CYNGOR BWRDEISTREF SIROL
RHONDDA CYNON TAF
COUNTY BOROUGH COUNCIL

GWŶS I GYFARFOD O'R CYNGOR

C.Hanagan
Cyfarwyddwr Gwasanaeth y Gwasanaethau Democrataidd a Chyfathrebu
Cyngor Bwrdeistref Sirol Rhondda Cynon Taf
Y Pafiliynau
Parc Hen Lofa'r Cambrian
Cwm Clydach CF40 2XX

Dolen gyswllt: Hannah Williams - Council Business Unit (01443 424062)

DYMA WŶS I CHI i rhithwir gyfarfod o **PWYLLGOR SAFONAU** yn cael ei gynnal ar **DYDD GWENER, 27AIN TACHWEDD, 2020** am **10.00 AM.**

Caiff Aelodau nad ydyn nhw'n aelodau o'r pwyllgor ac aelodau o'r cyhoedd gyfrannu yn y cyfarfod ar faterion y cyfarfod er bydd y cais yn ôl doethineb y Cadeirydd. Gofynnwn i chi roi gwybod i Wasanaethau Democrataidd erbyn Dydd Mercher, 25 Tachwedd 2020 trwy ddefnyddio'r manylion cyswllt uchod, gan gynnwys rhoi gwybod a fyddwch chi'n siarad Cymraeg neu Saesneg.

AGENDA

Tudalennau

1. DATGAN BUDDIANT

Derbyn datganiadau o fuddiannau personol gan Gynghorwyr, yn unol â gofynion Cod Ymddygiad y Cyngor.

Nodwch:

1. Mae gofyn i Aelodau ddatgan rhif a phwnc yr agendwm mae eu buddiant yn ymwneud ag ef a mynegi natur y buddiant personol hwnnw; a
2. Lle bo Aelodau'n ymneilltuo o'r cyfarfod o ganlyniad i ddatgelu buddiant sy'n rhagfarnu, rhaid iddyn nhw roi gwybod i'r Cadeirydd pan fyddan nhw'n gadael.

2. COFNODION

Cadarnhau cofnodion o'r cyfarfod a gafodd ei gynnal ar 29 Tachwedd 2020 yn rhai cywir.

ADRODDIAD Y SWYDDOG MONITRO

3. RHAGLEN WAITH Y PWYLLGOR SAFONAU AR GYFER 2020-2021

Trafod rhaglen waith ddrafft y Pwyllgor ar gyfer Blwyddyn y Cyngor 2020-2021.

9 - 18

4. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU - LLYTHYR AC ADRODDIAD BLYNYDDOL 2019–20

Rhoi crynodeb i'r Aelodau o'r materion sy'n ymwneud â'r Cod Ymarfer sydd wedi'u hamlinellu yn Llythyr ac Adroddiad Blynyddol yr Ombwdsmon i'r Cyngor yma ar gyfer 2019–2020.

19 - 166

5. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU - CRYNODEB O GWYNION 2019-2020

Crynodeb o gwynion yn erbyn Aelodau o 1 Ebrill 2019 – 31 Mawrth 2020.

167 - 180

6. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU – COFLYFRAU'R COD YMDDYGIAD

Trafod Coflyfrau'r Cod Ymddygiad ar gyfer mis Hydref - Rhagfyr 2019 (Rhifyn 23).

181 - 186

7. HYFFORDDIANT GLOYWI - Y COD YMDDYGIAD

Derbyn diweddariad ar lafar mewn perthynas â'r trefniadau arfaethedig ar gyfer hyfforddiant gloywi'r Cod Ymddygiad ar gyfer Cynghorwyr Bwrdeistref Sirol a Chynghorwyr Tref / Cynghorwyr Cymuned.

8. PANEL DYFARNU CYMRU - PENDERFYNIADAU DIWEDDAR Y TWIBIWNLYS

Derbyn gwybodaeth mewn perthynas â phenderfyniadau diweddar y Panel Dyfarnu.

187 - 258

9. PANEL DYFARNU CYMRU - CANLLAWIAU'R LLYWYDD

Rhoi cyfle i Aelodau drafod Canllawiau'r Llywydd sydd wedi'u diweddaru a'u cyhoeddi gan Lywydd Panel Dyfarnu Cymru.

259 - 276

10. CEISIADAU AM OLLYNGIAD

Trafod tri chais am ollyngiadau wedi'u cyflwyno'n unol â Rheoliadau'r Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) 2001.

277 - 288

11. MATERION BRYS

Trafod unrhyw faterion sydd, yn ôl doethineb y Cadeirydd, yn faterion brys yng ngoleuni amgylchiadau arbennig.

<u>Cyfarwyddwr Gwasanaeth y Gwasanaethau Democrataidd a Chyfathrebu Cylchreliad:-</u>

Aelodau Annibynnol – M.Jehu, MBE (Cadeirydd), D Bowen a J.Thomas

Y Cynghorwyr Bwrdeistref Sirol:
Y Cynghorydd M Forey a Y Cynghorydd E Webster

Y Cynghorydd Cymuned R.Butler

(Aelod wrth gefn o'r Cyngor Cymuned: C. Willis)

Mr C.Jones, Swyddog Monitro
Mr A.Wilkins, Dirprwy Swyddog Monitro
Mr C Hanagan, Cyfarwyddwr Materion Cyfathrebu a Phennaeth Dros Dro'r Gwasanaethau Llywodraethol

Tudalen wag

RHONDDA CYNON TAF COUNCIL STANDARDS COMMITTEE

Minutes of the meeting of the Standards Committee meeting held on Friday, 29 November 2019 at 10.00 am at the Committee Room 1, The Pavilions, Cambrian Park, Clydach Vale, Tonypandy, CF40 2XX.

County Borough Councillors - Standards Committee Members in attendance:-

Mr M Jehu
Mr R. Butler
Mr. C. Pallant
Councillor E Webster
Mr J. Thomas

Officers in attendance

Mr A Wilkins, Director of Legal Services
Mr P Nicholls, Service Director, Legal Services

14 Apologies

Apologies for absence were received from County Borough Councillor M. Forey and Mr D. Bowen (Independent Member).

15 Declaration of Interest

In accordance with the Council's Code of Conduct, there were no declarations made pertaining to the agenda.

16 Appointment of Vice-Chair

It was **RESOLVED** to appoint Mr D. Bowen as Vice-Chair of the Standards Committee.

17 Minutes

It was **RESOLVED** to approve the minutes of the 20th September 2019 as an accurate reflection of the meeting.

18 Matters Arising

Minute 49 – Following the decision at the previous meeting, the Monitoring Officer confirmed that the letter had been sent to the Chairs of the Community Councils, which highlighted the emerging issue from the Ombudsman's Annual Report and reiterated the importance of all Town and Community Councillors attending future Code of Conduct training sessions.

19 Application for Dispensation - County Borough Councillor R. Bevan

The Monitoring Officer outlined an application that had been received from County Borough Councillor Bevan for dispensation to speak and vote on all

matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter who is employed by the Council in the Community and Children's Services Group as the Service Manager for Access and Enablement.

Following consideration of the report, it was **RESOLVED** to grant County Borough Councillor R. Bevan a dispensation to speak and vote on all matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter, who is employed by the Council in the Community and Children's Services Group as the Service Manager for Access and Enablement, with such dispensation being reviewed by the Standards Committee on an annual basis.

20 Application for Dispensation - County Borough Councillor P. Jarman

The Monitoring Officer referred Members to his report, which sought the Committee's endorsement to grant dispensation to County Borough Councillor P. Jarman to speak and vote on all matters for the duration and adoption of the 2019-20 Budget process in her capacity as Leader of the Opposition.

It was explained that County Borough Councillor P. Jarman's son works in the Streetcare Department and lives with her at her home address and therefore, Councillor Jarman sought a dispensation to speak and vote on all services affected by the Budget. In her application for dispensation, Councillor Jarman stated that by virtue of being Leader of the Opposition Group, her participation in the Budget process is justified.

The Monitoring Officer continued and advised that one of the grounds for granting dispensation is:

"(f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise"

Following consideration of the report, it was **RESOLVED:**

1. To grant County Borough Councillor P.Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2019-20 budget process in her capacity as Leader of an Opposition Group;
2. To acknowledge that Councillor Jarman's son works in the Streetcare Department and lives with her at her home address and she therefore be granted dispensation to speak and vote on all services affected by the 2019-2020 Budget.

21 Review of Gifts and Hospitality Policy and associated Register

The Monitoring Officer presented the report, which provided the Standards Committee with the opportunity to review the declarations made by Elected Members in respect of the acceptance and refusal of gifts and hospitality.

Members were referred to the Council's policy in relation to Members acceptance and refusal of gifts and hospitality, which was attached as Appendix 1 to the report and were reminded that the policy had been revised on 25th March 2014, following a review undertaken by the Standards Committee.

It was noted that the current policy sets out a threshold of £25 under which Members/Officers can accept gifts and hospitality. In respect of any acceptance

or refusal of gifts or hospitality over £25, a Member must provide written notification to the Monitoring Officer of the existence and nature of that gift, hospitality, material benefit or advantage.

Members acknowledged the importance of such a policy, which aids transparency and alleviates situations where the donor may take offence if a Member were to refuse the acceptance of gift. The Chair noted that there were few declarations made by Members in respect of gifts and hospitality and proposed that the Monitoring Officer send an email on behalf of the Committee, for the attention of all Members, reminding them of the policy and what is required of them. In addition, the Community Councillor proposed that the Monitoring Officer send an email, for the attention of all Community Clerks, to state the requirements of Community Councillors in relation to their separate Gifts and Hospitality Policy.

One Member questioned whether the Gift Register was in the public domain and if it complied with GDPR. The Monitoring Officer informed Members that although the register was not published on the Council's website, it is made available if a person were to ask to see it. To date, the register had only been viewed by the Wales Audit Office and one other person. Members felt it would be beneficial if the register were to be reviewed to ensure its compliance with GDPR.

It was **RESOLVED:**

1. To note the content of the Council's Gifts and Hospitality Policy;
2. To note the form used for registering acceptance or refusal of a gift or hospitality;
3. To note the declarations contained in the elected Members' gifts and hospitality register;
4. To review the register's compliance with GDPR
5. That the Monitoring Officer send an email, for the attention of all Members, reminding them of the policy and what is required of them; and
6. That the Monitoring Officer send an email, for the attention of all Community Council Clerks, reminding them of the policy and what is required of the Community Councillors.

22 Public Services Ombudsman for Wales - Code of Conduct Casebook

In his report, the Monitoring Officer provided the Committee with Code of Conduct Casebooks (Issues 21 - 22) produced by the Public Services Ombudsman for Wales and following consideration thereof, it was **RESOLVED:**

1. To note the information contained within the report.

23 Urgent Business

- The Chair informed Members that Merthyr Tydfil County Borough Council had extended an invitation to Members of the Standards Committee to attend and observe a future Disciplinary Hearing of their Standards Committee. The Chair felt it would be beneficial for the Standards Committee to cross reference and potentially, learn from the neighbouring authority. Once confirmed, the date would be circulated to Members.

- Following a query from the Chair, the Monitoring Officer confirmed that

the next conference would take place in 2021 and that Members would be notified.

- The Monitoring Officer advised that the Local Government and Elections (Wales) Bill, had been published by Welsh Government on 18th November 2019, and included aspects in relation to the Standards Committee. The Committee would have the opportunity to discuss the Bill at a future meeting, whether that be at the meeting in March 2020 or an additional meeting in the early New Year.

- The Community Councillor requested for the Local Protocol to be circulated to Community Councils, in the hope that issues can be resolved prior to reaching investigation by the Public Services Ombudsman for Wales.

- The Members took the opportunity to praise the paperless approach to the Committee and commented on its effectiveness.

This meeting closed at 10.25 am

M Jehu
Chairman

RHONDDA CYNON TAF

RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

STANDARDS COMMITTEE WORK PROGRAMME

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

The purpose of the report is to review the Committee's Work Programme and agree items for consideration by the Standards Committee during the Municipal Year 2020-2021.

2. RECOMMENDATION

2.1 Subject to any amendments Committee Members' may have it is recommended the Work Programme for the Municipal Year 2020-2021, as set out in Appendix 2 to the report, be adopted.

3. BACKGROUND

3.1 The Standards Committee's Terms of Reference, as detailed in Appendix 1 to this report, set out the remit of the Committee to monitor, review and advise on matters relating to the Ethical code; Members Code of Conduct and associated matters of governance and probity.

3.2 To enable the Committee to fulfil its role an annual work programme is developed. The Committee is asked to give consideration to standard monitoring reports and any issues arising from the Committee's work in promoting high standards of conduct. The views of this Committee assist in the development of an ongoing work plan.

3.3 Attached at Appendix 2 to the report is a draft Work Programme for the Committee for the Municipal Year 2020-2021.

3.4 As a result of the ongoing COVID-19 pandemic the Committee's previously scheduled meeting in April of this year was cancelled. Where appropriate it is proposed reports that were aligned to that meeting be realigned into this Municipal Year's Work Programme.

3.5 The draft Work Programme reflects ongoing priorities and standard reports and the frequency of reporting. The Committee is invited to review the draft Work Programme taking into account available resources, and add or remove items as necessary.

4. LEGAL IMPLICATIONS

4.1 There are no legal implications arising from this report however the Committee is reminded of its statutory role contained in the extract from the Local Government Act 2000 set out below which should be considered alongside its terms of reference when setting the Work Programme:

54 Functions of standards committees

(1) The general functions of a standards committee of a relevant authority are--
(a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and
(b) assisting members and co-opted members of the authority to observe the authority's code of conduct.
(2) Without prejudice to its general functions, a standards committee of a relevant
authority has the following specific functions—
(a) advising the authority on the adoption or revision of a code of conduct,
(b) monitoring the operation of the authority's code of conduct, and
(c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.

4.2 The Committee has the same statutory functions in relation to Community and Town Councils (and Community and Town Councillors) as it has in relation to this Council and its Councillors (pursuant to section 56(1) of the Local Government Act 2000).

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL AND RESOURCE IMPLICATIONS

7.1 There are no consultation implications arising from this report subject to the agreed Work Programme being delivered within existing financial resources.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

REPORT OF THE MONITORING OFFICER

Background Papers: Freestanding matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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STANDARDS COMMITTEE - TERMS OF REFERENCE

Composition

(a) **Membership.** The Standards Committee is composed of 6 Members. Its membership includes:

(i) 3 'independent' Members, who are not either a Councillor or an Officer or the spouse of a Councillor or an Officer of this Council or any other relevant Authority as defined by the Act, appointed in accordance with the procedure set out in the Standards Committees (Wales) Regulations 2001;

(ii) 2 Councillors other than the Leader and not more than one Member of the Executive; and

(iii) 1 Community Council Member

(b) **Term of Office**

(i) Independent Members are appointed for a period of 6 years and may be reappointed for a consecutive term not exceeding 4 years.

(ii) Members of local authorities who are members of the Standards Committee will have a term of office of no more than four years or until the next ordinary local government election following their appointment, whichever is the shorter. They may be reappointed for 1 further consecutive term.

(c) **Quorum.** A meeting of the Standards Committee shall only be quorate when:

(i) at least three Members, including the Chairperson, are present, and

(ii) at least half the Members present (including the Chairperson) are Independent Members.

(d) **Voting**. Independent Members and the Community Council Member will be entitled to vote at meetings.

(e) **Chairing the Committee.**

(i) Only an Independent Member of the Standards Committee may be the Chair.

(ii) The Chair and Vice Chair will be elected by the Members of the Standards Committee for whichever is the shortest period of (a) not less than 4 years or no more than 6 years, or (b) until the term of office of the Independent Member comes to an end. The Chair and Vice Chair can be appointed for one period only.

Role and Function

The Standards Committee will have the following roles and functions:

(a) promoting and maintaining high standards of conduct by Councillors, co-opted Members and Church and Parent Governor representatives;

(b) assisting the Councillors, co-opted Members and Church and Parent Governor representatives to observe the Members' Code of Conduct;

(c) advising the Council on the adoption or revision of the Members' Code of Conduct;

(d) monitoring the operation of the Members' Code of Conduct;

(e) advising, training or arranging to train Councillors, co-opted Members and Church and Parent Governor representatives on matters relating to the Members' Code of Conduct;

(f) granting dispensations to Councillors , co-opted Members and Church and Parent Governor representatives from requirements relating to interests set out in the Members' Code of Conduct;

(g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that Officer by the Public Services Ombudsman For Wales;

(h) overview of the Council's whistleblowing policy;

(i) overview of complaints handling and Ombudsman investigations;

(j) oversight of the Members' protocols adopted by the Council;

(k) oversight of the register of personal interests maintained under Section 81 of the Local Government Act 2000;

(l) oversight of the gifts and hospitality register;

(m) monitor adherence to the Council's Management of Unreasonably Persistent Customers Policy by Group and Service Directors; and

(n) the Committee will exercise the functions set out in (a) - (g) above in relation to Community Councils and Members of Community Councils.

STANDARDS COMMITTEE WORK PROGRAMME

Forward plan of proposed Committee Business for the 2020 - 2021 Municipal Year

Specific Period: - September 2020 – April 2021

N.B – ***The work programme is subject to change to take account of any additional / deletion of reports, including any new consultative documents or legislative initiatives from the Welsh Government, which require urgent attention, Public Services Ombudsman For Wales referrals and hearings under the Council's Local Resolution Protocol – Standards of Conduct to be followed by Members***

Key Decision	Brief Outline	Responsible Officer	Open / Exempt Report	Consultation undertaken prior to Decision being made?
NOVEMBER 2020				**27.11.20**
Draft Standards Committee Work Programme	To consider a draft Work Programme for the Committee for the Municipal Year 2020 - 2021	Monitoring Officer	Open	Chair of the Committee
Public Services Ombudsman For Wales – Annual Report and Letter 2019 - 2020	To provide Members with a summary of Code of Conduct matters as set out in the Ombudsman's Annual Report and Letter to this Council 2019 – 2020	Monitoring Officer	Open	Cabinet / Overview and Scrutiny Committee
Public Services Ombudsman For Wales – Summary of Complaints 2019-2020	Summary of Complaints against Members from the 1st April 2019 – 31st March 2020	Monitoring Officer	Open	None
Public Services Ombudsman For Wales – Code of Conduct Casebooks	To consider the Code of Conduct Casebooks for the months October – December 2019 (Issue 23)	Monitoring Officer	Open	None
Code of Conduct Refresher Training	To receive an oral update on proposed arrangements for Code of Conduct refresher training for County Borough and Town/Community Councillors	Monitoring Officer	Open	None
Adjudication Panel Decisions	To provide an information report in respect of recent Adjudication Panel Decisions	Monitoring Officer	Open	None
Dispensation Applications	To consider three applications for dispensations made in accordance with The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001	Monitoring Officer	Open	None
Adjudication Panel For Wales Presidential Guidance	To consider the recently published APW Presidential Guidance on the conduct of Tribunals	Monitoring Officer	Open	None
	***			
MARCH 2020				**19.03.21**
Local Resolution Process For Town and Community Councils – One Voice Wales	To provide Members with information and seek the Committees endorsement in respect of One Voice Wales' Local Resolution Procedure for Town/ Com Councils	Monitoring Officer	Open	None

Key Decision	Brief Outline	Responsible Officer	Open / Exempt Report	Consultation undertaken prior to Decision being made?
Standards Committee Annual Report 2020 - 2021	To consider a draft Standards Committee annual report for the Municipal Year 2020 -2021	Monitoring Officer	Open	None
Adjudication Panel For Wales Annual Report 2019-2020	To consider the Adjudication Panel For Wales' Annual Report 2019-2020 following publication	Monitoring Officer	Open	None
Code of Conduct Refresher Training	To receive an update on the roll out of Code of Conduct refresher training	Monitoring Officer	Open	None
Update on Local Government and Elections (Wales) Bill	To receive an update in respect of aspects of the bill relating to the terms of reference of the Standards Committee and associated ethics issues	Monitoring Officer	Open	None
Review of the Procedures for dealing with complaints referred to the Committee by the PSOW	To Review the procedures and determine whether any amendments are required to be made and ensure they remain fit for purpose	Monitoring Officer	Open	Review other LA policies to identify areas of best practise
***				
MISCELLANEOUS (the following items to be considered as and when appropriate / necessary during the Municipal Year)				
Public Services Ombudsman For Wales – Code of Conduct Casebook	To provide information in respect of the quarterly publication of the Code of Conduct Casebook by the Public Services Ombudsman For Wales	Monitoring Officer	Open	
Dispensation Applications	To consider applications for dispensations made in accordance with The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001	Monitoring Officer	Open	
Local Resolution Protocol – Standards of Conduct To Be Followed By Members	To consider complaints made under Stage 2 of the Local Resolution Protocol	Monitoring Officer	Open	
Public Services Ombudsman For Wales – Members Code of Conduct Complaints	To consider any allegations that a Member has failed or may have failed to comply with the Members Code of Conduct contained in a report of the Public Services Ombudsman For Wales undertaken under Section 69 of the Local Government Act 2000	Monitoring Officer	Open	
Review of Standards Committee Member's Training Needs	To consider any requirements in respect of Committee Members' training needs	Monitoring Officer	Open	

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RHONDDA CYNON TAF

RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

PUBLIC SERVICES OMBUDSMAN FOR WALES - ANNUAL REPORT AND LETTER 2019–2020

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

To provide Members with a summary of matters pertaining to standards of conduct of County, Town and Community Councillors as set out in the Public Services Ombudsman for Wales' ('PSOW') Annual Report and Annual Letter to this Council for 2019-2020.

2. RECOMMENDATION

2.1 That the Committee notes the matters relating to Code of Conduct Complaints reported in the Public Services Ombudsman for Wales' Annual Report and Annual Letter to this Council 2019-2020.

3. BACKGROUND

3.1 The PSOW has published his Annual Report for 2019-2020 ('AR') pursuant to Paragraph 14 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2005. The AR has been combined with the annual accounts for the PSOW as it was last year. The purpose of the AR is to report on the performance of the PSOW's office over the year, provide an update on developments and to deliver any key messages arising from their work carried out during the year.

3.2 The AR is attached at Appendix 1 and can be accessed via the following link on the PSOW website:

https://www.ombudsman.wales/wp-content/uploads/2020/07/PSOW-Annual-Report-and-Accounts-2019-20.pdf

3.3 The PSOW also issues an Annual Letter (AL) to each Local Authority in Wales with a summary of complaints received by his office that relate specifically to that Local Authority. The AL is attached as Appendix 2 to this report.

3.4 The AR sets out the workload that has been dealt with by the PSOW during 2019-2020. It breaks the workload down into the number of enquiries received and the number of complaints received, and also breaks down the complaints

into those received about services (public body complaints) and those received in relation to Code of Conduct Complaints (CCCs). This report will highlight the data relating to CCCs only (issues arising from public services or the annual accounts section of the AR are beyond the scope of this report).

3.5 The number of CCCs dropped by 18% since 2018-19. The total number of complaints for the year 2018-19 was 282 and for 2019-20, 231. Of those 231 complaints 135 related to Town and Community Councils, 96 to Local Authorities and 0 to National Park authorities.

3.6 The decrease relates entirely to complaints made against members of Town and Community Councils. The Ombudsman has tentatively suggested that standards of conduct of members of these bodies may be improving and/or local resolution of issues may be taking place with good effect.

3.7 However Members should note that in January of this year both the Chair and I undertook a visit to one of the County Borough's Community Councils, namely Llantwit Fardre, as part of a mediation session due to ongoing issues with what the Ombudsman has described as 'tit for tat' complaints being made by Members. The issues largely related to personality clashes between members rather than true Code of Conduct issues albeit one complaint was taken forward for investigation but subsequently discontinued. That Council was responsible for 18% of the total number of complaints received by the Ombudsman concerning Town/Community Councils. I am pleased to report however that since that meeting things do appear to have vastly improved.

3.8 As in previous years the majority of CCCs (49%) related to matters of the promotion of equality and respect; 17% related to the failure to disclose or register interests; 10% related to integrity; 11% related to accountability and openness; 2% related to failure to be objective or act with propriety; 7% related to the duty to uphold the law and 3% related to selflessness and stewardship.

3.9 As in previous years therefore the majority of CCCs received during 2019/2020 related to matters of 'promotion of equality and respect' (49%) and 'disclosure and registration of interests' (17%). The Ombudsman is concerned these themes continue to dominate with a year on year increase in the number of complaints where bullying behaviour is alleged particularly from Clerks or employees/contractors of Local Authorities or Town/Community Councils. The Ombudsman has highlighted that training is a key component in addressing this particularly with Town/Community Councils.

3.10 The most common outcome of the complaints were that they were 'Closed after initial consideration.' Of the 235 complaints in 2019-20, the majority (202) were closed under this outcome. These include decisions where there is no 'prima facie' evidence of a breach of the Code and it is not in the public interest to investigate.

3.11 33 complaints were closed after full investigation in 2019-20 with the PSOW again directing investigative resources towards the more serious complaints where an investigation is required in the public interest. In 7 cases an investigation was discontinued, 9 no evidence of breach was found, 12 no further action was necessary and there were 5 referrals (to either Standards Committees or the Adjudication Panel for Wales).

3.12 As regards investigating complaints the Ombudsman notes the following in his report:

"All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- *a complaint is supported by direct evidence that is suggestive that a breach has taken place*
- *it is in the public interest to investigate that matter.*

Public interest can be described as "something which is of serious concern and benefit to the public

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned."

3.13 In cases which cannot be concluded in the above manner or feature serious breaches of the Code, it is necessary for the Ombudsman to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration. As earlier set out in 2019/20 5 referrals were made (2% of all the Code complaints closed). 4 to Standards Committees and 1 to the Adjudication Panel.

3.14 The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority and led to a four month suspension. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing, these two referrals were awaiting determination.

3.15 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, a member of Flintshire County Council was suspended from holding office for 3 months.

3.16 In 2019-20 the PSOW received five complaints which raised potential whistleblowing concerns about alleged breaches of the Code of Conduct. Most of these complaints were received from employees (or former employees) of local authorities and raised issues relating to alleged criminal offences and a perceived failure to comply with the law. Two of the complaints

were closed after an investigation did not identify evidence of a breach of the Code; 1 did not warrant any further action and 2 were continuing at the time the report was written. 3 cases which were ongoing in 2018-2019 were referred to the Standards Committees of the relevant authorities for further consideration.

4. LEGAL IMPLICATIONS

4.1 There are no legal implications arising from this report.

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL AND RESOURCE IMPLICATIONS

7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

REPORT OF THE MONITORING OFFICER

Background Papers: Public Services Ombudsman for Wales' Annual Report 2019-2020
Public Services Ombudsman for Wales' Annual Letter – RCT CBC 2019-2020

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer) – 01443 424105

Tudalen wag

Ombudsman Ombwdsmon

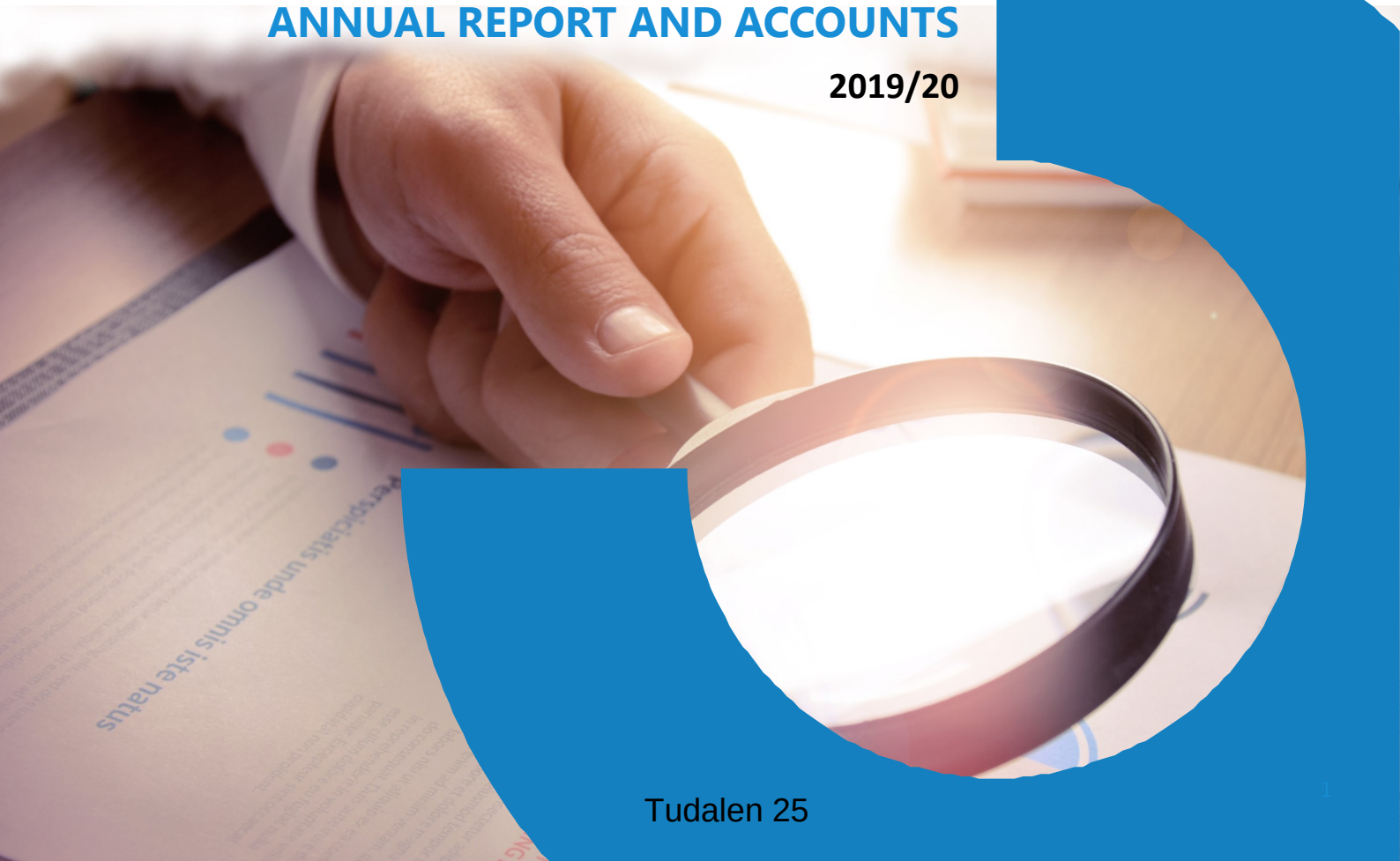
PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

Delivering Justice

The Public Services Ombudsman for Wales

ANNUAL REPORT AND ACCOUNTS

2019/20



COVID-19

This Report was produced in April and May 2020, against the backdrop of the Covid-19 outbreak. Most of the data in this Report relates to the period before the rapid escalation in Covid-19 spread and before restrictions on economic and social activity had been introduced. However, Covid-19 has affected our activity towards the end of the year and this is acknowledged, where appropriate, in the Report.

