

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	17 September 2019
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 February 2019 (Issue 19) and May 2019 (Issue 20)
REPORT BY:	Lynn Ball Head of Function (Council Business) / Monitoring Officer lbxcs@anglesey.gov.uk
LINK OFFICER:	Lynn Ball Head of Function (Council Business) / Monitoring Officer lbxcs@anglesey.gov.uk 01248 752586

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 February 2019 (Issue 19) and Casebook for May 2019 (Issue 20). A summary of the cases for Issue 19 is attached at **ENCLOSURE 1** and Issue 20 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 19 (February 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
<p>Blaenau Gwent County Borough Council - 201707024</p>	<p>Ms E complained that the County Councillor may have breached the Code of Conduct by setting up a page on Social Media which Ms E said unfairly targeted her business.</p> <p>Ms E also complained that the Councillor had intercepted an email she would not otherwise have been entitled to and shared the content of the email on the Social Media page.</p>	<p>Paragraph 4(a) - Promotion of Equality</p> <p>Paragraph 4(b) - Respect for others</p>	<p>The Ombudsman found that the Councillor set up the Social Media page in her private capacity, there was no reference to her work as a Councillor and it was not in any way associated with the Council.</p> <p>The email referred to had been sent directly to the Councillor. The email was not marked confidential and the Council confirmed that it was the type of information it would share with anyone who made a complaint.</p> <p>The Ombudsman concluded that there was no evidence of a breach of the Code of Conduct.</p>	<p>Councillors are able to have private Social Media pages but must ensure that they are separate from their roles as Councillors. Any information published should not be derived from a Councillor's elected role if it is sensitive/confidential. The use of the title "Councillor" will engage the Code. The fact that the title is not used is not an automatic shield either. The PSOW would take the substance of the material/posts into account.</p>
<p>Rhondda Cynon Taf County Borough Council - 201802132</p>	<p>Mr C complained that a County Councillor breached the Code of Conduct when she signed a police statement indicating she had seen an altercation between Mr B and another person. Mr B said the Councillor retracted the information in court and that were it not for the Councillor's statement he would</p>	<p>Paragraph 9(a) - Duty to Uphold the Law</p>	<p>The Ombudsman found that the statement appeared to have been given in good faith and the account given in court was so similar that it appeared to be the Councillor's version of events.</p> <p>The Ombudsman's finding was that there was no evidence of a breach of the Code of Conduct.</p>	

ENCLOSURE 1 – Issue 19 (February 2019)

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	not have gone to court.			
Beguildy Community Council - 201801874	<p>Ms B complained that the Councillor failed to declare an interest at a meeting, when a discussion took place about survey work on damaged drains on land next to land owned by the Councillor.</p> <p>Ms B also said that the Councillor failed to show her respect and consideration.</p> <p>The Councillor acknowledged a heated discussion with Ms B but said it was not personal and he did not bear Ms B any malice.</p>	Paragraphs 10-15 - Disclosure and registration of interests	<p>The Ombudsman found that the matters raised by the Councillor were of legitimate political concern and it is not the Ombudsman’s role to inhibit robust political debate.</p> <p>Whilst the matter discussed did directly affect the Councillor’s land and therefore might amount to a technical breach of the Code of Conduct the issue was of wider significance to the community and therefore his finding was that no action needed to be taken in respect of the matters investigated.</p>	<p>This decision seems to follow the <u>Calver</u> decision in terms of the Ombudsman’s reluctance to become involved in “robust political debate”.</p> <p>Members should be careful not to rely on this decision and should disclose personal/prejudicial interests in accordance with the Code of Conduct.</p> <p>[This may be a matter which the Standards Committee wishes to take up with the PSOW, as the report seems to contradict the PSOW’s own Guidance]</p>
Powys County Council - 201706713	A complaint was received about the behaviour of a County Councillor with regard to misleading a local resident (the complainant) when the Councillor commented on raising objections to a planning	Accountability and openness Paragraph 6(1)(a) – Disrepute	The Ombudsman determined, following an investigation, that there was no evidence to suggest that the Councillor had breached the Code of Conduct during a telephone conversation with the Complainant.	

