

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	16 June 2021
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 Casebook for January - December 2020 (Issue 24) published in April 2021.
REPORT BY:	Lynn Ball Director of Function (Council Business) / Monitoring Officer lbxcs@ynysmon.gov.uk 01248 752586
LINK OFFICER:	Lynn Ball Director of Function (Council Business) / Monitoring Officer lbxcs@ynysmon.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 January-December 2020 ([Issue 24](#)) **[ENCLOSURE 1]**.

Though cases are usually reported every quarter no report was published during 2020. This report refers to cases decided during 2020, as published in April 2021.

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 24 (January - December 2020)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
1. Wrexham County Borough Council - Case Number: 201804590	The Ombudsman received a complaint that the conduct and behaviour of a Member of Wrexham Council had brought the Council into disrepute in breach of the Code of Conduct. The Ombudsman investigated the matters complained about. Information was provided by relevant parties including the Council.	Duty to uphold the law	After careful consideration of the evidence obtained during the investigation the Ombudsman determined that it would not be in the public interest to pursue matters further and that no action should be taken in respect of the matters investigated.	Only limited information is provided in the case summary. There is not enough evidence here to consider any learning points.

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>2. Pembrey & Burry Port Town Council - Case Number: 201906707</p>	<p>The Ombudsman received a complaint that a Member of Pembrey & Burry Port Town Council had breached the Code of Conduct by failing to show respect and consideration for others, used bullying behaviour, and behaved in a manner which could reasonably be regarded as bringing the Council into disrepute.</p> <p>During the early stages of the investigation, the Member provided an account. He said that he believed his actions to have been justified and offered an apology if his assertiveness had been perceived differently by the Complainant.</p>	<p>Promotion of equality and respect</p>	<p>The Ombudsman considered the Member's response and his offer of an apology to be sufficient to resolve the complaint. The Ombudsman, therefore, considered that no action needed to be taken in respect of the matters investigated.</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. Showing remorse can assist members who have breached the Code but may not always be enough for the Ombudsman to consider no further action is required.</p>

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>3. St Donats Community Council - Case Number: 201905525</p>	<p>The Ombudsman received a complaint that a Member of St Donats Community Council had breached the Code of Conduct. It was alleged that the Member failed to declare a personal and prejudicial interest when she sat on the Interview Panel during an interview for the role of Co-opted Member of the Community Council.</p>	<p>Disclosure and registration of interests</p>	<p>The Ombudsman found that the Member had a personal interest in the interview by virtue of her relationship with the applicant's estranged brother and admission that there was tension between them. It was the Ombudsman's view that a member of the public, with knowledge of the circumstances, would regard the Member's interest as so significant as to prejudice her judgment of the public interest.</p> <p>The investigation established that the Member was advised by the Clerk that she was not required to declare an interest in the interview. Whilst a decision to declare an interest is the responsibility of each individual member, it was not unreasonable for the Member to have acted upon the Clerk's advice.</p> <p>The investigation considered whether the Member's failure to declare a personal and prejudicial interest caused any harm and whether it affected the decision to appoint to the role of Co-opted Member.</p> <p>There was no documentary evidence or written record of the</p>	<p>Members should not rely on this case as a way of defending taking part in decisions when they have a personal/prejudicial interest in a matter.</p> <p>The fact the member had obtained the Clerk's advice on the interest was of assistance to the member in defending this allegation. However, it is clear, whether or not to declare an interest is the responsibility of each member.</p> <p>The case 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>interviews. Therefore, the Ombudsman's decision was guided by the fact that the decision to appoint the successful applicant was taken unanimously by the Interview Panel. On the basis of the information available it was not considered that the applicant's application was adversely affected by the Member's presence and involvement in the interview process.</p> <p>In view of these factors it was concluded that the Ombudsman did not need to take further action in the public interest. However, he recommended to the Clerk of the Council that training on members' interests and their obligations under the Code of Conduct is provided to the Council.</p>	
--	--	--	--	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>4. St Harmon Community Council - Case Number: 201903933</p>	<p>The Ombudsman received a complaint that a member of St Harmon Community Council had breached the Code of Conduct for members by failing to show respect and consideration to others, and that he had failed to take appropriate action in respect of a personal and prejudicial interest he had in a co-option process the Council undertook.</p>	<p>Disclosure and registration of interests</p>	<p>During the course of the investigation, information was sought from the Council as well as from a number of witnesses.</p> <p>The evidence gathered did not substantiate that the Member's behaviour had demonstrated a failure to show respect and consideration to others such that could be considered a breach of the Code.</p> <p>The evidence suggested that the Member had failed to take appropriate action in relation to a personal and prejudicial interest he had in the co-option process. However, the Member did not influence the decision taken on co-option in any way; he had already acknowledged, accepted and apologised for his actions and he had taken steps to seek training on his obligations under the Code.</p> <p>Therefore, the Ombudsman determined that no action needed to be taken in respect of the matters investigated.</p>	<p>Members should not rely on this case as a way of defending taking part in decisions when they have a personal/prejudicial interest in a matter.</p> <p>The case 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>

