

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	12.09.2018
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 his Casebooks for January 2018 and May 2018
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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 January 2018](#) and [Casebook for May 2018](#). A summary of the cases from the January Casebook is attached at **ENCLOSURE 1** and the May Casebook in **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.

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** and **ENCLOSURE 2**.

ENCLOSURE 1

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Cardiff Council	An allegation that a Councillor had made comments to a former councillor on two occasions about a local religious association (no further information in the report regarding the comment made). The member strongly denied the allegations. There were no witnesses to either of the conversations.	Paragraphs 4(a) - equality, 4(b) - failure to show respect and consideration, 4(d) - impartiality and 6(1)(a) - bringing the role of councillor and the authority into disrepute.	<ul style="list-style-type: none"> No evidence of breach of the Code 	<ul style="list-style-type: none"> Members should be aware of matters relating to equality including religion
Merthyr Tydfil County Borough Council	<p>A complaint was made that the Councillor had made comments about a member of the public in a Facebook messenger group chat (no further information in the report regarding the comment made)..</p> <p>The Facebook messenger group in which the Councillor posted her comments consisted of three members.</p> <p>The Councillor had shown that she regretted her actions and when she realised that the subject of her comments had become aware of what she had posted, she provided an apology.</p>	Paragraph 6(1)(a) - bringing the role of councillor and the authority into disrepute	<ul style="list-style-type: none"> No breach of the Code The Ombudsman considered that whilst the Councillor's actions may have brought herself into disrepute, she had not brought her office or authority into disrepute. 	<ul style="list-style-type: none"> The Councillor was advised of her responsibility to take care when expressing her personal opinions.

ENCLOSURE 1

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Tywyn Town Council and Gwynedd Council	Councillor X complained that Councillor Y of Tywyn Town Council and Gwynedd Council had made personal allegations about her (no further information in the report regarding the comment made). Councillor X provided evidence that Councillor Y made comments about her in various emails, which he had sent to members of Tywyn Town Council and Gwynedd Council, and a member of the press.	Paragraphs 4(b) - failure to show respect and consideration, 4(c) - bullying and harassment, and 6(1)(a) - bringing the role of councillor and the authority into disrepute.	<ul style="list-style-type: none"> No breach of the Code In relation to 6(1)(a), the Ombudsman considered it was “unwise” for the Councillor to have sent the email to a member of the press, but it did not appear that the email was acted upon or shared further and so the consequences of the Councillor’s actions were not sufficiently serious to have brought his office or authority into disrepute. 	<ul style="list-style-type: none"> The Councillor was advised of his responsibility to be mindful of how his comments are perceived by others in future.
Llansannan Community Council	Mr X complained that the Councillor had asked Mr X to leave a meeting of the Community Council and used the words “for your own safety,” which Mr X considered to be a threat.	Paragraphs 4(b) – failure to show respect and consideration, and 4(c) – bullying and harassment.	<ul style="list-style-type: none"> No breach of the Code There was no evidence to suggest that the Councillor’s behaviour towards Mr X was in any way threatening and the Ombudsman was satisfied that his actions were reasonable under the circumstances. 	<ul style="list-style-type: none"> Members should be mindful of how their comments are perceived by others.

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Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Conwy County Borough Council	The Councillor had submitted a written objection, in an official capacity, to a planning application which the complainants had made to the Council. The Councillor lives near the application site, and could be personally affected by it.	Paragraph 12- failure to declare a prejudicial interest	<ul style="list-style-type: none"> • Breach of the Code given the proximity of the development site to the Councillor's home and the fact his objections were sent from his Council email address and signed off "Councillor [Name]". • However, no action was taken by the Ombudsman on the basis that the Councillor had shown remorse and apologised, his explanation that he had accidentally selected his Council email address from a drop down box when writing his email was plausible, he had acted swiftly to withdraw his objection when concerns were raised, and his actions did not adversely affect the planning application, which was granted permission. 	<ul style="list-style-type: none"> • Members should consider whether he/she is acting in a personal or official capacity • Members need to be confident they understand the difference between a personal interest and a personal and prejudicial interest • The outcome of this case shows the emphasis the Ombudsman places on Members taking mitigating actions i.e. showing remorse and apologising for their actions.