The Annual Report was produced while staff were working at home. Whilst staff had access to our systems and to our data, working remotely has been challenging and this may be reflected in the final Report.

THE WELSH PARLIAMENT

On 6 May 2020 the National Assembly for Wales became 'the Welsh Parliament' or 'Senedd Cymru'. This report refers to the period prior to this change, therefore for correctness we still use the name 'National Assembly for Wales' in the relevant sections.

PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

Annual Report and Accounts 2019/2020

of the Public Services Ombudsman for Wales

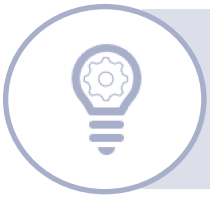
for the year ended 31 March 2020

Laid before the Welsh Parliament under paragraphs 15, 17 and 18 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019.

Contents

Key messages

We deliver for those who have suffered injustice.



We innovate and drive improvement across the public sector.

We embrace learning and welcome feedback.

We strive to ensure and promote equality and diversity.

We care for and invest in our staff.

We are accountable and transparent about our performance and use of resources.

Foreword

This document was prepared during the Covid-19 global pandemic. Never have Welsh public services, particularly health and social care, experienced such pressures or levels of appreciation. It is pleasing, in that context, that the level of complaints, received by my office in 2019/20, about public bodies was similar to that in the previous year (an increase of only 1.6%). The proportion of our interventions – cases where we find maladministration or service failure – was also lower (20%, compared to 24% last year).

Our most serious cases, on which we publish public interest reports, totalled only 4, compared to 14 the previous year - a reduction of 71%. These related to Flintshire Council, Swansea Bay University Health Board, the Student Loan Company and a joint report involving Betsi Cadwaladr University Health Board, Gwynedd County Council and Cartrefi Cymru. We saw this year a very welcome drop in complaints about breaches of the Code of Conduct (-18%). We also referred fewer investigations of likely breaches of the Code of Conduct to the Adjudication Panel for Wales or Standards Committees, though there were several high profile cases which demonstrated why the ethical standards regime is required to maintain high standards of conduct in public office in Wales.

This Annual Report covers the first year of the implementation of our new Corporate Plan, 'Delivering Justice', and I am delighted to report excellent progress. In one of the key developments during the year, in 2019 the National Assembly for Wales passed our new Act (the 'PSOW Act 2019'), which received Royal Assent in May. We created a new Improvement team with talent from inside and outside the organisation to lead the new work streams on own initiative investigations and Complaints Standards, as well as enhancing policy and communication resources and increasing our emphasis on internal and external complaints handling and service quality. The team wasted no time in getting key stakeholders up to speed, explaining the changes to the bodies in our jurisdiction, public service leaders from across Wales, senior civil servants and key third sector bodies. In October, we laid the criteria for exercising the new powers of Complaints Standards and own initiative investigations before the National Assembly.

Both powers are now operational and in March 2020 we commenced consultation on the proposal for our first own initiative investigation. The Complaints Standards team has begun the ground-breaking work of collecting and analysing data about complaint handling in the public sector.

This work is still at an early stage, but it already begins to indicate that my caseload represents the tip of the iceberg in terms of the volume of complaints handled by local authorities alone.

In addition to launching the new powers, we continued our other efforts to promote the improvement of public services in Wales. I met key bodies in jurisdiction, including the leaders of Betsi Cadwaladr, Hywel Dda, Swansea Bay and Aneurin Bevan University Health Boards. I also met local government chief executives to discuss the new PSOW Act. We published our fourth thematic report 'Justice Mislaid' and our first ever Equality and Human Rights casebook. We also continued to inform the public policy process where appropriate.

As we do every year, we welcomed scrutiny by the Assembly's Finance Committee and the Equality, Local Government and Communities Committee.

Although I stood down as Chair of the Ombudsman Association in May, we sustained excellent relationships with the ombudsman community in the UK, Europe and across the world. We celebrated the new Act with a seminar in Aberystwyth University addressed by representatives of leading ombudsman schemes. The office also participated fully in the development of the 'Venice Principles', a new global standard of excellence for ombudsman schemes approved by the Council of Europe.

We have continued to liaise with stakeholders in Wales. Amongst many other engagements, I was pleased to attend the National Eisteddfod in Llanrwst and to meet the new Welsh Language Commissioner, Aled Roberts. In March, I was delighted to meet Sir Wyn Williams, President of Welsh Tribunals, following the launch of the report of the Thomas Commission on the future of justice in Wales.

None of this work would have happened without my dedicated staff. I was delighted with the results of our annual staff survey which found that 99% of respondents felt proud to work for PSOW. I was also pleased with the results of an external assessment by Chwarae Teg which demonstrated an excellent working culture. My thanks to my staff for the excellent work that they have done in delivering justice in Wales.

Nick Bennett
Public Services Ombudsman for Wales

About us

We have three main roles: handling complaints about public service providers; considering complaints about breaches of the Code of Conduct by elected members; and driving systemic improvement of public services. We are independent of all government bodies and the service we provide is free of charge.

Complaints about public service providers

Our first role is to consider complaints about bodies providing public services where responsibility for their provision has been devolved to Wales. These bodies include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies

We are also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

We consider complaints about maladministration, service failure, or failure to provide a service. This means that we look to see whether people have been treated unfairly or inconsiderately or have received a bad service through some fault on the part of the service provider. If a complaint is upheld, we can recommend redress, or changes in process to ensure that mistakes are not repeated.

Code of Conduct complaints

Our second role is to consider complaints that elected members of local authorities have breached their Codes of Conduct, which set out the recognised principles of behaviour that members should follow in public life. These local authorities include:

- county and county borough councils
- community councils
- fire authorities
- national park authorities

We are also a "prescribed person" under the Public Interest Disclosure Act for raising whistleblowing concerns about breaches of the Code of Conduct by members of local authorities. Further explanation of our duties in this respect can be found on page 34 of the Report.

Systemic improvement of public services

Our third role is to drive broader improvement of public services. Whilst we have always tried to ensure that lessons from complaints are learned and that public bodies adopt good practice in complaint handling, our office was equipped with new powers to drive systemic improvement under the Public Services Ombudsman (Wales) Act 2019.

Under the Act, we are now empowered to undertake investigations on our own initiative. This means that, where we believe that there is maladministration resulting in personal injustice, we can start an investigation even if we have not received a complaint. More information about our work on the proposed first own initiative investigation can be found on page 55 of this Report.

We are also now empowered to set complaints standards for public bodies in Wales. This means that we can publish a statement of principles concerning complaints handling procedures for bodies in jurisdiction, as well as setting model complaints handling procedures for these bodies. We can also monitor the performance of public bodies in complaint handling, including by reviewing their complaint handling data. Page 52 of this Report details how we have taken forward this role to date.

The first UK ombudsman office equipped with full and operational powers to drive systemic improvement

Snapshot of the Year

2019/20

April

We delivered a TPAS Cymru seminar on effective complaints handling in social housing sector.

May

Public Services Ombudsman (Wales) Bill was given Royal Assent.

June

We hosted International Ombudsman Seminar at Aberystwyth University.

July

We met the Welsh Language Commissioner to discuss Welsh Language Standards.

August

We participated in a Youth Rights Panel at the National Eisteddfod in Llanrwst.

September

We gave evidence to the Assembly's Health Committee on the Health and Social Care (Quality and Engagement) (Wales) Bill.

Snapshot of the Year

2019/20

October

Sitemore 'State of the Nation' report named website ombudsman.wales in its top 10.

November

We published our first ever human rights-focused casebook.

December

We attended the International Ombudsman Institute seminar on the Venice Principles.

January

Our new powers of Complaints Standards and investigations on own initiative became operational.

February

We issued three public interest reports, two covering health matters and one regarding student loan finance.

March

We published thematic report entitled 'Justice Mislaid: Lost Records and Lost Opportunities'.

Our Key Performance Indicators

Like all public bodies, we measure our performance against a set of Key Performance Indicators (KPIs). The table below presents an overview of our KPIs. We discuss these figures in more detail throughout this Report. You can navigate easily to the relevant sections of the Report by clicking on the KPI title in the table below.

	2018/19	Target 2019/20	2019/20	Target 2020/21
KPI 1: Complaints about public bodies - decision times				
Decision that a complaint is not within jurisdiction < 3 weeks	83%	90%	95%	90%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks	84%	90%	92%	90%
Where we seek early resolution, decision within 9 weeks	85%	90%	94%	90%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	55%	80%	67%	80%
KPI 2: Complaints about public bodies which are investigated - cases closed				
Cases closed within 12 months	82%	85%	81%	85%
KPI 3: Code of Conduct complaints - decision times				
Decision taken not to investigate within 6 weeks	92%	95%	93%	90%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	76%	80%	86%	90%
KPI 4: Code of Conduct complaints which are investigated - cases closed				
Cases closed within 12 months	88%	90%	88%	90%
KPI 5: Customer satisfaction*				
Easy to find PSOW	84%	90%	91 / 98%	91 / 98%
Service received helpful	51%	70%	63 / 83%	63 / 83%
Clear explanation of process and decision	71%	80%	65 / 89%	65 / 89%

* In 2019/20 we changed the way we measure our customer satisfaction, which makes it difficult to assess our performance against the 2019/20 targets. The 2019/20 results are presented for all respondents as well as those satisfied with the outcome.

	2018/19	Target 2019/20	2019/20	Target 2020/21
KPI 6: Compliance				
% of recommendations made due and complied with by public service providers in the year	N/A	N/A	72%	N/A
Number of compliance visits	1	3	4	6
KPI 7: HR				
Completion of PRDP (appraisal) reviews	100%	100%	100%	100%
Employee response to staff survey	86%	85%	92%	N/A
KPI 8: Staff training				
% of staff achieving target number of days of continuing professional development	77%	90%	93%	95%
KPI 9: Staff attendance				
Average number of days lost through sickness per member of staff	3.3	< 6	9.0	6.5
% of working days lost through staff sickness	1.2%	2.0%	3.4%	2.5%
% of working days lost through short term sickness	N/A	N/A	1.0%	1%
% of working days lost through long term sickness	N/A	N/A	2.4%	1.5%
KPI 10: Financial				
Cash repaid to Welsh Consolidated Fund	0.5%	< 3%	1.0%	< 3%
Unit cost per case	£599	£700	£669	£700
Support costs as percentage of budget	3.5%	< 5%	4.3%	< 5%
External Audit Opinion on Accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts
Internal Audit Opinion on internal controls	Substantial Assurance	Substantial Assurance	Substantial Assurance	Substantial Assurance
KPI 11: Complaints about us				
Number of complaints received	30	N/A	36	N/A
Number of complaints upheld	9	N/A	7	N/A
KPI 12: Sustainability				
Waste (kg)	31,110	<30,000	26,996	26,000
Electricity (kWh)	106,701	<100,000	104,521	104,000

Deliver Justice

Strategic aim 1

We strive to be a fair, independent, inclusive and responsive complaints service. We continue to deliver justice to the people of Wales by handling complaints about maladministration by public service providers and allegations of breaches of the Code of Conduct by elected members. When we intervene after considering a complaint, we want to ensure that we remedy injustice and drive systemic improvement.

A short guide to terminology

Caseload: all cases handled by the office.

Case: any engagement with our office by a member of the public.

Enquiry: a case where a member of the public contacts us with a general query, does not have the required information to submit a complaint, or the matter in question clearly falls into the remit of another body. In such circumstances we offer advice or signpost people as necessary.

Complaint: a case that proceeds past the enquiry stage to assessment and/or investigation. Complaints can relate either to service providers or to alleged breaches of the Code of Conduct by elected members of local authorities.

Outcome: our decision after we have considered a complaint.

Intervention: a complaint outcome when we decided that it is appropriate to take an action - uphold a complaint, or propose an alternative remedy or voluntary settlement.

Referral: a type of intervention in the Code of Conduct cases where we refer a matter to a Standards Committee or the Adjudication Panel for Wales for consideration. This may be because the matter cannot be concluded in any other way or because it features serious breaches of the Code.

Our casework trends help to highlight some possible changes in performance of public bodies and conduct of elected members. Compared to 2018/19, this year:

1.6% **we received 1.6% more new complaints about public bodies**. This could indicate a drop in their performance—but could also be attributed to increasing awareness of our service.

18% **we received 18% fewer allegations of breaches of the Code of Conduct**, due to a significant and welcome drop in frivolous complaints made against members of Town and Community Councils.

3% **we saw a 3% fall in new complaints about Health Boards**, suggesting that our work with these bodies may be helping to support improvement.

20% **we intervened in a smaller proportion of complaints about public bodies —20%,** compared to 24% last year. We also referred a smaller proportion of complaints about breaches of the Code of Conduct — 2%, compared to 3% last year. When we intervene after considering a complaint, we want to ensure that we remedy injustice and drive systemic improvement. Information on our recommendations can be found on page 37 of this Report.

We also work to ensure that we offer the best possible service and that we are accessible to all people who need us. In 2019/20:

48% **48% of respondents to a national survey were aware of us** — compared to 35% in 2012.

57% **98%** 57% of respondents to our customer satisfaction survey were **satisfied with the service received**—rising to 98% amongst those satisfied with the outcome of their complaint.

2% using our new powers, **we accepted 2% of all new complaints orally**, helping those with additional needs to access justice.

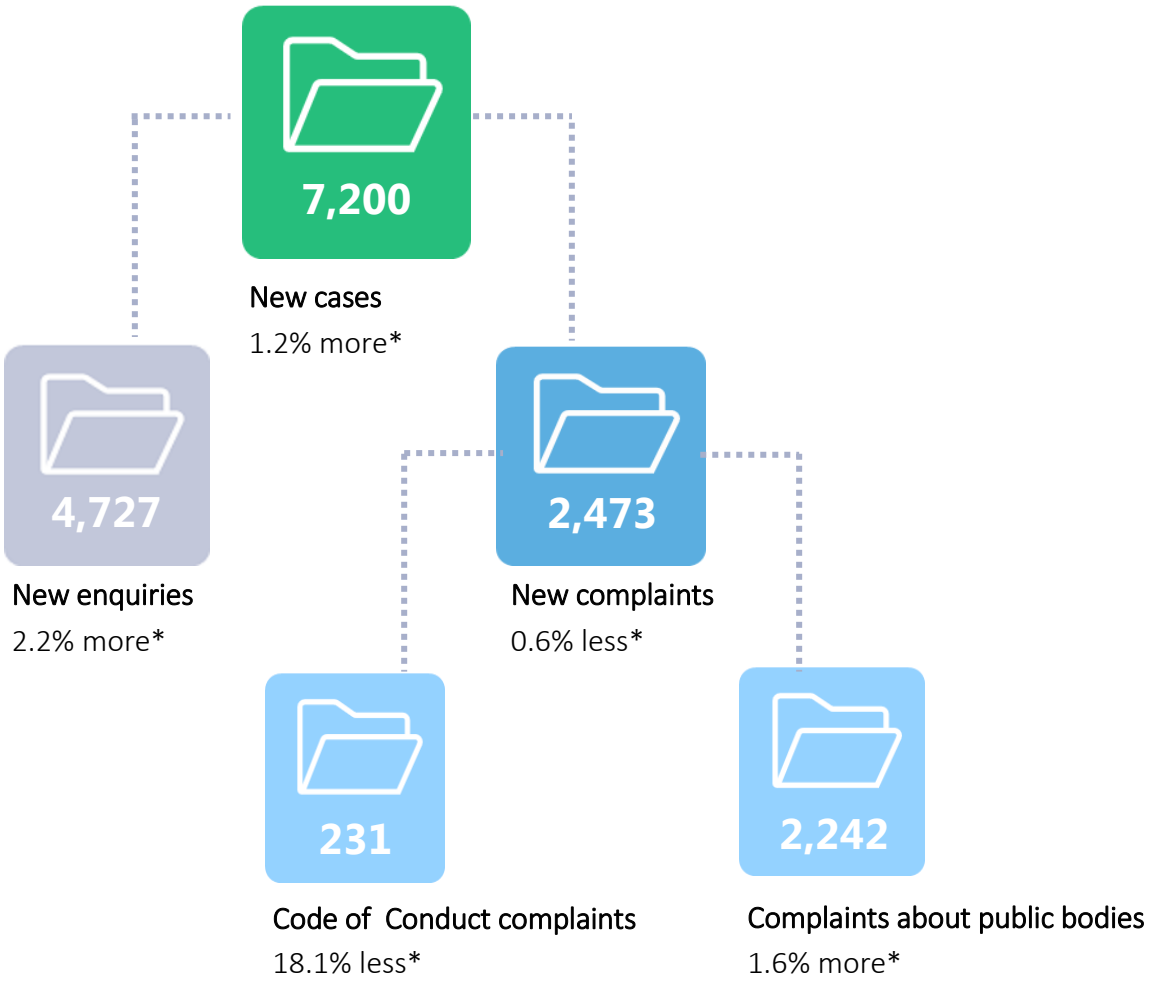
Our caseload volumes and trends

Caseload overview

(a) New caseload

Every year, we are contacted by thousands of individuals. Continuing the trend over recent years, in 2019/20 the number of contacts with our office increased by 1.2% to 7200—the highest since the establishment of the office.

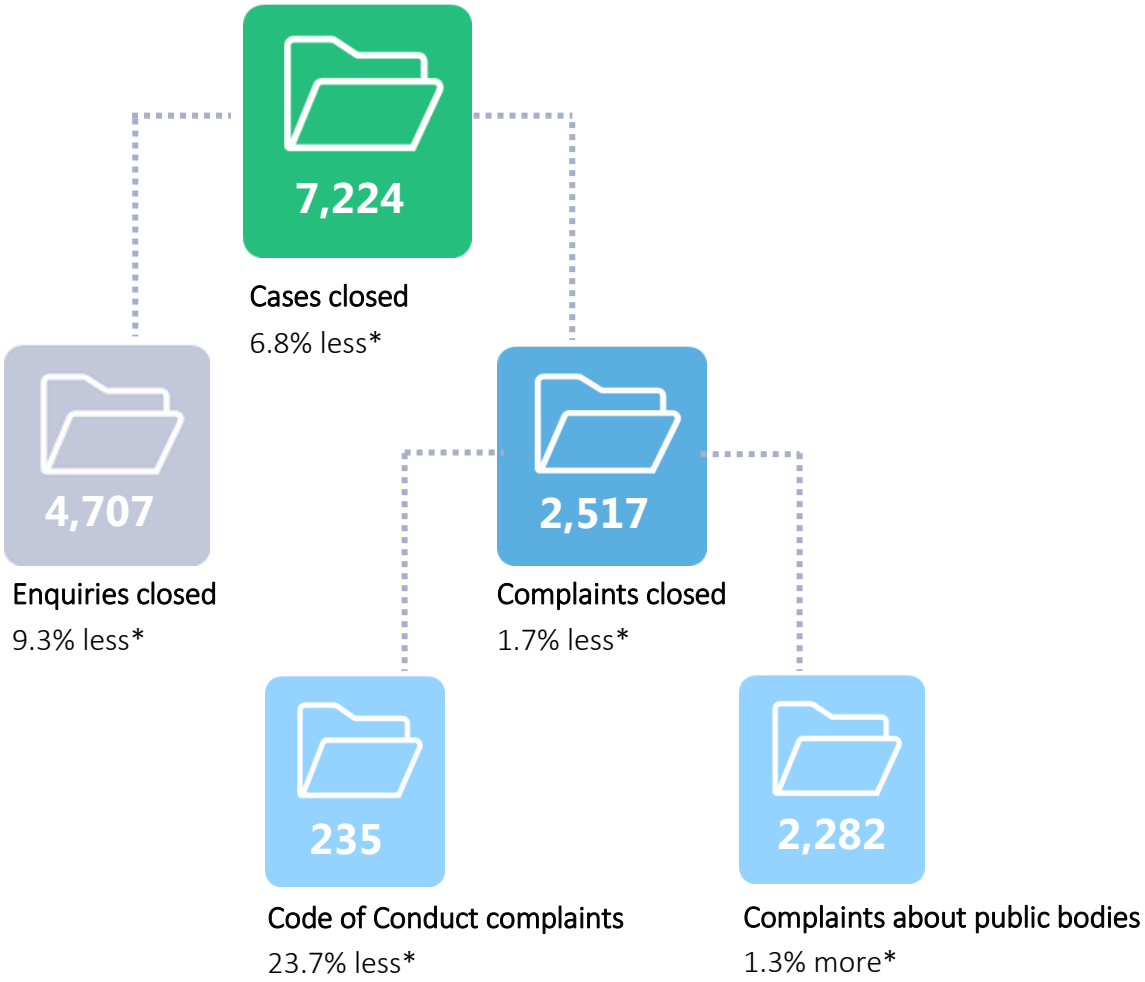
As in previous years, around 65% of new cases involved enquiries rather than complaints. Whilst we welcome all contacts with our office, we continue to work to raise awareness of our role and powers to help people understand when and how we can help.



* compared to 2018/19

(b) Closed caseload

This year, we closed 6.8% fewer cases overall and 1.7% fewer complaints than in 2018/19. The number of closed complaints about public bodies increased slightly. However, we saw a drop in the number of closed complaints about breaches of the Code of Conduct—although we still closed more Code complaints than we received. Overall, we still managed to reduce the number of cases open at year end, from 489 in 2018/19 to 453 in 2019/20.



* compared to 2018/19

The number of cases that we close differs from the number of cases received. This is because some of the cases closed in 2019/20 were received in the previous year, and some cases received in 2019/20 will be closed in 2020/21.

Complaints about public bodies

(a) New complaints about public bodies

1.6%

General trends

In 2019/20, we received 2242 new complaints about public bodies - 1.6% more than last year.

We categorise our complaints based on their primary subject. The chart shows the main subjects of new complaints about public bodies reaching our office and changes compared to 2018/19:

Subject	2019/20	2018/19
Health	41%	41%
Housing	15%	12%
Complaint handling	9%	11%
Social services	8%	9%
Planning and building control	7%	9%
Other	20%	18%

We also record our complaints by the type of public body complained about. Our new complaints related to the following groups of bodies:

Body	2019/20	2018/19	% change
NHS Bodies (including Health Boards, NHS Trusts, Dentist, GPs, Opticians and Pharmacists)	1020	1007	+1.3%
Local Authorities (including County/ County Borough Councils and School Appeal Panels)	890	912	-2.4%
Social Housing sector (housing associations)	202	168	+20.2%
Welsh Government and its sponsored bodies	68	68	-
Community Councils	27	23	+17.4%
Other	35	29	+20.7%
Total	2242	2207	+1.6%

This data points towards three main trends:

- Healthcare concerns continue to constitute the main subject of new complaints reaching our office with no significant change since 2018/19.
- The proportion of new complaints about housing matters in our new complaints overall has increased from 12% to 15%. This has contributed to a 20% increase in complaints about housing associations. This may reflect our efforts over the year to raise awareness of our role within the sector, but we will be monitoring these complaints in the year ahead. More details of this work can be found on page 64 of this Report.
- The proportion of new complaints about complaint handling has decreased from 11% to 9%. We welcome this trend, as we consider the volume of complaints about complaint handling as an important indicator of the overall standard of complaint handling in the public sector.

On its own, the number of new complaints reaching our office does not tell the whole story about the performance of public services.

This year, we have started to use our new power of Complaints Standards to begin to build a picture of the broader number of complaints handled by public service providers.

This work spells a step-change in our ability not only to promote systemic improvement in complaint handling in Wales, but also to contextualise the number of complaints reaching our office.

In due course, the information collected from public bodies will allow us to better understand how the numbers of complaints that we receive relate to the numbers considered through internal complaint handling procedures of the bodies in our jurisdiction.

More details about our Complaints Standards work can be found on page 52 of this Report.

The next sections discuss in more detail the trends in our new complaints by the main groups of bodies complained about - NHS bodies and Local Authorities.

1020

New complaints: NHS bodies

Of all new complaints about public bodies, 1020 or 45% related to NHS bodies— an increase of 1.3% compared to 2018/19.

Complaints about NHS bodies related predominantly to health (88%). However, as in previous years, a significant proportion of these complaints related to complaint handling (8%). We will continue to work with NHS bodies on reducing the number of these complaints, including as part of our new Complaints Standards role.

As in previous years, Health Boards accounted for the highest number of complaints about NHS bodies. The table below presents a detailed breakdown of new complaints about these bodies compared to 2018/19:

Health Board	2019/20	2018/19	% change
Aneurin Bevan University Health Board	140	134	+4.5%
Betsi Cadwaladr University Health Board	227	194	+17.0%
Cardiff and Vale University Health Board	100	102	-2.0%
Cwm Taf Morgannwg University Health Board*	80	75	+6.7%
Hywel Dda University Health Board	92	109	-15.6%
Powys Teaching Health Board	23	26	-11.5%
Swansea Bay University Health Board*	91	139	-34.5%
Total	**753**	**779**	-3.3%

* formerly Cwm Taf UHB and Abertawe Bro Morgannwg UHB— there were changes to names and boundaries on 1 April 2019.

During the year, we worked with all the Health Boards promoting improvements to their service delivery.

More details of this work with the Health Boards, as well as with other public service providers in our jurisdiction, can be found on pages 60-64 of this Report.

Overall, the number of new complaints about Health Boards has decreased by 3.3% compared to 2018/19. We saw a significant drop in new complaints received about the new Swansea Bay UHB (-34.5%), Hywel Dda UHB (-15.6%) and Powys Teaching Health Board (-11.5%).

On the other hand, as in previous years, Betsi Cadwaladr UHB continued to account for the highest number of complaints about Local Health Boards reaching our office. Betsi Cadwaladr UHB now accounts for 30% of all our new complaints against Health Boards. The second most complained about Health Board is now Aneurin Bevan UHB – showing a 4.5% increase on last year.

The overall increase in complaints about NHS bodies this year appears to be due to an increase in complaints about GPs. Compared to 2018/19, we saw a 24% increase in the number of new complaints about GPs. These complaints are widely spread, with no disproportionate focus on particular GPs or practices.

890

New complaints: Local Authorities

Of all new complaints about public bodies, 890 or 40% were about Local Authorities—a decrease of 2.4% compared to last year.

These complaints relate to a variety of subjects. The main subjects in 2019/20 were:

- Social services: 18%
- Housing: 16.9%
- Planning and building control: 15.4%
- Environment and environmental health: 10.6%
- Complaint handling: 9%

Complaint handling persists as one of the main subjects of our new complaints about Local Authorities. This year, we have engaged intensively with Local Authorities on this issue, starting to exercise our new Complaints Standards powers.

Our Complaints Standards work will allow us to report on all complaints handled by Local Authorities.