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>5. Carmarthenshire County Council - Case Number: 201900874</p>	<p>The Ombudsman received a complaint that a Member of Carmarthenshire County Council had breached the Code of Conduct. It was alleged that the Member had failed to treat members of staff at the Council with respect and consideration, had breached confidentiality, and had brought the office of Councillor into disrepute in relation to 2 incidents which occurred during the selection process for the Council's new Chief Executive.</p> <ul style="list-style-type: none"> - The first incident was that the Member had deliberately informed the unsuccessful candidate for the post that they had not been successful, thus circumventing the Human Resources ("HR") procedures in place. - The second incident was that the Member had ignored a clear instruction that Councillors should not publicise the identity of the successful candidate for 30 minutes. 	<p>Integrity</p>	<p>In relation to the two incidents:</p> <ul style="list-style-type: none"> - The Ombudsman interviewed a number of witnesses and found that the evidence suggested the Member had accidentally informed the unsuccessful candidate that they had not been successful and had not intended to circumvent HR procedures. The Ombudsman accepted that the Member had shown remorse and had apologised. The Ombudsman determined that no breaches of the Code had occurred as this had been a genuine error by the Member. - The Ombudsman determined that there was evidence that the Member had ignored a clear instruction not to publicise the identity of the successful candidate, and that this may have amounted to a breach of the Code. <p>The Member had not considered the impact on the candidates, their wider friends and families, or the staff employed by the Council thereby failing to show due respect when publishing the result. Further, the information had been confidential until the</p>	<p>Members should not rely on this case as a way of defending the disclosure of confidential information obtained in their role as Members.</p> <p>The case 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>proper procedures to publicise it had been completed, which the Member had pre-empted.</p> <p>The Ombudsman determined that these actions were capable of bringing the office of Councillor into disrepute. However, the Ombudsman was not persuaded that it would be proportionate and in the public interest to make a referral to the Standards Committee, due to the short period of time the information was disclosed before the official announcement and taking into account the opinions of the candidates that the effect on them was limited; however, he considered that it had been appropriate for the matter to be referred to him.</p> <p>The Ombudsman found that no action needed to be taken in respect of the matters investigated.</p>	
--	--	--	--	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>6. Llantwit Fardre Community Council - Case Number: 201904216</p>	<p>The Ombudsman received a complaint that a Member of Llantwit Fardre Community Council had breached the Code of Conduct by allegedly making several accusations against serving Community Councillors during a Community Council meeting on 24 September 2019.</p> <p>It was further alleged that the Member then shared a written copy of his comments, in which he accused Community Councillors of bullying the former Clerk of the Community Council, with members of the press and public present</p>	<p>Promotion of equality and respect</p> <p>The investigation considered the following paragraphs of the Code:</p> <ul style="list-style-type: none"> • Paragraph 5(a) – disclosing confidential information. • Paragraph 6(1)(a) – disrepute. • Paragraph 6(1)(c) – reporting breaches of the Code to the Monitoring Officer. • Paragraph 6(1)(d) – vexatious, frivolous or malicious complaints. • Paragraph 8(a) – having regard to the advice of the authority’s officers. 	<p>The investigation established that the Member addressed the Community Council at its meeting on 24 September 2019, where members of the press and public were present. There was no evidence to suggest that the Member disclosed confidential information during the meeting.</p> <p>The investigation found that during his address, the Member made several accusations against other members of the Council. Rather than airing his concerns in public the Member should have raised his concerns through the proper processes available for doing so. Raising accusations in such a public forum when those being accused did not have a fair opportunity to respond could amount to a breach of paragraph 6(1)(a) of the Code of Conduct.</p> <p>The investigation found that the Member disregarded advice from the Clerk of the Council and that his actions were in breach of paragraph 8(a) of the Code.</p> <p>When deciding whether to take further action in relation to these possible breaches of the Code of Conduct, the Ombudsman carefully</p>	<p>Members should not rely on this case.</p> <p>The involvement of the Monitoring Officer and the Chair of the Standards Committee in subsequent matters at this Community Council was considered to be sufficient for the Ombudsman not to pursue the matter further.</p>

