torfaen County Borough Council – Promotion of equality and respect Case Number: 202000681 & 202000667 - Report issued in July 2020

The Ombudsman received complaints that an elected Member ("the Member") of Torfaen County Borough Council ("the Council") had breached the Council's Code of Conduct for Members ("the Code").

Two Police Community Support Officers ("PCSOs") complained that, on 7 June 2020, the Member approached them at Cwmbran Boating Lake ("the Lake") in an aggressive manner. They said that the Member was shouting and demanding that they dealt with people who were angling at the Lake whilst it was the closed season. They said that the Member did not accept that it was not a policing matter and identified himself as a Councillor to try and use his position to intimidate them.

The Ombudsman received an account from the Member, obtained a witness account from another Councillor who was present at the Lake, and obtained information from Gwent Police. On the balance of probabilities, the evidence indicated that the Member may have breached paragraph 4(b) of the Code by speaking to the PCSOs in a raised voice.

The investigation found that there was no dispute that the Member identified himself as a Councillor. The Member explained that he had done so to explain his knowledge of angling legislation. The Ombudsman found that the Member did contact Gwent Police to seek clarification regarding the enforcement of angling legislation and to raise a concern that the PCSOs had not spoken to, or provided advice, to the anglers as they had informed him.

The Ombudsman did not find sufficient evidence that the Member had displayed bullying and/or harassing behaviour, or that he had brought the authority into disrepute.

The Ombudsman found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue matters further.

The Ombudsman asked the Member to be mindful of how his conduct may be perceived when acting in his role as a Councillor and suggested that he complete refresher training on the Code.

Glynneath Town Council – Promotion of equality and respect
Case Number: 201904472 - Report issued in July 2020

The Ombudsman received a complaint that a Member (“the Member”) of Glynneath Town Council (“the Council”) had breached the Council’s Code of Conduct (“the Code”).

A member of the public complained that when the Member entered Glynneath Town Hall (“the Hall”) on 20 September 2019 she had been aggressive and shouted at them, and that the Member had threatened to “put paid” to their Hall Hire Agreement with the Council.

The Ombudsman obtained conflicting witness statements from 3 members of the public, as well as the complainant and the Member. On balance, the evidence obtained suggested that the Member may have breached paragraph 4(b) of the Code by shouting at the member of the public.

The Ombudsman did not find sufficient evidence that the Member had displayed bullying behaviour, or that they had brought their authority into disrepute. Furthermore, there was no supporting evidence that the Member had threatened the complainant’s future hire of the Hall, nor had the Member acted on such a threat.

The Ombudsman found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue further enquiries into the matter, given the conflicting nature of the evidence obtained.

The Ombudsman recommended to the Council that it should arrange training on the Code for its Members as soon as is practicable.

Tywyn Town Council – Promotion of equality and respect
Case Number: 201900952 - Report issued in September 2020

An officer of Tywyn Town Council (“the Council”) complained that a member had written a disrespectful letter to a third party.

The Ombudsman’s investigation considered whether the content of the letter may have breached paragraphs 4(b) and 6(1)(a) of the Code of Conduct for members (“the Code”).

The member asserted that they were not acting in their capacity as member when writing the letter. However, the Ombudsman found that, as the letter referred to Council business, it was reasonable to conclude that the member gave the impression they were acting in their capacity as a member of the Council when they wrote the letter. The Ombudsman found that the majority of the comments made by the member were political in nature.

However, the member's comments to the third party recipient of the letter were considered to be disrespectful. Whilst the Ombudsman considered that those comments were suggestive of a breach of paragraph 4(b) of the Code, having taken into consideration the information provided by the recipient and the wider evidence available, he did not consider it would be proportionate or in the public interest for any further action to be taken.

The Ombudsman did not consider that there was evidence to suggest that the content of the letter sent by the member was suggestive of a breach of paragraph 6(1)(a) of the Code.

Mumbles Community Council – Duty to uphold the law Case Number: 201904820 - Report issued in November 2020

The Ombudsman received a self-referred Code of Conduct ("the Code") complaint from a Member ("the Member") of a Community Council in Wales ("the Council") because they had been named in a Welsh Audit Office ("Audit Wales") Report concerning unauthorised Council expenditure. The Ombudsman considered whether the Member may have breached paragraph 7 (b) (i), (ii), (iii) of the Code for use of Council resources which was imprudent, in breach of the authority's requirements and unlawful.