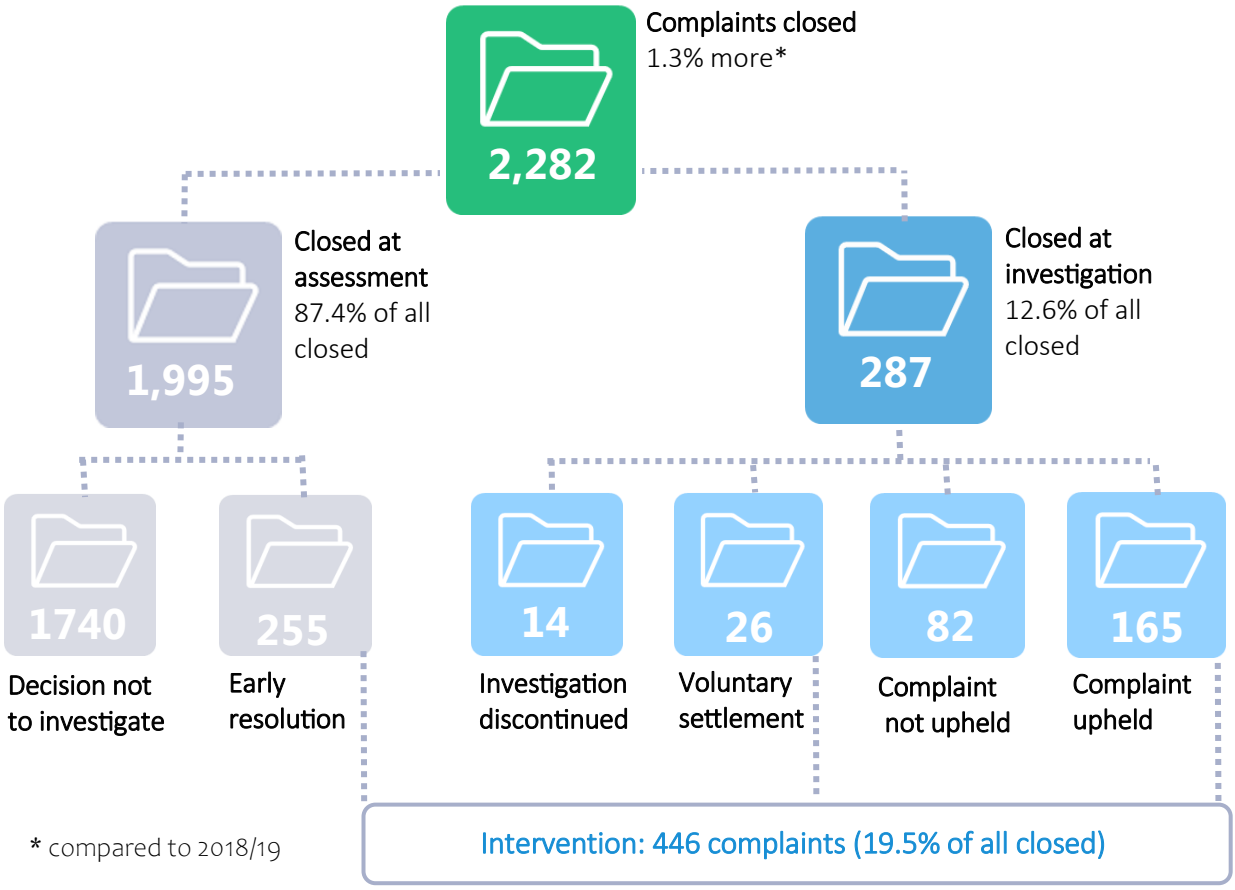
(b) Closed complaints about public bodies

2282

General trends

In 2019/20, we closed 2282 complaints about public bodies - 1.3% more compared to the previous year. This performance contributed to us reducing the number of complaints carried over at the end of the year.

The graphic below presents an overview of outcomes of complaints about public bodies that we closed in 2019/20:



When we receive a new complaint we undertake an initial assessment to determine whether we can and whether we should investigate.

The Public Services Ombudsman (Wales) Acts 2005 and 2019 set out key criteria that must be considered before we investigate. These include a requirement that the body complained about has had a reasonable opportunity to resolve the complaint and that the complaint is made to us within 12 months of the events complained about. If these criteria are not met, the complaint will generally be closed at assessment stage.

In 2019/20, we closed 87.4% complaints about public bodies at assessment stage - a slightly higher proportion than last year (84.7%). This increase reflects the number of complaints relating to matters outside our jurisdiction, and those made to us prematurely, generally, where the service provider had not had the opportunity to resolve the matter. This underlines the importance of good complaint handling by public bodies. Our Complaints Standards powers should support our work to address this. However, it also suggests that there is more work for us to do to make potential complainants aware of our role and our powers.

Compared to 2018/19, in 2019/20 we investigated a smaller proportion of complaints about public bodies - 12.6% compared to 15.3%. Almost identically to last year, most of our investigations - 82% - related to health. This trend reflects the complexity and seriousness of health cases.

A key measure of performance of public services is the proportion of cases where we intervened – that is, where we decided that there was evidence of maladministration or service failure which required action.

In 2019/20, we found grounds to intervene in 446 or 19.5% of our closed complaints—compared to 23.7% last year. We will monitor this trend in the coming years.

Also, our rate of interventions in health cases specifically dropped from 32% to 26%. This means that we found maladministration and service failure in a smaller proportion of health cases that we closed.

More information on the recommendations we make in cases that we intervene in can be found on page 37 of this Report.

Our interventions also include early resolution of a complaint at assessment stage. We continue to use early resolution where possible as this provides a timely and positive outcome for all parties. This year, early resolutions accounted for approximately 57% of our interventions overall—the same as last year.

1052

Closed complaints: NHS bodies

In 2019/20, we closed 1052 complaints against NHS bodies - 1.2% more compared to the previous year.

This is positive in terms of the output of the office, given that most of these complaints would have been complex and therefore take longer to investigate. In 2019/20, 97 out of 124 (78%) of our most challenging and complex cases related to NHS bodies.

Of the closed complaints about NHS bodies, 782 related to Health Boards. The table below presents our intervention rate in complaints about individual Health Boards compared to last year:

Health Board	2019/20	2018/19
Current Health Boards	Intervention rate	
Aneurin Bevan University Health Board	33%	38%
Betsi Cadwaladr University Health Board	31%	41%
Cardiff and Vale University Health Board	28%	35%
Cwm Taf Morgannwg University Health Board	15%	-
Hywel Dda University Health Board	32%	42%
Powys Teaching Health Board	54%	59%
Powys Teaching Health Board - All Wales Continuing Health Care cases	31%	44%
Swansea Bay University Health Board	11%	-
Former Health Boards		
Abertawe Bro Morgannwg University Health Board	72%	39%
Cwm Taf University Health Board	43%	33%
All Health Boards	**31%**	**39%**

This year we handled some complaints about two former Health Boards — Abertawe Bro Morgannwg UHB and Cwm Taf UHB. These Health Boards accounted for some of the highest intervention rates by us this year—72% and 43% respectively.

However, these intervention rates are skewed by the fact that the closed complaints against these Health Boards comprised predominantly cases carried over from the previous year that required investigation - with those not requiring investigation generally closed in 2018/19.

We recorded a high intervention rate for Powys Teaching Health Board (excluding All Wales Continuing Health Care cases)—54%. However, it is important to note that the overall number of complaints about this Health Board that we closed this year was very small (13).

In an overall positive trend, we saw that, compared to last year, our rate of intervention in complaints against all Health Boards decreased from 39% to 31%.

This decrease was the highest for:

- Powys Teaching Health Board - All Wales Continuing Health Care cases— reduced from 44% to 31%
- Betsi Cadwaladr UHB —reduced from 41% to 31%
- Hywel Dda UHB - reduced from 42% to 32%

902

Closed complaints: Local Authorities

In 2019/20, we closed 902 complaints against Local Authority bodies—2.9% fewer than last year. Of these, 879 related to County Councils and County Borough Councils.

Our intervention rate in complaints about the Councils decreased this year from 15% to 13%.

The Councils where we intervened in the highest proportion of cases were:

- Pembrokeshire County Council—24%
- Powys County Council—20%
- Torfaen County Borough Council—20%

Torfaen also saw a significant increase in the rate of our interventions—from 8% in 2018/19 to 20% in 2019/20. However, we saw the highest such increase for Merthyr Tydfil County Borough Council and Monmouthshire County Council. Both these Councils had 0% intervention rate last year, increasing to 13% in 2019/20.

The Councils for which we recorded the highest decrease in intervention rates were:

- Cardiff Council - Rent Smart Wales— reduced from 33% to 0%
- Blaenau Gwent County Borough Council - reduced from 29% to 6%
- Flintshire County Council— reduced from 29% to 14%

During the year we engaged intensely with Local Authorities as part of our new Complaints Standards role to drive improvement in public services. We will continue this work in 2020/21.

Code of Conduct complaints

(a) New Code of Conduct complaints

This year we received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

Body	2019/20	2018/19
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	**231**	**282**

This decrease relates entirely to complaints made against members of Town and Community Councils. This is encouraging and suggests that standards of conduct of members of these bodies may be improving and/or that local resolution of issues may be taking place with good effect.

Nevertheless, within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

In fact, 18% of the Town and Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. In those cases, we were very grateful to the Monitoring Officer of the principal authority who agreed to visit the Council to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We take a very dim view of complaints of this nature and have, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

We categorise the subject of the Code of Conduct complaints based on the Nolan Principles, which are designed to promote high standards in public life.

The table below shows the proportion of complaints received under each principle when compared to 2018/19:

Subject	2019/20	2018/19
Accountability and openness	11%	7%
Disclosure and registration of interests	17%	17%
Duty to uphold the law	7%	9%
Integrity	10%	13%
Objectivity and propriety	2%	2%
Promotion of equality and respect	49%	51%
Selflessness and stewardship	3%	1%

As in previous years, the majority of the Code of Conduct complaints that we received during 2019/20 related to matters of 'promotion of equality and respect' (49%) and 'disclosure and registration of interests' (17%).

We are concerned that these themes continue to dominate. In fact, we have seen year on year an increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of Local Authorities or Town and Community Councils.

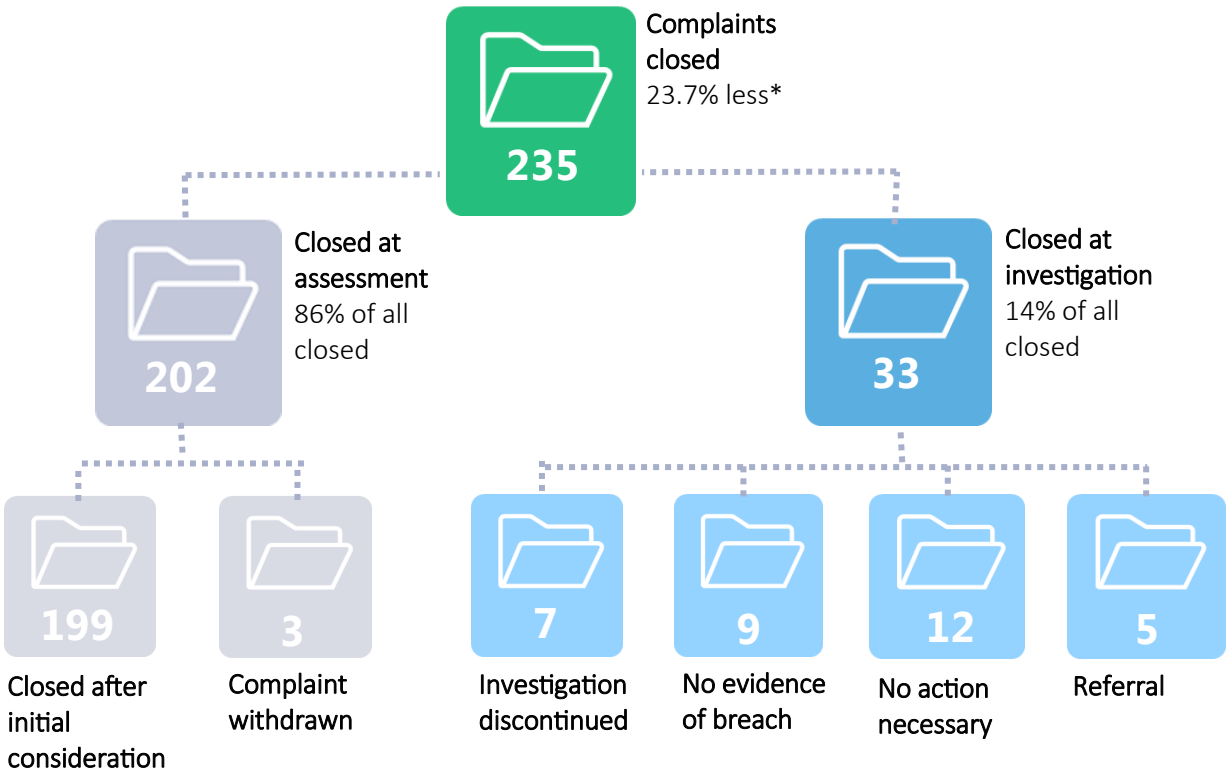
This suggests that members could benefit from training or refresher training on these subjects. However, our impression from investigations is that many members of Town and Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.

Our view is that Code of Conduct training is essential to becoming a 'good councillor'. We believe that members should embrace this training as soon as they become elected/ co-opted and refresh themselves on the provisions regularly. Whilst there is no statutory obligation for members of Town and Community Councils to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

(b) Closed Code of Conduct complaints

This year we closed 235 Code of Conduct complaints. This represented a 23.7% decrease compared to the previous year. The rate of closures was also inevitably affected by the number of new complaints received. However, we are glad that we still closed more complaints this year than we received.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2019/20:



* compared to 2018/19

All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- a complaint is supported by direct evidence that is suggestive that a breach has taken place
- it is in the public interest to investigate that matter.

Public interest can be described as "something which is of serious concern and benefit to the public"

In 2019/20, we closed 202 or approximately 86% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%).

The remaining complaints taken forward to investigation represented the most serious of the complaints received.

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made one of these determinations in 85% of the Code of Conduct investigations this year.

In cases which cannot be concluded in this manner or feature serious breaches of the Code, it is necessary for us to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2019/20 we made 5 referrals - that is, we referred 2% of all the Code complaints that we closed, compared to 8 or 3% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'. We did, however, investigate a higher proportion of cases related to 'disclosure and registration of interests' than the proportion of this theme in the closed Code of Conduct complaints overall:

Subject	All closed	Closed at assessment	Closed at investigation
Disclosure and registration of interests	17%	15%	30%
Promotion of equality and respect	49%	50%	42%

(c) Referrals

In 2019/20 we made:

- 4 referrals to the Standards Committees
- 1 referral to the Adjudication Panel for Wales

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority. At the time of writing, the Adjudication Panel for Wales was considering an appeal, on the issue of sanction only, in this case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing, these two referrals were awaiting determination.

The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, a member of Flintshire County Council was suspended from holding office for 3 months.

Between 2016/17 and 2018/19, the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 88% of our referrals

This year Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by us in 2018/19. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice our investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

(d) Lessons

As is clear from the above, we make referrals only in a very small number of cases. We do not believe that the cases that we do refer are indicative of a wider decline in member conduct. Nevertheless, outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

However, even when we do not refer a case, we try to use our investigation as an opportunity to promote good practice. We usually remind the members investigated of their obligations under the Code and, where possible include instruction on further training or engagement with the authority to prevent further possible breaches. We may also make the members aware that the matter could be taken into consideration in the event of any future complaints of a similar nature.

We think that it is important that we continue to look for innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned. Where appropriate, we also want to give members the opportunity to account for their own actions and for further development.

We plan to revise our Guidance to Members to include analysis of recent cases determined by Standards Committees and the Adjudication Panel for Wales.

(e) Whistleblowing disclosure report

Since 1 April 2017, the Ombudsman is a 'prescribed person' under the Public Interest Disclosure Act 1998. The Act provides protection for employees who pass on information concerning wrongdoing in certain circumstances.

The protection only applies where the person who makes the disclosure reasonably believes:

1. that they are acting in the public interest, which means that protection is not normally given for personal grievances
2. that the disclosure is about one of the following:

- criminal offences (this includes financial improprieties, such as fraud)
- failure to comply with duties set out in law
- miscarriages of justice
- endangering someone's health and safety
- damage to the environment
- covering up wrongdoing in any of the above categories.

As a 'prescribed person' we are required to report annually on whistleblowing disclosures made in the context of Code of Conduct complaints only.

In 2019/20 we received 5 Code of Conduct complaints that would potentially meet the statutory definition of disclosure from employees or former employees of a council. The disclosures mostly related to allegations that the members concerned had 'failed to comply with duties set out in law'. Of these:

- we closed 2 after an investigation did not identify evidence of a breach of the Code
- we concluded in 1 case that no further action was required
- at the time of writing, investigation into 2 cases is continuing.

In addition, 3 cases which were ongoing in 2018/19 have now been concluded.

These cases have been referred to the Standards Committees of the respective councils for further consideration.

Timeliness

We are conscious of the need to consider complaints in a timely manner. The length of our process reflects the need to investigate thoroughly and diligently, to consider carefully the views and comments of complainants and public bodies and to draw on professional advice when needed. Whilst there is still more work for us to do, the timeliness of our service in 2019/20 has improved in most areas compared to the previous year.

The table below presents our performance this year against our Key Performance Indicators:

	Target	2019/20	2018/19
Complaints about public bodies - decision times			
Decision that a complaint is not within jurisdiction < 3 weeks	90%	95%	83%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks	90%	92%	84%
Where we seek early resolution, decision within 9 weeks	90%	94%	85%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	67%	55%
Complaints about public bodies which are investigated - cases closed			
Cases closed within 12 months	85%	81%	82%
Code of Conduct complaints - decision times			
Decision taken not to investigate within 6 weeks	95%	93%	92%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	86%	76%
Code of Conduct complaints which are investigated - cases closed			
Cases closed within 12 months	90%	88%	88%

Whilst we have made progress in improving the proportion of investigated cases where the investigation is started within 6 weeks, we have not yet reached our target of 80%. However, we have been working on this aspect of our service and have been doing better as the year progressed.

We reported last year that an increased number of complex complaints about health services would affect our ability to complete investigations within 12 months. We also reported that performance was likely to be worse in 2019/20 as more older cases were closed. We actually completed investigations within 12 months in 81% of cases (82% in 2018/19). We continue to consider some cases against public bodies brought forward from 2018/19. These will unfortunately continue to affect our ability in 2020/21 to meet our target of 85% cases closed within 12 months.

We measure timeliness from the point at which we have sufficient information from the complainant to decide how to proceed. This is so that our reported performance reflects the experience of complainants. However it also means that our performance is affected by any delays on the part of public bodies, or our clinical advisers to respond to us, as well as the timeliness of our own work.
We are working hard to focus on completing investigations and issuing reports, but Covid-19 related pressures and restrictions are understandably limiting the ability of GPs, Health Boards and Local Authorities to engage with our investigations. We are avoiding putting additional pressures on these organisations during these challenging times.

Our performance regarding Code of Conduct complaints is broadly consistent with the previous year, with work ongoing to improve our performance against Key Performance Indicators.

Recommendations

When we find fault, we make recommendations to put any injustice right. In 2019/20:

1222 we issued 1222 recommendations to public bodies

£80k we recommended just under £80,000 of financial redress

This year, for the first time, we are publishing information about the recommendations that we make in cases concerning public bodies.

In 2019/20, we intervened in 446 cases. Across these cases, we made 1222 recommendations - an average of 2.7 recommendations per case.

The most common recommendation that we make is that a body should issue an apology to the person or persons who suffered injustice (23%). This reflects the importance to complainants of receiving an acknowledgement that things have gone wrong and an apology for the failings identified.

We also commonly recommend that a body fully explains its actions to the complainant (8%) or simply responds to their initial complaint (7%).

This highlights the importance of good complaint handling by public bodies.

The next most common group of recommendations concerns procedure change or process review (10%) as well as feedback to staff (10%). These recommendations are particularly important: we aim not only to put right any injustice but also to help public bodies to learn from what went wrong and improve for the future.

Our key contribution is securing justice for individuals and broader improvement of public services. However, where appropriate we can recommend financial redress. In 2019/20, we recommended this in 15% of cases we intervened in.

The total amount of financial redress we recommended was £78,951.

Compliance

Our recommendations aim to put things right, secure justice and improve services for the benefit of the public - not just for those who complain. In 2019/20:

0 we did not need to issue any special reports

4 we conducted 4 compliance visits

72% we received evidence of compliance with 72% of recommendations due during the year

This year, we are also highlighting the impact our recommendations have made on public services.

Although we are aware of how important it is that an individual failing or injustice is put right, we are conscious that the greatest impact we can have is through ensuring that there is learning and improvement as a result of our recommendations.

We always seek the agreement of public bodies to our recommendations. Where public bodies do not agree with our recommendations or settlements, or do not implement the recommendations or settlements agreed, we are able to publish special reports. No such reports were needed in 2019/20.

However, in many cases public bodies implement our recommendations later than agreed with us.

This year, we received evidence of compliance with 72% of the recommendations due to be implemented during 2019/20. For the remaining 28%, evidence of compliance is outstanding and we will be pursuing this, subject to Covid-19 limitations, in the coming months.

In 2019/2020, we completed 4 compliance visits—compared to 1 last year. The purpose of these visits was to follow up on the recommendations made in public

20% of our recommendations highlighted retraining or process reviews. This can lead to significant improvement in public services.

interest reports. The visits also allow us to see the changes that have been made and to share these with other public bodies who might benefit from the improvements made.

Below we refer to 3 cases which demonstrate how our interventions and recommendations can make a difference:

- In one example, we intervened this year in a complaint about a housing association that was trying to charge a group of elderly tenants for roof repairs—leading to the risk of financial hardship for many. Our involvement at an early stage of this complaint led the housing association to reconsider its approach and withdraw its demands for payment, as well as reimbursing those who had already paid.

- We also investigated this year a complaint brought to us by the family of someone who had sadly died. The family was concerned about the care given by the Health Board in question, including intravenous (IV) fluid management. We recommended that the Health Board recognised that it did not have an up to date IV fluid management policy. The Health Board also appointed a clinical lead to co-ordinate new guidelines and, in December 2019, published new guidance on this issue.

- Our recommendations will not always have immediate effects. This year we saw the long-term effects of one of our investigations concluded in 2017. The investigation concerned a complaint about a Local Authority and savings for young people in care. We upheld the complaint and, as well as putting things right for the individual involved, we shared our findings with Welsh Government as we considered that national guidance should be improved. We were glad to see that our report was subsequently referenced in the Welsh Government consultation on changes to statutory guidance—including the addition of two new requirements under 'The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019'.

We will continue working with public bodies and reviewing the impact which our recommendations have on services, procedures and outcomes.

Review and Quality Assurance

We have in place fair and transparent processes for handling review requests on casework-related decisions and for regularly assessing the quality of our casework to ensure it meets our service standards. We share any learning points from these reviews with staff to support organisational learning. In 2019/20:

232 we handled 232 review cases

227 we completed 227 reviews

83% we closed 83% reviews within 20 days

11% we identified that we could do more in 11% of the cases reviewed, often where additional evidence was provided by the complainant

Case review requests

We have confidence in our investigation process. However, we may decide to re-open a case or carry out some further action where complainants either provide new evidence that was not previously available to us, or where we recognise that we may not have properly considered some aspect of their case or adequately explained our decision.

Case reviews are undertaken by staff who are independent of the previous decision-making process on the case.

The table below presents our review caseload in comparison with 2018/19:

Review cases	2019/20	2018/19
Cases carried over from previous year	16	20
New cases	216	209
Total	**232**	**229**
Completed	227	†213
Carried over to next year	5	16

†In 2018/19, we mistakenly reported this figure as cases received.

In 2019/20, we completed 6.6% more reviews than in the previous year.

We appreciate the need to consider reviews in a timely manner. We aim to complete all requested reviews of casework decisions and respond within 20 working days.

Response time	2019/20	2018/19
Response within 20 days	83%	89%
Average number of days taken to respond	15.5	13.9

We may decide to uphold or partially uphold a review for a range of reasons—for example, if the complainant provided additional evidence, information or clarification, or when we considered that we could have done more.

We decided that 23 cases reviewed in 2019/20 should be either re-opened or that some further action should be taken. This constituted 11% of the cases reviewed - the same as the previous year.

Whilst not all of our reviews this year would have related to cases closed during 2019/20, to put these 23 cases in context, they represent less than 1% of all cases closed this year.

Quality Assurance

In addition to undertaking the review of cases upon request, we also have in place a Quality Assurance (QA) process. This process is based on an audit of a random selection of 30 complaints closed per quarter, split equally between complaints closed at assessment and investigation stage. These cases are examined to see if the way we dealt with them was in line with our service standards, policies and procedures, and to identify examples of good or poor practice we can learn from.

We also undertake Quality Assurance reviews, involving health professionals, of a sample of the clinical advice we receive to help us in our casework.

During 2020/21 we intend to review and improve our Quality Assurance process, to make sure it provides timely and representative information, and assurance that we are meeting our Service Standards.

Learning lessons

Whether based on reviews or the QA process, we aim to ensure that we consider what lessons can be learned and identify areas for improvement.

Our senior managers regularly consider samples of cases where we consider lessons can be learned. Our Review and Service Quality Officer also makes casework staff and managers aware of any issues that arise from reviews or quality assurance checks.

Any learning points identified are then cascaded to our staff through team meetings and a designated learning area on our Intranet. We also consider whether any individual or organisational training needs have been highlighted, and whether any changes to our policies and procedures are necessary.

An example of learning identified from these processes is where a complainant's request for communication in a specific format was not apparent to all staff, so correspondence was issued in the wrong format. We have now updated our case management system to record these requests clearly and ensure that this information is highlighted when new correspondence is prepared.

During 2020/21, we intend to develop the learning area on our Intranet to ensure that the lessons are shared more effectively and that they are clear to all casework staff.

Service user feedback

We are dedicated to delivering excellent service. We seek and welcome feedback from our service users and strive to learn from our mistakes. In 2019/20:

57% 57% of all complainants questioned were satisfied with our customer service...

98% ... rising to 98% amongst those satisfied with the outcome of their complaint

36 we received 36 new complaints about us

91% we responded to 91% complaints about us in 20 days

22% we upheld or partially upheld 22% complaints about us

Customer satisfaction research

In previous years, we relied on the customer feedback submitted to us via an online satisfaction form, open to complainants at any stage of the process. However, the response rate was low and the sample of respondents was not representative. Therefore, during 2019/20 we commissioned a telephone survey of a representative sample of our complainants whose cases were closed during the year.

When analysing the findings, we saw that our handling of complaints about public bodies consistently received a higher positive score than our handling of complaints about breaches of the Code of Conduct. Also, positive scores were higher for cases that we closed at the investigation stage, rather than those we closed after assessment. However, the main theme was a very strong correlation between the positive perception of our service and complaint outcome. This is perhaps inevitable, given that many of our service users feel very strongly about their cases.

Some scores from the survey, including our score by 4 of our Service Standards, are presented in the table overleaf. In respect of our fifth Service Standard, "We will operate in a transparent way", we will next year consider expanding the questionnaire to capture perceptions of transparency among our service users. For transparency and fairness, we are reporting the results for all respondents, and results for those respondents satisfied with the outcome.

Positive scores from all respondents were highest in relation to our accessibility and communication, but lower in relation to our handling of their complaints and their perceptions of the fairness of our decisions.

This said, the accessibility score was low in respect of awareness of the option to request reasonable adjustments. This was probably because respondents not needing reasonable adjustments were less likely to remember being asked about this. Questions about reasonable adjustments are included in hard copy and online complaint forms and in letters acknowledging the receipt of new complaints.

When asked about how we could improve our service, respondents most commonly suggested improving personal contact (9%), improving timeliness of communication (8%) and of the service overall (5%), increasing our understanding of their cases (6%), and explaining clearly our role, process and decisions (5%).

5% of respondents stated that our service would be improved if their outcome was

Aspect of our service	All respondents	Respondents satisfied with the outcome
Overall satisfaction with the customer service received	57%	98%
It was easy to find us	91%	98%
Our service was helpful	63%	83%
We clearly explained our process and decision	65%	89%

Our Service Standards	All respondents	Respondents satisfied with the outcome
1. We will ensure that our service is accessible to all.	65%	77%
2. We will communicate effectively with you.	64%	82%
3. We will ensure that you receive a professional service from us.	57%	89%
4. We will be fair in our dealings with you.	49%	86%

positive or if we investigated their case and 5% felt that we were biased or not impartial. This again, shows the very strong link made by our service users between the quality of our service and the complaint outcome.

In 2020/21, we will be investigating the reasons for some of the trends identified and looking to improve our service, based on the research findings.

Complaints about us

In 2019/20, we received 36 new complaints about our service. Together with 3 complaints carried over from the previous year, there were 39 complaints to be considered in total. However, 5 complaints were withdrawn or suspended during the year. These were cases where the complainant:

- had a change of heart (for example, when they understood that their complaint about our service would not change the outcome of their complaint about a public body that we handled)
- said they would submit a full complaint but did not
- did not provide any details of what they thought had gone wrong.

