

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	13 September 2017
REPORT TITLE:	Public Services Ombudsman for Wales Decisions
PURPOSE OF THE REPORT:	To advise the Committee of All Wales decisions published by the Public Services Ombudsman for Wales in the period April 2016 to April 2017
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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 Casebooks for April 2016 to April 2017. A summary of the cases is attached at **ENCLOSURE 1**

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.

While the APW has the legal status of a tribunal and has always published its decisions (including any appeals against the decisions of standards committees) the PSOW did not publish his reports or findings but recently has introduced the quarterly Case Book which provides a case summary. Anything referred to a standards committee will, of course, be available on that council's website.

3. RECOMMENDATION

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

ENCLOSURE 1

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Langstone Community Council	The Councillor endorsed that the Community Council fund works proposed by the Councillor's wife.	<ul style="list-style-type: none"> • Failure to disclose and withdraw from a decision in the presence of a prejudicial interest • Bringing the role of councillor and the authority into disrepute • Seeking to gain an advantage 	<ul style="list-style-type: none"> • No breach of the Code 	<ul style="list-style-type: none"> • There would have been a benefit to the Councillor and the Councillor's wife in relation to the carrying out of the works. However, the level of benefit: "would have been slight", such that it did not create a prejudicial interest and the Councillor was entitled to participate in the decision.
Radyr and Morganstown Community Council	<ul style="list-style-type: none"> • Put pressure on the clerk to change the minutes of a meeting • Passed a note to a member of the public asking for members of the public to leave a Council meeting. • Produced her own version of the minutes of the meeting 	<ul style="list-style-type: none"> • Failure to show respect and consideration • Bullying 	<ul style="list-style-type: none"> • No breach of the Code 	<ul style="list-style-type: none"> • The two versions of the conversation with the clerk in relation to the minutes were so significantly different that it was impossible to substantiate the allegation. • With regard to the second allegation

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				<p>the PSOW concluded that the Councillor's actions were "ill-advised" but did not constitute a breach of the Code</p> <ul style="list-style-type: none"> • There was no evidence to suggest that the minutes produced by the Councillor were inaccurate and that the production of the minutes did not constitute bullying of the clerk or compromising the clerk's impartiality.
Radyr and Morganstown Community Council	Disclosure of confidential information	<ul style="list-style-type: none"> • Failure to show respect and consideration • Disclosure of confidential information. 	<ul style="list-style-type: none"> • No evidence to suggest that the Councillor did disclosure confidential information. 	<ul style="list-style-type: none"> • There is little or no factual information provided merely that the PSOW did investigate a complaint but came to the view that there was no evidence to support it.

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Llantwit Major Town Council	Councillor had approached a member of the public and shouted at her and behaved in an aggressive way.	<ul style="list-style-type: none"> • Failure to show respect and consideration • Disrepute 	<ul style="list-style-type: none"> • No action to be taken 	<ul style="list-style-type: none"> • Conduct may have breached the Code but it was not in the public interest to pursue the matter as the Councillor had resigned his office.
Llanelli Rural Council	A Councillor had obstructed another Councillor's pathway and acted in a threatening manner towards the other Councillor. The conduct of both was investigated, using the PSOW's inherent jurisdiction.	<ul style="list-style-type: none"> • Failure to show respect and consideration • Disrepute • Bullying 	<ul style="list-style-type: none"> • Failure to show respect and consideration and bullying and harassment were not engaged as neither of the Councillors involved was acting in their public capacity at the time. • Both Councillors may have breached the Code of Conduct with regard to disrepute but not in the public interest to refer to the Standards Committee or the APW. 	<ul style="list-style-type: none"> • Both Councillors advised to consider their future conduct and that in the event of a subsequent breach the PSOW would take into account this earlier breach.
Kidwelly Town Council	Inappropriate behaviour at a function. It is alleged that the Councillor was drunk, made inappropriate sexual comments to a	<ul style="list-style-type: none"> • Failure to show respect and consideration • Failure to 	<ul style="list-style-type: none"> • No action needed to be taken 	<ul style="list-style-type: none"> • While the CPS did pursue a case of sexual assault, they offered no evidence

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	number of women and touched one of the women in a sexually inappropriate way	promote equality <ul style="list-style-type: none"> • Disrepute 		<p>with the complainant accepting the Councillor's formal public apology that he was intoxicated and may have behaved inappropriately.</p> <ul style="list-style-type: none"> • Had the allegation of sexual assault been proven then the PSOW expressed the view that it would have brought the Councillor and his Council into disrepute. However, because the evidence was not conclusive it was unlikely that the APW would apply a disqualification and suspension was no longer available as a sanction because the member concerned had resigned. It was

