

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	STANDARDS COMMITTEE
DATE:	8 <sup>th</sup> March 2017
TITLE OF REPORT:	Update on Ombudsman's attendance at the North Wales Standards Committee Forum
PURPOSE OF THE REPORT:	To report back to Standards Committee on the Ombudsman's presentation and questions on 17.10.2016
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## 1. INTRODUCTION & BACKGROUND

On the 17th October 2016 the Public Services Ombudsman for Wales attended the Isle of Anglesey County Council for a meeting of the North Wales Standards Committee Forum ("NWSCF"). Nick Bennett, the Ombudsman, gave a presentation and answered a list of questions from members of the Forum. The Anglesey Standards Committee invited him to attend as the Ombudsman had previously indicated he would be willing to pay a further visit following his visit to the North Wales Standards Committee Forum in Anglesey on 26.11.2014.

- Usually, the Chair and Vice-chair of each Standards Committee, along with the Monitoring Officer, are invited. As the meeting was being hosted by the Isle of Anglesey County Council, all members of the Isle of Anglesey County Council's Standards Committee were invited to the Forum on this occasion too.

### The Ombudsman's Contribution

- A copy of the presentation which the Ombudsman gave is attached at **Appendix 1 (available in English only)**.
- The Ombudsman explained in relation to Local Resolution that this was something he would welcome as being extended to Town and Community Councils – but said he would not dictate on this; it was very much up to each Standards Committee.
  - In terms of complaints the Ombudsman explained the number of County Council complaints had reduced but the number of Town and Community Council complaints had increased. 3 Community Councils were responsible for a third of all Town and Community Council complaints.
  - The Ombudsman explained that the two stage test continues to be utilised and its aim is to continue to rid any vexatious complaints. However, the Ombudsman's office is receiving more complaints.

The majority of the Ombudsman's budget is allocated to health investigations, but he was clear that where there are issues of bullying, corruption, or abuse of power then he takes complaints of a breach of the Code of Conduct for elected members very seriously.

- 3(d)** The Ombudsman believed the North Wales Standards Committee Forum was a very beneficial relationship for the North Wales Authorities to have. He also explained he would be happy to meet with the Forum on a more regular basis should this be deemed useful.
- 4.** A copy of the questions posed to the Ombudsman along with his answers is attached at **Appendix 2 (available in English only)**.

#### Other matters discussed

- 5.** Following the Ombudsman's contribution to the Forum, the meeting continued, and the issue of the Register of Interests for Members was discussed. (Item number 3 in the Standards Committee meeting on 14.09.2016)

It was resolved that each authority makes enquiries in terms of its contract with the service provider and to report back to the Forum; what maybe an issue for one authority may not be for another. If it appears it is an issue for all, then it was agreed it would be better for action to be taken collectively rather than as individual authorities, if possible.

- 6.** It has been agreed that the North Wales Standards Committees Forum will meet twice per annum from hereonin, in March / April and November. The host authority will be responsible for making the necessary arrangements.
- 7.** Denbighshire County Council will host the next meeting of the Forum in March or April 2017 and will look into the possibility of mediation training.

#### Comments

- 8.** The Forum meeting was attended by 21 representatives from all the relevant authorities, bar 1. The general feedback was the meeting had been useful.

### **RECOMMENDATION**

- 9.** (A) The Standards Committee is asked to note the contents of this report and its enclosures.
- (B) Does the Standard Committee agree to distribute a copy of **Appendix 2** to the Monitoring Officers within the other North Wales authorities?



