

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL

COMMITTEE:	Standards Committee
DATE:	11 March 2020
REPORT TITLE:	Decisions by the Public Services Ombudsman for Wales
PURPOSE OF THE REPORT:	To advise the Committee of All Wales decisions published by the Public Services Ombudsman for Wales in his Casebooks for September 2019 (Issue 21) and October 2019 (Issue 22)
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1. INTRODUCTION

The Public Services Ombudsman for Wales (PSOW) publishes a [Casebook of Code of Conduct Complaints](#) once every quarter.

This report summarises the information published by the PSOW in his Casebook for September 2019 (Issue 21) and Casebook for October 2019 (Issue 22). A summary of the cases for Issue 21 is attached at **ENCLOSURE 1** and Issue 22 is attached as **ENCLOSURE 2**.

2. BACKGROUND

The PSOW exercises “first sift” powers under Section 69 of the Local Government Act 2000, which requires him to consider complaints that members of local authorities in Wales may have broken their code of conduct. The PSOW’s jurisdiction includes county councils and town and community councils.

Having received a complaint, the PSOW applies his threshold test to determine whether or not the complaint should be investigated. The threshold test involves the PSOW being satisfied that:-

- There is evidence to suggest that the code of conduct may have been breached; and

- That the matter is sufficiently serious for it to be in the public interest for an investigation to be opened.

When an investigation is opened, the PSOW may reach one of four findings under Section 69 of the Local Government Act 2000 which are:-

- (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).

If (c) or (d) above apply, the PSOW will then submit his report to the local standards committee or to the Adjudication Panel for Wales (APW), and it is for the committee, or a case tribunal of the Panel, to conduct a hearing to consider the evidence and to make the final decision on whether or not the code of conduct has been breached and, if so, whether a penalty should be imposed, and what any penalty should be. Standards committees have statutory authority to issue a suspension against a councillor for a period not exceeding 6 months. Standards Committees have no powers of disqualification and, where there are findings of breach, will try to apply a sanction that is proportionate to the offence. This will often be a censure (public rebuke) or a recommendation of training/undertaking/mediation etc. A case tribunal has authority to suspend for up to 12 months and to disqualify for up to 5 years.

3. RECOMMENDATION

The Chair of the Standards Committee will lead a discussion on any matters of interest reported in **ENCLOSURE 1** and **ENCLOSURE 2**.

ENCLOSURE 1 – Issue 21 (September 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
Sully and Lavernock Community Council - 201802547	It was alleged that a Member of Sully and Lavernock Community Council had breached the Code of Conduct when he, despite being aware that a grievance had been submitted to the Council about his behaviour, failed to declare an interest when those matters were discussed in Council meetings.	Disclosure and registration of interests	Having reviewed the information provided by the complainant, the Community Council, the County Council and the Member, the Ombudsman found that there was no evidence of a breach of the Code of Conduct.	<p>Members should remember to disclose personal/prejudicial interests in accordance with the Code of Conduct.</p> <p>Members should remember that they may have a close personal association with someone with whom they are in dispute .</p>
Amlwch Town Council - 201802863	The Ombudsman received a complaint that a Member of Amlwch Town Council had breached parts of the Code of Conduct in his conduct towards the Council's Clerk at a meeting.	Promotion of equality and respect; not bringing the authority into disrepute	<p>The Ombudsman interviewed a selection of those present at the meeting, including members of the Council and members of the public. The evidence did not support the complaint.</p> <p>Under Section 69(4)(a) of the Local Government Act 2000, the Ombudsman concluded that there was no evidence to suggest that the Member had failed to comply with the Code of Conduct.</p>	<p>Members are encouraged to undertake equality and diversity training, including members of Town and Community Councils.</p> <p>The Standards Committee has previously advised Community Councils they should include a budget for training when setting their precept amounts.</p>
Powys County Council – 201803813 & 201803815	It was alleged that a Member of Powys County Council had breached the Code of Conduct by continuously making comments to the press about the complainant's business, which caused the complainant to feel bullied and	Promotion of equality and respect	<p>The Ombudsman investigated the complaint by reviewing information provided by relevant parties including the complainant and the Monitoring Officer.</p> <p>Following investigation, the Ombudsman found that there was no evidence of a</p>	<p>Members are encouraged to undertake equality and diversity training. This is considered a mandatory topic in IOACC (as decided by Group Leaders).</p> <p>Members should consider</p>