This means that the total number of complaints about us that we concluded in 2019/20 was 32—similar to the previous year.

In 91% of cases, we responded within the timescale we set – 20 days:

Response time	2019/20	2018/19
Within 20 days	29 (91%)	29 (94%)
Outside 20 days	3 (9%)	2 (6%)

However, we did not manage to do so in 3 cases. This was as a result of annual leave over the Christmas period, delays in securing Easy Read translations (i.e. versions using a

combination of words and pictures to aid understanding) and complaints that intertwined objections about our service with objections to casework decisions. This year, we changed our supplier of Easy Read translation and we trust that this action will eliminate those delays.

We upheld or partially upheld 7 (22%) complaints about our service. This is a reduction from 9 (28%) complaints last year. The complaints upheld this year related to matters such as:

- clarity and timeliness of our communication with service users (including insufficient updates)
- timeliness of our investigations overall
- incorrect method of contact despite agreeing reasonable adjustments
- delays in identifying and securing clinical advice required
- delays in Easy Read correspondence.

Complaints about us	**2019/20**	**2018/19**
Brought forward from the previous year	3	5
Received during the year	36	30
Total	**39**	**35**
Withdrawn / suspended	5	1
Closed	32	31
Open at year-end	2	3
Total	**39**	**35**
Fully or partially upheld	7	9
Not upheld	25	22
Total closed	**32**	**31**

To ensure that we are open and accountable, if a service user is unhappy about how we responded to their complaint about our service, they may ask for their case to be considered by an external Independent Review Service for Customer Complaints (IRSCC). The IRSCC does not review our case decisions – it will only review complaints about the quality of service that we provided.

During 2019/20, 7 cases referred to the IRSCC were concluded. All concerned, to some extent, our decision-making, over which the IRSCC has no jurisdiction. One of the complaints that was externally reviewed was upheld in part. In that case, the IRSCC recommended that we consider providing guidelines for our staff about audio/video evidence obtained without the knowledge or consent of the people recorded. The IRSCC recommended that we review the way that decisions about the use of such evidence in investigations is communicated to people. This has been done.

During the year, the IRSCC commended our staff for their responsiveness to service complaints, in particular for their efforts to ensure that people with disabilities have full access to our services. Whilst we understand that there is always room for improvement, we are pleased to note the positive comments about the standard of our complaints handling and our efforts to provide reasonable adjustments. Learning points from cases reviewed by the IRSCC have been shared with staff.

Accessibility, awareness and outreach

We strive to provide an inclusive and responsive complaints service. We want to make sure that people are aware of and trust our service and that we are accessible to all who need us. In 2019/20:

91% 91% of our customers questioned found it easy to contact us

48% 48% of respondents to a national survey knew about us

Cymraeg we engaged with the Welsh Language Commissioner and received his draft standards Compliance Notice

2% we received 2% of complaints orally and planned for more outreach around this power in 2020/21

Equality profile of our service users

We invite all our complainants to share with us their equality information. This enables us to analyse the profile of our service users and identify under-represented groups. A full equality profile of our service users and our analysis can be found in our Annual Equality Report, published alongside this Report, as well as on our website.

Accessibility

We strive to be accessible to all those who contact us, and we offer a range of services to support accessibility.

The information we produce can be provided in a number of formats.

Key documents can be provided in formats such as CD and Braille. Our website features a 'BrowseAloud' service, which assists the user by providing text-to-speech functionality on our website. A British Sign Language (BSL) video and a link to the 'SignVideo' (interpreting service for BSL users) are also available on the website. We ask complainants to identify any adjustments they need and we consider and respond to all requests.

This year, 91% of respondents to our telephone survey stated that they found it easy or very easy to contact us. This opinion was even higher among those respondents who were also satisfied with the outcome of their complaint (98%).

Welsh language

We are committed to ensuring that the Welsh language is welcomed and treated no less favourably than English in all aspects of our work and that we meet the needs of Welsh speakers. We currently operate in accordance with our Welsh Language Policy which was reviewed in 2018. Under the 2019 Act, we are required to comply with Welsh Language Standards, which will replace this policy in due course.

We already have arrangements in place to ensure that we can offer a comprehensive bilingual service to people who come into contact with the office.

During 2019/20, we engaged with the office of the Welsh Language Commissioner to discuss the extent of our envisaged Welsh language duties. In November 2019 we received our draft Compliance Notice. We were pleased to accept almost all the suggested standards, but made a few detailed suggestions about internal arrangements. However, given the ongoing public emergency related to the Covid-19 outbreak we have asked the Commissioner to delay the imposition of standards.

Awareness and outreach

We are conscious that a lack of awareness of our office or negative attitudes towards us might reduce access to our service. This year we commissioned research about awareness of our office and attitude towards it as part of a national survey run by Beaufort Research.

48% of respondents to the survey were aware of us. This result has improved since 2012 when we last commissioned similar research – with 35% of respondents stating at that time that they were aware of our office.

We also believe that it is important to capture public attitudes towards our work. We were glad to see a generally positive perception of our office:

70% agreed they would have confidence in our work

79% agreed we were impartial

88% believed that they could approach us if they needed

However, it is important to maintain and increase public awareness and confidence in our office and better engage with groups under-represented among our complainants.

In one example of our outreach activities, in August 2019 we held a joint event with the Children's Commissioner for Wales at the National Eisteddfod to raise awareness of the difficulties faced by young people in accessing administrative justice.

Also, in February 2020 we were delighted to discuss awareness of our office and experience of submitting complaints with the Age Cymru Consultative Forum. We are grateful to Age Cymru for facilitating this opportunity and to the members of the Forum for a lively and insightful discussion.

We will be looking to organise similar events with other under-represented groups next year.

Oral complaints

Under the PSOW Act 2019, we can now accept complaints other than in writing, including oral complaints. We trust that in due course this new power will facilitate access to the service by individuals who, for a range of reasons, are unable to submit their complaint in writing.

The power to accept oral complaints came into force in July 2019, and during 2019/20 this option was used by about 2% of our complainants.

We were pleased to see that 77% of respondents to the national survey knew that they could submit a complaint to us orally.

Whilst we want this service to be used primarily by the individuals who cannot submit complaints in writing, we also want to make sure that all who need this service are aware of it.

During the next year we will finalise and launch an outreach campaign to promote our power to receive oral complaints.

Promote Learning

Strategic aim 2

We aim to promote learning from complaints and stimulate improvements on a wider scale. This year, we are breaking new ground in this work. We are the first ombudsman in the UK to be equipped with full and operational powers to establish a Complaints Standards role and to undertake investigations on our own initiative.

In 2019/20, we made large strides in launching our new powers to drive systemic improvement:

- we engaged extensively about our new powers with stakeholders across Wales
- we finalised our Complaint Handling Principles, Model Complaints Handling Policy and accompanying guidance
- we started to gather data from Local Authorities on their complaint handling, finding much divergence in practices across Wales
- we issued criteria and a process for undertaking own initiative investigations
- we launched a consultation on our proposal to focus our first own initiative investigation on homelessness

We continued to inform the policy process in Wales by sharing insights from our work, responding to public consultations and participating in evidence sessions with the National Assembly for Wales.

We also continued to use a variety of traditional and new formats to communicate lessons from our casework. In 2019/20:

- 4 we issued 4 public interest reports
- we published our first Equality and Human Rights Casebook
- 1 we issued 1 thematic report, 'Justice Mislaid'
- we issued annual letters to bodies in our jurisdiction
- we continued to engage directly with the bodies in our jurisdiction and to share intelligence with other scrutiny and regulatory bodies

Complaints Standards

The 2019 Act equipped our office with new powers to drive systemic improvement of public services. The first of these powers is our new Complaints Standards role. It allows us to set model complaint handling procedures for bodies in our jurisdiction. It also allows us to monitor complaint handling by these bodies. In 2019/20:

we engaged extensively about this new power with stakeholders across Wales

we finalised our Complaint Handling Principles, Model Complaints Handling Policy and accompanying guidance

we began to build a better picture of complaint handling by Local Authorities, discovering much divergence in how they record and handle complaints

Background

Good complaint handling is an essential element of good administration.

Over the years, we have seen consistently that a noticeable proportion of complaints reaching our office relates to complaint handling by public bodies. In 2019/20, this subject accounted for 9% of all the new complaints about public bodies that we received.

Our Complaints Standards work aims to drive improvement throughout public services.

In this year's Wales Omnibus Survey, we asked respondents about their experience of complaining to the main public service providers in our jurisdiction.

Of those who complained over the last 2 years:

35% found it very difficult or fairly difficult to complain

57% were not happy with how their complaint was resolved.

Improvement in public service complaint handling practice would be likely to reduce the number of complaints reaching our office. However, the main beneficiary would be the Welsh public—with less time, effort and frustration being expended on 'putting things right' directly with the bodies concerned.

This is why, as part of the reform of our office, we called for strengthening of our powers to drive improvement in complaint handling.

Engagement

Once the 2019 Act received Royal Assent in May 2019, we immediately worked to establish our Complaints Standards team, which was fully in place by August. We embarked on a widespread programme of engagement, meeting with 21 Local Authorities and 5 Health Boards—as well as various other stakeholders including the Healthcare Inspectorate Wales and the Wales Audit Office.

The purpose of this programme was to understand the challenges faced by different public bodies, to highlight and share existing good practice, and to identify any barriers to improving performance. During these visits, the Complaints Standards team also explored the appetite for bespoke complaint handling training.

Following a public consultation, we were able to lay before the Senedd our proposed Complaint Handling Principles, Model Complaints Handling Policy and accompanying guidance. These documents were approved in January 2020.

The Complaints Standards team planned to launch these documents formally in March 2020 and then deliver over 30 days of training to Local Authorities— free of charge. However, due to Covid-19 restrictions and pressures, it was decided to delay the launch and postpone the training. This means that, whilst the Complaint Handling Principles, Model Policy and guidance have been finalised, Local Authorities are not yet required to comply with them.

Complaints data

Although the activities planned for March could not go ahead as intended, we now have a better understanding of the complaints landscape in Wales. As soon as it became operational, the Complaints Standards team requested quarterly data on the complaints handled from Local Authorities.

Our work with Local Authorities suggests that the data received so far is not complete and that complaint handling practices in different authorities have developed independently from each other, diverging from complaint handling guidance issued by the Welsh Government in 2011.

However, the data we have* suggests that:

around 16,000 complaints were logged by Local Authorities in 2019/20 — amounting to 2.5 complaints per 1000 residents

40% of the complaints logged related to 'Environment and Environmental Health' (mostly waste)

nearly half of all complaints were upheld

80% were closed within 20 working days

6% were referred to us

The number of complaints about Local Authority services in Wales is considerably lower than those in Scotland, where the ombudsman has had Complaints Standards powers for 10 years. This appears to be the result of inconsistent and incomplete recording of complaints.

* Data was submitted quarterly by Local Authorities throughout 2019/20. However, some submissions in quarters 3 and 4 were incomplete or missing. The numbers displayed here are an approximation of a full year's results using information known.

Looking forward

In 2020/21 we will aim to secure more consistent complaint handling and drive service improvements for the benefit of the Welsh public.

Whilst uncertainty about the duration and extent of Covid-19 restrictions makes planning difficult, we intend to:

- formally issue the Complaints Standards documents
- publish information on complaint handling performance of public bodies via a new webpage, increasing transparency and allowing comparisons between different public bodies
- complete at least 26 visits to stakeholders
- deliver at least 50 days of training (with a notional value of approximately £150,000) free of charge to public bodies
- achieve a high level of satisfaction with this training.

Own initiative investigations

The 2019 Act also equipped our office with another tool to drive systemic improvement of public services - the power to undertake own initiative investigations. This means that we can start an investigation even when we have not received a complaint. We are using the new power responsibly and engaging as broadly as possible to ensure that the work we do adds value. In 2019/20:

we engaged extensively about this power with stakeholders, including representatives from public bodies across Wales

we issued criteria and a process for selecting and undertaking own initiative investigations

we launched a consultation on our proposal to focus the first own initiative investigation on homelessness

Background

Equipping the Ombudsman with the power to undertake own initiative investigations is a new development in Wales. However, these powers have been widely and successfully used by ombudsmen throughout the world, for example, by the European Ombudsman and the Ontario Ombudsman. Using the power of an own initiative investigation, these ombudsmen have been able to respond to current issues and significantly affect service provision.

With the 2019 Act, we have become only the second ombudsman's office in the UK to be granted this power (the Northern Ireland Public Services Ombudsman has had this power since 2016).

This power will help us provide a citizen-focused service. It will also aid us in the delivery of social justice and in the drive towards continued improvement in public services for the benefit of all citizens in Wales.

Doing the groundwork

Investigations undertaken on own initiative can be a powerful tool for improvement. However, for such investigations to lead to tangible benefits we must ensure that we are using them wisely, proportionately and based on solid evidence. We must also make sure that we add value to the work of other bodies overseeing or scrutinising service delivery in Wales. Finally, we must develop internal expertise to undertake such investigations, drawing on all good practice available.

Reflecting this, in April 2019 we created a small Own Initiative (OI) team. In preparation for the commencement of the 2019 Act, the OI team met with those responsible for similar work at other ombudsman offices to discuss good practice and to learn from their experiences.

The OI team also took steps to engage with broader stakeholders, providing a number of briefings in June 2019. These sessions provided an opportunity to raise awareness of the concept of own initiative investigations, to explain how such investigations could affect stakeholder organisations and to identify any potential barriers to the new process.

The 2019 Act requires that we consult Welsh Ministers, bodies in our jurisdiction and any other relevant bodies on criteria for undertaking own initiative investigations. In September 2019, we consulted on the draft criteria, along with a draft process for undertaking these investigations. Responses were largely positive, with many organisations welcoming this additional power.

In October 2019, we laid the proposed criteria and process before the Assembly. Our powers to investigate on own initiative were approved in January 2020. Details of the criteria and process, as approved, are available on our website.

Our first own initiative investigation

The OI team continued its engagement with various stakeholders and began research to draw up proposals for the first own initiative investigation. This work led to a proposal that our first such investigation should focus on homelessness in Wales.

Welsh Government statistics show that the number of Welsh households being assessed as homeless is increasing. Homelessness has a range of well-documented negative impacts.

Amongst others, it can aggravate people's existing vulnerabilities (for example due to their age, race, sexuality or physical or mental health difficulties) and restrict their ability to access the support and assistance they require. Ensuring that vulnerable people are treated fairly by public service providers is central to the role of the Ombudsman.

Homelessness is a broad and multi-faceted problem. In order to better define the focus of the proposed investigation, the OI team met representatives of third sector and research organisations in Wales to discuss homelessness, and, in particular, the assessment process and the common difficulties experienced by homeless people. These discussions helped to narrow the focus of the proposed investigation to the administration of the homelessness assessment and review process by Local Authorities.

The initial consultation on this proposal was launched on 13 March 2020. However, as a result of the Covid-19 pandemic, the closing date for the consultation process and the forward work plan will be revised.

In 2019/20, the OI team met representatives of:

- **Northern Ireland Public Services Ombudsman**
- **European Ombudsman**
- **Wales Audit Office**
- **Future Generations Commissioner for Wales**
- **Older People's Commissioner for Wales**
- **Children's Commissioner for Wales**
- **Citizens Advice Wales**
- **Shelter Cymru**
- **Llamau**
- **Wales Institute of Social and Economic Research and Data (WISERD)**

Policy work

We continue to inform the policy process by sharing insights from our work. In 2019/20:

9 **we responded to 9 public consultations**

2 **we participated in 2 oral evidence sessions with the National Assembly for Wales on policy developments**

Focus of our policy work

We contribute to the development of public policy only when we feel we have the information and expertise to justify interventions.

Many of our contributions in 2019/20 related to health and social care – the focus of 49% of our complaints this year. For example, we responded to the inquiry by the Assembly's Health, Social Care and Sport Committee into provision of health and social care in the adult prison estate. We also contributed to a review of the national framework for continuing NHS healthcare, both as members of the working group convened for this purpose, and by responding to public consultation on the subject.

We were delighted to be invited by the Assembly's Public Accounts Committee to contribute to its inquiry into the effectiveness of local planning authorities in Wales.

Planning and building control complaints represented 7% of our complaints this year and we valued the opportunity to share with the Committee some issues consistently raised by complainants, for example, in relation to information sharing and engagement by planning authorities and delays in planning enforcement action.

Another significant focus of our work is local government, including the investigation of allegations of breaches of the Code of Conduct by elected members. This year we commented on the Local Government and Elections (Wales) Bill. We welcomed the Bill, but also identified the potential to strengthen and clarify some provisions. In particular, we considered that the Bill should place more emphasis on the need to maintain clear lines of accountability in the event of collaborative working or joint service provision by principal councils.

We also sometimes comment on the organisation of complaint handling and administrative justice in Wales as well as on the broader frameworks that ensure effective public accountability. For example, in 2019/20 we submitted comments on the commencement, by the Welsh Government, of the Equality Act socio-economic duty, as well as on the proposals to strengthen the duties of certain public bodies to promote fair work and social partnerships. We also shared our comments on the recommendations of the Commission on Justice in Wales with the Welsh Government and other stakeholders, such as the President of the Welsh tribunals.

Most of our policy work is focused on Wales. However, we were delighted to contribute to the proposals for the establishment of the Jersey Ombudsman. Our comments received much attention in the summary of responses published by the Government of Jersey and we were glad to see that our suggestions were broadly reflected in the revised proposals.

All our policy responses can be found on our website.

Health and Social Care (Quality and Engagement) (Wales) Bill

Our main policy intervention in this area related to the progress of the Health and Social Care (Quality and Engagement) (Wales) Bill. We submitted a response to the inquiry on the subject by the Assembly's Health, Social Care and Sport Committee and also appeared before that Committee to share our comments.

Whilst we welcomed the aspirations of the Bill, we drew attention to a number of areas where it could be more detailed or more ambitious. Amongst others, we expressed concerns over provisions to ensure the independence of the proposed Citizen Voice Body, we underlined the need for it to be locally accessible, and we called for provision to strengthen its power to make representations. More generally, we were disappointed that the Bill does not address the need for better alignment of the NHS and Social Services complaints procedures.

We were glad to see some of our comments reflected in the report by the Committee at Stage 1 of the scrutiny of the Bill, and addressed through some amendments adopted since. Even if the lack of alignment between health and social care complaints procedures is not addressed as part of the Bill, we look forward to engaging with the Assembly and the Welsh Government on this subject in the months to come.

Sharing our findings

We use a variety of formats to communicate lessons from our casework and are constantly looking for new ways to share information more widely and make it more accessible. In 2019/20:

- **4** we issued 4 public interest reports
- **1** we published 1 thematic report, 'Justice Mislaid'
- we published our first Equality and Human Rights Casebook
- we continued to engage directly with the bodies in our jurisdiction, especially Health Boards

Public interest reports

Issuing a public interest report remains one of the key tools available to me to highlight systemic problems, promote learning from complaints and ensure that listed authorities are accountable for the services they provide.

This year, we issued 4 public interest reports - compared to 14 in 2018/19. However, the number of these reports in 2018/19 was unusually high—we would normally expect to issue up to 6 public interest reports each year. One possible explanation for the overall smaller number of these reports this year is the apparent reduction in the incidence of maladministration and service failure in the cases we investigated.

Two of our public interest reports this year related to healthcare.

The first report related to a package of care, funded jointly by Gwynedd Council and Betsi Cadwaladr UHB and provided by Cartrefi Cymru, a registered domiciliary care provider. In this case, Mr N sadly choked to death after a care provider failed to undertake an appropriate risk assessment and produce an acceptable plan for his care.

We were extremely concerned about the multiple failings in communication and in the proper commissioning and contracting of care for Mr N, on the part of the 3 bodies involved. We found maladministration on the part of the Council and the Health Board in relation to their management of contractual arrangements and failure on the part of Cartrefi Cymru to conduct a comprehensive risk assessment and keep appropriate documentation.

Our second report related to the case of Mrs T, an 87-year-old woman, who died after Swansea Bay UHB failed to take prompt and appropriate action to assess and treat her symptoms of a stroke. We found that the Health Board failed to undertake an appropriate assessment of Mrs T's risk of a stroke, even when her family raised concerns that she appeared to have left-sided weakness, facial droop and slurred speech. We also found that, when doctors were asked to review Mrs T's condition in light of her family's concerns, several clinicians failed to appropriately record their findings. Finally, we found that there were further shortcomings in record keeping throughout the period of care.

Two further public interest reports issued by our office this year related to other services.

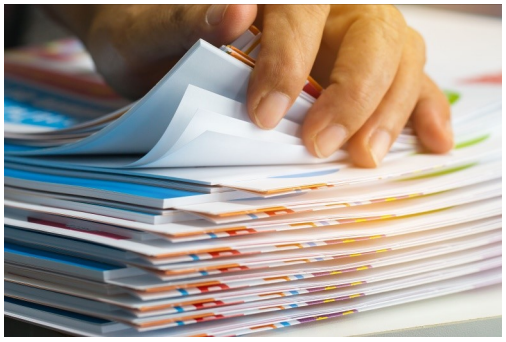
Our third report concerned maladministration on the part of Flintshire County Council which resulted in years of "persistent and intrusive" disruption to a resident from an unlicensed car wash. Mr R suffered "significant injustice" after being exposed to unacceptable levels of noise and water spray over a 5-year period. We also concluded that the Council failed to give due consideration to Mr R's right to the quiet and peaceful enjoyment of his home, as set out in the Human Rights Act 1998.

Our final public interest report concerned a complaint by Mr X about the Student Loans Company (the SLC). Our investigation found that the SLC failed to inform Mr X that he was not eligible for a tuition fee loan for 2014-15 in a reasonable way.

This was not properly communicated to Mr X until after he had incurred fees for the full academic year, leaving him in considerable debt. We also found that, even when the SLC knew that Mr X would never be entitled to additional funding due to his personal circumstances, it continued to ask for information about Mr X's personal circumstances and even (wrongly) granted his application for additional funding almost 18 months later. This, on top of the debt burden Mr X had already incurred, caused him considerable stress. We also found that the SLC and the Welsh Government's complaint handling process was confusing and had taken almost 2 years to complete.

Whilst in all these cases we recommended an apology and, in 2 cases, also financial redress, all these cases led us to issue detailed recommendations for wider action, including reviews of existing policies and procedures and improved training arrangements. We will be monitoring compliance with these recommendations and the impact of the changes instituted in the coming months.

Thematic report



Alongside our new powers to drive systemic improvement, we also intend to continue to publish thematic reports. These reports are based on the analysis of the cases investigated by our office and are a useful way of highlighting and emphasising the key issues being identified by us on a daily basis.

This year, we published Justice Mislaid: Lost Records and Lost Opportunities (also in Easy Read). The report highlighted a sample of cases considered where health and social care records have been mislaid or lost.

Lost or inadequate records held by bodies significantly affect the thoroughness of complaint investigations and the responses provided. The consequences of lost records can include a prolonged complaints process, a delay in justice, unreliable findings and a breakdown in the relationship between the service provider and the service user. Robust information governance and records management on the part of providers of public services in Wales would prevent these unnecessary and avoidable outcomes.

The 'Justice Mislaid' report concludes with several recommendations in respect of effective and up to date records management policies and processes; training for staff; communication between service providers and complainants; and governance arrangements to ensure that lessons are learned from incidents of lost or misplaced records.

Casebook

We also continue to publish information about our casework in casebooks. The Ombudsman's Casebook, currently published on a quarterly basis, contains the summaries of all reports issued in cases relating to public service providers during the quarter, as well as a selection of summaries relating to 'quick fixes' and voluntary settlements. Next year, we intend to implement a new approach to producing closed case summaries. Instead of publishing the cases per quarter, we intend to move to 'live' case records, whereby we publish summaries of all cases closed on an ongoing basis.

This year we also published for the first time an Equality and Human Rights Casebook (also in Easy Read). It is not our function to make definitive findings about whether a public body has breached an individual's human rights. However, where we identify evidence of maladministration which has caused injustice, we consider whether a person's human rights may have been engaged and comment on a public body's regard for these rights. We work with all casework staff to develop and support the consideration of equality and human rights in our casework. The Equality and Human Rights Casebook assembles a selection of cases where human rights matters have either been expressly raised as part of the complaint or have been pivotal to our findings. It has been well received by our stakeholders and we intend to repeat this publication on an annual basis.

"The new Human Rights Casebook by the Public Services Ombudsman for Wales is an excellent resource for ensuring that public bodies remain committed to their equality and human rights obligations".
Equality and Human Rights Commission

We also produce a Code of Conduct Casebook. This is also published quarterly and contains the summaries of all reports issued.

Annual letters

We continue to send letters on an annual basis to Health Boards and Local Authorities concerning the complaints we have received and considered during the year. The annual letters aim to provide these bodies with information to help them improve both their complaint handling and the services that they provide. All annual letters are published on our website. Given the developments in relation to the Covid-19 outbreak, in 2020/21 we intend to publish the letters in the second quarter of the year.

Engagement

An important aspect of our improvement work is direct engagement with the bodies in our jurisdiction and liaison with other stakeholders operating in the sectors which account for most of our complaints.

In one example, we stepped up this year our efforts to engage with the housing sector. We hosted a visit from Pobl Housing Group complaints team. We also delivered 2 workshops in TPAS Cymru seminars 'Effective complaints in the housing sector' in April and May 2019. It is possible that this work helped to raise awareness of our role resulting in more complaints about social housing this year.

However, we continue to focus our main improvement efforts on Health Boards.

We have a small number of investigation officers who also have an improvement officer role. These staff spend a proportion of their time working to challenge and support Betsi Cadwaladr, Aneurin Bevan, Swansea Bay and Hywel Dda University Health Boards. As part of this work, during 2019/20, we:

- held quarterly meetings with Hywel Dda UHB complaints staff and attended its Improving Patient Experience Committee
- attended Cwm Taf Morgannwg UHB Complaints Scrutiny Panel
- held quarterly meetings with Aneurin Bevan UHB to discuss complaint handling and liaison issues, alongside regular telephone contact with the contact officer
- held 5 meetings with Betsi Cadwaladr UHB officers, including the former Chief Executive
- undertook an intense programme of engagement with Swansea Bay UHB, including quarterly meetings with the Health Board's Internal Audit team, a meeting with the Chief Executive and Director of Nursing & Patient Experience, delivery of training to newly qualified consultants and regular 'catch up' meetings with the Concerns Team.

We are delighted that some of this work appears to bear fruit. In particular, we were glad to see this year the decrease in new complaints about Swansea Bay and Hywel Dda UHBs. For all the Health Boards that we engaged with, we welcome the drop in the number of interventions that we had to make this year, which may be indicative of systemic improvements.

We also endeavour to share information and insights with other key stakeholders responsible for the scrutiny of the health sector.

We regularly exchange intelligence with Healthcare Inspectorate Wales, Care and Social Services Inspectorate Wales, General Medical Council, Community Health Councils and Audit Wales, as well as the Welsh Commissioners.

Use Resources Wisely

Strategic aim 3

We value and support our staff and are committed to creating an equal, diverse and inclusive workplace. We strive to ensure good governance which supports and challenges us and we benchmark our work against best practice in the UK and internationally. We also secure value for money and ensure that our services are fit for the future.

100% All staff completed their annual Performance Review and Development Process

93% 93% of staff completed 28 or more hours of continuing professional development

3.4% We saw the average percentage of working days lost through staff sickness increase to 3.4%...

... but we launched our new Wellbeing Strategy and a number of actions to support staff wellbeing

We conducted a staff survey which found that:

99% of respondents were proud to work for PSOW

82% felt that training and development opportunities at PSOW are appropriate and relevant

87% felt that PSOW is committed to creating a diverse equal and inclusive workplace

We signed up as a Disability Confident Committed Employer

We achieved the silver FairPlay Employer level for gender equality

We reduced our waste by 13.2%

We attended two scrutiny sessions with the National Assembly for Wales

We reduced our median Gender Pay Gap from 21% to 11%, below the Welsh average for the public sector (14.2%)

We maintained close links with colleagues in the UK, Europe and around the world

Training and development

We support our staff to develop the knowledge and skills essential for their work. In 2019/20:

100% all staff completed their annual Performance Review and Development Process

93% 93% of all staff completed 28 hours or more of continuing professional development

82% 82% of staff felt that training and development opportunities at PSOW are appropriate and relevant

Our staff are key to our service provision. That means that we actively encourage training and development and make sure that staff are clear about their objectives and priorities. We also work hard to involve staff in important decisions about our approaches and ways of working, for example, through workshop sessions at all-staff meetings.

We operate a Performance Review and Development Process for each member of staff, which involves:

- a review of the previous year's achievements and the setting of objectives at the start of the year
- a mid-year review of progress.

New staff, during their induction and probation periods, have a separate process for this, with more immediate objectives and priorities set. Staff returning from maternity/adoption leave or long-term sickness have objectives agreed at a point on their return. For all other staff, it is pleasing to note that both formal reviews were completed as planned.