Ombudsman  
Ombwdsmon

## North Wales Standards Committee Forum

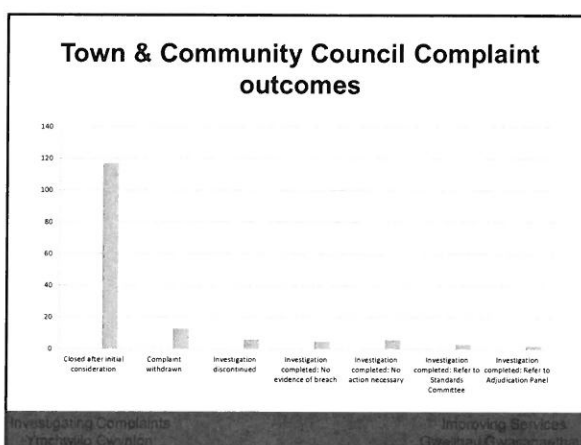
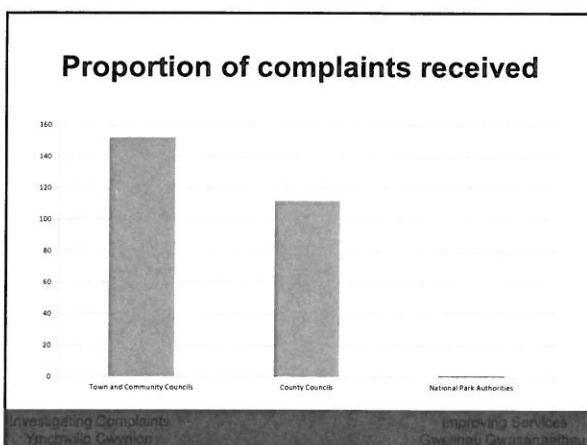
Nick Bennett  
Ombudsman

Ymchwilio Cwynion  
Gwellhau Gwasanaethau

## Local Resolution

- Member v Member complaints should be dealt with by internal dispute resolution procedure
- Extension of this to Community Councils

Ymchwilio Cwynion  
Gwellhau Gwasanaethau



## Two stage test

- Is there **direct** evidence that a breach actually took place?

If so:

- Is an investigation required in the public interest?

Ymchwilio Cwynion  
Gwellhau Gwasanaethau

## Testing Public Interest One Year on

- Is an investigation required in the public interest?
  - Public interest factors (non exhaustive)
    - Seriousness of breach
    - Deliberately seeking personal gain
    - Misuse of position of trust causing harm
    - Motivated by discrimination (protected characteristics)
    - Evidence of previous similar behaviour

Ymchwilio Cwynion  
Gwellhau Gwasanaethau

### **Vexatious Complaints!**

- "Cllr X refused to shake my hand!"
- "Cllr Y cracked a bad joke in poor taste!"
- "Cllr P tutted and huffed whilst shaking his head!"
- "Cllr M referred to the public gathered in the street as a mob!"
- "Cllr S was clicking his pen on and off in an aggressive manner!"

Investigating Complaints  
Ymchwilio Cwynion

Improving Services  
Gwellhau Gwasanaethau

### **What does this mean?**

- The Ombudsman will only deal with serious breaches of the Code
- Not the 'Ombudsman of sense of humour'
- More matters referred back to Standards Committees to investigate
- 'Mandatory' Member v Member internal dispute resolution

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## **Q & A**

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## APPENDIX 2

### NORTH WALES STANDARDS COMMITTEE FORUM 17 OCTOBER 2016 OMBUDSMAN QUESTIONS AND ANSWERS

Local resolution protocol. Is it toothless because it is not compulsory and because it cannot apply sanctions?

Local Resolution protocols have been successful in our view in encouraging engagement at a local level and accountability for low level failures to abide by the Code. It gives the parties the opportunity to resolve matters promptly and amicably. Local authority members should be aware that where local resolution fails matters can be referred to us for consideration. Our view is that if a breach justifies the imposition of a sanction that this would not be suitable for local resolution in any event and should be referred to us. It is intended to be used for low level, trivial or vexatious matters.

What is the future for local resolution protocols for town and community councils? Will it be limited to those who have powers of competency/additional duties under the Future Generations and Wellbeing Act 2015?

One Voice Wales has put together a draft model process which we have supported. Our view is that this process or one like this should be available to all Town and Community Councils.