ENCLOSURE 1 – Issue 21 (September 2019)

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	harassed.		breach of the Code of Conduct. The matters referred to by the complainant were accurate and in the public domain. There was no evidence which was suggestive that matters had been leaked to the press by the Member.	<p>completing the e-learning course available, if they were unable to attend the classroom training arranged in March 2019. The course is available on the following link:</p> <p>https://learning.wales.nhs.uk/login/index.php</p>
Magor with Undy Community Council – 201807788	The Ombudsman received a complaint that a Member of Magor with Undy Community Council had breached the Code of Conduct when he organised the transfer of Council data to an external, electronic storage application. It was alleged that the Member acted improperly to persuade Council staff to grant access to the Council's files, and inappropriately accessed the information which was available during the file transfer process.	Integrity	Having been informed, during the course of the investigation, that the Member had resigned from the Council, the Ombudsman concluded that the complaint no longer satisfied the public interest requirements of the two-stage test and the investigation was discontinued.	<p>Matters involving a former Councillor will be considered differently to a Councillor who is still in elected post, due to its effect on the Public Interest Test.</p> <p>Where the Ombudsman decides that a complaint should be investigated, there are four findings which the Ombudsman can arrive at:</p> <p>(a) that there is no evidence that there has been a breach of the authority's code of conduct;</p> <p>(b) that no action needs to be taken in respect of the matters that were subject to the investigation;</p> <p>(c) that the matter be referred to the authority's</p>

ENCLOSURE 1 – Issue 21 (September 2019)

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				<p>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.</p> <p>Where an individual is a member of more than one authority e.g. a county council and a community council / more than one community council, the Ombudsman can utilise option (c) or (d) in relation to the other 'relevant authority', and not the one in which the member committed the breach. For example, had this individual been a county council member too, even though he was no longer a member of the authority in which the breach occurred (Magor with Undy Community Council), the sanction for the breach of Magor with Undy Community Council's Code of Conduct could have been imposed upon him in his capacity as a</p>

ENCLOSURE 1 – Issue 21 (September 2019)

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				member of the county council.
Cwmlllynfell Community Council - 201704948	The Ombudsman received a complaint that a Member of the Cwmlllynfell Community Council displayed disrespectful and bullying behaviour towards the Clerk (at the time) at two meetings.	Promotion of equality and respect	<p>Following investigation, the Ombudsman found that:</p> <ul style="list-style-type: none"> - there was evidence to suggest that the Member had <u>failed to show respect and consideration</u> to the former Clerk when raising matters of a personal nature, which did not relate to the performance of the Clerk's duties, during the second meeting which was open to the public; the Member's actions were considered to be contrary to one of the Council's Standing Orders; AND - there was evidence to suggest that the Member had displayed <u>bullying behaviour</u> towards the Clerk at this meeting. <p>The Ombudsman determined that the matter should be referred to the Monitoring Officer of Neath Port Talbot County Borough Council for consideration by that Council's Standards Committee.</p> <p>The Standards Committee determined that the Member's conduct in respect of the second meeting was in breach of paragraphs 4(b) and 4(c) of the Council's Code of Conduct. In addition, the Standards Committee found that in behaving in this way during this meeting</p>	<p>https://democracy.npt.gov.uk/mgAi.aspx?ID=31042</p> <p>Information in relation to the matter is limited on NPTCBC's website but the above link refers to the matter.</p>

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			that the Member had also brought the office of member into disrepute in breach of paragraph 6(1)(a). The Standards Committee issued a censure to the Member for the breaches of the Code found.	