Our emphasis on staff training and development is reflected in an annual assessment of training and development needs for each member of staff, a comprehensive induction programme for new staff, online training for key topics such as equality and in-house training and Good Practice Seminars on specific public services and legislative changes. We also provide skills training appropriate to staff roles.

Our focus on the importance of training and development of staff means that we have set a target that all staff achieve at least 28 hours of training and development each year. This year (excluding staff on maternity/adoption leave or long-term sickness) 93% of staff achieved this. We will continue to focus on this in 2020/21.

As part of our annual Performance Review and Development Process, we consider the effectiveness of the training and development activity completed and we are working to improve the ongoing assessment of training.

We were glad to see that 82% of staff who responded to our staff survey this year felt that training and development opportunities at PSOW are appropriate and relevant.

Health and wellbeing

We care for our staff and are pro-active in promoting wellbeing in the workplace. In 2019/20:

3.4% we saw the average percentage of working days lost through staff sickness increase to 3.4%...

... but we launched our new Wellbeing Strategy and a number of actions to support staff wellbeing

we trained and introduced Mental Health First Aiders

99% 99% of staff responding to our staff survey said they were proud to work for PSOW

We recognise that our staff are key to the service we provide and indeed to supporting access to justice for complainants and prompting public service improvement. It is important, therefore, that as well as training and developing staff, we make sure that we support their health and well-being.

Our sickness absence figures for 2019/20 are disappointing, with staff absence averaging 3.4%, substantially more than in previous years. Most of this figure (70%) relates to long-term absence, with some staff receiving planned medical treatment requiring recuperation time. Short-term absences were similar to previous years, at 1%.

Anxiety and stress accounted for 43% of days lost to sickness which emphasises the need to look after our staff's mental, as well as physical, wellbeing.

Recognising this, we have developed and launched a new Wellbeing Strategy. Under the Strategy, we have put in place a number of new actions, as well as continuing existing arrangements. Staff have access to counselling and can self-refer to our Occupational Health advisers. We offer subsidised yoga to staff during lunchbreaks, and we have responded to staff experiencing discomfort and musculoskeletal problems by providing standing desks, as needed.

We provide annual health checks to staff, to help them to stay healthy. We have also trained a number of staff as Mental Health First Aiders who can provide support to staff and signpost to other support services.

Our staff have been instrumental in the development of the Well-being Strategy and actions. An internal staff Wellbeing Group oversees the implementation of activities such as lunchtime mindfulness sessions for staff and lunchtime walks.

Roughly every 2 years, we undertake a detailed survey of staff to gather their views and to obtain feedback on how the organisation is doing. 92% of staff responded to this year's survey.

Responses to the survey were overwhelmingly positive. Amongst other highlights:

- 99% of staff stated that they were proud to work for PSOW
- 97% of staff considered that PSOW is a good place to work
- 94% of staff considered that their managers communicate effectively with them.

However, in some areas, we received less positive responses. These related to matters such as the amount of pressure on staff and the timescales staff are expected to work to.

We will be looking to address these and other aspects of the survey next year and improve some of the ways we work.

Staff equality, diversity and inclusion

This year, we stepped up our efforts to ensure that as an employer we promote equality and tackle any barriers to inclusion:

we signed up as a Disability Confident Committed Employer

we achieved the silver FairPlay Employer level for gender equality

87% of respondents to our staff survey felt that PSOW is committed to creating a diverse, equal and inclusive workplace

we reduced our median Gender Pay Gap from 21% to 11%, below the Welsh average for the public sector in 2019

Diversity of our workforce

We are proud to be an equal opportunities employer. We were glad to see that 87% of staff who responded to our staff survey this year felt that PSOW is committed to creating a diverse, equal and inclusive workplace — and 86% felt they were treated fairly at work.

We invite our staff and job applicants to participate in voluntary equality monitoring and, in 2019/20, extended our work on this to analyse the equality profile of our successful applicants.

During 2019/20, we acted to address the under-representation of disabled people within our workforce and amongst our job applicants. To help us in this work, we signed up as a Disability Confident Committed employer.

The scheme supports employers to make the most of the talents disabled people can bring to the workplace. During the year, we revised the recruitment packs, confirming our commitment to offer interviews to disabled candidates if they meet essential criteria. We also reviewed our recruitment advertising strategy to ensure that our job offers reach disabled candidates.

This work has not yet affected the equality profile of our workforce and job applicants in 2019/20, which showed that disabled people remain an under-represented group. However, further actions to attempt to overturn this trend are planned for 2020/21.

This year, we also measured in more detail the Welsh language skills of our workforce.

Whilst 15.9% of people stated that Welsh was their main language (an increase of 3.9% since last year), the proportion of people with fairly good or fluent skills was higher:

- Speaking: 23.8%
- Reading: 27%
- Writing: 27%
- Understanding: 27%

Our work on gender equality

This year, our median Gender Pay Gap decreased from 21% at March 2019 to 11% at March 2020.

	2020	2019
% of staff female	75%	73%
Median Pay Gap	11%	21%
Mean Pay Gap	19%	23%

We are aware that, in a relatively small organisation, individual recruitment outcomes can make apparently large differences. Women among our job applicants consistently outnumber men by a significant margin. We also have in place a range of policies and training opportunities to remove barriers to employment or career progression by female staff.

However, the extent of our Gender Pay Gap at March 2019 prompted us to seek an external specialist opinion on our performance on gender equality.

As a result, we engaged with Chwarae Teg to work towards accreditation as a FairPlay Employer.

Chwarae Teg is a Welsh charity leading on gender equality, including in the workplace. Its FairPlay Employer scheme benchmarks organizations in terms of gender equality across 4 levels: bronze, silver, gold and platinum. We were delighted to achieve the FairPlay Employer Award at silver level, having scored above the Welsh public sector average across all the categories assessed.

We were also pleased that our median Pay Gap decreased by 10 percentage points and our mean Pay Gap decreased by 4 percentage points compared to the previous year. Our Median Gender Pay Gap is now below the Welsh average (13.5%) and below the Welsh average in the public sector (14.2%) (Chwarae Teg, 2019).

Whilst we are pleased with these results, there are clearly areas in which we can seek improvements. We have now received recommendations for actions from Chwarae Teg and will be working on the implementation of these actions in 2020/21.

Find more information about our work to promote equality in our Annual Equality Report 2019/20

Sustainability

We understand that we need to play our part in protecting the environment. We are continuing to develop sustainable practices throughout the organisation. In 2019/20:

we reduced our waste by 13.2%

we reduced our energy usage by 2%

0% of our general waste was sent to landfill

41% we avoided 41% more commuting mileage per day

we published our report under the Biodiversity and Resilience of Ecosystems Duty (section 6 duty)

Where possible, we make changes to reduce the impact of the office on the environment and operate in a sustainable manner.

Waste management

In 2019/20, we reduced our waste by 13.2% compared to the previous year.

In the past 12 months we have removed all desk bins to encourage staff to recycle as much waste as possible and added recycling points throughout the office.

We also reduced by 40% the number of sub files (sent to our professional advisers for them to advise on cases) being produced in paper format.

This reduces printing and paper use but also reduces mileage covered by our courier company.

	2019/20	2018/19
Confidential waste (kg)	8,650	8,860
Mixed recycling (kg)	2,346	2,250
General waste (kg)	16,000	20,000
Total waste (kg)	**26,996**	**31,110**

Since April 2019, we have sent 0% of our general waste to landfill.

Lighting and energy

Total electricity usage has fallen by 2% from the previous year.

	2019/20	2018/19
Energy usage (KwH)	104,521	106,701

We achieved this by installing LED lighting and providing signage throughout the office to encourage staff and visitors to turn off lights and equipment when not in use.

Emissions

The number of staff who work at home as part of their normal working pattern, as well as those working compressed hours over fewer days, has increased this year by 175%.

We calculate that this increase has resulted this year in a reduction of our carbon footprint:

41% more commuting mileage avoided per day

175% more average kgs of CO^2 in emissions avoided annually

These figures relate to the period before the COVID-19 lockdown. At the time of writing this Report, all our staff were working from home. Whilst this will clearly have a very strong effect on our emissions result in the short term, in the longer term it is also likely to increase working at home on a more regular and permanent basis.

Biodiversity and Resilience of Ecosystems Duty (section 6 duty) report

In December 2019 we published our report under biodiversity and resilience of ecosystems duty, in compliance with the Environment (Wales) Act 2016.

This report outlines our work to support sustainability since 2016 and contains detailed data on our actions and performance in this respect. It also contains an appendix with up to date detailed information on our performance on sustainability in 2019/20.

Formal accountability

We are accountable to the National Assembly for Wales for the work done and the office's use of resources.

The National Assembly for Wales

The Finance Committee has established a set of principles to guide the preparation of budget submissions and each year we make a formal submission, taking account of these principles, seeking funding for the following year. The submission is scrutinised by the Finance Committee, which makes a recommendation on the funding to be provided. The Committee also makes comments and recommendations on the submission and these are taken into account in subsequent years.

The Annual Report and Accounts document reports on the use of resources and on the work done during the year. It is laid before the National Assembly for Wales and published. The report is scrutinised by the Equality, Local Government & Communities Committee each year. In addition, the Public Accounts Committee periodically scrutinises our use of resources and makes observations and recommendations. We work to implement recommendations made by these Committees in our Estimates submission and our Annual Report and Accounts.

Judicial review

As a Corporation Sole, and to reflect the principles of ombudsman schemes internationally, the Ombudsman and his staff are fully responsible for casework decisions. Whilst complainants can request an internal review of a casework decision they are unhappy with (and this is undertaken by a senior member of staff who has not previously been involved in the case), the appropriate route to challenge our decision is through judicial review.

It is rare for our decisions to be challenged legally and very few cases are subject to judicial review proceedings. However, during 2019/20, we faced one legal challenge in the High Court. A complainant sought permission from the Court to judicially review our findings on his complaints about the relevant Health Board and Council's handling of his late mother's care. We had fully investigated the complaints, which we partially upheld.

On 19 March 2020, the Court refused the application for permission because no arguable grounds for judicial review that had a realistic prospect of success had been presented. An award of costs was made in our favour.

Benchmarking

We develop our work by benchmarking against best practice across the ombudsman sector. In 2019/20:

we maintained close links with colleagues in the UK, Europe and around the world

The ombudsman community

We continued to be closely involved in the work of the Ombudsman Association (OA). In 2019/20, we attended (and in some cases chaired) a number of the OA interest groups, considering legal matters, human resources, first contact, casework, communications and policy. We participated and assisted in the OA Annual Conference, 'Driving improvements: collaboration and peer learning' held in Belfast in May 2019. We also continue to meet members of the Public Services Ombudsman Group which this year convened on 3 occasions in Belfast, Edinburgh and Manchester.

We sustained relationships with European colleagues, attending the European Network of Ombudsmen, hosted by Emily O'Reilly, the European Ombudsman and addressed by the European Commission's chief negotiator, Michel Barnier.

We also participated in conferences and good practice seminars organised by the International Ombudsman Institute (IOI).

In one of the highlights of the year, in May 2019, the Committee of Ministers of the Council of Europe endorsed 25 'Principles on the Protection and Promotion of the Ombudsman Institution', subsequently also adopted by the Venice Commission. These so-called 'Venice Principles' represent a set of internationally accepted standards for the proper functioning and independence of public services ombudsman offices. We participated fully in the development of the Venice Principles and we view them as a new global standard of excellence for ombudsman schemes.

2019/20 has also been a year of change for our role in many of these networks. In May 2019, Nick Bennett, the PSOW, stood down as Chair of the OA, handing over the position to Anthony Arter, the Pensions Ombudsman.

2020 was also the final year for Nick Bennett to represent the UK on the IOI's world and European Boards. These roles have now passed to the Parliamentary and Health Service Ombudsman, Rob Behrens, and we wish him every success.

With the 2019 Act, we became the first ombudsman in the UK to hold active powers to undertake investigations on our own initiative and to set complaints standards for public bodies (our colleagues in Northern Ireland also expect to have the latter power in due course.) From the earliest day of calling for these powers, we were eager to avoid 'reinventing the wheel' and to draw on the good practice available.

In June 2019, we held a seminar on the new powers in Aberystwyth University, addressed by the leading ombudsmen from schemes in Ireland, Scotland and Northern Ireland, and the Catalan Ombudsman as well as the president of the European IOI.

Later in the year, our Complaints Standards team visited colleagues in Edinburgh to learn about the steps taken by the Scottish Public Services Ombudsman to establish a Complaints Standards service. The Own Initiative team liaised with the Northern Ireland Public Services Ombudsman and the European Ombudsman to discuss good practice in own initiative investigations.

We were also glad to support colleagues with our expertise. In January and February this year, we hosted visits from colleagues in Northern Ireland and England to discuss our progress in the implementation of the Complaints Standards role. We also participated in a peer review seminar in the UK Parliament where we shared our experiences with other UK and international offices.

The Welsh Commissioners and the Auditor General

Nick Bennett continued to meet the Welsh Commissioners and the Auditor General for Wales on a quarterly basis to discuss issues of mutual interest. On the back of these meetings, we were delighted to co-operate with the Children's Commissioner for Wales on a joint event in the Eisteddfod Genedlaethol 2019 in Llanrwst, as well as holding discussions during the year on the use of our new power to undertake investigations on our own initiative.

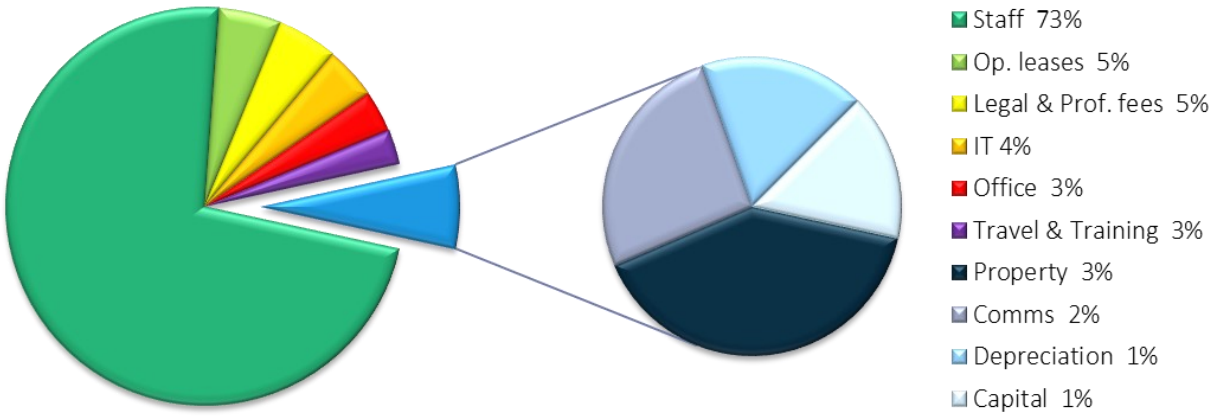
Our staff also met separately on several occasions representatives of these offices, as well as the Equality and Human Rights Commission, to discuss issues such as our approaches to casework, policy work and IT systems. We value these opportunities for sharing experiences, good practice and challenges with our colleagues. They are more important than ever in the context of the challenges that the Covid-19 outbreak is setting for public services in Wales.

Financial Management

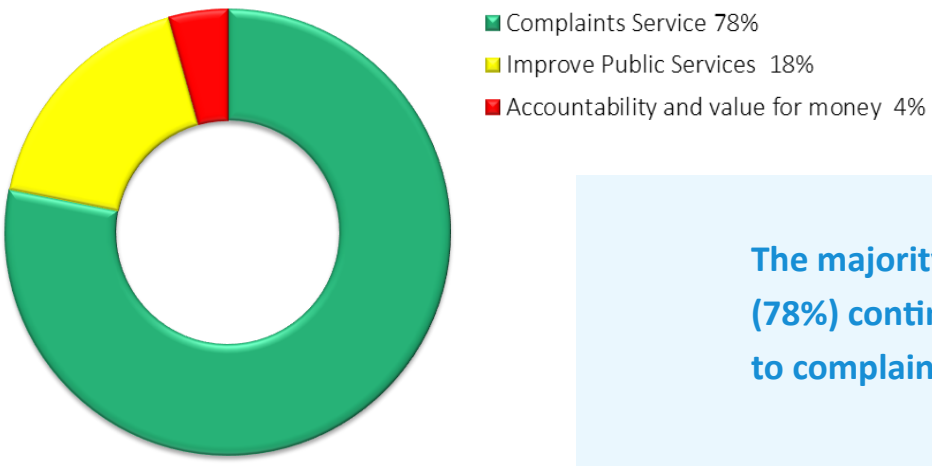
Overall resource and cash expenditure has increased compared to the same period last year. This is due to the commencement of the new Public Services Ombudsman (Wales) Act and a significant, national increase in employer pension contributions.

Resource Out-turn	2019/20	2018/19	Change
	£000s	£000s	£000s
Total Resource	4,871	4,445	+426
Cash Requirement	4,836	4,390	+446

Gross Resource Expenditure 2019/20



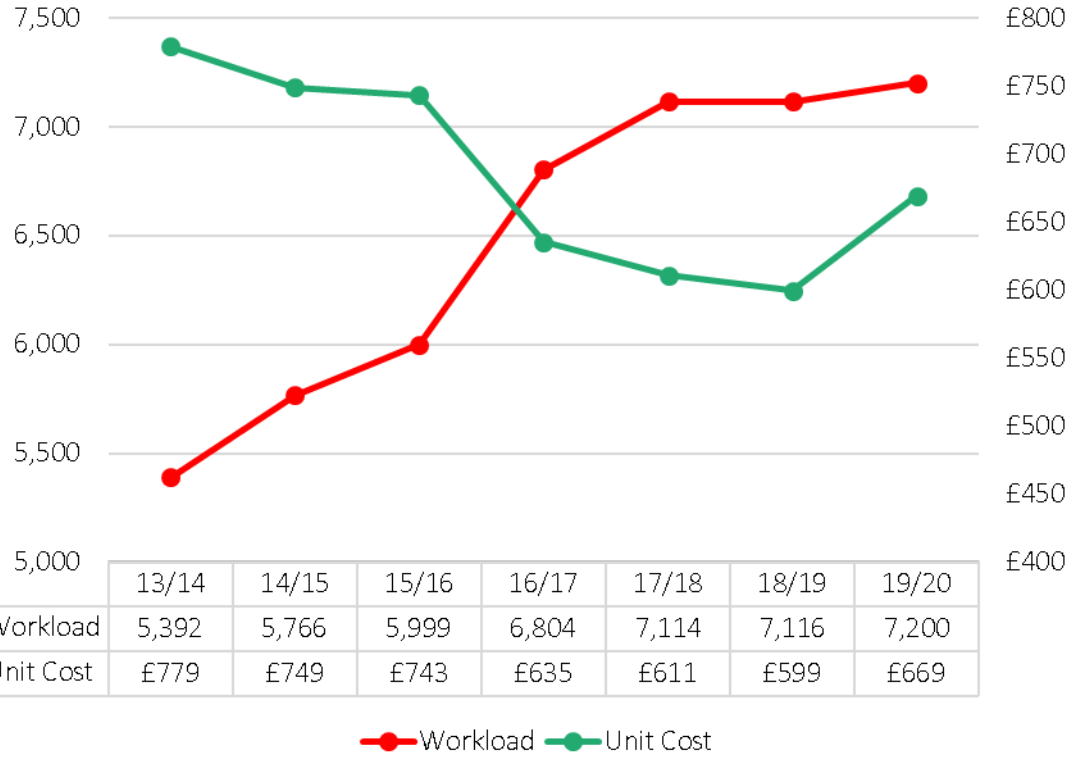
Analysis of spending by Strategic Aims



The majority of our resources (78%) continue to be applied to complaints handling

Workload Compared to Unit Cost

Prior year costs have been inflated by CPI.



	13/14	14/15	15/16	16/17	17/18	18/19	19/20
Workload	5,392	5,766	5,999	6,804	7,114	7,116	7,200
Unit Cost	£779	£749	£743	£635	£611	£599	£669

We've seen a 34% rise in workload over the last 7 years and a 14% fall, in real terms, in unit cost

We spent 92% of our budgeted funding (£231k) on implementing the new PSOW Act

PSOW Act 2019 expenditure

	£000s
Staff costs	171
Communications	25
Office costs	9
Capital	8
Training & Recruitment	5
Computer services	5
Premises	4
Travel & Subsistence	4
Total spent on New Powers	**231**
Budget	251
Variance	**20**

Expenditure to 31 March 2020 compared to previous year

	2019/20	2018/19	Reasons for significant changes
	£000	£000	
Salaries	2,582	2,389	Increase in staff numbers due to new PSOW Act
Social Security costs	252	221	
Pension costs	685	480	National increase in employer contributions
Pension fund charges	33	42	
Total Pay	**3,552**	**3,132**	
Rentals under operating leases	237	264	End of photocopier lease - December 2019
External Audit fee	15	18	Efficiencies in carrying out 2018/19 audit
Legal and professional fees	230	261	Improved management of professional advice
Other property costs	135	135	
Computer services	209	182	Full cloud back-up introduced in 2019/20
Office costs	169	103	Investment in Wellbeing & purchase of photocopiers
Travel and Subsistence	45	31	Costs to launch new PSOW Act
Training and Recruitment	93	55	Additional professional investigation training for staff
Communications	87	41	Outreach work to launch new PSOW Act
Depreciation	60	31	Large IT capital investment in 2018/19
Total other Administration Costs	**1,280**	**1,121**	
Gross Costs	**4,832**	**4,253**	
Income	(14)	(61)	End of staff secondment to HIW
Net Expenditure	**4,818**	**4,192**	
Capital	53	253	IT infrastructure investment in 2018/19
Net Resource	**4,871**	**4,445**	

More detailed financial information can be found in the financial statements and notes that support the accounts.

Nick Bennett N Bennett
Accounting Officer
Public Services Ombudsman for Wales 1 July 2020

Accountability Report

2019/20

Corporate Governance Report

Ombudsman's Report

Under the Government of Wales Act 2006, the office is financed through the Welsh Consolidated Fund (WCF) with any unspent cash balances repaid into the WCF after a certified copy of the accounts has been laid before the National Assembly for Wales. This creates a further control in that there is a need to effectively manage the budget on both a cash and a resource basis. The salary of the office holder of the Public Services Ombudsman for Wales and the related costs are a direct charge on the WCF and are administered through the National Assembly for Wales.

As at 31 March 2020, the Office comprised 73 full and part-time staff based in Pencoed, Bridgend including the Ombudsman, Chief Operating Officer & Director of Improvement, Chief Legal Adviser & Director of Investigations, as well as investigation and support staff.

The National Assembly for Wales provided cash of £4.9 million for the funding of the Office, with £251k being budgeted funding for the implementation of the new PSOW Act 2019. £48k of this overall funding is due to be returned to the WCF being the unused cash balance at the year end. The expenditure of the office was kept within the Estimate agreed in November 2018 and amended by Supplementary Budgets during 2019/20.

The table below shows that, over the past 7 years, the Office has seen an increase of over 34% in all contacts (that is, in enquiries, complaints about the conduct of members of local authorities and public body complaints), whilst unit costs have reduced by 14% when adjusted for CPI inflation, despite additional funding in 2019/20 for New Powers and the effect of a 6% increase in employer pension contributions.

Workload	Enquiries	Code	Public Body	Total Complaints	Unit cost
13/14	3,234	226	1,932	5,392	£779
14/15	3,470	231	2,065	5,766	£749
15/16	3,731	276	1,992	5,999	£743
16/17	4,512	236	2,056	6,804	£635
17/18	4,861	270	1,983	7,114	£611
18/19	4,627	282	2,207	7,116	£599
19/20	4,726	365	2,109	7,200	£669
Change	**46%**	**62%**	**9%**	**34%**	**-14%**

Remuneration and Pension Liabilities

Details of the pay and related costs of the Ombudsman and the Office are shown in the Remuneration Report.

Pension obligations to present and past employees are discharged through the Principal Civil Service Pension Scheme (PCSPS), the Local Government Pension Scheme administered through the Cardiff and Vale of Glamorgan Pension Scheme and the pensions paid directly to former Commissioners or their dependants.

Further details are given in the Pensions Disclosures.

Corporate Governance

The office holder of the Public Services Ombudsman for Wales is a Corporation Sole. In addition, upon taking up my role as Ombudsman, I was appointed by the Treasury as the Accounting Officer for the public funds with which the National Assembly entrusts me to undertake my functions. The Audit & Risk Assurance Committee supports the Ombudsman by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and on the integrity of financial statements and the annual report. Further details are set out in the Annual Governance Statement.

Register of Interests

A register of interests is maintained for the Ombudsman, Directors and members of the Advisory Panel and Audit & Risk Assurance Committee.

Accounts Direction

Under the Accounts Direction issued by HM Treasury dated 21 December 2006, I was required to prepare accounts for the financial year ended 31 March 2020 in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (the FReM) issued by HM Treasury which was in force for 2019/20.

The accounts have been prepared to:

- give a true and fair view of the state of affairs at 31 March 2020 and of the net resource outturn, resources applied to objectives, recognised gains and losses and cash flows for the financial year then ended
- provide disclosure of any material expenditure or income that has not been applied for the purposes intended by the National Assembly for Wales or material transactions that have not conformed to the authorities that govern them.

Auditors

The Auditor General for Wales is the External Auditor of the accounts of the PSOW as laid down in paragraph 18 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019.

The cost of the audit for 2019/20 was £15k (2018-19: £18k).

As far as I am aware, I have taken all the steps necessary to make the auditors aware of any relevant audit information.

N Bennett

Nick Bennett
Accounting Officer
Public Services Ombudsman for Wales 1 July 2020

Statement of Accounting Officer's Responsibilities

Under the Public Services Ombudsman (Wales) Act 2019, as Public Services Ombudsman for Wales I am required to prepare, for each financial year, resource accounts detailing the resources acquired, held or disposed of during the year and the use of resources by the PSOW during the year.

The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of the PSOW and its net resource outturn, Statement of Financial Position and cash flows for the financial year.

In preparing the accounts, as the Accounting Officer, I am required to comply with the requirements of the 'Government Financial Reporting Manual' and in particular to:

- observe the Accounts Direction issued by the Treasury including the relevant accounting and disclosure requirements and apply suitable accounting policies on a consistent basis
- make judgements and estimates on a reasonable basis
- state whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed and disclose and explain any material departures in the accounts
- prepare the accounts on a going concern basis
- confirm that the Annual Report and Accounts as a whole is fair, balanced and understandable, and
- take personal responsibility for the Annual Report and Accounts and the judgements required for determining that it is fair, balanced and understandable.

My relevant responsibilities as Accounting Officer include the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding the PSOW's assets, as set out in Managing Welsh Public Money and the Public Services Ombudsman (Wales) Act 2019.

As the Accounting Officer, I have taken all the steps that I ought to have taken to make myself aware of any relevant audit information and to establish that PSOW's auditors are aware of that information. So far as I am aware, there is no relevant audit information of which the auditors are unaware.

Annual Governance Statement 2019/20

Status of the Public Services Ombudsman for Wales

As laid down in Schedule 1 paragraph 2 of the Public Services Ombudsman (Wales) Act 2019, the Ombudsman is a Corporation Sole holding office under Her Majesty and he discharges his function on behalf of the Crown. Schedule 1 paragraph 19 states that the Ombudsman is the Accounting Officer for the Office of the Ombudsman.

Scope of Responsibility

In undertaking the role of Accounting Officer, I ensure that the Office operates effectively and to a high standard of probity. In addition, I have responsibility for maintaining a sound system of internal control that supports the achievement of PSOW's policies, aims and objectives, whilst safeguarding the public funds and assets for which I am personally responsible, in accordance with the responsibilities assigned to me in 'Managing Welsh Public Money'.

I am independent of the National Assembly for Wales, but am accountable to its Public Accounts Committee for the use of resources made available to support my statutory functions. In determining the level of resources available to the Office, the PSOW's budget proposals are considered by the Finance Committee of the National Assembly for Wales in accordance with the process laid down in the Act. I produce a combined Annual Report and Accounts for consideration by the Equality, Local Government and Communities Committee and the Finance Committee.

I am required to include this Governance Statement with my annual report and accounts to explain how the governance of my Office works and to ensure it meets the requirements of the Corporate Governance Code and The Orange Book: Management of Risk. To enable me to satisfy these requirements, I have established appropriate structures, systems and procedures that are comprehensive and provide me with evidence that the governance arrangements are working as intended across the whole organisation and its activities. Such arrangements include my Governance Framework, a comprehensive internal control environment, effective internal and external audit arrangements and robust financial management, risk planning and monitoring procedures.

Strategic Planning and Performance Monitoring

In my Strategic Plan for the 3 years 2019/20 to 2021/22, I set the following for the Office:

Our Vision for public services in Wales:

Services that actively listen and learn from complaints.

Our Mission:

To uphold justice and improve public services.