Conflict of interests for Monitoring Officers and Standards Committees arising from Local Resolution Protocols and then dealing with any subsequent referrals from the Ombudsman.

This is in our view a matter of professional judgement. If there is a conflict the new 2016 Regulations<sup>1</sup> allow for the creation of joint standards committees or referral to another authority in these situations.

There appears to be a reduction in the number of cases before the Adjudication Panel for Wales. Is this a direct result of local resolution? Or does the Ombudsman consider that the introduction of the public interest threshold test has affected the number of cases?

Whilst we consider that the "public interest" test may have had some bearing on this, the effect is that we are investigating the serious breaches. The figures for referral's to APW in previous years have fluctuated but remain largely dependent on the nature of the complaints made to us. Low level complaints not investigated because they did not meet the public interest test are unlikely to have been referred to the APW under the previous two stage test in any event.

Is the Ombudsman considering offering or arranging mediation training for Monitoring Officers and the members of the various Standards Committee in light of the requirement for more to be done by way of local resolution? What is the role of the Standards Committee in relation to the Ombudsman's comment in the amended guidance, published July 2016, that "I am supportive of this (local resolution process) extending to cover community councils" (page 8)?

No our resources could not extend to this.

If the Ombudsman is considering that a local resolution process should be extended to include community councils too, will the Ombudsman provide a standard Local Resolution Protocol or template so as to ensure all members are treated fairly and consistently?

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<sup>1</sup> The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016  
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No, our view is that the process proposed by OVW is suitable and alternatively a principal authorities' own protocol could be utilised and amended for this purpose.

There is reluctance in some community councils in terms of embracing the digital age. How do you see the role of the community councils?

This is not a matter for us.

Why do cases take so long from the complaint being reported to conclusion?

Reasons vary – often depend on nature and number of allegations made, sources of evidence and how accessible these are, the availability of witnesses and members themselves when they need to be interviewed. We are constantly looking at ways to improve on timescales. We now have a dedicated Code of Conduct investigation monthly review systems aimed at ensuring investigations are focused and timely. We are hopeful that this will have a positive impact and will be monitoring this.

Last year 15/16 we saw an improvement in closure times. 84% of investigations were concluded within 9 months compared to the previous year when only 76% were closed in this time frame; those taking up to a year to conclude reduced by 9%.

Is the Ombudsman considering preparing a Sanction Guidance specifically tailored to the needs and powers of Standards Committees?

There is no plan for us to do this. We are generally of the view that the issue of sanction is mainly for the Committee or Tribunal considering a matter. The APW has issued sanctions guidance which we actively refer Standards Committees to. We feel that the aggravating and mitigating factors are equally applicable and the guidance on the nature of a sanction informative. As a group you may wish to develop this yourself

Clarity around the new SI. i.e. suspension only within current term of office. Doesn't this make it pointless when a member can commit a serious breach of the Code, and if the timing is right, there will be no consequences? Would the expectation of the Ombudsman be that Standards Committees or Case Tribunals would still proceed and issue a censure only, making it clear that a suspension or disqualification would have followed had it been available? Is it really wasting costs to investigate, prosecute and adjudicate on something like this and isn't it unfair to elected members that some will be facing suspension because of a breach that takes place early on in their term of office and others will "get away with it"?

We supported this amendment when consulted by WG as it brings standards committee suspension sanctions in line with the APW's powers.

Are we going down the route of the England model? Would it be better for the Ombudsman to just focus on public service delivery, rather than the conduct of elected members, given scarce resources?

Public Service delivery is important but the Code of Conduct plays a vital role in upholding standards in public office which is essential for public confidence in elected members. This is particularly important where we are seeing examples of serious breaches such as abuse of process or position.

The role of the Standards Committee and local Monitoring Officers in relation to town and community councils, particularly in light of the new draft Guidance. Is there an expectation that Monitoring Officers lodge complaints and / or is there an expectation that Standards Committees and Monitoring Officers now undertake local resolution at Town and Community Council level?

