

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL

MEETING:	Standards Committee
DATE:	16 September 2015
TITLE OF REPORT:	Code of Conduct Factsheets produced by the Public Services Ombudsman for Wales for Local Authority Members
PURPOSE OF THE REPORT:	For information
REPORT BY:	Monitoring Officer
CONTACT OFFICER:	Lynn Ball, lbxcs@anglesey.gov.uk (01248 752586)

1. INTRODUCTION

The role of the Public Services Ombudsman for Wales (the Ombudsman) was created on 1st April 2006. The main purposes of the role are as follows:-

1. To consider complaints about services provided by public bodies
2. To put service complaints right where possible
3. To recognise and share good practice and improve the standards of public services in Wales
4. To build confidence in local government in Wales by promoting high standards in public life
5. To consider complaints that members of local authorities have broken the code of conduct.

In relation to the last two points, the Ombudsman has recently appointed a new Code of Conduct Complaints Lead who has developed two new Factsheets written for members who are subject to a code of conduct investigation.

The Factsheets are attached to this report at **ENCLOSURES 1 and 2** respectively. They provide useful guidance on the processes followed and both note that members are strongly advised against discussing or sharing information with anyone, other than those providing legal or other advice to them, in order to avoid prejudicing any such investigations.

2. FACTSHEET FOR LOCAL AUTHORITY MEMBERS: What we do when we get a complaint about your conduct.

All new complaints are considered by the Complaints Advice Team and each complaint is subject to a two stage test. The first test is to see if there is direct evidence of a breach of the code and the second stage then considers whether a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. The aim is to inform the member of the decision to investigate or not to investigate within 4 weeks of receipt of the complaint.

If the decision is made to investigate, information about the process is outlined and the possible investigation outcomes are then discussed.

3. CODE OF CONDUCT COMPLAINTS: Factsheet for member interviewees.

Following on from item 2 above, this Factsheet provides information on the interview process i.e. the nature and format of the interview, what a member would need for such an interview, and confirms the arrangements for recording and agreeing the interview.

4. RECOMMENDATION

That a communication be sent to all members highlighting the Ombudsman's advice as attached at **ENCLOSURE 3**.

ATODIAD / ENCLOSURE

1

This factsheet explains the approach taken by the Ombudsman's staff when carrying out interviews with elected members who are subject to investigation under the Code of Conduct Complaints procedure.

The nature and format of the interview

Interviews will generally be conducted face-to-face, although in exceptional circumstances you may be asked to provide written answers to a series of written questions.

The Investigator will digitally record the interview to ensure that your evidence is accurately recorded. You should be prepared to answer any questions put to you. You will also be given the opportunity to make comments you feel are relevant to the investigation and which you consider the Ombudsman should take account of when reaching his determination on the complaint.

It would be helpful if you could identify any concerns that you have or identify any witnesses who you feel should be contacted during the course of the investigation so that these can be promptly resolved. Failure to comply with any request made by the Investigator to attend an interview in connection with an investigation may amount to a breach of the Code.

The Ombudsman appreciates that interviews may sometimes cause anxiety. You are therefore welcome to have someone with you when you see the investigating officer. You may attend with a legal representative or have somebody else present for support. If you wish to have somebody present at the interview to support you, please let the Investigator know who this person will be in good time. It should not be someone who is involved in the investigation; they are allowed to be present simply to offer you support and not to answer questions for you. Interviews will always be on the record.

What you will need for the interview

Make sure that you understand what the interview is about. You should have been given details of the complaint which sets out what the Ombudsman is investigating and copies of relevant evidence gathered. If you have any papers - such as letters or diaries or the formal file to which the complaint relates - which you think might be relevant to the interview, take them with you. If you have any notes you made at the time of the events under investigation, these may help the Investigator.

In addition to relevant documents, you should ensure that you have with you any other items which you might need during the course of the interview, such as reading glasses, hearing aids or medication (inhalers etc.). You should also ensure that, unless absolutely necessary, any mobile phones or tablet devices are turned off for the duration of the interview and that your colleagues are aware that you should not be disturbed.

Please notify the Investigator before the interview of any special requirements you may have, including any arising from any of the protected characteristics defined by the Equality

Act 2010 (as amended) e.g. any disability or religious considerations. You will be given the opportunity also to conduct your interview in Welsh if you would like to do so.

Although the Investigator will have a timetable and will try to keep to it, sometimes interviews overrun so you should ensure that this is taken into account when planning anything immediately after the scheduled conclusion of the interview.