Our Strategic Aims:

- Strategic Aim 1: Deliver Justice
  A fair, independent, inclusive and responsive complaints service.

- Strategic Aim 2: Promote Learning, Work to Improve Public Services
  Promote learning from complaints and stimulate improvements on a wider scale.

- Strategic Aim 3: Use Resources Wisely and Future-proof the Organisation
  Identify and adopt best practice. Secure value for money and services that are fit for the future. Support staff and ensure good governance which supports and challenges us.

Whilst individual teams within the Office are charged with implementing the actions identified, the Management Team monitors progress made against targets and the outcomes achieved via monthly reports.

System of Internal Control

The system of internal control is designed to manage risk to a reasonable level rather than eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable, and not absolute, assurance of effectiveness. It is based on an ongoing process designed to identify and prioritise the risks to the achievement of my policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

The system has been in place in the Office of the PSOW for the year ended 31 March 2020 and up to the date of approval of these accounts and accords with HM Treasury guidance. No significant areas of internal control weaknesses have been identified from audit work and steps to improve controls further are implemented promptly and monitored by the Audit & Risk Assurance Committee.

Corporate Governance arrangements: Audit & Risk Assurance Committee

Governance arrangements include an Audit & Risk Assurance Committee (ARAC). The Committee's responsibilities are:

(a) Terms of Reference

The Committee supports the Ombudsman by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the annual report.

(b) Membership

Membership comprises up to 6 independent external members. The 2018/19 membership of Mr Jim Martin, former Scottish Public Services Ombudsman, Dr Tom Frawley CBE, former Assembly Ombudsman and Northern Ireland Commissioner for Complaints, Mr Jonathan Morgan, former Assembly Member and previously Chair of the National Assembly's Public Accounts Committee, Mrs Anne Jones, former Assistant Information Commissioner, Mr Trevor Coxon, former Monitoring Officer of Wrexham County Borough Council and Mr Ian Williams, former Group Chief Executive of Hendre Limited remained unchanged in 2019/2020. Mr Morgan's initial term of office was due to conclude in December 2019. However, for continuity particularly in light of the new PSOW Act 2019, the Ombudsman invited Mr Morgan to continue in his role as Independent Member and Chair of the ARAC for a further 12-month period.

(c) Training

Members of the Committee are invited to assess their training needs annually. An induction programme is provided for all new members of the ARAC.

(d) Meetings

The Committee sets itself an annual work programme. There are generally 4 meetings of the Committee during the year.

The Ombudsman attends ARAC Meetings and the Chief Operating Officer acts as Secretary to the Committee. The meetings were also regularly attended by internal and external auditors and appropriate members of the PSOW's Management Team.

At each meeting, the Committee received a number of standing agenda items. These include declarations of any identified fraud or losses, including any data losses. At each meeting, the Committee received a copy of the latest Budget Monitoring report considered by the Management Team. This is intended to provide the Committee with an assurance that there is regular scrutiny of the financial position within the Office.

During the year, the Committee also received reports on a number of other appropriate matters within its Terms of Reference. They included the 9 and 12-month accounts, internal audit plans, a review of the Whistleblowing Policy, a review of governance arrangements, updates on major IT developments, progress on the implementation of the Strategic ITC Plan and relevant financial and corporate governance matters issued by HM Treasury. The Committee reviewed the Office's counter-fraud arrangements, in the context of the Cabinet Office Counter-Fraud Framework, to satisfy itself that appropriate arrangements are in place.

The Committee provided advice to the Ombudsman to ensure that the 2019/20 Annual Governance Statement included appropriate information and complied with best practice.

A standing item is risk management. At each meeting the Committee considered a report on the greatest identified risks. The Committee explored and challenged the reported risks to satisfy itself that all key risks have been identified. Risk management and risk mitigation measures were also considered.

As a result of the Covid-19 pandemic, the March 2020 meeting of the Committee did not take place in the normal way. Papers were circulated as normal and all members commented and asked questions about the papers in writing. A small meeting was then held using video conferencing. This involved the Committee Chair, internal audit, external audit, the Ombudsman and a reduced number of staff. Other than for the Chair, full attendance for the year was therefore 3 meetings, and all members contributed to the fourth meeting.

Attendance at meetings by Committee members during the year was as follows:

Membership:	
Jonathan Morgan (Chair)	4
Ian Williams	3
Jim Martin	3
Anne Jones	3
Trevor Coxon	3
Tom Frawley	2

(e) Internal and External Audit

The Committee received regular reports from both the internal and external auditors. The work of Deloitte as Internal Auditors during the year was planned based on their overall needs assessment and carried out through their fourth annual programme. Their reports highlighted the satisfactory internal control framework within the organisation and made recommendations for improvement where necessary.

The internal audits undertaken in 2019/20 and overall assessments were as follows:

	Assurance level
Professional Advice	SUBSTANTIAL
Corporate Governance and Risk Management	SUBSTANTIAL
Information Security	MODERATE
Financial Systems:	
Fixed Assets	SUBSTANTIAL
General Ledger	SUBSTANTIAL
Purchasing and Payments	SUBSTANTIAL

In all but one audit, the level of assurance was considered 'Substantial', the highest assurance level. A number of low priority recommendations were made and these have either been completed or will be completed in accordance with agreed timescales. In addition, an advisory audit of Contract Management arrangements was carried out in August 2019.

The internal auditors' Annual Report for 2019/20 stated: 'Based on the work we have undertaken during the year we are able to conclude that the Ombudsman has a basically sound system of internal control, which should provide **substantial assurance** regarding the achievement of the Ombudsman's objectives.' These findings also provide assurance that the arrangements in place are reducing the Office's exposure to risk. The Committee noted the thoroughness of the audit work, practicality of recommendations and the open and positive response of management to the recommendations made.

The Committee considered the 2018/19 Annual Report and Accounts that included the Governance Statement of the Office for 2018/19, together with the External Audit of Financial Statements Report and Management Letter. An unqualified opinion was given, following external audit work undertaken by the Wales Audit Office, on the 2018/19 Accounts. There were no recommendations arising from the Audit. The external audit conclusions for the 2018/19 financial year were reviewed at the September 2019 meeting of the Committee.

Both Internal and External Auditors have the right to raise any matter through an open access policy to the Chair and, through that right, to bring any matter to the attention of the Committee. The Committee, by reviewing the programmes of both the External and the Internal Auditors, ensured that they were co-operating effectively with each other. The quality of the audit work has been evaluated during the year through consideration of the audit reports and recommendations and dialogue at meetings between Committee Members and the Auditors.

To ensure that appropriate matters can be raised in confidence, the Chair of the Committee generally holds an annual meeting with representatives of the External and Internal Auditors.

Arrangements this year were disrupted by Covid-19 restrictions. On 31 March 2020 the Chair of the Committee had a virtual meeting with the internal auditors. The external audit representative was unable to join this as planned but there was a subsequent discussion between the Chair of the Committee and the external audit lead, by telephone, on 21 April.

(f) Monitoring processes

At each meeting during 2019/20, the Committee received a report on progress made on the implementation of External and Internal Audit recommendations. Committee members were satisfied that all the recommendations made had been implemented or will be implemented by the first quarter of 2020/21.

(g) Annual Review and Assessment

This annual review is undertaken to evaluate the work of the Committee and to ensure that the work of the Audit & Risk Assurance Committee continues to comply with the Good Practice Principles set out in the HM Treasury Audit Committee Handbook. To assist the Committee in determining that it was complying with good practice, each member was invited to complete the National Audit Office's 'The Audit Committee self-assessment checklist'. Comments received from Committee members were considered in preparing the Annual Review for 2019/20.

The ARAC Annual Review concluded that it had received comprehensive assurances and information that was reliable and sufficient to enable it to carry out its responsibilities. Those assurances demonstrated a satisfactory overall internal control environment, financial reporting and the management of risk and of the quality of both the Internal and External Audit work undertaken.

The Committee was therefore able to provide assurances to support me effectively, as Public Services Ombudsman for Wales, to comply with my Accounting Officer responsibilities. The Committee provided evidence to assist in the preparation of this Annual Governance Statement.

Advisory Panel

The Advisory Panel is a non-statutory forum whose main role is to provide support and advice to the Ombudsman in providing leadership and setting the strategic objectives of the office of the Public Services Ombudsman for Wales. The Panel also brings an external perspective to assist in the development of policy and practice.

Panel meetings are chaired by one of the independent external members. In June 2019, following a recommendation from the Public Accounts Committee, Jonathan Morgan stepped down as a member of the Panel and therefore from the position of Chair, but remained Chair of the Audit & Risk Assurance Committee. On the recommendation of the Panel, Anne Jones was appointed to take over as Chair and took up the role with effect from September 2019.

Dr Jane Martin CBE joined the Panel in September 2019 as an independent member. She is not a member of the Audit & Risk Assurance Committee, so the membership arrangements for the Advisory Panel and Audit & Risk Assurance Committee take account of the recommendations of the Public Accounts Committee. Dr Martin was Local Government Ombudsman and Chair of the Commission for Local Administration in England until January 2017 and is now a member of the Committee on Standards in Public Life. The Advisory Panel is an advisory-only body to the Ombudsman and does not make decisions in its own right.

Reporting of Personal Data Related Incidents

All incidents involving personal data are reported to the Audit & Risk Assurance Committee. Guidance issued by the Information Commissioner's Office (ICO) is considered to establish whether it is necessary to report the incident to that office. Further improvements were made to the PSOW's process for handling such incidents to reflect current ICO guidance. During 2019/20, one incident required reporting to the ICO. The ICO was satisfied with the PSOW's approach to the incident and confirmed that no further action was required.

The Risk and Control Framework

As required by 'Managing Welsh Public Money', I am supported by a professionally qualified Financial Accountant who carries out the responsibilities of a Finance Director as set out in that document.

Risk management and the risk register are standing Agenda items for the Audit & Risk Assurance Committee, and the approach to risk management, together with risk appetite, is reviewed periodically.

I am continuing to enhance the robust internal control arrangements to ensure that the Office has the capacity to identify, assess and manage risk effectively. In undertaking this responsibility during the year ended 31 March 2020, I have been supported by a Chief Operating Officer to whom some of the Ombudsman's responsibilities have been delegated.

Key risks at the financial year-end were identified as follows:

Risk horizon	Risk affects:	Risk management and mitigation:	Residual risk:
Core function – Case volumes and meeting KPIs	Likely impact of Covid-19 on case volumes and ability to meet Key Performance Indicators (KPIs). Public bodies are unlikely to be able to engage with Ombudsman which will result in a growing number of open cases and growth in older cases. Cases cannot be concluded without public body input to investigation or agreement to findings and recommendations.	Work closely and supportively with public bodies.	The likely inability of public bodes to engage with us on our casework means that the residual risk is considered RED
Core function – Staffing levels	Likely impact of Covid-19 on maintaining productive casework staffing levels.	Make full use of IT systems to support effective and efficient homeworking.	The likely impact on casework staff and productivity means that the residual risk is considered RED
Support services – Staffing levels	Likely impact of Covid-19 on maintaining productive support (IT, Finance, HR, and Casework Support) staffing levels.	Make full use of IT systems to support effective and efficient homeworking.	The likely impact on support staff and productivity means that the residual risk is considered RED

I and my Management Team will continue to work to manage and minimise the risks in these key areas in the year ahead and the risks will be considered at each meeting of the Audit & Risk Assurance Committee.

Risk Assurance Framework Arrangements

PSOW Framework

- Strategic objectives from Business Plan
- Work programme
- Risk management
- Anti-fraud policy
- Governance framework
- Policies, procedures and code of conduct

Advisory Panel
Provides support and advice on vision, values and purposes as well as strategic direction and planning

Accounting Officer
Governance
Decision making
Financial management
Risk management

Audit & Risk Assurance Committee
Reviews and monitors governance, risks and internal controls.
Agrees annual governance statement

Management Team
3-year strategic plan
Operational plan
Performance monitoring
Corporate policies
Risk management
Value for money

Central Guidance
HM Treasury
FReM
Managing Welsh Public Money
Public Sector Internal Audit

PSOW policies, plans and risk register

Annual Governance Statement

Assurance Map Components

1st line of defence
Strategic and operational delivery reporting
KPI reporting
Financial controls / Budget monitoring

2nd line of defence
Risk register reviews
Quality assurance
Information security assurance

3rd line of defence
Internal audit reports
Financial accountant spot checks
Scrutiny by Finance Committee and PAC

Other assurances
External audit

I am satisfied that the systems in place identify potential risks at an early stage and enable, through active management, the appropriate action to be taken to minimise any adverse impact on the office.

The Audit & Risk Assurance Committee receives regular reports on the risks relating to this Office, explores the Office's approach to those risks and provides comments and suggestions on current and emerging risks.

Risks are considered across a number of key areas or risk horizons. These are:

- risks that could affect my ability to fulfil my core functions
- risks affecting data security
- financial risks
- governance risks
- risks affecting facilities & support arrangements (such as premises & IT services).

Budgeting Process

As Accounting Officer, I ensure that I have in place arrangements for tight control of the public money entrusted to me. The Management Team receives a monthly budget monitoring report setting out details of actual against budgeted expenditure. Any unexpected expenditure issues that may arise during the year are considered and any actions required to ensure that the office remains within its budgeted expenditure are agreed. No major issues arose in respect of the PSOW's budget for 2019/20.

As far as the process of producing the PSOW's financial estimate for 2020/21 is concerned, a paper setting out initial budget criteria was considered by the Advisory Panel in June 2019. The final estimate paper included full-year funding for New Powers as well as some inflationary increases. Overall, the resource and cash savings on a like-for-like basis in the proposed budget would be 1.3% and 1.1% respectively. The Finance Committee scrutinised the paper in October 2019 and the full amount sought was included in the Annual Budget Motion March 2020.

Conclusion

I can report that there were no significant weaknesses in the Office's system of internal controls in 2019/20 which would affect the achievement of the Office's policies, aims and objectives and that robust Corporate Governance is in operation with no breaches of the Corporate Governance Code.

N Bennett

Nick Bennett
Accounting Officer
Public Services Ombudsman for Wales

1 July 2020

Remuneration Report

Public Services Ombudsman for Wales

The Government of Wales Act 2006 provides for my remuneration and associated national insurance and pension costs to be met from the Welsh Consolidated Fund, rather than being paid directly. These costs are included, for transparency, in the remuneration report.

Remuneration

The following sections provide details of the remuneration and pension interest of the most senior management of the Office: Nick Bennett - Ombudsman, Chris Vinestock - Chief Operating Officer & Director of Improvement and Katrin Shaw - Chief Legal Adviser & Director of Investigations.

Single Total Figure of Remuneration

2019/20					
Officials	Salary (£'000)	Bonus payments (£'000)	Benefits in Kind (to nearest £100)	Pension benefits (to nearest £1,000)	Total (£'000)
Nick Bennett	150-155	-	-	58,000	205-210
Chris Vinestock	100-105	-	-	75,000	175-180
Katrin Shaw	85-90	-	-	75,000	160-165

Single Total Figure of Remuneration

2018/19					
Officials	Salary (£'000)	Bonus payments (£'000)	Benefits in Kind (to nearest £100)	Pension benefits (to nearest £1,000)	Total (£'000)
Nick Bennett	145-150	-	-	58,000	205-210
Chris Vinestock	95-100	-	-	34,000	125-130
Katrin Shaw	75-80	-	-	29,000	105-110

Salary

Salary includes gross salary, overtime and any other allowances to the extent that they are subject to UK taxation.

Benefits in kind

The monetary value of benefits in kind, covers any expenditure paid by the PSOW and treated by HM Revenue and Customs as a taxable emolument. There was no such expenditure.

Bonuses

No bonus was paid during the year to me or to any staff within my office, as no bonus scheme is in operation.

Pay multiples

The banded remuneration of the highest-paid director in the financial year 2019/20 was £150-£155,000 (2018/19 = £145-£150,000). This was 3.6 times (2018/19 = 3.5) the median remuneration of the workforce, which was £42,684 (2018/19 = £41,847). In 2019/20, no employee received remuneration in excess of the highest-paid director (2018/19 = none).

Remuneration ranged from £20,000 to £155,000 (2018/19, £18,000-£150,000).
Total remuneration includes salary, non-consolidated performance-related pay and benefits-in-kind. It does not include severance payments, employer pension contributions and the cash equivalent transfer value of pensions.

Pay awards

Staff pay is linked to the pay awards made to employees within Local Government in England and Wales. In line with that procedure, a 2% pay increase was awarded to staff in April 2019.

Pensions

Pension entitlements for the persons shown above are detailed below:

Pension Liabilities

The pension obligations to present and past employees are discharged through:

- the Principal Civil Service Pension Scheme (PCSPS)
- the Local Government Pension Scheme administered through the Cardiff and Vale of Glamorgan Pension Scheme (the Fund)
- the pensions paid directly to former Commissioners or their dependants.

	As at 31/03/20					As at 31/03/19
Name	Accrued pension at pension age and related lump sum £000	Real increase in pension and related lump sum at pension age £000	CETV £000	Real Increase in CETV £000	Employer contribution to partnership pension accounts Nearest £100	CETV £000
Nick Bennett	45-50	2.5-5	559	30	-	495
Chris Vinestock	60-65	2.5-5	912	49	-	822
Katrin Shaw	35-40	2.5-5	553	51	-	476

CETV refers to the Cash Equivalent Transfer Value, and further information can be found in the Pensions Disclosures.

Sickness

During the year, an average of 9.0 days per employee were lost through sickness, compared with 3.3 days in 2018/19. This is the equivalent of 3.4% (1.2% in 2018/19) of total possible workdays. This reflects normal short-term absences, long-term sickness and several staff having planned major surgery. 70% of the total days lost to sickness were attributable to long-term absences.

Reporting of Civil Service and other compensation schemes

No exit packages were paid in 2019/20 (2018/19 Nil).

Advisory Panel and Audit & Risk Assurance Committee

The following non-pensionable payments, based on a daily rate, were made to members of the Advisory Panel and Audit & Risk Assurance Committee:

	2019/20	2018/19
	£	£
Jonathan Morgan	1,263	3,789
Anne Jones	1,263	2,488
Jim Martin	933	2,799
Ian Williams	933	1,866
Trevor Coxon	933	2,799
Tom Frawley	622	2,488
Jane Martin	564	-
Margaret Griffiths (left 2018/19)	-	282
John Williams (left 2018/19)	-	282

Due to the late timing of the March 2020 meeting only 3 payments were made to committee members in 2019/20, with the fourth payment for attending the remote meeting in March being made in April 2020. The 2018/19 figures include 5 payments for similar reasons.

For staff reporting issues see the Annual Equality Report.

N Bennett

Nick Bennett
Accounting Officer
Public Services Ombudsman for Wales 1 July 2020

National Assembly for Wales Accountability and Audit Report

In addition to the primary statements prepared under International Financial Reporting Standards (IFRS), the Government Financial Reporting Manual (FReM) requires the Ombudsman to prepare a statement and supporting notes to show resource outturn against the Supply Estimate presented to the Assembly, in respect of each request for resource.

Summary of Net Resource Outturn

for the year ended 31 March 2020

	Revised Estimate			Outturn				2018/19
	Gross Expenditure	Income	Net Total	Gross Expenditure	Income	Net Total	Net total compared to estimate	Net Total
	£000	£000	£000	£000	£000	£000	£000	£000
Revenue	4,941	(14)	4,927	4,832	(14)	4,818	109	4,192
Capital	27	-	27	53	-	53	(26)	253
Net Resource	**4,968**	**(14)**	**4,954**	**4,885**	**(14)**	**4,871**	**83**	**4,445**
Net Cash Requirement	**4,898**	**(14)**	**4,884**	**4,850**	**(14)**	**4,836**	**48**	**4,390**

Positive totals reflect a resource or cash under-spend.

The Ombudsman's salary is paid directly from the Welsh Consolidated Fund with only the reimbursement of actual business expenses included in the PSOW accounts.

Reconciliation of Net Resource to Net Cash Requirements

for the year ended 31 March 2020

		2019/20			2018/19
	Note	Revised Estimate	Net Total Outturn	Net total outturn compared to revised estimate	Outturn
		£000	£000	£000	£000
Net Revenue	2-4	4,927	4,818	109	4,192
Net Capital	6	27	53	(26)	253
Net Resource		**4,954**	**4,871**	**83**	**4,445**
Movement in provisions	10	(20)	(1)	(19)	12
Capital charges	6	(70)	(60)	(10)	(31)
Movements in working capital	7-9	20	26	(6)	(16)
Pension charges (LGPS)	Pension Disclosures	-	-	-	(20)
Net cash requirement		**4,884**	**4,836**	**48**	**4,390**

N Bennett

Nick Bennett
Accounting Officer
Public Services Ombudsman for Wales

1 July 2020

The Certificate and Independent Auditor's Report of the Auditor General for Wales to the Senedd

Report on the audit of the financial statements

Opinion

I certify that I have audited the financial statements of the Public Services Ombudsman for Wales for the year ended 31 March 2020 under paragraph 18 (2) of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019. These comprise the Summary of Net Resource Outturn, Statement of Comprehensive Net Expenditure, Statement of Financial Position, Consolidated Statement of Cash Flows, Statement of Changes in Taxpayers Equity and related notes, including a summary of significant accounting policies. These financial statements have been prepared under the accounting policies set out within them. The financial reporting framework that has been applied in their preparation is applicable law and HM Treasury's Financial Reporting Manual based on International Financial Reporting Standards (IFRSs) as adopted by the European Union/United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice).

In my opinion the financial statements:

- give a true and fair view of the state of the Public Services Ombudsman for Wales' affairs as at 31 March 2020 and of its net cash requirement, net resource outturn and net operating cost, for the year then ended; and
- have been properly prepared in accordance with HM Treasury directions issued under the Public Services Ombudsman (Wales) Act 2019.

Basis for opinion

I conducted my audit in accordance with applicable law and International Standards on Auditing in the UK (ISAs (UK)). My responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of my report. I am independent of the body in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK including the Financial Reporting Council's Ethical Standard, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Conclusions relating to going concern

I have nothing to report in respect of the following matters in relation to which the ISAs (UK) require me to report to you where:

- the use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Accounting Officer has not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the body's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Other information

The Accounting Officer is responsible for the other information in the annual report and financial statements. The other information comprises the information included in the annual report other than the financial statements and my auditor's report thereon. My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my report, I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, my responsibility is to read the other information to identify material inconsistencies with the audited financial statements and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by me in the course of performing the audit. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

Legislation and directions issued to the Public Services Ombudsman for Wales do not specify the content and form of the other information to be presented with the financial statements.

Opinion on regularity

In my opinion, in all material respects, the expenditure and income in the financial statements have been applied to the purposes intended by the Senedd and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Report on other requirements

Opinion on other matters

As legislation and directions issued to the Public Services Ombudsman for Wales do not specify the content and form of the other information to be presented with the financial statements, I am not able to confirm that other information within the Annual Report (outside of the financial statements) has been properly prepared.

In my opinion, based on the work undertaken in the course of my audit, the information given in the Annual Report is consistent with the financial statements.

Although there are no legislative requirements for a Remuneration Report, the Public Services Ombudsman for Wales has prepared such a report, and in my opinion that part ordinarily required to be audited has been prepared in accordance with HM Treasury guidance.

In my opinion, based on the work undertaken in the course of my audit the information given in the Annual Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and the Governance Statement has been prepared in accordance with HM Treasury guidance.

Matters on which I report by exception

In the light of the knowledge and understanding of the body and its environment obtained in the course of the audit, I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- proper accounting records have not been kept;
- the financial statements and the part of the Remuneration Report to be audited are not in agreement with the accounting records and returns;
- information specified by HM Treasury regarding the remuneration and other transactions is not disclosed; or
- I have not received all of the information and explanations I require for my audit.

Report

I have no observations to make on these financial statements.

Responsibilities

Responsibilities of the Accounting Officer for the financial statements

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for preparing the financial statements in accordance with the Public Ombudsman (Wales) Act 2019 and HM Treasury directions made there under, for being satisfied that they give a true and fair view and for such internal control as the Accounting Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Accounting Officer is responsible for assessing the body's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting unless deemed inappropriate.

Auditor's responsibilities for the audit of the financial statements

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website www.frc.org.uk/auditorsresponsibilities. This description forms part of my auditor's report.

Responsibilities for regularity

The Accounting Officer is responsible for ensuring the regularity of financial transactions.

I am required to obtain sufficient evidence to give reasonable assurance that the expenditure and income have been applied to the purposes intended by the Senedd and the financial transactions conform to the authorities which govern them.

Adrian Crompton
Auditor General for Wales
2 July 2020

24 Cathedral Road
Cardiff
CF11 9LJ

Annual Accounts

2019/20

Statement of Comprehensive Net Expenditure

for the year ended 31 March 2020

		2019/20	2018/19
Administration costs	**Note**	**£000**	**£000**
Staff costs	2	3,552	3,132
Other non-staff administration costs	3	1,280	1,121
Gross Administration Costs		**4,832**	**4,253**
Operating Income	4	(14)	(61)
Net Administration Costs		**4,818**	**4,192**
Net Revenue Outturn		**4,818**	**4,192**

All activities commenced in the period are continuing.

Notes 1 to 18 form part of these statements.

Statement of Financial Position

for the year ended 31 March 2020

	Note	2019/20 £000	2018/19 £000
Non-current assets			
Property, Plant and Equipment	6a	202	185
Intangible assets	6b	148	172
Receivables due after more than 1 year	7	1	1
Pension fund surplus	Pension Disclosures	1,080	810
		1,431	**1,168**
Current Assets			
Trade and other receivables	7	207	175
Cash and cash equivalents	8	48	20
		255	**195**
Total assets		**1,686**	**1,363**
Current liabilities			
Trade and other payables	9	(210)	(172)
Provisions less than 1 year	10	(45)	(44)
		(255)	**(216)**
Total assets less current liabilities		**1,431**	**1,147**
Non-current liabilities			
Trade and other payables due after 1 year	9	(20)	(24)
Provisions greater than 1 year	10	(481)	(481)
		(501)	**(505)**
Total assets less liabilities		**930**	**642**
General Fund		**930**	**642**

Notes 1 to 18 and the Pension Disclosures form part of these statements.

The financial statements were approved by the Accounting Officer and authorised for issue on 1st July 2020 by:

N Bennett

Nick Bennett
Accounting Officer
Public Services Ombudsman for Wales 1 July 2020

Statement of Cash Flows

for the year ended 31 March 2020

	Note	2019/20	2018/19
		£000	£000
Net cash outflow from operating activities	11	(4,783)	(4,137)
Net cash outflow from investing activities	12	(53)	(253)
Financing from National Assembly for Wales	13	4,884	4,410
Prior year cash balance repaid		(20)	(32)
Net increase (decrease) in cash equivalents after adjustments for payments to Welsh Consolidated Fund		28	(12)
Cash and cash equivalents at beginning of period		20	32
Cash and cash equivalents at end of period		48	20

Notes 1 to 18 form part of these statements.

Statement of Changes in Taxpayers' Equity

for the year ended 31 March 2020

	General Fund	
	2019/20	2018/19
	£000	£000
Balance as at 1 April	642	(356)
Net operating costs	(4,818)	(4,192)
Funding by National Assembly for Wales	4,884	4,410
Due back to Welsh Consolidated Fund:		
Cash	(48)	(20)
Non operating income	-	-
Actuarial re-measurement of LGPS pension fund	270	800
Total recognised income and expense for year	288	998
Balance as at 31 March	930	642

Notes 1 to 18 and the Pension Disclosures form part of these statements.

Notes to the Financial Statements

1. Statement of Accounting Policies

These financial statements have been prepared in accordance with the Government Financial Reporting Manual (the FReM) issued by HM Treasury which is in force for 2019/20. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adopted or interpreted for the public sector. Where the FReM permits a choice of accounting policy, the accounting policy which has been judged to be most appropriate to the particular circumstances of the PSOW for the purpose of giving a true and fair view has been selected. The particular accounting policies adopted by the PSOW are described below. They have been applied consistently in dealing with items considered material in relation to the accounts.

1.1 Accounting Convention

These accounts have been prepared under the historical cost convention modified to account for any revaluation of fixed assets, where material to their value to the business, by reference to their current costs.

1.2 Property, Plant and Equipment

Expenditure on property, plant and equipment is capitalised where the purchases are expected to have a useful life extending over more than 1 year and the cost exceeds £5k. Assets costing less than £5k may be capitalised providing they are capital in nature and are part of a larger scheme that is, in total, more than £5k. Assets are shown at cost less an allowance for depreciation. On initial recognition, fixed assets are measured at cost, including such costs as installation, which are directly attributable to bringing them into working condition for their intended use. In reviewing the costs of fixed assets previously acquired and the prices paid for new acquisitions during the year there is no material difference between the historic net book value of the assets and their replacement cost less depreciation.