The guidance attempts to clarify that there are options available to a MO when a potential breach of the Code is identified, the mechanism to complain to us still exists. Where local

resolution for Town and Community Council's is concerned it really is something which needs careful consideration. The One Voice Wales proposal is such that the Clerk plays a vital role in the process.

Is there, or is there intended to be, an archive library of standards decisions, for consistency, rather than just the APW Case Tribunals.

Our casebook's provide a link to decisions taken by both SC and APW. We are currently working on a database of historic decisions which pre date the case books for internal use and we could consider whether there is scope for extending this for public access.

It is a statutory requirement for Town and Community Councils to have websites and for their registers of interests to be published on them. What steps will the Ombudsman take if Town and Community Councils fail to conform to this requirement?

Failure by a town and community council to do this would ordinarily fall under our Maladministration jurisdiction. If a properly made complaint was investigated which identified that this was not happening recommendations could be made. If this was identified in the context of a code investigation we could make reference to this in the report but not an enforceable recommendation. However APW do have the ability to make recommendations if this arose as a key issue during a tribunal.

What is the impact on the Ombudsman's office timescales now that it is receiving / investigating fewer cases?

Analysis of figures since the introduction of the PI test suggest that investigations are being concluded sooner 84% within 9 months in 15/16 compared to 76% in 14/15.

The legislation in relation to the new ground for dispensation [ paragraph 4 (3) of The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 ] details that a dispensation may be granted if "it appears to the committee to be otherwise appropriate to grant a dispensation".

However, the amended guidance published by the Ombudsman's office details that dispensation can be granted "if appropriate in all circumstances, where it was not otherwise possible, to make reasonable adjustments to accommodate a person's disability".

Please confirm this is the "disability" created by the prejudicial interest; the legislation seems to be going further than what is included in the guidance?

Our understanding which is based on consultation information from WG is that the new ground for dispensation is based on a practical solution to "disability" of a particular member making it difficult for them to leave a room or chamber when a matter that they have a P&P interest is being discussed. The guidance has been written to reflect this.

Given the comments in guidance published by your office suggesting that local resolution procedures might help to reduce the number of complaints received from town and community councillors how had you envisaged that being resourced?

[The paragraph from the guidance is as follows -

"Most local authorities across Wales have implemented local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints. I am supportive of this extending to cover community councils."]

This would not be a matter for us

Whilst the annual report is welcome would it be possible to include greater analysis of the trends and any lessons that might come from the statistics, e.g. is there a rise in cases of disrespect or has there been a fall in allegations of failure to declare interests, in order to



help reveal any future work that might be needed by Standards Committees or to demonstrate the success of work that has already been undertaken.

We are currently exploring ways of capturing and reporting in a more comprehensive and meaningful manner. It is hoped that we will be able to provide greater analysis in the future and appreciate the need for this.

There is a concern that the public may lose confidence in the enforcement of the Code of Conduct if they feel that legitimate complaints have been considered not worthy of investigation. Would the Ombudsman consider referring cases that he has determined not to investigate for local investigation?

We take the view that members of the public could lose confidence if we were to investigate trivial complaints also this is the reason behind the public interest test. We do have powers to discontinue an investigation and refer this for local investigation; this is something which we have done in the past, but with very little take up and some reluctance from Monitoring Officers. Nevertheless the ability to do this still applies and we could do it if we deemed it appropriate.

Does the Ombudsman consider that the setting of minimum standards and mandatory training for Clerks to Town, City and Community Councils would assist in the maintenance of high standards of conduct and the operation of Local Resolution Procedures in those Councils?

Yes whilst we agree that training in this area would be beneficial particularly if Clerk's are to play a role in local resolution but this is something that we as an organisation would be unable to resource. Organisations such as one voice wales or Society of Local Clerks may wish to take up.