ENCLOSURE 2

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Llanbedrog Community Council	<p>An allegation that a Councillor had breached the Code by failing to leave the room when his planning application was discussed at a meeting of the Community Council.</p> <p>The Councillor had declared an interest and did not take part in the discussion but he failed to leave the meeting room, thus breaching the Code as his interest was prejudicial.</p>	Paragraphs 10, 11 and 12 in relation to personal and prejudicial interests.	<ul style="list-style-type: none"> • No action needed to be taken in respect of the complaint. • In not leaving the meeting room the Councillor was in breach of the Code of Conduct but the breach was mitigated on the basis the Councillor did not take part in the discussion and, the item was so brief, there was little opportunity for the Councillor to leave. • Also, the Community Council was not the final decision-maker on planning matters and so the Councillor's actions were of limited consequence. 	<ul style="list-style-type: none"> • Members need to be confident they understand the difference between a personal interest and a personal and prejudicial interest
Abertillery and Llanhilleth Community Council	A complaint that a Councillor had arranged for a sum of money, intended for the Community Council, to be paid to a community project. The Councillor was Chairman of both the Community	Paragraphs 6(1)(a), 7(b)(ii) and 7(b)(iv) – bringing their office into disrepute, and the use of the	<ul style="list-style-type: none"> • No action needed to be taken in respect of the complaint due to public interest test. • The Chairman was inexperienced and held a 	<ul style="list-style-type: none"> • Several IOACC Members are twin-hatted and need to be careful to consider if he/she has a personal and

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	<p>Council and the community project.</p> <p>It was determined that the Council had no legal right to receive the money and it could not therefore be considered as Council resources; paragraph 7 was therefore satisfied.</p> <p>However, the Ombudsman considered the Councillor may have been in breach of paragraph 6(1)(a) in that he had brought his office or the authority into disrepute as he had acted improperly in the way in which he had obtained the funding for the project by representing himself as acting on behalf of the Council.</p>	authority's resources.	mistaken belief that he was acting in the public interest. He had not gained personally from his actions.	<p>prejudicial interest which prevents him/her from participating in relation to the matter.</p> <ul style="list-style-type: none"> Members should also consider whether the inbuilt dispensations included in the Code of Conduct are applicable.
Llay Community Council	A member of the public complained that a Councillor had failed to declare a personal interest and had participated in a discussion about a planning application which affected the site of the Llay branch of a charitable organisation. The Councillor is the Secretary of the Social Committee of the Social Club which is licensed to operate from the charitable organisation's site.	Paragraphs 11(1) and 14(1)(a)(ii) – personal and prejudicial interests.	<ul style="list-style-type: none"> There was evidence to suggest a breach. The Councillor's personal interest was prejudicial and he should have withdrawn from the room while the matter was discussed. However, there were mitigating circumstances such as the fact the 	<ul style="list-style-type: none"> Several IOACC Members are twin-hatted and need to be careful to consider if he/she has a personal and prejudicial interest which prevents him/her from participating in relation to the

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	<p>The Council had unanimously voted to oppose the planning application.</p> <p>The Councillor had not declared a personal interest nor a personal/prejudicial interest. The Councillor, even when interviewed by the Ombudsman, did not consider that he needed to declare an interest and withdraw.</p>		<p>Council was not the determining authority and was simply being consulted on the application; the Councillor did not stand to personally benefit from the outcome; and the Councillor's role with the Council and the Social Committee were sufficiently distant so as to mitigate their impact. No further action was required</p> <ul style="list-style-type: none"> • The Ombudsman was concerned at the apparent confusion amongst councillors generally in respect of personal interests when it took witness statements from the other members, and considered that additional training would address this. 	<p>matter.</p> <ul style="list-style-type: none"> • Members should also consider whether the inbuilt dispensations included in the Code of Conduct are applicable.