1.3 Depreciation

Assets are depreciated at rates calculated to write them down to zero or, if applicable, estimated residual value on a straight-line basis over their estimated useful life following an initial charge of a full month's depreciation in the month of purchase. Assets in the course of construction are depreciated from the month in which the asset is brought into use.

Except where otherwise noted asset lives are assumed to be the following:

Plant	10 years or the lease term if shorter
Furniture and other fittings	10 years or in the case of fittings, the lease term
Computers and other equipment	3 to 10 years

1.4 Intangible assets

Purchased computer software licences and developed software are capitalised where expenditure of £5k or more is incurred, and the useful life is more than 1 year. Intangible assets costing less than £5k may be capitalised providing they are capital in nature and are part of a larger scheme that is, in total, more than £5k. Intangible assets are reviewed annually for impairment and are stated at amortised historic cost. Software licences are amortised over the shorter of the term of the licence and the useful economic life of the computer equipment on which they are installed. This would usually be from 3 to 5 years. Developed software is amortised over the estimated useful life. In the year of acquisition, amortisation charges commence when the asset is brought into use.

1.5 Value Added Tax

The PSOW is not registered for VAT. Expenditure is therefore disclosed gross of VAT.

1.6 Pensions

The pension obligations to present and past employees are covered by the provisions of the Principal Civil Service Pension Scheme (PCSPS), the Local Government Pension Scheme administered through the Cardiff and Vale of Glamorgan Pension Scheme (the Fund) and by direct payment to previous Commissioners for Local Administration in Wales or any surviving beneficiaries. Full details are disclosed in the Pension Disclosures at the end of the Financial Statements. The costs of providing these pensions are charged through the Statement of Comprehensive Net Expenditure, with actuarial gains and losses relating to the Cardiff and Vale of Glamorgan Pension Scheme being recognised in the year in which they occur.

1.7 Early departure costs

Where the PSOW is required to meet the additional cost of benefits beyond the normal benefits payable by the appropriate pension scheme in respect of employees who retire early, these costs are charged to the Statement of Comprehensive Net Expenditure in full when the liability arises.

1.8 Leases

Expenditure on leased property and equipment is charged in the period to which it relates.

1.9 Staff Costs

In line with IAS 19, short-term employee benefits, such as wages, salaries and social security contributions, paid annual leave and paid sick leave, as well as non-monetary benefits for current employees, are recognised when an employee has rendered services in exchange for those benefits.

1.10 Provisions

These are sums which are of uncertain timing or amount at the balance sheet date and represent the best estimate of the expenditure required to settle the obligations. Where the effect of the time value of money is significant, the estimated risk-adjusted cash flows are discounted using the recommended HM Treasury discount rate.

1.11 Income

All income is recognised in the Statement of Comprehensive Net Expenditure in accordance with IAS 18 and IFRS 15.

1.12 Impact of Standards Not Yet Effective

Standard	Effective date	Further details
IFRS 16 Leases	2021-22 Implementation delayed from 2020-21 due to Covid-19	IFRS 16 will replace the current leases standard IAS 17 and requires a lessee to recognise assets and liabilities for leases with a term of more than 12 months, unless the underlying asset is of low value. A lessee is required to recognise a right-of-use asset representing its right to use the underlying leased asset and a lease liability representing its obligation to make lease payments. As a consequence, a lessee also recognises depreciation of the right-of-use asset and interest on the lease liability and classifies cash repayments of the lease liability into a principal and interest portion. This is a significant change in lease accounting.
IFRS 17 Insurance Contracts	2021-22 at earliest	IFRS 17 replaces IFRS 4 Insurance Contracts, and requires a current measurement model, using updated information on obligations and risks, and requiring service results to be presented separately from finance income or expense. It applies to all insurance contracts issued, irrespective of the type of entity issuing the contracts, so is not relevant only for insurance companies.

2. Staff Costs and Numbers

The aggregate employment costs were as follows:

	2019/20	2018/19
	£000	£000
Permanent staff:		
Salaries	2,582	2,389
Social Security costs	252	221
Pension costs	685	480
Pension fund charges	33	42
Total	**3,552**	**3,132**

There were no temporary staff employed by the PSOW during 2019/20 and 2018/19.

The average number of whole-time equivalent persons employed (including senior management and fixed term appointments) during the year was as follows:

	2019/20	2018/19
	No.	No.
Directors	2	2
Communications and PA	3	3
Complaints and Investigations	50	49
Improvement Team	3	-
Corporate Services and ITC	7	8
Total	**65**	**62**

3. Non-Staff Administration Costs

	2019/20	2018/19
	£000	£000
Rentals under operating leases	237	264
External Audit fee	15	18
Legal and professional fees	230	261
Other property costs	135	135
Computer services	209	182
Office costs	169	103
Travel and subsistence	45	31
Training and Recruitment	93	55
Communications	87	41
Sub-total	**1,220**	**1,090**
Depreciation	36	24
Amortisation charge	24	7
Loss on disposal	-	-
Sub-total	**60**	**31**
Total Other Administration Costs	**1,280**	**1,121**

4. Operating Income

	2019/20	2018/19
	£000	£000
Seconded staff	(13)	(60)
Interest receivable	-	-
Other – Future Generations Commissioner	(1)	(1)
Total	**(14)**	**(61)**

5. Operating Costs by Strategic Aims

The costs of providing a first-class Ombudsman service to Wales are set out below. We have 3 strategic aims for delivering our mission and the allocation of costs to each of the aims has been based on the following:

(a) an estimate of the staff time spent on the objective
(b) direct allocation of expenditure where applicable
(c) apportionment of other costs pro rata to the estimate of staff time

	2019/20		2018/19	
	£000	%	£000	%
Strategic Aim 1:				
A fair, independent, inclusive and responsive complaints service.	3,764	78.1	3,356	80.0
Strategic Aim 2:				
Promote learning from complaints and stimulate improvements on a wider scale.	849	17.6	691	16.5
Strategic Aim 3:				
Identify and adopt best practice. Secure value for money and services that are fit for the future. Support staff and ensure good governance which supports and challenges us.	205	4.3	145	3.5
Net operating costs	**4,818**	**100.0**	**4,192**	**100.0**

Due to the implementation of our new Corporate Plan from April 2019 the strategic aims have changed, meaning that direct comparison to 2018/19 cannot be made. For this reason, the 2018/19 figures have been restated by combining strategic aims 2 and 3 from the previous plan.

The previous Strategic Aim of evolving and preparing for the implementation of the new Public Services Ombudsman (Wales) Act has been combined within the new Strategic Aim 2 as promoting learning and delivering improvement is a key aim of the new Act.

6a. Property, Plant and Equipment

2019/20	Plant	Computers and other equipment	Furniture and other fittings	Total
	£000	£000	£000	£000
Cost or valuation at 1 April 2019	156	216	428	800
Additions	-	29	24	53
Disposals	-	(22)	(14)	(36)
At 31 March 2020	156	223	438	817
Depreciation as at 1 April 2019	(156)	(139)	(320)	(615)
Charged in the year	-	(19)	(17)	(36)
Disposals	-	22	14	36
At 31 March 2020	(156)	(136)	(323)	(615)
Carrying amount as at 31 March 2020	-	87	115	202
Carrying amount as at 31 March 2019	-	77	108	185

2018/19	Plant	Computers and other equipment	Furniture and other fittings	Total
	£000	£000	£000	£000
Cost or valuation at 1 April 2018	156	150	430	736
Additions	-	66	15	81
Disposals	-	-	(17)	(17)
At 31 March 2019	156	216	428	800
Depreciation as at 1 April 2018	(156)	(131)	(321)	(608)
Charged in the year	-	(8)	(16)	(24)
Disposals	-	-	17	17
At 31 March 2019	(156)	(139)	(320)	(615)
Carrying amount as at 31 March 2019	-	77	108	185
Carrying amount as at 31 March 2018	-	19	109	128

6b. Intangible Assets

2019/20	Information Technology	Software Licences	Total
	£000	£000	£000
Cost or valuation at 1 April 2019	500	52	552
Additions	-	-	-
Disposals	(3)	-	(3)
At 31 March 2020	497	52	549
Amortisation as at 1 April 2019	(328)	(52)	(380)
Amortisation charged in the year	(24)	-	(24)
Disposals	3	-	3
At 31 March 2020	(349)	(52)	(401)
Carrying Value as at 31 March 2020	148	-	148
Carrying Value as at 31 March 2019	172	-	172

2018/19	Information Technology	Software Licences	Total
	£000	£000	£000
Cost or valuation at 1 April 2018	328	52	380
Additions	172	-	172
Disposals	-	-	-
At 31 March 2019	500	52	552
Amortisation as at 1 April 2018	(321)	(52)	(373)
Amortisation charged in the year	(7)	-	(7)
Disposals	-	-	-
At 31 March 2019	(328)	(52)	(380)
Carrying Value as at 31 March 2019	172	-	172
Carrying Value as at 31 March 2018	7	-	7

In the opinion of the Public Services Ombudsman for Wales there is no material difference between the net book value of assets at current values and at their historic cost.

7. Trade and other Receivables

	2019/20	2018/19
	£000	£000
Amounts falling due within 1year		
Prepayments	207	175
Trade debtors	-	-
Amounts falling due after more than 1year		
Prepayments	1	1
Total	**208**	**176**

8. Cash and Cash Equivalents

Any bank balance held at the year-end must be returned to the Welsh Consolidated Fund. A figure of £48k (£20k in 2018/19) has been included within the accounts, being the net balance at the year end on all the bank accounts operated by the Public Services Ombudsman for Wales, irrespective of whether the individual account is in debit or credit. The year-end balance will be repaid to the Welsh Consolidated Fund in 2020/21 under the Government of Wales Act 2006.

9. Trade Payables and other Current Liabilities

	2019/20	2018/19
	£000	£000
Amounts falling due in 1 year		
Untaken annual leave	93	61
Deferred rent reduction	5	5
Welsh Consolidated Fund - unspent balances	48	20
Trade payables	6	15
Accruals	58	71
	210	**172**
Amounts falling due in more than 1 year		
Deferred rent reduction	20	24
Total	**230**	**196**

10. Provisions for Liabilities and Charges

	2019/20				2018/19
	Pensions for Former Commissioners	Dilapidation Costs	Other Costs	Total	Total
	£000	£000	£000	£000	£000
Balance at 1 April	239	286	-	525	537
Additional provision	33	6	-	39	33
Discount rate movement	6	-	-	6	(2)
Provisions utilised in the	(44)	-	-	(44)	(43)
Balance at 31 March	**234**	**292**	**-**	**526**	**525**

Analysis of expected timings of payment of provisions:

	2019/20	2018/19
	£000	£000
Payable within 1 year	45	44
Payable within 2 to 5 years	157	157
Payable in more than 5 years	324	324
Balance at 31 March 2020	**526**	**525**

Pension provisions are calculated based on the National Life Tables for England and Wales issued by the Office of National Statistics. Later year pension increases are in line with GDP deflator information issued by HM Treasury. The discount factor has been amended to -0.50% for the financial year (0.29% in 2018/19) in line with the guidance issued by the Treasury. Two surviving spouses of former Commissioners remain as a pension liability.

Dilapidations were increased in 2019/20 in line with the Office for National Statistics latest all construction index.

11. Reconciliation of Operating Cost to Operating Cash Flows

	Notes	2019/20 £000	2018/19 £000
Net operating cost		**(4,818)**	**(4,192)**
Adjust for non-cash items	3	60	51
Decrease/(Increase) in trade and other receivables	7	(32)	13
Increase/(Decrease) in trade and other payables	9	34	(9)
Movement in provisions	10	1	(12)
Movement in cash repaid to Welsh Consolidated Fund	8	(28)	12
Net cash outflow from operating activities		**(4,783)**	**(4,137)**

12. Non-Current Asset Expenditure and Financial Investment

	2019/20 £000	2018/19 £000
Purchases of property, plant and equipment	(53)	(81)
Proceeds of disposals of property, plant and equipment	-	-
Purchases of intangible assets	-	(172)
Net cash outflow from investing activities	**(53)**	**(253)**

13. Reconciliation of Net Cash Requirement to Increase/(Decrease) in Cash

	2019/20 £000	2018/19 £000
Net Cash Requirement:		
Operating activities	(4,783)	(4,137)
Capital Expenditure	(53)	(253)
	(4,836)	**(4,390)**
Financing from National Assembly for Wales	4,884	4,410
Repayment to Welsh Consolidated Fund	(20)	(32)
Increase/(Decrease) in cash and cash equivalents	**28**	**(12)**

14. Commitments under Operating Leases

	2019/20	2018/19
	£000	£000
Total future minimum operating lease payments on building:		
Payable within 1 year	198	198
Within 2 and 5 years	792	792
More than 5 years	72	270
	1,062	1,260
Other		
Payable within 1 year	-	12
Within 2 and 5 years	-	-
More than 5 years	-	-
	-	12
Total of all operating leases	1,062	1,272

The 2018/19 figures have been restated to reflect updated lease terms.

15. Contingent Liabilities

None.

16. Capital Commitments

There were no capital commitments at 31 March 2020 (2018/19 Nil).

17. Related Party Transactions

The PSOW is headed by the Public Services Ombudsman for Wales. The office was established under the Public Services Ombudsman (Wales) Act 2005 and is now governed by the Public Services Ombudsman (Wales) Act 2019. The Ombudsman is independent of Government and the funding arrangements of the Office are set up to ensure that the independence of the Office is secured. The PSOW has had a number of material transactions with the National Assembly for Wales, HM Revenue and Customs (Tax and National Insurance) and the Cabinet Office (payments in respect of the Principal Civil Service Pension Scheme). During the year, no directors, key members of staff or their close relatives have undertaken any material transactions.

18. Events after the Reporting Period

None.

Pension Disclosures

Two pension schemes are operated on behalf of current staff – The Principal Civil Service Pension Scheme (PCSPS) and the Cardiff and Vale of Glamorgan Pension Fund (the Fund). There also remains an ongoing liability to meet the unfunded pensions of two dependant relatives of former Local Government Commissioners.

Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015, a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or **alpha**, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date, all newly appointed civil servants and the majority of those already in service joined **alpha**. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS). The PCSPS has 4 sections: 3 providing benefits on a final salary basis (**classic**, **premium** or **classic plus**) with a normal pension age of 60 and 1 providing benefits on a whole career basis (**nuvos**) with a normal pension age of 65.

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under **classic**, **premium**, **classic plus**, **nuvos** and **alpha** are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012 remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 will switch into **alpha** sometime between 1 June 2015 and 1 February 2022. All members who switch to **alpha** have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or **alpha** – as appropriate. Where the official has benefits in both the PCSPS and **alpha** the figure quoted is the combined value of their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a 'money purchase' stakeholder pension with an employer contribution (**partnership** pension account).

Employee contributions are salary-related and range between 4.6% and 8.05% for members of **classic**, **premium**, **classic plus**, **nuvos** and **alpha**. Benefits in **classic** accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to 3 years initial pension is payable on retirement. For **premium**, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike **classic**, there is no automatic lump sum. **Classic plus** is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per **classic** and benefits for service from October 2002 worked out as in **premium**. In **nuvos**, a member builds up a pension based on their pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. Benefits in **alpha** build up in a similar way to **nuvos**, except that the accrual rate in 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The **partnership** pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 8% and 14.75% (depending on the age of the member) into a stakeholder pension product chosen by the employee from a panel of providers. The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.5% of pensionable salary to cover the cost of centrally-provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme, if they are already at or over pension age. Pension age is 60 for members of **classic**, **premium** and **classic plus**, 65 for members of **nuvos**, and the higher of 65 or State Pension Age for members of **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha the figure quoted is the combined value of their benefits in the two schemes but note that part of that pension may be payable from different ages.)

Further details about the Civil Service pension arrangements can be found at the website www.civilservicepensionscheme.org.uk

Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity, to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

Real Increase in CETV

This reflects the increase in CETV that is funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

Compensation for loss of office

No staff left under Voluntary Exit or Voluntary Redundancy terms during the financial year.

Cardiff and Vale Pension Fund - Local Government Pension Scheme

The disclosures below relate to the funded liabilities of the Cardiff and Vale of Glamorgan Pension Fund (the Fund) which is part of the Local Government Pension Scheme (the LGPS).

The funded nature of the LGPS requires the PSOW and its employees who are members of the scheme to pay contributions into the Fund, calculated at a level intended to balance the pension's liabilities with investment assets.

The PSOW recognises gains and losses in full, immediately through the Statement of Comprehensive Net Expenditure. In accordance with International Financial Reporting Standards, disclosure of certain information concerning assets, liabilities, income and expenditure relating to pension schemes is required.

No further employer contributions are required to be paid to the Fund by the PSOW.

Disclosure under IAS19 (LGPS funded benefits)

Introduction

The figures below relate to the funded liabilities within the Fund which is part of the Local Government Pension Scheme (LGPS).

Results under IAS 19 (LGPS funded benefits)

Date of the last full actuarial valuation	31 March 2019
Expected employer contributions next year (£M)	0.00
Duration of liabilities	12.7 years

Key assumptions (% per annum)

	31 March 2020	31 March 2019	31 March 2018
	%	%	%
Discount rate	2.30	2.40	2.60
CPI Inflation	2.10	2.20	2.10
Pension increases	2.10	2.20	2.10
Pension accounts revaluation rate	2.10	2.20	2.10
Salary increases	3.10	3.20	3.10

Mortality assumptions

The mortality assumptions are based on actual mortality experience of members within the Fund based on analysis carried out as part of the 2019 valuation, and allow for expected future mortality improvements. Sample life expectancies are shown below:

Assumed life expectancy at age 65 (in years)	31 March 2020	31 March 2019
Males		
Member aged 65 at accounting date	22.2	22.4
Member aged 45 at accounting date	23.2	23.0
Females		
Member aged 65 at accounting date	24.6	24.8
Member aged 45 at accounting date	26.0	25.9

Asset allocation

	Value at			
	31 March 2020			31 March 2019
	Quoted %	Unquoted %	Total %	Total %
Equities	0.0	0.0	0.0	0.0
Property	0.0	0.0	0.0	0.0
Government bonds	100.0	0.0	100.0	100.0
Corporate bonds	0.0	0.0	0.0	0.0
Cash	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0
Total	**100.0**	**0.0**	**100.0**	**100.0**

Reconciliation of funded status to Statement of Financial Position

	Value at	
	31 March 2020	31 March 2019
	£M	£M
Fair value of assets	7.08	7.00
Present value of funded defined benefit obligation	5.04	5.26
Funded status	**2.04**	**1.74**
Unrecognised asset	(0.96)	(0.93)
Asset/(Liability) recognised on balance sheet	**1.08**	**0.81**

The split of the liabilities at the last valuation between the various categories of members is as follows:

Active Members	7%
Deferred Pensioners	13%
Pensioners	80%

Amounts recognised in Statement of Comprehensive Net Expenditure

	Period ending 31 March 2020	Period ending 31 March 2019
	£M	£M
Operating Cost		
Current service cost	0.02	0.02
Past service cost (incl. curtailments)	0.00	0.00
Settlement cost	0.00	0.00
Financing Cost		
Interest on net defined benefit liability / (asset)	(0.02)	0.00
Pension expense recognised in profit and loss	**0.00**	**0.02**
Remeasurements in Other Comprehensive Income		
Return on plan assets (in excess)/below that recognised in net interest	(0.16)	(0.21)
Actuarial (gains)/losses due to change in financial assumptions	0.00	0.19
Actuarial (gains)/losses due to changes in demographic assumptions	(0.10)	(0.20)
Actuarial (gains)/losses due to liability experience	(0.04)	0.01
Adjustments due to the limit in paragraph 64	0.03	(0.59)
Total amount recognised in other comprehensive income (OCI)	**(0.27)**	**(0.80)**
Total amount recognised in profit and loss and OCI	**(0.27)**	**(0.78)**
Allowance for administration expenses included in current service cost (£M)	0.00	0.00

Changes to the present value of the defined benefit obligation

	Period ending 31 March 2020	Period ending 31 March 2019
	£M	£M
Opening defined benefit obligation	**5.26**	**5.32**
Current service cost	0.02	0.02
Interest expense on defined benefit obligation	0.12	0.14
Contributions by participants	0.00	0.00
Actuarial (gains)/losses on liabilities – financial assumptions	0.00	0.19
Actuarial (gains)/losses on liabilities – demographic assumptions	(0.10)	(0.20)
Actuarial (gains)/losses on liabilities – experience	(0.04)	0.01
Net benefits paid out	(0.22)	(0.22)
Past service cost (incl. curtailments)	0.00	0.00
Net increase in liabilities from disposals/acquisitions	0.00	0.00
Settlements	0.00	0.00
Closing defined benefit obligation	**5.04**	**5.26**

Changes to the fair value of assets

	Period ending 31 March 2020	Period ending 31 March 2019
	£M	£M
Opening fair value of assets	**7.00**	**6.84**
Interest income on assets	0.14	0.17
Re measurement gains/(losses) on assets	0.16	0.21
Contributions by the employer	0.00	0.00
Contributions by participants	0.00	0.00
Net benefits paid out	(0.22)	(0.22)
Net increase in assets from the disposals/acquisitions	0.00	0.00
Settlements	0.00	0.00
Closing fair value of assets	**7.08**	**7.00**

Actual return on assets

	Period ending 31 March 2020	Period ending 31 March 2019
	£M	£M
Interest income on assets	0.14	0.17
Remeasurement gain/(losses) on assets	0.16	0.21
Actual return on assets	0.30	0.38

Funded Benefits

The following data was provided by the Fund Administering Authority and/or the Employer and has been used to produce the IAS 19 results in this report. Details of the split of assets between the various asset classes were also provided by the Fund Administering Authority and are shown above. We have also shown some of the intermediate calculations used in evaluating the figures in this report.

Active Members as at 31 March 2019

	Number	Total Pay £(M)
Total	1	0.05

Pensioner and deferred pensioner members as at 31 March 2019

Type	Number	Total Pension £(M)
Deferred members	5	0.02
Pensioners and dependants	12	0.24

Funded cash-flow data provided

	Months Provided	Amount Provided	Amount Used
		£M	£M
Employer – Normal contributions	12	0.00	
Employer – Additional capital contributions	12	0.00	
Employer – Early retirement strain on fund payments	12	0.00	
Total contributions by the Employer			0.00
Employee – Normal contributions	12	0.00	
Employee – Added years contributions	12	0.00	
Total contributions by participants			0.00
Transfers in	12	0.00	
Other income	12	0.00	
Transfers out	12	0.00	
Retirement lump sums	12	0.00	
Other outgoings	12	0.00	
Death in service lump sums *	12	0.00	
Benefits paid (i.e. pension paid)	12	0.22	
Net benefits paid out **			0.22

* We have calculated the expected death in service lump sums over the year to be (£M)
0.00

** The 'Net benefits paid out' figure includes an allowance for expenses of (£M)
0.00

Annualised pensionable payroll over the accounting period

Type	(£M) *
Period ending 31 March 2020	0.05
Period ending 31 March 2019	0.05

* The annualised pensionable payroll has been derived from the contributions paid over the relevant accounting period

Fund return

The overall Fund return over the accounting period has been calculated as 2.4%.

The asset return over the accounting period for the Employer has been taken as the index return on the published FTSE Index Linked UK Gilts over 5 years total return index, to reflect the notional low risk investment strategy which has been put in place with effect from 1 December 2016, in respect of the Employer.

Pensions for former Ombudsmen

With the agreement of the Secretary of State for Wales in 1991 and subsequent confirmation by Statutory Instrument 1993 No. 1367, Local Government Commissioners became eligible to join the Local Government Pension Scheme. However, the pensions of the three previous Local Government Commissioners remained the responsibility of the Public Services Ombudsman for Wales and are met through the Statement of Comprehensive Net Expenditure. At 31 March 2020 two surviving spouses of former Commissioners continued to receive a pension.

Pensions are increased annually in line with other pension schemes within the Public Sector. The basis of calculations of the Annual Pensions Increase has been changed from using the annual movement based on the Retail Price Index (RPI) to the Consumer Price Index (CPI). The amount of the uplift applied is normally set out in the Statutory Instrument Pensions Increase (Review) Order. This uplift for 2019/20 was 2.4%.

The total payments during 2019/20 were £44k (£43k in 2018/19). The liabilities arising out of the obligation to finance these pensions together with any dependant pensions has been calculated to be £234k (£239k in 2018/19). The calculation to determine the overall liability has been carried out internally using life expectancy tables for males and females in Wales obtained from the website of the Government Actuary's Department. A discount rate, from PES (2019), of –0.50% (0.29% in 2018/19) has been applied in accordance with the Treasury guidance that all pension liabilities should be discounted.

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PUBLIC SERVICES OMBUDSMAN FOR WALES

Our ref: NB

Ask for: Communications

01656 641150

Date: 7 September 2020

Communications
@ombudsman-wales.org.uk

Councillor Andrew Morgan
Council Leader
Rhondda Cynon Taf County Borough Council

By Email Only
Andrew.Morgan2@rhondda-cynon-taff.gov.uk

Dear Councillor Morgan

Annual Letter 2019/20

I am pleased to provide you with the Annual letter (2019/20) for Rhondda Cynon Taf County Borough Council.

I write this at an unprecedented time for public services in Wales and those that use them. Most of the data in this correspondence relates to the period before the rapid escalation in Covid-19 spread and before restrictions on economic and social activity had been introduced. However, I am only too aware of the impact the pandemic continues to have on us all.

I am delighted to report that, during the past financial year, we had to intervene in (uphold, settle or resolve early) a smaller proportion of complaints about public bodies: 20% compared to 24% last year.

We also referred a smaller proportion of Code of Conduct complaints to a Standards Committee or the Adjudication Panel for Wales: 2% compared to 3% last year.

With regard to new complaints relating to Local Authorities, the overall number has decreased by 2.4% compared to the previous financial year. I am also glad that we had to intervene in a smaller proportion of the cases closed (13% compared to 15% last year). That said, I am concerned that complaint handling persists as one of the main subjects of our complaints again this year.

Amongst the main highlights of the year, in 2019 the National Assembly for Wales (now Senedd Cymru Welsh Parliament) passed our new Act. We are now the first ombudsman's office in the UK to have full and operational powers to drive systemic improvement of public services through investigations on our 'own initiative' and the Complaints Standards role.

Public Services Ombudsman For Wales | Ombwdsmon Gwasanaethau Cyhoeddus Cymru, 1 Ffordd yr Hen Gae, Pencoed CF35 5LJ
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During 2019/20, we have engaged intensively with Local Authorities on this issue, starting to exercise our new Complaints Standards powers.

Local Authorities in Wales submitted data about the complaints they handled to the Complaints Standards Authority (CSA) for the first time in 2019/2020, revealing much more about the complaints landscape in Wales.

The data submitted for 2019/2020 shows:

- Over 13,000 complaints were recorded by Local Authorities – 4.25 for every 1000 residents.

- Nearly half (42%) of those complaints were upheld in full or in part.

- About 80% (79.51%) were investigated within 20 working days.

- About 7% (6.91%) of all complaints ended up being referred to PSOW.

The CSA will work with public bodies to ensure the data submitted is an accurate representation of complaints being submitted by service users.

A summary of the complaints of maladministration/service failure received relating to your Council is attached.

Also attached is a summary of the Code of Conduct complaints relating to members of the Council and the Town & Community Councils in your area.

Action for the Council to take:

- Present my Annual Letter to the Cabinet to assist members in their scrutiny of the Council's performance.

- Engage with my Complaints Standards work, accessing training for your staff and providing complaints data.

- Inform me of the outcome of the Council's considerations and proposed actions on the above matters by 30 November.

This correspondence is copied to the Chief Executive of your Council and to your Contact Officer. Finally, a copy of all Annual Letters will be published on my website.