Issues to bear in mind

The Investigator may also take handwritten notes of the interview and may ask you to sign and date these at the end of the interview. At the end of the interview the digital recorder will produce two compact discs, one disc will be sealed for evidential purposes and the other will be used by the Investigator as a working version of the recording. You will be asked to sign the sealed version as verification of the interview and given a notice explaining how you can request a copy of the disc.

As soon as reasonably possible after the interview, the Investigator will send you a typed transcript of the interview. This transcript will be used to form the basis of your evidence.

You should bear in mind that all comments made during the interview may be attached to any report on the investigation which the Ombudsman may refer to the Council's Standards Committee, or to the President of the Adjudication Panel for Wales.

Further information

The information provided to you in advance or during your interview should be held in strictest confidence.

Disclosure of details relating to an investigation should not be disclosed to anyone other than a legal or other adviser. If the information is disclosed to other persons disclosure may amount to a breach of paragraphs 5(a) and 7(a) of the Code. In addition you should not discuss the evidence you intend to provide at interview or contained within any witness statement with persons who may be involved in the investigation, whether directly or indirectly, as such contact may be construed as similar breaches of the Code.

**If you would like more information about this process,
please contact us:**

- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
- **write to:** The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

ATODIAD / ENCLOSURE
2

Factsheet for Local Authority Members: What we do when we get a complaint about your conduct



This factsheet explains what happens when the Ombudsman receives a complaint about the conduct or behaviour of members and co-opted members of local authorities, community councils, fire & rescue authorities and national park authorities in Wales. It does not cover every detail of our procedures, which are available at www.ombudsman-wales.org.uk.

New Complaints

All new complaints are considered by the Ombudsman's Complaints Advice Team, who will acknowledge receipt of the complaint and notify you, the Monitoring Officer of your authority and/or the Clerk of your Community Council (if appropriate) of its existence. A copy of the complaint will also be provided.

You need not respond to this letter if you do not wish to. However if you consider that specific information should be considered by the Ombudsman as part of his initial consideration of this matter please let us know. If you decide to respond or provide any information you should bear in mind that your comments may also be disclosed to the complainant, or used in any subsequent proceedings.

Each complaint, and any supporting information, will then be examined against a two stage test. At the first stage, we will consider whether there is direct evidence that a breach of the Code of Conduct has occurred. At the second stage we consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether you have deliberately sought a personal gain at the public expense for yourself or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the circumstances. We will aim to tell you within four weeks whether or not the Ombudsman intends to investigate the complaint.

If we cannot accept the complaint

If a complaint does not meet the requirements of the two stage test, you will be provided with a copy of the explanation in writing.

If we decide to investigate the complaint

If we decide to investigate the complaint it will be conducted by one of the Ombudsman's investigators. We will always write to you and the parties to the complaint confirming our decision to investigate, again you do not need to respond if you do not wish to. However it would be helpful if you could identify any concerns that you may have during the course of the investigation so that these may be promptly resolved.

Investigations are generally conducted in private. Disclosure of details relating to an investigation may amount to a breach of the Code of Conduct. You are therefore advised not to discuss the complaint with anyone (including potential witnesses) other than your legal or other adviser to avoid any prejudice to the investigation. If there are witnesses who you think should be contacted you should advise the Investigator as soon as possible.

Where a request (which identifies you by name) is received from the media or a third party for information relating to an investigation, confirmation of the existence of an investigation only will be given.

The Investigator will usually obtain further relevant documentary and witness evidence. Each investigation varies and while it may be necessary to interview those involved, some cases may be concluded through examination of documents alone. We aim to complete all investigations within 12 months but most are concluded sooner. If, for any reason, we consider it necessary to discontinue our investigation, we will write to you explaining this decision.

When all reasonable enquiries are completed the Investigator will review the evidence gathered and decide whether it is supportive of a breach of the Code. If so, copies of the relevant evidence gathered will be sent to you together with an invitation to attend an interview. Interviews will be recorded and will usually be conducted face-to-face, although in exceptional circumstances you may be asked to answer a series of written questions. Detailed information about the interview process can be found in our factsheet 'Factsheet for Member Interviewees'.

At the interview you should be prepared to answer any questions put to you. You will also be given the opportunity to make comments you feel are relevant to the investigation. You may attend with a legal representative or have somebody else present for support should you choose to do so, so long as they are independent of the matters investigated. Failure to comply with any request made by the Investigator in connection with an investigation may amount to a breach of the Code for elected members.