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	<p>application.</p> <p>The Complainant said the Councillor was attempting to secure an advantage for the applicant under the planning application and to deter local residents from objecting.</p>	<p>Paragraph 7 - using their position to create an advantage for themselves or another person</p>		
<p>City and County of Swansea - 201802771</p>	<p>The Ombudsman investigated a complaint that a Councillor may have breached the Code of Conduct by overclaiming mileage expenses.</p>	<p>Paragraph 9(a) - Duty to uphold the Law</p>	<p>Having considered the information available to him, the Ombudsman concluded that, whilst there was evidence that the member had incorrectly overclaimed expenses, consideration had to be given to the member's inexperience and unfamiliarity with the process; the fact that the member had also underclaimed expenses on a number of occasions; the value of the overpayments and, the member's apology and readiness to repay the overpaid money.</p> <p>In view of the above the Ombudsman found that no further action should be taken.</p>	<p>Members should take care to ensure any claims for expenses are made in accordance with Council policy and seek advice if required.</p>
<p>Powys</p>	<p>The Ombudsman investigated a</p>	<p>Paragraph</p>	<p>Having considered the information</p>	<p>There is no information in</p>

ENCLOSURE 1 – Issue 19 (February 2019)

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County Council - 201706847	complaint that a Councillor may have breached the Code of Conduct by failing to honour an undertaking given to the Adjudication Panel for Wales that he would send a written letter of apology to two colleagues.	4(a) - Promotion of Equality Paragraph 4(b) - Respect for others	available to him, including the Member's comments that he had written and posted the letters, the Ombudsman concluded that, since the Member had agreed to rewrite and send the letters again, no further action should be taken.	the Ombudsman's Casebook as to which APW case this relates, but a search for APW decisions involving Powys County Council leads to the following: https://apw.gov.wales/about/upcoming-tribunals/Cllr-Edwin-Roderick-2019/?skip=1&lang=en https://apw.gov.wales/about/upcoming-tribunals/Cllr-Edwin-Roderick-2019/?lang=cy
Sully and Lavernock Community Council – 201705246	The Ombudsman received a complaint that, during a meeting of Sully and Lavernock Community Council, a member had breached the Code of Conduct by making ageist and discriminatory comments about a candidate that had applied to be co-opted to the Council.	Paragraph 4(a) - Promotion of Equality Paragraph 4(b) - Respect for others	Information was sought from the Council and interviews were undertaken with witnesses who were at the meeting, and the Member. The investigation found that the Member had made such comments, but that there was no evidence to suggest that his comments had a bearing on the outcome for the candidate. Further to this, the Member had only been elected to the Council for six weeks, the Code had not been	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.

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			<p>explained to him and he had not had any training on its content. Additionally, when interviewed, the Member apologised for the comments, said he would not make such comments again and confirmed that he had since had training on the Code.</p> <p>Whilst the Ombudsman suggested that the Member consider attending an equality and diversity training course, he concluded that it was not in the public interest to pursue the matter and that no further action needed to be taken in respect of the matters complained about.</p>	<p>The course is available on the following link: https://learning.wales.nhs.uk/login/index.php</p>
<p>Pembrey & Burry Port Town Council – 201704860</p>	<p>The Ombudsman received a complaint that a Member of Pembrey & Burry Port Town Council had breached the Code of Conduct by taking part in discussions and a vote at two meetings on matters in relation to a former member of Council staff who had recently made a complaint about the Member.</p>	<p>Paragraphs 10-15 - Disclosure and registration of interests</p>	<p>The Member was interviewed, as was the Councillor who submitted the complaint, and a further member of the Council.</p> <p>At interview, the Member said he sought advice from the Clerk as to whether he could participate in discussions and he was advised that he could. He also sought his own legal advice on the matter. The Member said that he was unaware that a close personal association could give rise to</p>	<p>Members should remember that they may have a close personal association with someone with whom they are in dispute .</p>

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			<p>a personal interest where it related to someone with whom a member may be “in dispute”. The Member said that at the time he did not feel that he was in dispute with the member of Council staff. However, the Member acknowledged that he would handle similar matters very differently in future.</p> <p>The Ombudsman concluded that the Member’s conduct in respect of both meetings was suggestive of a breach of the paragraphs of the Code of Conduct which require him to make a declaration of interest and leave the room as appropriate. However, in view of the Member’s actions being misguided rather than intentional, the Ombudsman concluded that it would not be in the public interest to refer the matter to the standards committee.</p>	
Gwynedd Council - 201702769	The Ombudsman received a complaint that a Councillor had breached the Code of Conduct for members when he failed to declare his beneficial interest in properties registered in his name and stated that he had no beneficial interests in land in the	Paragraphs 10-15 - Disclosure and registration of interests [18.5.1 and	Members must, in all matters, consider whether they have a personal interest, and whether the Code of Conduct requires them to disclose that interest. Members must regard themselves as having a personal interest in any business of the authority if it relates to or is likely to affect any land in which	Members are reminded of their obligations in relation to the registration of certain personal interests in the Register of Interests, in accordance with the Code of Conduct.