			<p>considered whether it was in the public interest for him to do so. The Ombudsman considered recent steps taken by Rhondda Cynon Taf's Monitoring Officer and the Chair of the Council's Standards Committee to meet with the majority of the members of the Council in February to encourage better working relationships within the Council. It was understood that a collective agreement was reached on taking a fresh approach on how to deal with situations where disagreement had previously escalated into personal attacks. The Member was present at this meeting. As the events which were considered as part of this investigation took place some months before the meeting with the Monitoring Officer and Chair of the Standards Committee, it was not in the public interest to pursue this investigation further.</p>	
--	--	--	---	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>7. Torfaen County Borough Council - Case Number: 202000681 & 202000667</p>	<p>The Ombudsman received complaints that an elected Member of Torfaen County Borough Council had breached the Council's Code of Conduct for Members. Two Police Community Support Officers ("PCSOs") complained that, on 7 June 2020, the Member approached them at Cwmbran Boating Lake ("the Lake") in an aggressive manner. They said that the Member was shouting and demanding that they dealt with people who were angling at the Lake whilst it was the closed season. They said that the Member did not accept that it was not a policing matter and identified himself as a Councillor to try and use his position to intimidate them.</p>	<p>Promotion of equality and respect</p>	<p>The Ombudsman received an account from the Member, obtained a witness account from another Councillor who was present at the Lake, and obtained information from Gwent Police. On the balance of probabilities, the evidence indicated that the Member may have breached paragraph 4(b) of the Code by speaking to the PCSOs in a raised voice.</p> <p>The investigation found that there was no dispute that the Member identified himself as a Councillor. The Member explained that he had done so to explain his knowledge of angling legislation.</p> <p>The Ombudsman found that the Member did contact Gwent Police to seek clarification regarding the enforcement of angling legislation and to raise a concern that the PCSOs had not spoken to, or provided advice, to the anglers as they had informed him.</p> <p>The Ombudsman did not find sufficient evidence that the Member had displayed bullying and/or harassing behaviour, or that he had brought the authority into disrepute.</p>	<p>The Ombudsman is encouraging refresher training on the Code.</p>

			<p>The Ombudsman found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue matters further.</p> <p>The Ombudsman asked the Member to be mindful of how his conduct may be perceived when acting in his role as a Councillor and suggested that he complete refresher training on the Code.</p>	
--	--	--	--	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>8. Glynneath Town Council - Case Number: 201904472</p>	<p>The Ombudsman received a complaint that a Member of Glynneath Town Council had breached the Council's Code of Conduct. A member of the public complained that when the Member entered Glynneath Town Hall ("the Hall") on 20 September 2019 she had been aggressive and shouted at them, and that the Member had threatened to "put paid" to their Hall Hire Agreement with the Council.</p>	<p>Promotion of equality and respect</p>	<p>The Ombudsman obtained conflicting witness statements from 3 members of the public, as well as the complainant and the Member.</p> <p>On balance, the evidence obtained suggested that the Member may have breached paragraph 4(b) of the Code by shouting at the member of the public. The Ombudsman did not find sufficient evidence that the Member had displayed bullying behaviour, or that they had brought their authority into disrepute. Furthermore, there was no supporting evidence that the Member had threatened the complainant's future hire of the Hall, nor had the Member acted on such a threat.</p> <p>The Ombudsman found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue further enquiries into the matter, given the conflicting nature of the evidence obtained.</p> <p>The Ombudsman recommended to the Council that it should arrange training on the Code for its Members as soon as is practicable.</p>	<p>The Ombudsman is encouraging training on the Code of Conduct for Members.</p>