ENCLOSURE 2 – Issue 22 (October 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Caia Park Community Council – 201805133	The Ombudsman received a complaint that, in October 2018, a Member of Caia Park Community Council had breached the Code of Conduct for members when they submitted an application for funding for a community project, in which they had an interest, against the advice of the Clerk. It was alleged that the Member's behaviour could bring the Council into disrepute.	Disclosure and registration of interests	<p>The investigation established that the Clerk had advised that the Council could consider an application for funding above the agreed limit; the Member declared an interest and there was no evidence that they sought to influence the decision making.</p> <p>Therefore, the Ombudsman found that there was no evidence that the Member had breached the Code of Conduct.</p>	Members should remember to disclose personal/prejudicial interests in accordance with the Code of Conduct.
Powys County Council - 201803272	The Ombudsman received a complaint that a Member of Powys County Council had breached the Code of Conduct by breaching the part of the Code relating to disrepute. The complaint related to the connection of water supplies to two of the Member's properties and in respect of his actions in relation to his caravan site.	Accountability and openness	<p>Copies of relevant documents were obtained. The evidence found by the investigation was shared with the Member before he was formally interviewed.</p> <p>The Ombudsman determined there was no evidence to suggest that the Member had breached the Code.</p>	
Denbighshire County Council - 201900044	It was alleged that the behaviour of a Member of Denbighshire County Council had been	Promotion of equality and respect	During the course of the investigation information was provided by the relevant parties including the complainant and the Monitoring Officer.	Members are encouraged to undertake equality and diversity training. This is considered a mandatory topic

ENCLOSURE 2 – Issue 22 (October 2019)

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	inappropriate and disrespectful and breached the Code of Conduct.		The Ombudsman found that there was no evidence to support the concerns raised and found that there was no breach of the Code of Conduct.	in IOACC (as decided by Group Leaders). Members should consider completing the e-learning course available, if they were unable to attend the classroom training arranged in March 2019. The course is available on the following link: https://learning.wales.nhs.uk/login/index.php
Prestatyn Town Council - 201900045	It was alleged that the behaviour of a Member of Prestatyn Town Council had been inappropriate and disrespectful and breached the Code of Conduct.	Promotion of equality and respect	<p>During the course of the investigation information was provided by the relevant parties including the complainant, the Clerk to the Council and the Monitoring Officer.</p> <p>The Ombudsman found that there was no evidence to support the concerns raised and found that there was no breach of the Code of Conduct.</p>	Members are encouraged to undertake equality and diversity training. This is considered a mandatory topic in IOACC (as decided by Group Leaders). Members should consider completing the e-learning course available, if they were unable to attend the classroom training arranged in March 2019. The course is available on the following link: https://learning.wales.nhs.uk/login/index.php
Sully and Lavernock Community Council - 201900025	The Ombudsman received a complaint that a Member of Sully and Lavernock Community Council had breached the Code of Conduct when he allegedly physically attacked	Duty to uphold the law	The Ombudsman's investigation was suspended pending the outcome of a criminal prosecution made against the Member in relation to the incident. The case was heard by the Magistrates Court; there was no direct witness evidence to the alleged incident and the Member was	A Member who receives a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine is disqualified as a member for a period of five

ENCLOSURE 2 – Issue 22 (October 2019)