When we have all the information required, we will write a report or letter setting out the evidence we have considered and the conclusions we have reached.

Investigation outcomes



If we conclude there is no evidence to suggest that a breach the Code of Conduct has occurred, we will close the investigation and provide written reasons for this decision to all parties to the complaint.

If, having reviewed the evidence, it is suggestive that a breach of the Code has occurred; the Ombudsman may determine in some circumstances that no further action is appropriate. Again written reasons for this decision will be sent to all parties.

Where the Ombudsman finds that a complaint is justified and it is also considered to be in the public interest to do so, he may refer it either to the Standards Committee of the relevant authority, or to a tribunal convened by the Adjudication Panel for Wales to make a determination on the issues. You will however be given the opportunity to comment on draft version of the report within a set timescale. Any comments made will be given due consideration before the report is finalised and may be incorporated into the final report.

A copy of the Ombudsman's final report will be sent to you. The complainant will be notified of the Ombudsman's conclusions, and a summary of the report will be provided by way of information. The final report will not be disclosed by the Ombudsman until such time as a determination is made on the issues by the Standards Committee or tribunal.

If the complainant is dissatisfied with our decision



Once we have issued a decision, not to investigate a complaint or to close an investigation or that no further action is appropriate, our task is effectively ended and the file is closed. We will not re-open a case solely because the complainant disagrees with our decision. However you should be aware that a complainant can ask (within twenty working days) for us to review the complaint. If a review request is received we will notify you and provide a copy of any request received.

If you would like more information about this process, please contact us:



- **phone** 0300 790 0203;
- **e-mail** ask@ombudsman-wales.org.uk;
- **visit the website at** www.ombudsman-wales.org.uk;
- **follow us on Twitter:** @OmbudsmanWales;
- **write to:** The Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

ATODIAD / ENCLOSURE
3

Annwyl Aelod

Yng: Taflenni Gwybodaeth gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru

Gweler ynghlwm os gwelwch yn dda ddwy Daflen Wybodaeth sydd wedi cael eu cynhyrchu gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru mewn perthynas â chwynion a wneir yn erbyn aelodau etholedig mewn perthynas â'r Côt Ymddygiad.

Mae'r Taflenni Gwybodaeth yn hunan-egluhaol ac yn rhoi canllawiau ar y prosesau i'w dilyn pan dderbynnir cwyn – **“Beth fyddwn ni'n ei wneud pan gawn no gwyn am eich ymddygiad”** ynghyd â chanllawiau ar gyfer y broses gyfweld ffurfiol - **“Talen ffeithiai i aelodau sy'n cael eu cyfweld”**.

Yn y ddwy Daflen Wybodaeth, cyngorir yr aelodau'n gryf i beidio â thrafod neu rannu gwybodaeth gydag unrhyw un ac eithrio'r rheiny sy'n darparu cyngor cyfreithiol neu gyngor arall iddynt er mwyn osgoi rhagfarnu unrhyw ymchwiliad sy'n mynd rhagddo.

Mae'r ddwy Daflen Wybodaeth ar gael ar wefan yr Ombwdsmon.

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_cy/Welsh%20%20Factsheet%20for%20Local%20Authority%20Members%20%20What%20we%20do%20when%20we%20get%20a%20complaint%20about%20your%20conduct%20W%20%20Version%2010%20July%202015.ashx

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_cy/Welsh%20%20%20Code%20of%20Conduct%20complaints%20%20Factsheet%20for%20member%20interviewees%20%20Version%2010%20July%202015.ashx

Dear Member,

Re: Factsheets from the Public Services Ombudsman for Wales (O)

Please see attached two Factsheets which have been produced by the Ombudsman in relation to code of conduct complaints against elected members.

The Factsheets are self-explanatory and provide guidance as to the processes followed when a complaint is received – **“What we do when we get a complaint about your conduct”** and also guidance about the formal interview process – **“ Factsheet for member interviewees”**.

Both Factsheets note that members are strongly advised against discussing or sharing information with anyone other than those providing legal or other advice to them in order to avoid prejudicing any ongoing investigations.

Both Factsheets are also available from the O's website -

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_en/Factsheet%20for%20Local%20Authority%20Members%20%20What%20we%20do%20when%20we%20get%20a%20complaint%20about%20your%20conduct%20%20Version%2010%20July%202015.ashx

http://www.ombudsman-wales.org.uk/~media/Files/Factsheets_en/Code%20of%20Conduct%20complaints%20%20Factsheet%20for%20member%20interviewees%20%20Version%2010%20July%202015.ashx