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>9. Tywyn Town Council - Case Number: 201900952</p>	<p>An officer of Tywyn Town Council complained that a member had written a disrespectful letter to a third party.</p> <p>The member asserted that they were not acting in their capacity as member when writing the letter.</p>	<p>Promotion of equality and respect.</p> <p>The Ombudsman's investigation considered whether the content of the letter may have breached paragraphs 4(b) and 6(1)(a) of the Code of Conduct for members ("the Code").</p>	<p>The Ombudsman found that, as the letter referred to Council business, it was reasonable to conclude that the member gave the impression they were acting in their capacity as a member of the Council when they wrote the letter. The Ombudsman found that the majority of the comments made by the member were political in nature. However, the member's comments to the third party recipient of the letter were considered to be disrespectful. Whilst the Ombudsman considered that those comments were suggestive of a breach of paragraph 4(b) of the Code (failure to show respect), having taken into consideration the information provided by the recipient and the wider evidence available, he did not consider it would be proportionate or in the public interest for any further action to be taken.</p> <p>The Ombudsman did not consider that there was evidence to suggest that the content of the letter sent by the member was suggestive of a breach of paragraph 6(1)(a) of the Code (brining office or authority into disrepute).</p>	

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>10. Mumbles Community Council - Case Number: 201904820</p>	<p>The Ombudsman received a self-referred Code of Conduct complaint from a Member of the Community Council because they had been named in a Welsh Audit Report concerning unauthorised Council expenditure.</p>	<p>Duty to uphold the law.</p> <p>The Ombudsman considered whether the Member may have breached paragraph 7 (b) (i), (ii), (iii) of the Code for use of Council resources which was imprudent, in breach of the authority's requirements and unlawful.</p>	<p>The Ombudsman's investigation found that a Planning Consultancy had billed the Council for work which had not been agreed, and the Planning Consultancy said it had been instructed by the Member. The Member said at the time of the events he was new to the Council and he thought the work undertaken for the Council by the Planning Consultancy had been part of a previously agreed arrangement with the Council. The Member said he had not worked with planning consultants before and he had not realised that his specific communications with them would incur additional costs.</p> <p>The Ombudsman's investigation found that the Member had a responsibility to fully understand the terms of the Council's arrangements with the Planning Consultancy, and the Member's actions and failure to do so, could reasonably be considered as a potential breach of paragraph 7(b) (i), (ii), (iii) of the Code.</p> <p>However, the Ombudsman also found that whilst the Clerk had suggested the Member should contact the Planning Consultancy, the Member had not been provided</p>	

			<p>with clear guidance on the implications of doing so, and that the Member's communications had a limited impact on the overall expenditure. In addition, Audit Wales had not engaged with the Member or the Planning Consultancy to establish what instruction it attributed to the Member.</p> <p>Having taken into consideration the evidence available and the information provided by the Member, the Ombudsman did not consider it would be proportionate or in the public interest for any further action to be taken.</p>	
--	--	--	--	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>11. Denbighshire County Council - Case Number: 201806601</p>	<p>The Ombudsman received a complaint that a Member of Denbighshire County Council had failed to observe the Code of Conduct for members of the Council. It was alleged that the member abused his position by visiting a member of the public's place of work and complaining to her employer about a private altercation between her and a constituent in a local store car park.</p>	<p>Objectivity and propriety</p>	<p>The Ombudsman determined that there was evidence to suggest that the Member had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The Ombudsman determined that the member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Council's Code of Conduct.</p> <p>The Ombudsman referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee. The Ombudsman's report was issued in September 2020.</p> <p>A review of the Denbighshire County Council's website does not include a link to a meeting at which this report has been considered to date. https://moderngov.denbighshire.gov.uk/ieListMeetings.aspx?CommitteeId=212&LLL=0 However, it is clear from the Minutes of the December 2020</p>	