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	someone.		<p>found not guilty.</p> <p>As a result of this, the Ombudsman did not consider that the evidence suggested that the Member had breached the Code of Conduct in this case. The Ombudsman's finding under s69(4)(a) of the Local Government Act 2000 was therefore that there was no evidence that the Member had failed to comply with the Code.</p>	<p>years. However, a lesser penalty could still result in a breach of the Code of Conduct, albeit not an automatic disqualification.</p>
Llandrindod Wells Town Council - 201803394	<p>The Ombudsman received a complaint that a Member of Llandrindod Wells Town Council had inappropriately accessed the Council's computer, withheld information gathered from it from the Council and failed to declare a personal and prejudicial interest in matters the Council was considering. There was also an allegation that the Member had engaged in bullying behaviour towards the Clerk at two meetings in particular.</p>	Promotion of equality and respect	<p>Copies of relevant documents were obtained, including the approved minutes of the two meetings, and telephone interviews were conducted with relevant witnesses. The evidence found by the investigation was shared with the Member before he was formally interviewed.</p> <p>The investigation found that the evidence did not suggest the Member had acted in a bullying manner, prevented the Council from obtaining access to information to which it was entitled or used his position improperly. The Member was entitled to comment on matters to do with the Council and had legitimate grounds for his actions.</p> <p>The investigation found evidence that the Member had failed to show due respect and consideration to the Clerk at one</p>	<p>The outcome shows that the Ombudsman considers the effect of the breach when considering what action to take; a breach of the Code does not automatically mean the Ombudsman will take any further action. However, Members should be careful not to rely on such a case as a defence. Members should ensure they follow the provisions in the Code of Conduct.</p>

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			<p>meeting, and that he had failed to take appropriate action in respect of a personal and prejudicial interest. However, the Member had been acting in good faith and in the best interests of the Council. In addition, he demonstrated a reasonable level of personal reflection since the time of the events. On this basis, the Ombudsman found that no action needed to be taken in respect of the matters investigated.</p>	
<p>Bridgend Town Council - 201707582</p>	<p>The Ombudsman received a complaint about a Member of Bridgend Town Council where it was alleged that the Member had failed to disclose a personal and prejudicial interest during a meeting of the Council and proceeded to participate in discussions relating to that matter. Additionally, it was alleged that the Member failed to show respect and consideration during the meeting and behaved in a bullying manner towards the Clerk to the Council.</p>	<p>Disclosure and registration of interests</p>	<p>During the course of the investigation information was provided by relevant parties including the complainant and the Council.</p> <p>The Ombudsman found that the evidence gathered was suggestive that the Member had failed to appropriately declare a personal and prejudicial interest at the meeting of the Council. In addition, the Member's actions in failing to leave the room and making representations were also suggestive of a failure to comply with the relevant provisions of the Code.</p> <p>Further, the Ombudsman determined that the evidence was suggestive that the Member failed to show respect and consideration to the Clerk during that meeting.</p>	<p>Members are reminded of their obligations in relation to the disclosure of personal/prejudicial interests, in accordance with the Code of Conduct.</p> <p>A Briefing Note on Personal / Prejudicial Interests can be seen here.</p> <p>http://monitor.anglesey.gov.uk/Journals/n/h/o/Personal-and-Prejudicial-Interest---A-Briefing-Note-to-Members.pdf</p> <p>http://monitor.ynysmon.gov.uk/Journals/c/f/c/Nodyn-Briffio-i-Aelodau---Diddordeb-Personol-a-Rhaqfarnol.pdf</p>

ENCLOSURE 2 – Issue 22 (October 2019)

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			<p>In deciding what action to take the Ombudsman considered the custom and practice of declaring interests within the Council at the relevant time, the mitigation provided by the Member and recent evidence confirming a significant improvement in working relationships within the Council.</p> <p>The Ombudsman concluded that it would not be in the public interest to take matters further and that no action should be taken in respect of the matters investigated.</p>	<p>The outcome shows that the Ombudsman takes other factors into consideration when deciding what action to take in relation to a breach of the Code of Conduct. It shows that a breach of the Code does not automatically mean the Ombudsman will take any further action. However, Members should be careful not to rely on such a case as a defence. Members should ensure they follow the provisions in the Code of Conduct.</p>
<p>Bridgend Town Council - 201707583</p>	<p>It was alleged that a Member of Bridgend Town Council had failed to disclose a personal and prejudicial interest during a meeting of the Council and proceeded to participate in discussions relating to that matter. Additionally, it was alleged that the Member had used his position improperly in an attempt to gain an advantage for himself or his close personal associates.</p>	<p>Disclosure and registration of interests</p>	<p>During the course of the investigation information was provided by relevant parties including the complainant, and the Council.</p> <p>The Ombudsman found that the evidence gathered was suggestive that the Member had failed to appropriately declare a personal and prejudicial interest at the meeting of the Council. In addition, the Member's actions in failing to leave the room and making representations are also suggestive of a failure to comply with the relevant provisions of the Code.</p> <p>However, the Ombudsman was not</p>	<p>This matter is similar in its facts to the above matter relating to the same Council.</p> <p>Members are reminded of their obligations in relation to the disclosure of personal/prejudicial interests, in accordance with the Code of Conduct.</p> <p>A Briefing Note on Personal / Prejudicial Interests can be seen here.</p> <p>http://monitor.anglesey.gov.uk/</p>