ENCLOSURE 1 – Issue 19 (February 2019)

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	<p>Council area.</p> <p>It was alleged that the Councillor failed to sign and return the Council's declaration of interests form, despite numerous opportunities to do so.</p>	<p>18.4.1(b) of the Gwynedd Code of Conduct.]</p>	<p>they have a beneficial interest, and which is in the area of their authority. Members must register financial and other interests within 28 days of their election to office by providing written notification of their interests to authority's Monitoring Officer.</p> <p>As the Councillor was a new member at the time the events took place, it was the first time that the Councillor's conduct had been brought to the Ombudsman's attention and had since correctly completed the declaration of interest form, the Ombudsman decided (following an investigation) not to take further action against the Councillor.</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-Rhagfarnol.pdf</p> <p>Instructions on how Members can update the Register can be seen here.</p> <p>http://monitor.anglesey.gov.uk/Journals/j/n/s/How-to-update-your-register-of-interest-form.pdf</p> <p>http://monitor.ynysmon.gov.uk/Journals/x/t/v/Sut-i-ddiweddaru-eich-cofrestr</p>

ENCLOSURE 1 – Issue 19 (February 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
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Llandegla Community Council – 201704189	A complaint was received about the behaviour of a member of Llandegla Community Council at two Council meetings and also about his conduct in submitting a funding application without the Council's authority.	Integrity Paragraph 4- Respect and consideration, bullying and harassment Paragraph 6 - disrepute.	The Ombudsman determined, following an investigation, that there was no evidence to suggest that the Councillor had breached the Code at the second of the two meetings and in respect of the funding application. He found that no action needed to be taken in respect of his behaviour at the first meeting.	
Guilsfield Community Council – 201707849	The Ombudsman investigated a complaint that a member of Guilsfield Community Council may have breached the Code of Conduct by misleading members of the public regarding the Council's consideration of a planning application and in relation to an interest he declared during Council meetings on 21 November and 20 December 2017.	Accountability and openness	The Ombudsman concluded that there was no evidence to suggest that the Councillor had advised any member of the public, other than in good faith, and there was no evidence that he deliberately set out to mislead any member of the public. Consequently, he decided that it was not in the public interest to pursue this issue any further. The Ombudsman agreed, given that the Councillor had declared an interest in the planning application at the two meetings, that he had a personal interest in it. He further considered that a reasonable member of the public, who had knowledge of the interest, would be likely to consider it so	Members should consider carefully if they have a personal / prejudicial interest in a matter. A Briefing Note on Personal / Prejudicial Interests can be seen here. http://monitor.anglesey.gov.uk/Journals/n/h/o/Personal-and-Prejudicial-Interest---A-Briefing-Note-to-Members.pdf http://monitor.ynysmon.gov.uk/Journals/c/f/c/Nodyn-

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			<p>significant that it would be likely to prejudice his judgment. The Councillor should, therefore, have withdrawn from the room when the business was being discussed. However, although the Councillor remained present, there was no evidence that he used his position improperly, disrupted the democratic process or influenced the Council's discussion and ultimate decision on the Application.</p> <p>The Ombudsman therefore decided that no action needed to be taken in respect of the matters investigated, although he recommended that the Councillor should consider carefully his duties under the Code of Conduct, particularly the obligation to withdraw from a meeting when an interest is prejudicial, and seek advice if he was unsure of its implications.</p>	<p>Briffio-i-Aelodau---Diddordeb-Personol-a-Rhagfarnol.pdf</p> <p>Members should be careful not to rely on this decision and should disclose personal/prejudicial interests in accordance with the Code of Conduct.</p>

ENCLOSURE 2 – Issue 20 (June 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Pembroke Dock Town Council - 201706079	<p>The Ombudsman received a complaint that a Member of the Town Council had breached the Code of Conduct for members. It was alleged that the Member had acted in a disrespectful and bullying manner towards the previous Clerk to the Council, both in Council meetings and when communicating with her by email, between 2014 and her resignation from the Council in 2017.</p> <p>Information was sought from the Council, Pembrokeshire County Council and the Member. Interviews were also undertaken with relevant witnesses.</p>	Showing respect and consideration, bullying and harassment, bringing the Council into disrepute and a Member's duty to disclose an interest if they have one in any Council business.	The Member had not acted in a disrespectful or bullying manner towards the Clerk at meetings or when communicating with her by email. The evidence was not suggestive of a breach of the Code and the Member had not brought the Council into disrepute. The Ombudsman further concluded that it was likely that the Member may have breached the Code when failing to declare a personal interest at meetings.	
Saltney Town Council – 201800177, 201800178, 201800179, 201800180	The Ombudsman received a complaint that Members of Saltney Town Council had breached the Code of Conduct by engaging in an argument with other councillors in front of members of the public, following a Town Council meeting.	Showing respect and consideration, bullying and harassment, bringing the Council into disrepute .	The Ombudsman found that the behaviour complained about was below the standard that he would expect from elected members but that their behaviour was petty and immature and therefore to take further action and use further public resources would not be in the public	Members should be mindful of how they conduct themselves, in particular in public meetings.

ENCLOSURE 2 – Issue 20 (June 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
			interest.	