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				therefore not considered proportionate by the PSOW to refer the matter to the APW.
Magor with Undy Community Council	Councillor sought authority from the Council to represent the Council on outside bodies. At the time when the request was made, following an APW decision, the Councillor was suspended. It was claimed that the Councillor showed little regard for the decision of the APW by submitting his request when he did.	<ul style="list-style-type: none"> • Failure to demonstrate objectivity • Disrepute 	<ul style="list-style-type: none"> • No evidence of breach of the Code 	<ul style="list-style-type: none"> • PSOW concluded that the Councillor had written the letter with the intention of asking to serve on the committees / outside bodies once his period of suspension had been concluded.
Flintshire County Council	A Councillor attempted to obtain money in exchange for supporting a planning application. The complainant alleged that when he refused to make the payment, the Councillor opposed his planning application.	<ul style="list-style-type: none"> • Duty to uphold the law • Failure to declare prejudicial interest at the Planning Committee 	<ul style="list-style-type: none"> • No evidence of breach of the Code 	<ul style="list-style-type: none"> • Evidence from North Wales Police did not demonstrate that there was any evidential basis to support the allegation
Caerphilly County Borough Council	Councillor disclosed confidential information to a member of the public who was not entitled to receive it.	<ul style="list-style-type: none"> • Objectivity • Disclosure of confidential information 	<ul style="list-style-type: none"> • No breach of the Code. 	<ul style="list-style-type: none"> • The investigation indicated that there was insufficient evidence to support the allegation.

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Langstone Community Council	Councillor had used his influence to cause the Police to visit a member of the public in an attempt to “warn him off” pursuing concerns about the Councillor.	<ul style="list-style-type: none"> Selflessness / stewardship Improper use of influence 	<ul style="list-style-type: none"> No breach of the Code 	<ul style="list-style-type: none"> The Councillor believed that he and his family were being harassed and the evidence did not suggest that he sought to use his status as a Councillor to influence how the Police dealt with the matter.
Isle of Anglesey County Council	A member of the Planning Committee voted against a planning application on land adjacent to his nephew’s home.	<ul style="list-style-type: none"> Failure to declare personal and prejudicial interest 	<ul style="list-style-type: none"> Code broken but no action required 	<ul style="list-style-type: none"> Investigated and concluded that there was a personal interest but that the interest was not prejudicial.
Bridgend County Borough Council	<p>On two occasions one Councillor called another Councillor “a scab” and refused to apologise on the basis that the statement was factually accurate.</p> <p>During the investigation, evidence was produced to demonstrate that</p>	<ul style="list-style-type: none"> Failure to show respect and consideration 	<ul style="list-style-type: none"> PSOW concluded that the Code had been breached but no further action required 	<ul style="list-style-type: none"> PSOW found that the Councillor admitted her mistake, was willing to publically apologise for her comments and accepted that she

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	the allegation was untrue and the Councillor accepted that her actions had breached the Code of Conduct.			had breached the Code of Conduct. This probably had a significant impact on the PSOW's decision not to pursue the matter further.
Cwmaman Town Council	Councillor participated in planning decision (consultative capacity) and ought not to have participated owing to an interest	<ul style="list-style-type: none"> • Disclosure and registration of interest 	<ul style="list-style-type: none"> • No action needed to be taken 	<ul style="list-style-type: none"> • The Councillor may have breached the Code of Conduct but it was not in the public interest to pursue the matter.
Manorbier Community Council	<p>Councillor participated in a decision to recommend to the LPA that a planning application be refused. The Councillor's house was close to the site and she had made a number of complaints about the applicant's business on the site.</p> <p>The Councillor accepted that she had a personal interest but denied that it was prejudicial</p>	<ul style="list-style-type: none"> • Declaration and registration of interest 	<ul style="list-style-type: none"> • Likely breach of the Code and referral to the Standards Committee 	<ul style="list-style-type: none"> • The PSOW considered that given the proximity of the Councillor's home to the business, and the history of complaints, it was likely that the interest was prejudicial and he referred the matter to the local Standards

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				<p>Committee.</p> <ul style="list-style-type: none">• The Standards Committee concluded that the Councillor had breached the Code of Conduct when it was both a personal interest and a prejudicial interest and a two month suspension was imposed as well as compulsory training to be undertaken within six months.• The Councillor appealed the decision to the APW. The Panel agreed that the Councillor had breached the Code and increased the period of suspension to 3 months.

