

<b>CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>COMMITTEE:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>15 December 2020</b>
<b>REPORT TITLE:</b>	<b>Decisions by the Public Services Ombudsman for Wales</b>
<b>PURPOSE OF THE REPORT:</b>	<b>To advise the Committee of All Wales decisions published by the Public Services Ombudsman for Wales in his Casebook for October – December 2019 (Issue 23).</b>
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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 October-December 2019 ([Issue 23](#)) [**ENCLOSURE 1**].

Though cases are usually reported every quarter no report has been published for matters arising during 2020.

## 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**.

ENCLOSURE 1 – Issue 23 (October-December 2019)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>Merthyr Tydfil County Borough Council – Case Number: 201805269</p>	<p>The Ombudsman received a complaint that a Member of Merthyr Tydfil County Borough Council had breached the Code of Conduct by voting on the setting of the rate of council tax at a meeting of full Council in March 2018 when he was in arrears of council tax for a former home.</p> <p>It is an offence under s106 of the Local Government Finance Act 1992 for a member to vote on setting the rate of council tax when they are themselves in arrears.</p> <p>The Ombudsman obtained relevant documentary evidence, including copies of the council tax records for the property involved. He also viewed the webcast for the meeting of full Council and interviewed the Council’s Monitoring Officer and the Member.</p>	<ul style="list-style-type: none"> <li>• Paragraph 6(1)(a) relating to bringing the authority into disrepute;</li> <li>• Paragraph 10(1) in relation to the requirement to consider if there is a personal interest to disclose;</li> <li>• Paragraph 11(1) in relation to the disclosure of personal interests at meetings;</li> <li>• Paragraph 14(1)(a) in relation to the requirement not to participate in a meeting when the business in which you have a prejudicial interest arises;</li> <li>• Paragraph 14(1)(b) in relation to the requirement not to exercise executive functions in relation to a matter in which you have a prejudicial interest;</li> <li>• Paragraph 14(1)(c) in relation to the requirement not to try and influence a decision in which you have a prejudicial interest.</li> </ul>	<p>The Ombudsman considered that the evidence suggested that the Member had breached the Code as he accepted that he had not declared an interest and had voted on setting the council tax rate. The Member also accepted that at the time of that meeting he was in arrears of council tax for the former property.</p> <p>However, the Ombudsman decided that it would <u>not be in the public interest to pursue the matter given the significant mitigating circumstances in this particular case</u>. These included the personal circumstances that had led to the Member incurring the original debt and the fact that the member was inexperienced. He had apologised, paid off the arrears and said that it would not happen again.</p> <p>In view of the mitigating circumstances, the Ombudsman concluded that no further action needed to be taken.</p>	<p><u>Members should not rely on this case</u> as a way of defending voting on the Budget when in council tax arrears.</p> <p>Only limited information is provided in the case summary. However, it shows that the PSOW continues to use the two stage test and the threshold for the “public interest” element (the second stage) is high.</p>

**ENCLOSURE 1 – Issue 23 (October-December 2019)**

<b>Name of Council</b>	<b>Summary of Complaint</b>	<b>Relevant Provision of Code</b>	<b>Decision Summary</b>	<b>Learning Points for Members</b>
<p>Merthyr Tydfil County Borough Council – Case Number: 201807334</p>	<p>The Ombudsman received a complaint that a Member had breached the Code of Conduct; it was alleged that, contrary to the Monitoring Officer’s advice that a conflict of interest existed, the Member accepted a specific cabinet position. It was also alleged that the Member had failed to declare an interest in such matters.</p> <p>During the investigation, information was sought on the Monitoring Officer’s advice, and the Member was interviewed. The Member explained that he had considered the advice of the Monitoring Officer and was confident that an appropriate strategy had been formulated to manage and mitigate any potential conflicts of interest. The Member said that he and the Leader of the Council had undertaken research to identify where similar scenarios had occurred in other councils and the impact it had on those authorities. The Member also produced evidence of declarations of interest that he had made.</p>	<p>Disclosure and registration of interests under paragraphs 10 - 12.</p>	<p>Although the Ombudsman was satisfied that the Member had regard to the Monitoring Officer’s advice, the lack of transparency in relation to aspects of the appointment (including the timing of the Member’s resignation from employment which would have conflicted with the appointment) was of concern and caused others to reasonably question the appointment.</p> <p>As the Member had eventually resigned from his former employment and taken up his role the Ombudsman found that it was not in the public interest to pursue the matter further and found that no further action needed to be taken. Given the potential for a conflict of interest to arise, the Member was reminded of the need to seek advice from the Monitoring Officer in future matters.</p>	<p><u>Members should not rely on this case</u> as a way of defending potential situations of conflict between employment and their role as Councillor.</p> <p>Only limited information is provided in the case summary. However, it shows that the PSOW continues to use the two stage test and the threshold for the “public interest” element (the second stage) is high.</p> <p>Members are reminded to contact the Monitoring Officer for advice where they are unsure of Code of Conduct matters including, as in this case, the declaring of personal/prejudicial interests.</p>