			meeting that a "special standards committee hearing" had taken place. No further information has been published.	
--	--	--	--	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>12. Laleston Community Council - Case Number: 201807411</p>	<p>The Ombudsman received a complaint that a Former Member of Laleston Community Council had failed to observe the Code of Conduct for Members of the Council. It was alleged that the Former Member had misused Council funds via unauthorised cashpoint withdrawals and debit card transactions between November 2018 and January 2019. A police investigation took place, and the Former Member subsequently resigned from the Council.</p> <p>The Ombudsman's investigation established that at the time of the events the Former Member had taken on extra duties and been paid agreed allowances by the Council. It was found that the Former Member then took charge of the Council's debit card and used it for purchases and cash withdrawals which were in excess of what he already received and could not be accounted for. The Former Member said he had accessed the Council's finances in this way because he felt he was</p>	<p>Duty to uphold the law</p>	<p>The Ombudsman determined that the Former Member may have breached the Council's Code of conduct, in particular, paragraphs 7(a) and 7(b) i), ii), iii), iv) and vi) as he has sought to gain a personal and financial advantage via unauthorised access to Council finances, and misused Council funds.</p> <p>The Ombudsman also found that the Former Member's actions and conviction could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.</p> <p>The Ombudsman referred his investigation report to the Monitoring Officer of Bridgend County Borough Council for consideration by its Standards Committee.</p> <p>A review of Bridgend County Borough Council's website does not include substantive information in relation to the meeting at which this report has been considered to date.</p> <p>It is clear from the Minutes of the</p>	

	entitled to the funds; however, he did not provide any further information to suggest his transactions were for the benefit of the Council.		25.02.2021 meeting that the Ombudsman's Investigation and report was considered but the item was considered with the press and public excluded on the basis the item relates to an individual. https://democratic.bridgend.gov.uk/ieListDocuments.aspx?CId=133&MId=4036&Ver=4&LLL=0 No further information has been published.	
--	---	--	--	--

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Learning Points for Members
<p>13. Sully and Lavernock Community Council - Case Number: 201901994</p>	<p>The Ombudsman received a complaint that a member of Sully and Lavernock Community Council failed to observe the Code of Conduct for elected members. It was alleged that the Member made a series of public posts, on the social media platform Facebook, which could have the potential to damage the reputation of the Council.</p>	<p>Integrity</p>	<p>The Ombudsman found that 3 public posts, dated between 10 January and 11 March 2019, which made reference to high profile female politicians, were gratuitously offensive and could reasonably be regarded as bringing the Councillor's Office or Authority into disrepute which was suggestive of a breach of paragraph of 6(1)(a) of the Code of Conduct. The Ombudsman considered that the language used went beyond political expression and was so egregious that, should a breach of the Code of Conduct be found and a sanction imposed, it would be a proportionate interference with the Councillor's right to freedom of expression.</p> <p>The Ombudsman also found that the Councillor had failed to supply evidence he claimed to hold in respect of the privacy of the posts and that, in refusing to provide information, he had failed to comply with a request in connection with the investigation which was suggestive of a breach of paragraph 6(2) of the Code of Conduct.</p> <p>The Ombudsman referred his investigation report to the</p>	

			<p>Adjudication Panel for Wales for its consideration.</p> <p>The APW report can be seen here. APW/002/2020-021/CT: Councillor Philip Baguley</p> <p>This case is subject to a separate report (agenda item 7) presented to the Standards Committee on the APW's recent decisions.</p>	
--	--	--	--	--