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			<p>persuaded that the evidence was suggestive that the Member used his position in an attempt to gain an advantage as suggested.</p> <p>In deciding what action to take the Ombudsman considered the custom and practice of declaring interests within the Council at the relevant time and the mitigation provided by the Member.</p> <p>The Ombudsman concluded that it would not be in the public interest to take matters further and that no action should be taken in respect of the matters investigated.</p>	<p>Journals/n/h/o/Personal-and-Prejudicial-Interest---A-Briefing-Note-to-Members.pdf</p> <p>http://monitor.ynysmon.gov.uk/Journals/c/f/c/Nodyn-Briffio-i-Aelodau---Diddordeb-Personol-a-Rhagfarnol.pdf</p> <p>The outcome shows that the Ombudsman takes other factors into consideration when deciding what action to take in relation to a breach of the Code of Conduct. It shows that a breach of the Code does not automatically mean the Ombudsman will take any further action. However, Members should be careful not to rely on such a case as a defence. Members should ensure they follow the provisions in the Code of Conduct.</p>
Trefeurig Community Council - 201806748	The Ombudsman received a complaint that a Member of Trefeurig Community Council had breached the Code of Conduct when, during a discussion about a planning application for a	Disclosure and registration of interests	<p>During the course of the investigation information was provided by relevant parties including the complainant, and the Clerk to the Council.</p> <p>The Ombudsman found that no action needed to be taken in respect of the</p>	

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	local development, the Member failed to declare an interest in the matter.		matters investigated.	
Prestatyn Town Council - 201700947	The Ombudsman received a complaint that a Member of Prestatyn Town Council may have used threatening and abusive behaviour towards a fellow member of the Council and behaved in an aggressive and confrontational manner at two Council meetings in November 2016 and May 2017.	Promotion of equality and respect	<p>The Ombudsman obtained relevant information about the matter from the Council and interviewed a number of witnesses. The Member was interviewed and provided his response to the complaint.</p> <p>Having considered the evidence the Ombudsman found that there was evidence to suggest that the Member may have breached the Code of Conduct and referred the matter for consideration by the Council's Standards Committee.</p> <p>The Standards Committee determined that the Member failed to show respect and consideration to Police Officers who were in attendance at the meeting in November 2016 and towards his fellow member in the meeting in May 2017.</p> <p>In addition, the Standards Committee found that the Member's behaviour at both meetings was capable of bringing the Council into disrepute.</p> <p>The Standards Committee decided that, on the basis of the findings reached, the Member should be suspended from office</p>	<p>https://moderngov.denbighshire.gov.uk/ieListDocuments.aspx?CId=212&MIId=5998&Ver=4&LL=0</p> <p>The report presented to Denbighshire County Council's Standards Committee can be seen as Agenda Item 4 on the above link.</p> <p>The range of sanctions available to the Standards Committee include:</p> <ul style="list-style-type: none"> • no further action should be taken in respect of the failure to comply with the Code of Conduct; or • that the Member should be censured; or • that the Member should be suspended or partially suspended from being a member of the relevant authority for a period not exceeding six months.