The Ombudsman's investigation found that a Planning Consultancy had billed the Council for work which had not been agreed, and the Planning Consultancy said it had been instructed by the Member. The Member said at the time of the events he was new to the Council and he thought the work undertaken for the Council by the Planning Consultancy had been part of a previously agreed arrangement with the Council. The Member said he had not worked with planning consultants before and he had not realised that his specific communications with them would incur additional costs. The Ombudsman's investigation found that the Member had a responsibility to fully understand the terms of the Council's arrangements with the Planning Consultancy, and the Member's actions and failure to do so, could reasonably be considered as a potential breach of paragraph 7(b) (i), (ii), (iii) of the Code.

However, the Ombudsman also found that whilst the Clerk had suggested the Member should contact the Planning Consultancy, the Member had not been provided with clear guidance on the implications of doing so, and that the Member's communications had a limited impact on the overall expenditure. In addition, Audit Wales had not engaged with the Member or the Planning Consultancy to establish what instruction it attributed to the Member.

Please Note: Summaries are prepared for all reports issued by the Ombudsman. This summary may be displayed on the Ombudsman's website and may be included in publications issued by the Ombudsman and/or in other media. If you wish to discuss the use of this summary please contact the Ombudsman's office.

Having taken into consideration the evidence available and the information provided by the Member, the Ombudsman did not consider it would be proportionate or in the public interest for any further action to be taken.

Referred to Standards Committee

Denbighshire County Council – Objectivity and propriety Case Number: 201806601 - Report issued in September 2020

The Ombudsman received a complaint that a Member (“the Member”) of Denbighshire County Council (“the Council”) failed to observe the Code of Conduct for members of the Council. It was alleged that the member abused his position by visiting a member of the public’s place of work and complaining to her employer about a private altercation between her and a constituent in a local store car park.

The Ombudsman determined that there was evidence to suggest that the Member had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The Ombudsman determined that the member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Council’s Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.

Laleston Community Council – Duty to uphold the law Case Number: 201807411 - Report issued in November 2020

The Ombudsman received a complaint that a Former Member (“the Former Member”) of Laleston Community Council (“the Council”) had failed to observe the Code of Conduct for Members of the Council. It was alleged that the Former Member had misused Council funds via unauthorised cashpoint withdrawals and debit card transactions between November 2018 and January 2019.

A police investigation took place, and the Former Member subsequently resigned from the Council. The Ombudsman’s investigation established that at the time of the events the Former Member had taken on extra duties and been paid agreed allowances by the Council. It was found that the Former Member then took charge of the Council’s debit card and used it for purchases and cash withdrawals which were in excess of what he already received and could not be accounted for. The Former Member said he had accessed the Council’s finances in this way because he felt he was entitled to the funds; however, he did not provide any further information to suggest his transactions were for the benefit of the Council.

The Ombudsman determined that the Former Member may have breached the Council’s Code of conduct, in particular, paragraphs 7(a) and 7(b) i), ii), iii), iv) and vi) as he has sought to gain a personal and financial advantage via unauthorised access to Council finances, and misused Council funds. The Ombudsman also found that the Former Member’s actions and conviction could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Bridgend County Borough Council for consideration by its Standards Committee.

Referred to Adjudication Panel for Wales

Sully and Lavernock Community Council – Integrity Case Number: 201901994 - Report issued in September 2020

The Ombudsman received a complaint that a member (“the Member”) of Sully and Lavernock Community Council (“the Council”) failed to observe the Code of Conduct for elected members. It was alleged that the Member made a series of public posts, on the social media platform Facebook, which could have the potential to damage the reputation of the Council.

The Ombudsman found that 3 public posts, dated between 10 January and 11 March 2019, which made reference to high profile female politicians, were gratuitously offensive and could reasonably be regarded as bringing the Councillor’s Office or Authority into disrepute which was suggestive of a breach of paragraph of 6(1)(a) of the Code of Conduct. The Ombudsman considered that the language used went beyond political expression and was so egregious that, should a breach of the Code of Conduct be found and a sanction imposed, it would be a proportionate interference with the Councillor’s right to freedom of expression.

The Ombudsman also found that the Councillor had failed to supply evidence he claimed to hold in respect of the privacy of the posts and that, in refusing to provide information, he had failed to comply with a request in connection with the investigation which was suggestive of a breach of paragraph 6(2) of the Code of Conduct.

The Ombudsman referred his investigation report to the Adjudication Panel for Wales for its consideration.