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Monmouthshire County Council	Councillor spoke in a public meeting to defend racially offensive language when it was without malice. He used examples of such language in the meeting	<ul style="list-style-type: none">• Equality• Failure to show respect	<ul style="list-style-type: none">• No breach of the Code of Conduct	<ul style="list-style-type: none">• Councillors have a duty to properly consider any motion proposed and this should not be restricted by the nature of the motion in question “no matter how sensitive”. This would interfere with freedom of expression. The Councillor did not defend racism, his comments were not overtly racist and were not directed at an individual or a group.
Tywyn Town Council	Councillor had failed to declare a personal and prejudicial interest at Caravan Park Committee when the Councillor owned a nearby caravan park.	<ul style="list-style-type: none">• Disclosure and registration of interests	<ul style="list-style-type: none">• May have breached the Code but no further action required	<ul style="list-style-type: none">• The Monitoring Officer had advised that the interest was prejudicial and the Councillor’s application for dispensation was rejected.

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				<ul style="list-style-type: none"> The Councillor tendered his resignation and the PSOW considered that his conduct may have breached elements of the Code, including failure to have due regard to the advice of the Monitoring Officer, failing to declare the interest and failing to withdraw from the meeting. However, in view of the resignation no further action was required.
Powys County Council	One Councillor approached another Councillor for an informal discussion in which the Councillor initiating the conversation had a personal and prejudicial interest.	<ul style="list-style-type: none"> Declaration and Registration of Interests 	<ul style="list-style-type: none"> No evidence of breach 	<ul style="list-style-type: none"> Each Councillor had a different version of events and there were no witnesses. It was not possible to reconcile the different accounts.

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Llangefni Town Council	Councillor breached the Code of Conduct owing to conduct towards the clerk.	<ul style="list-style-type: none"> • Respect and consideration • Bullying and harassment • Disrepute 	<ul style="list-style-type: none"> • No action necessary 	<ul style="list-style-type: none"> • No evidence of breach in relation to two of the three elements of the complaint and no action needed to be taken in respect of the other.
Rhondda Cynon Taf	Councillor misused his position to influence work to be carried out by Highways in pursuant of a personal vendetta against a member of the public/complainant.	<ul style="list-style-type: none"> • Improper use of influence • Improper use of Council resources 	<ul style="list-style-type: none"> • No evidence of a breach of the Code 	<ul style="list-style-type: none"> • Following investigation the PSOW concluded that there was no evidence to suggest that the Councillor had exerted any improper influence.
Conwy County Borough Council	<p>There was no referral here. PSOW using inherent jurisdiction while investigating a different matter.</p> <p>The Councillor had disclosed sensitive and personal information about a third party to another Councillor and to a member of the public.</p>	<ul style="list-style-type: none"> • Disclosure of confidential information 	<ul style="list-style-type: none"> • Suggestive of a breach 	<ul style="list-style-type: none"> • The Councillor admitted the breach and had acted out of concern and had apologised for his actions so not in the public interest to pursue the matter further.

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Aberystwyth Town Council	Councillor had told a member of the public about the complainant's suspension.	<ul style="list-style-type: none"> • Respect and consideration • Disclose confidential information • Disrepute 	<ul style="list-style-type: none"> • Not in the public interest to pursue the matter further 	<ul style="list-style-type: none"> • The allegation was not disputed and there was evidence of failure to show respect and consideration, disclosing confidential information and bringing the office into disrepute.
Prestatyn Town Council	Failure to declare personal and prejudicial interest in relation to a planning application.	<ul style="list-style-type: none"> • Declaration and registration of interest 	<ul style="list-style-type: none"> • Personal and prejudicial interest but not in the public interest to take further action 	<ul style="list-style-type: none"> • The planning application under consideration would have impacted on the Councillor's business premises. • However the PSOW decided that the Councillor did not seek to influence a decision even though he aired his concerns regarding access / egress to his business as a result of the planning application. The

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				PSOW also noted that the Town Council was a consultee rather than a decision maker. The PSOW concluded that the actions of the Councillor were of limited consequence. The PSOW recommended that the Councillor reflect upon his actions and attend training on the Code of Conduct.
Mumbles Community Council	<p>6 complaints</p> <p>Complaints appear to be made by one member of the public against six Community Councillors in relation to their failure to declare an interest and to participate in decisions relating to funding of a charitable organisation / organisations of which they were members.</p>	<ul style="list-style-type: none"> • Failure to disclose interests and participation • Improper use of position 	<ul style="list-style-type: none"> • There was a failure to declare a personal interest as required under the Code but not prejudicial except in two cases. 	<ul style="list-style-type: none"> • No improper use of position. Prejudicial, in two cases where the Councillors concerned held management roles within the charity. PSOW considered that it was not in the public interest to pursue any of the

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				matters any further because there was no personal gain and the members had since apologised and acknowledged their interests.