ENCLOSURE 2 – Issue 22 (October 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
			of member of the Council for a period of four months.	
Neath Town Council - 201707990	It was alleged that a Member of Neath Town Council had failed to observe the code of conduct for members when she commented that a Neath resident had deserved to be murdered.	Promotion of equality and respect	<p>The investigation found that the Member's unsolicited comments about the victim were both disrespectful and distasteful and, whilst it may have been the member's private opinion, there was no reason for it to have been expressed publicly.</p> <p>In view of the effect of the Member's comments on the citizens of Neath Town Council, many of whom believe that the Member is no longer a suitable representative, and the effect on the reputation of the Town Council itself, the Ombudsman concluded that the Member may have breached paragraph 6(1)(a) of the Code of Conduct.</p> <p>The Ombudsman determined that the matter should be referred to the Monitoring Officer of Neath Port Talbot County Borough Council for consideration by that Council's Standards Committee.</p> <p>The Standards Committee found that the Member had breached the Code of Conduct and she was suspended for four months.</p>	<p>https://democracy.npt.gov.uk/mgAi.aspx?ID=33107</p> <p>The Minutes of the relevant Neath Port Talbot County Borough Council's Standards Committee meeting can be seen on the above link.</p> <p>The range of sanctions available to the Standards Committee include:</p> <ul style="list-style-type: none"> • no further action should be taken in respect of the failure to comply with the Code of Conduct; or • that the Member should be censured; or • that the Member should be suspended or partially suspended from being a member of the relevant authority for a period not exceeding six months.
Mathern	During a public hearing of	Promotion of	The Ombudsman considered that a	This case was considered by

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<p>Community Council - 201802799</p>	<p>the Adjudication Panel For Wales held on 19 July 2018, a member of Mathern Community Council made a statement which he followed up with a letter to the Adjudication Panel for Wales. Both the statement and the letter contained language either the same as or similar to language which the Adjudication Panel for Wales had advised him would amount to a breach of the Code of Conduct.</p> <p>The Ombudsman decided to investigate whether the Member's actions amounted to a breach of paragraph 6(1)(a) of the Code of Conduct on the basis that the matter had come to his attention as a result of the investigation which was being heard by the Adjudication Panel for Wales on 19 July.</p>	<p>equality and respect</p>	<p>reasonable person would conclude that the Member's actions affected the reputation of both the office of Member and the Authority of which he is a member and that they may amount to a breach of paragraph 6(1)(a) of the Code of Conduct.</p> <p>The Ombudsman also considered that any restriction of the Member's right to freedom of expression under article 10 of the Human Rights Act, would be necessary for the protection of the rights and interests of others.</p> <p>The Ombudsman referred the matter to the Adjudication Panel for Wales.</p> <p>However, on 17 July 2019 the Adjudication Panel determined that the matter did not come to the Ombudsman's attention as a result of the investigation heard on 19 July 2018 as that investigation concluded on 20 December 2017 (when the matter was referred to the Adjudication Panel for Wales) and determined it would therefore not consider the case. No further action was taken.</p>	<p>the Standards Committee at its meeting on 17 September 2019 – see link:</p> <p>http://democracy.anglesey.gov.uk/documents/s14681/520615-%20-%20Item%208%20-%20Report%20full.pdf?LLL=0</p> <p>It relates to Councillor Graham Down of Mathern Community Council. The "original" case against Councillor Down was considered by the Standards Committee at its meeting on 13 March 2019 (item 7). By way of reminder, Councillor Down was found to have breached the Code of Conduct by making homophobic remarks in his role as Councillor on Monmouthshire County Council. A copy of the Adjudication Panel for Wales' decision can be seen here: https://adjudicationpanel.gov.wales/apw0032017-018ct-councillor-graham-down</p> <p>A copy of the latter decision (relating to this entry) by the Adjudication Panel for Wales can be seen here:</p>

ENCLOSURE 2 – Issue 22 (October 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
				https://adjudicationpanel.gov.wales/apw0012018-019ct-councillor-graham-down-0