Yours sincerely

Nick Bennett
Ombudsman

CC: Chris Bradshaw, Chief Executive
Jayne Thomas, Contact Officer

Factsheet

A. Complaints Received

Local Authority	Complaints Received	Complaints received per 1000 residents
Blaenau Gwent County Borough Council	17	0.24
Bridgend County Borough Council	34	0.23
Caerphilly County Borough Council	49	0.27
Cardiff Council*	122	0.33
Carmarthenshire County Council	42	0.22
Ceredigion County Council	31	0.42
Conwy County Borough Council	29	0.25
Denbighshire County Council	32	0.34
Flintshire County Council	61	0.39
Gwynedd Council	37	0.30
Isle of Anglesey County Council	26	0.37
Merthyr Tydfil County Borough Council	13	0.22
Monmouthshire County Council	16	0.17
Neath Port Talbot County Borough Council	22	0.15
Newport City Council	39	0.25
Pembrokeshire County Council	25	0.20
Powys County Council	72	0.54
Rhondda Cynon Taf County Borough Council	39	0.16
Swansea Council	92	0.37
Torfaen County Borough Council	5	0.05
Vale of Glamorgan Council	30	0.23
Wrexham County Borough Council	33	0.24
Wales	**866**	0.28

* inc 1 Rent Smart Wales

B. Complaints Received by Subject

Rhonnda Cynon Taf CBC	Complaints Received	Complaints Percentage Share
Adult Social Services	3	7.69%
Benefits Administration	2	5.13%
Children's Social Services	7	17.95%
Complaint Handling	2	5.13%
Education	1	2.56%
Environment and Environmental Health	9	23.08%
Housing	5	12.82%
Planning and Building Control	3	7.69%
Roads and Transport	4	10.26%
Various Other	3	7.69%

C. Complaint Outcomes

(* denotes intervention)

Complaints Closed	Premature/ Out of Time/Right to Appeal	Out of Jurisdiction	Other cases closed after initial consideration	Early Resolution/ voluntary settlement*	Discontinued	Other Reports- Not Upheld	Other Reports Upheld - in whole or in part*	Public Interest Report *	Grand Total
Rhondda Cynon Taf County Borough Council	21	2	12	5	0	0	0	0	40
Percentage Share	52.50%	5.00%	30.00%	12.50%	0.00%	0.00%	0.00%	0.00%	

D. Number of cases with PSOW intervention

	No. of interventions	No. of closures	% of interventions
Blaenau Gwent County Borough Council	1	17	6%
Bridgend County Borough Council	1	34	3%
Caerphilly County Borough Council	6	50	12%
Cardiff Council	21	120	18%
Cardiff Council - Rent Smart Wales	-	1	0%
Carmarthenshire County Council	6	46	13%
Ceredigion County Council	4	30	13%
Conwy County Borough Council	6	34	18%
Denbighshire County Council	2	32	6%
Flintshire County Council	8	57	14%
Gwynedd Council	4	39	10%
Isle of Anglesey County Council	3	28	11%
Merthyr Tydfil County Borough Council	2	15	13%
Monmouthshire County Council	2	15	13%
Neath Port Talbot Council	4	25	16%
Newport City Council	4	38	11%
Pembrokeshire County Council	7	29	24%
Powys County Council	14	71	20%
Rhondda Cynon Taf County Borough Council	5	40	13%
Swansea Council	4	93	4%
Torfaen County Borough Council	1	5	20%
Vale of Glamorgan Council	4	27	15%
Wrexham County Borough Council	4	33	12%
Grand Total	**113**	**879**	**13%**

E. Code of Conduct Complaints Closed

County/County Borough Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Rhondda Cynon Taf	-	-	-	-	-	-	-	-

F. Town/Community Council Code of Complaints

Town/Community Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Llantwit Fardre Community Council	21	1	-	-	-	-	-	22
Taff's Well and Nantgarw Community Council	3	-	-	-	-	-	1	4
Ynysybwl & Coed-y-cwm Community Council	1	-	-	-	-	-	-	1

Appendix

Explanatory Notes

Section A provides a breakdown of the number of complaints against the Local Authority which were received during 2019/20, and the number of complaints per 1,000 residents (population).

Section B provides a breakdown of the number of complaints about the Local Authority which were received by my office during 2019/20. The figures are broken down into subject categories with the percentage share.

Section C provides the complaint outcomes for the Local Authority during 2019/20, with the percentage share.

Section D provides the numbers and percentages of cases received by the PSOW in which an intervention has occurred. This includes all upheld complaints, early resolutions and voluntary settlements.

Section E provides a breakdown of all Code of Conduct complaint outcomes against Councillors during 2019/20.

Section F provides a breakdown of all Code of Conduct complaint outcomes against town or community councils.

Feedback

We welcome your feedback on the enclosed information, including suggestions for any information to be enclosed in future annual summaries. Any feedback or queries should be sent via email to communications@ombudsman-wales.org.uk

Tudalen wag

RHONDDA CYNON TAF

RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS AGAINST MEMBERS – 1ST APRIL 2019 – 31ST MARCH 2020

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

1.1 To provide Members with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st April 2019 – 31st March 2020.

2. RECOMMENDATIONS

2.1 To note the contents of the report.

3. BACKGROUND AND DETAILS OF COMPLAINTS

3.1 Members will note below the summary of anonymised complaints made against Members and submitted to the Ombudsman for the period 1st April 2019 – 31st March 2020:

Date Complaint Received by the Ombudsman	Body & Cllr	Nature of Complaint	Ombudsman Investigation Yes/No
19/9/19	Ynysybwl & Coed-Y-Cwm Community Council (Community Cllr)	Mr X complained Cllr Y spoke to them in an aggressive manner and that they pushed Mr X in the chest causing them some pain. Ombudsman determined that at the time of the conduct Cllr Y was not acting as a Cllr but as a private individual. The Code of Conduct usually only applies when a member of a council is performing functions as a Cllr or seeking in some way to rely upon their status as a Cllr. The Code of Conduct only applies when a Cllr is acting as a private individual in very specific circumstances, which did not appear to apply in this case. The allegation that the Cllr pushed Mr X in the chest area could be considered as an	No

		assault, which is a criminal matter. That would be a matter for the Police to consider, not the Ombudsman. The Ombudsman wrote to Mr X requesting they provide him with any further information to support their allegation but did not receive anything further. Decision therefore was that there was no breach of the code of conduct by the Cllr as they did not appear to be acting in their capacity as one at the time of the incident.	
11/3/20	Taff's Well & Nantgarw Community Council (Community Cllr)	Cllr Y complained that Cllr D's conduct at a Council meeting amounted to bullying and harassing. As the Ombudsman was already in the process of investigating a similar complaint against Cllr D the events were be added to that investigation.	Yes
29/1/20	Taff's Well & Nantgarw Community Council (Community Cllr)	The complaint received by the Ombudsman suggested that a recorded decision of the Ethics Committee of a company recommended that a number of documents be referred to the Ombudsman with an allegation that Cllr X had breached the Code of Conduct on the grounds of "bullying and harassment. The papers did not indicate which provisions of the Code it was considered that Cllr X had breached. Moreover, as Cllr X was an officer of the Company it was unclear why that Cllr had not made a referral to the Monitoring Officer of the County Council if they felt they had breached the Code, in line with the Guidance issued by the Ombudsman, as opposed to referring to a committee of their own company and then seeking that the complainant pass on the information to the Ombudsman. The complainant subsequently stated that they had not in fact made a complaint and therefore the Ombudsman could not receive evidence in support of it.	No
7/1/20	Taff's Well & Nantgarw Community Council (Community Cllr)	Cllr T complained Cllr U stated they would release papers relating to the personal circumstances of Cllr T at a Council meeting. The Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code as alleged. Apart from the specific assertions the complainant provided two emails to support the complaint and to establish Cllr U's conduct towards Cllr T. Based on the limited information presented the Ombudsman could not identify a breach of the Code as alleged.	No
17/9/19	Taff's Well & Nantgarw Community Council (Community	Cllr G complained Cllr L breached the Protection from Harassment Act and the Data Protection Act by receiving or attempting to receive personal data from them.	No

	Cllr)	Cllr G did not confirm which specific paragraph of the Code they considered Cllr L may have broken. Whilst they referenced the general duty to uphold the law, this is one of the Principles rather than a section of the Code, although the individual sections of the Code are designed to support the implementation of the Principles. The Ombudsman considered paragraphs 4(b) show respect and consideration for others and (c) not use bullying behaviour or harass any person, may be relevant. Ombudsman was satisfied Cllr G was acting in their capacity as a Cllr when engaging in communications with Cllr L. The Ombudsman considered the matters which were alleged did not in fact constitute a breach of the Code. In the specific circumstances surrounding the matter the Ombudsman found it was not unreasonable for Cllr L (given their responsibilities) to be in possession of certain data and act in the way they acted in supporting the role of the Council's Clerk.	
11/03/20	Taff's Well & Nantgarw Community Council (Community Cllr)	Cllr K complained they were being bullied and harassed by Cllr W in relation to certain matters and threatening behaviour and comments made to/about them. The conduct about which Cllr K complained were determined to be very closely linked to events already under investigation in relation to a complaint against Cllr K. Ombudsman was not persuaded that Cllr W provided evidence which suggests that Cllr K's conduct warranted investigation and that the language used (either in emails or verbally) was capable of amounting to a breach of the Code which justified investigation.	No
13/9/19	Taff's Well & Nantgarw Community Council (Community Cllr)	Complaint into the following potential breaches of the Code currently being investigated by the Ombudsman in relation to Cllr B: 4(c) - You must not use bullying behaviour or harass any person 7(a) - In your official capacity or otherwise you must not, use or attempt to use your position improperly to confer on or secure for yourself, or any other person , an advantage or create or avoid for yourself, or any other person, a disadvantage. 9(a) - You must observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member.	Yes (ongoing)

11/6/2019	Llantwit Fardre Community Council (Community Cllr)	Cllr Q alleged Cllr S made insulting, abusive and malicious comments about them and fellow members. They alleged that Cllr S made comments in a letter to a political group and as part of comments made on social media under a pseudonym. The Ombudsman considered the matters which were alleged did not in fact constitute a breach. They found it was not uncommon for elected members to say things about political opponents which others may consider to be rude or offensive and it was not the purpose of the Code of Conduct to inhibit free speech and the robust expression of political differences. The contents of the letter were found to amount to political comment. The criticism of opposition ideas and opinion is considered to be part of democratic debate and it is unlikely that such comments would ever be considered to be a breach of the Code. Furthermore, the Ombudsman says that “political” comments are not those simply made within council meetings and include comments members may generally make about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that the Ombudsman will investigate complaints made in this context. Therefore the Ombudsman found the comments were not offensive or unreasonable and therefore no evidence of a breach was provided.	
September & October 2019 (4 x complaints relating to same Cllr & incident investigated by Ombudsman as part of one investigation	Llantwit Fardre Community Council (Community Cllr)	Cllrs complained that Cllr O breached the Code of Conduct for members when they made several accusations against serving Community Cllrs during a Community Council meeting. They alleged that Cllr O then shared a written copy of their address, in which they accused Community Cllrs of bullying the former Clerk of the Community Council, with members of the press and public present. Any member of a relevant authority must observe the Code of Conduct whenever that member is acting in their official capacity. Members must not disclose confidential information or information which could reasonably be regarded as confidential unless they have consent or are required by law to do so. The Code applies to a member acting in both an official and personal capacity where those actions may bring the office of member or the authority into disrepute. Members should report to their authority’s monitoring officer if they believe another member’s conduct breaches the Code of Conduct. Members must not make vexatious, malicious or frivolous complaints against other members or anyone who works for their authority. Members must participate in	Yes (discontinued)

		meetings having had regard to any relevant advice provided by their authority's officers. The Ombudsman's investigation did not find any evidence to suggest that Cllr O disclosed confidential information during their address at the meeting. The relevant minutes of the meeting note that Cllr O referred to individuals by name and that their manner was "derogatory". The minutes also say that Cllr O was advised by the Chair and Acting Clerk that their actions were inappropriate. Cllr O continued to speak, referring to individuals by their positions within the Community Council, rather than by name. The minutes note that Cllr O was also advised by the Clerk that this was inappropriate, however they did not follow that advice. Cllr O's disregard for the Clerk's advice appears to have been in clear breach of paragraph 8(a) of the Code. Whilst Cllr O was entitled to raise their concerns about other members the Ombudsman did not consider that the full Council meeting, which was open to the public, was an appropriate forum for them to do so. The Ombudsman carefully considered Cllr O's written statement, which was distributed to those present at the meeting. In it they make several accusations about fellow Community Cllrs and calls for their resignation. Rather than airing their concerns in public Cllr O should have raised their concerns through the proper processes available for doing so. Raising such serious 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, in that they may have brought the Council into disrepute. This was borne out by the fact that many of the Cllrs contacted the Ombudsman to complain about the events at the meeting. When deciding whether to take further action in relation to these possible breaches of the Code of Conduct, the Ombudsman carefully considers whether it is in the public interest for him to do so. The Ombudsman was very concerned over recent months about the level of dispute between members of the Council and the number of referrals which were made to his office. The Ombudsman was appreciative of the visit undertaken by the Monitoring Officer and the	

		Chair of the Council's Standards Committee when they met with the majority of the members of the Council in January to encourage better working relationships within the Council. A collective agreement was reached on taking a fresh approach on how to deal with situations where disagreement had previously escalated into personal attacks. As the events which are being considered as part of this investigation took place some months before the meeting with the Monitoring Officer and Chair of the Standards Committee, the Ombudsman did not consider it in the public interest to pursue the investigation. They considered it was in the public interest for the Council members to move forward developing positive working relationships in the spirit agreed at the meeting. The Ombudsman therefore determined not to take any further action in relation to this complaint.	
22/1/20	Llantwit Fardre Community Council (Community Cllr)	Cllr Y complained Cllr H breached paras 4(b) and 6.1(a) of the Council's code of conduct. These sections of the code relate to showing respect and consideration for others and not to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. The conduct amounted to wearing a 'bah humbug' Santa Hat during a meeting of the Council and that they behaved in a completely disinterested manner and at one point confessed to having read neither the agenda or the clerks report. They also sounded off a novelty horn/klaxon during the meeting. The Ombudsman did on the face of it, agree that the conduct potentially constituted a breach of the Code but were not sufficiently serious to warrant an investigation by the Ombudsman. The Ombudsman did however write to Cllr H to remind them of their responsibilities to behave in a professionally appropriate manner during Council meetings.	No
3/10/19	Llantwit Fardre Community Council (Community Cllr)	Cllr B alleged Cllr D failed to address the bullying and harassment of staff, including a duty of care to protect staff from such behaviour and mismanaged the Council's funds. They alleged Cllr D bought their office into disrepute. The Ombudsman considers factors such as: whether the member has deliberately sought a personal gain at the public's expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation is proportionate in	No

		the circumstances. The Ombudsman was not persuaded that the evidence provided was sufficient to demonstrate that Cllr D breached the Code of Conduct. Also matters relating to the Council's agenda items, and any notice of them, are a governance matter which are more appropriately considered by the Chair and Clerk in accordance with the Council's own internal procedures.	
9/3/20	Llantwit Fardre Community Council (Community Cllr)	Cllr S alleged Cllr L in their role as Chairman of a committee, failed to provide clarity and answer their questions. The Ombudsman determined the complainant did not provided sufficient evidence to substantiate their complaint. The Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code. In view of the high number of Code complaints the Ombudsman's office was receiving from the Community Council the Ombudsman relayed his concerns that this office was continuing to receive a high number of complaints which do not warrant investigation in the public interest. This was despite advice received from the Monitoring Officer and assurances provided to him. A warning was also given that should the Ombudsman receive further complaints which do not meet the threshold for investigation, he will consider whether they are vexatious in nature and indicated he not hesitate to take action to investigate any possible breach of paragraph 6(1)(d) of the Code.	No
22/10/19	Llantwit Fardre Community Council (Community Cllr)	Cllr E alleged Cllr G regularly showed a lack of interest, respect and courtesy during Council meetings particularly when speaking to younger Cllrs and was discourteous to other Cllrs. The Ombudsman determined that the complainant had not provided sufficient evidence to substantiate their complaint and that the Ombudsman will not investigate unless there is reasonably strong evidence to suggest that a member concerned has breached the Code of Conduct. In any event, even if there were sufficient direct evidence to suggest that Cllr G had breached the Code of Conduct he did not consider that it was sufficiently serious to warrant investigation. It is not the purpose of the Code of Conduct to inhibit free speech and the robust expression of political differences but there is however a clear distinction between robustly engaging in debate and engaging in personal attacks on individuals.	No

		The Ombudsman was not persuaded that the conduct mentioned was so egregious as to amount to breach of the Code of Conduct. In any event, it appears from the information provided that the Chair addressed the issue at the time in accordance with your Council's procedure.	
22/10/19	Llantwit Fardre Community Council (Community Cllr)	Cllr Z complained that Cllr J may have breached paragraphs 7(b)(i) and 7(b)(ii) of the Model Code of Conduct in relation to accounting software which it was alleged was purchased by Cllr Z without the sanction of the Council. This involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public expense for themselves or others or misused a position of trust, whether an investigation is required to maintain public confidence in elected members, and whether a referral is proportionate in the circumstances. Having reviewed the matter in accordance with the Ombudsman's public interest test, whilst the complaint raised potentially serious issues, given the accounting software cost the Community Council £4,000, the evidence indicated that Cllr J did not act to obtain the software solely on their own initiative. Furthermore, on the basis of the information the Ombudsman has received, there was no suggestion that Cllr J acted in any way to benefit themselves or anyone with whom they has a close relationship. The actions were deemed to have been taken in the interest of the Council as a whole to avoid the situation arising where the Council could not operate and pay its staff or suppliers.	Yes (discontinued)
27/9/20 (3 identical complaints made by 3 Cllrs against another Cllr	Llantwit Fardre Community Council (Community Cllr)	Cllr A complained about Cllr Z's behaviour against the previous Clerk and had ridiculed the Clerk's work in public meetings calling them 'rubbish' and behaving aggressively and intimidatingly towards them. They alleged a lack of respect was shown to them and that Cllr Z's actions bought the Community Council into disrepute. In respect of the allegation that Cllr Z's conduct related to comments against a member of Community Council staff, the Ombudsman said there were appropriate channels for expressing concerns about an officer's performance and to do so in a public meeting or forum, for instance, is not acceptable. That said, such issues should be addressed by members through the correct forum and matters relating to the performance of a staff member are generally considered to be part of the	No

		function of the Community Council as a whole and as a corporate body, as opposed to being the sole responsibility of individual members or any obligation under the Code of Conduct. It was determined the breach of the code of conduct which was alleged was not sufficiently serious to warrant investigation. Furthermore, based on the evidence provided, even if a breach of the Code of Conduct were proven, it was not sufficiently serious that a Standards Committee would be likely to consider or impose a sanction on Cllr Z.	
27/9/19 (complaint made about two Cllrs)	Llantwit Fardre Community Council (Community Cllrs)	Cllr F raised a concern about Cllrs J and K regarding the Council's proposed Children's Christmas Fayre and Old Age Christmas Dinner tasked to its Leisure Sub-Committee ("the Sub-Committee") for organisation and to bring its proposals back to Full Council for consideration. Both Cllrs were members of the Sub-Committee. Cllr F complained that Cllrs J and K failed to follow corporate governance or due process. Specifically the complainant alleged Cllrs J and K failed to declare interests as a member of a Sports Club's Committee at both meetings. The complainant also questioned Cllr J and K's impartiality because of an additional connection to the Sports Club. The Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code, as alleged. No evidence was provided to demonstrate each element complained about such as minutes of any meeting(s) referred to in the complaint, to demonstrate which members attended which meetings, the context in which the member attended, whether any interests were declared, and the nature of that interest. There must be some evidence that the alleged personal interest would likely conflict with Cllr J and K's obligations under the Code, and significantly impact their ability to make a decision in the public interest. This is an objective test, and the evidential proof required is on a balance of probabilities. A personal interest must be more than a simple connection within the local community or by being nominated to that other public role by virtue of being a member of the Council.	No
11/10/19 complaint made about three Cllrs)	Llantwit Fardre Community Council (Community Cllr)	Mr X alleged Cllr Y had a personal and prejudicial interest in matters involving a Sports Club because they were a member of it. Cllr Y had taken part in discussions and voted at full Council meetings and its Leisure & Amenities Committee meetings where the Sports Club was debated as a venue for the Christmas events. They also complained that Cllr Y took part and	No

		voted at a Council meeting where a funding request for an event was discussed, voted on and subsidised. Personal and prejudicial interests are contained in paragraphs 10 to 14 of the Code. Briefly, personal interests relate to council issues or matters under discussion at meetings, where the issue under discussion has some link to the member/the members close personal associate. Where such an interest exists, members are required to declare that personal interest and to disclose the nature of that interest, before the matter is discussed or, as soon as it becomes apparent to the member, at the relevant council meeting. However, a member can remain in the room, participate in the discussion and vote on the issue unless the personal interest is considered as prejudicial in accordance with paragraph 11 of the Code of Conduct. Simply put, a personal interest only becomes prejudicial where an informed independent observer could conclude that the personal interest would significantly influence the member's vote or decision. There must be some evidence of a direct link between the alleged personal interest which would likely conflict with Cllr Y' obligations under the Code and significantly impact their ability to make a decision in the public interest. The evidential proof required is on a balance of probabilities. There was no evidence provided by the complainant that Cllr Y could have breached the Code as alleged. Paragraph 10(2)(c)(v) of the Code provides that elected members should consider that they have a personal interest in a matter being considered by their Authority if a decision might reasonably be regarded as affecting a registered society in which they hold a position of general control or management. Paragraph 11 of the Code confirms that where an elected member has a personal interest, they must disclose orally to the meeting the existence and nature of that interest. Under Paragraph 12(1), where a personal interest exists, members also have a prejudicial interest if a member of the public with knowledge of the relevant facts would reasonably consider that interest is likely to prejudice their judgement of the public interest. However, Paragraph 12(2)(a)(iii) confirms that elected members will not be regarded as having a prejudicial interest in any business where it relates to a body to which they have been ***nominated*** by their Authority. From the evidence provided, Cllr Y was	

		nominated by the Council to represent it on the Sports Club Committee. As such Cllr Y may have had a personal interest to declare at Council meetings where the Sports Club was discussed, either as a venue or a funding request, for event. In the Ombudsman's view, it followed that failing to declare that interest during any Council meeting in which they were present and where this matter was considered, could be considered, technically, as a breach of the Code. However, given that Cllr Y was nominated to the Sports Club Committee by the Council, the exemption referred to above would apply in the context of a prejudicial interest. Accordingly, Cllr Y would have been entitled to remain in the room and take part in the discussions and vote. In conclusion, even if this breach were to be proven, it would not be in the public interest to investigate because there is no evidence that Cllr Y or anyone closely linked to them received any benefit from, or suffered a disadvantage to others, from this role.	
17/12/19	Llantwit Fardre Community Council (Community Cllr)	Mr X complained Cllr M posted politically motivated and factually incorrect comments on social media relating to members of the public which suggested that they had voting rights within the Council. Based on the information available, it appeared to the Ombudsman that the breach of the Code of Conduct which was alleged was not sufficiently serious to warrant investigation. The comments provided with the complaint (which do not include the author's name but accepted by Cllr M as their comments) appear to relate to a local event with criticism directed at elected members of the Council and members of the public. Whilst directing certain criticism towards members of the public was ill-advised, it is not the purpose of the Code of Conduct to inhibit free speech and the robust expression of political differences between elected members. That Ombudsman did remind Cllr X of how their conduct may be perceived by the public.	No
14/10/20	Llantwit Fardre Community Council (Community Cllr)	Cllr F complained Cllr L publicly humiliated and bullied the Clerk during Council meetings. They alleged the Clerk resigned from their role due to Cllr Ls actions. A letter from the Clerk was produced as evidence to support the complaint. The Ombudsman determined that the conduct may amount to a breach of the Code of Conduct. However even if the alleged breach were to be proven, an investigation would not be in the public interest. The allegation that the Clerk resigned as a direct consequence of Cllr L's actions is serious. However the Ombudsman said it is his role is to consider ethical standards	No

		met by members it is not his role to resolve employment disputes. As the events described in the complaint took place some months before the meeting with the Monitoring Officer and Chair of the Standards Committee they did not consider it is now in the public interest to pursue this investigation further.	
10/2/20	Llantwit Fardre Community Council (Community Cllr)	Cllr D complained Cllr K's actions amounted to maladministration. They complained that Cllr K failed to answer your questions or provide clarity about the role of the Clerk in respect of including personal opinion in minutes. Having considered the information available the Ombudsman found the complainant had not provided sufficient evidence to substantiate the complaint, and the Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the code. In any event Cllr D indicated in their complaint that Cllr K's actions amounted to maladministration, that is that he failed to follow Community Council's policies and/or procedures. Therefore, it appeared to them that the matters which were alleged did not in fact constitute a breach of the Code because maladministration is a separate matter to an elected members obligation set out in the Code and does not apply to the actions of the Council as a whole or the conduct of its officers/employees e.g. the Clerk. Additionally, an elected member cannot make a maladministration complaint about the authority they are elected to.	No
22/1/20	Llantwit Fardre Community Council (Community Cllr)	Cllr F complained about Cllr T's comments at the start of a meeting which they considered brought their role and office into disrepute. Cllr T complained to the meeting about social media comments that had been made against them and demanded an explanation from a Cllr whom he accused of making those comments. Cllr F also suggested that Cllr T highlighted that one of the Cllrs had a complaint registered against them by the Public Services Ombudsman for Wales. This was done with members of the public present and breached the confidentially requirements associated with an investigation by the Ombudsman. Having considered the above and evidence presented the Ombudsman did not find a breach of the Code of Conduct in that they did not appear to bring the Cllr or their office into	No

		disrepute. With regard to the comments made about the member being subject to an investigation by this office the Ombudsman would expect the details pertaining to, and substance of, any investigation to be kept private, the mere revelation of the existence of such an investigation does not amount to a breach of confidence which in turn amounts to a breach of the code.	

4. LEGAL IMPLICATIONS

4.1 There are no legal implications arising from this report.

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL IMPLICATIONS

7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

REPORT OF THE MONITORING OFFICER

Background Papers: Freestanding matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer) – 01443 424105

RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

PUBLIC SERVICES OMBUDSMAN FOR WALES – CODE OF CONDUCT CASEBOOK

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To receive the Ombudsman's Code of Conduct Casebook (Issue 23) produced by the Public Services Ombudsman for Wales.

2. RECOMMENDATION

2.1 To note and consider the contents of the Ombudsman's Code of Conduct Casebook (Issue 23) published by the Public Services Ombudsman for Wales.

3. BACKGROUND

3.1 The Public Services Ombudsman for Wales produces quarterly Code of Conduct casebooks.

3.2 Issue 23 of the Code of Conduct Casebook, covers the period October - December 2019, and is attached as Appendix 1 to the report.

3.3 Members should note that the Casebooks are able to be accessed via the Ombudsman's Website and the following link:

Code of Conduct Casebooks

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

STANDARDS COMMITTEE

27 NOVEMBER 2020

REPORT OF MONITORING OFFICER

BACKGROUND PAPERS

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)
– 01443 424105

Ombudsman
PUBLIC SERVICES OMBUDSMAN FOR WALES

The Code of Conduct
Casebook

Issue 23 January 2020

Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

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).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defense put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers October to December 2019.

Ombudsman
PUBLIC SERVICES OMBUDSMAN FOR WALES

The Code of Conduct Casebook

Issue 23 January 2020

Ombudsman
PUBLIC SERVICES OMBUDSMAN FOR WALES

Contents

Case summaries

No evidence of breach

There are no summaries in relation to this finding.

No action necessary

Merthyr Tydfil County Borough Council – Duty to uphold the law
Case Number: 201805269 - Report issued in December 2019

The Ombudsman received a complaint that a Member ("the Member") of Merthyr Tydfil County Borough Council ("the 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. 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.

The relevant parts of the Code in this case are paragraphs 6(1)(a) relating to bring the authority into disrepute and paragraphs 10(1), 11(1) and 14(1)(a), (b) and (c) about the actions a member should take if they have a personal and prejudicial interest in a matter the authority is considering.

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.

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. However, the Ombudsman decided that it would not be in the public interest to pursue the matter given the significant mitigating circumstances in this particular case. 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. In view of the mitigating circumstances, the Ombudsman concluded that no further action needed to be taken

Merthyr Tydfil County Borough Council – Disclosure and registration of interests
Case Number: 201807334 – Report issued in December 2019

The Ombudsman received a complaint that a Member ("the Member") of Merthyr Tydfil County Borough Council ("the Council") 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.

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.

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. 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.

Referred to Standards Committee

There are no summaries in relation to this finding.

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding.

RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS

INFORMATION REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To allow Members the opportunity to consider recent decisions made by the Adjudication Panel for Wales (APW).

2. RECOMMENDATION

2.1 It is recommended the Committee considers the copies of the recent decisions made by the Adjudication Panel for Wales (as appended to the report); and

2.2 Determines whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

3. BACKGROUND

3.1 The ethical framework set under Part III of the Local Government Act 2000 included the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct. The operation of the Panel is governed by Regulations issued by the Welsh Government.

3.2 The APW issues decision notices following the conclusion of the cases it considers and in that respect Members will find copies of the following decisions appended to the report:

Appendix 1 - APW001/2018-019/CT - Councillor Graham Down
Appendix 2 - APW/002/2018-019/CT - Councillor Roderick
Appendix 3 - APW/001/2019-020/CT - Councillor Aaron Shotton
Appendix 4 - APW/002/2019-020/AT - Councillor Neil McEvoy (Appeal against Standards Committee determination)

3.3 The Committee may find it helpful to consider those decisions and the approach adopted by the APW in formulating its decision and sanctions (where relevant) in light of its own role when conducting Code of Conduct hearings with reference to the decision at Appendix 4 in particular.

3.4 The Committee may also wish to consider whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

4. LEGAL IMPLICATIONS

4.1 There are no legal implications arising from this report.

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL AND RESOURCE IMPLICATIONS

7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

STANDARDS COMMITTEE

27 NOVEMBER 2020

REPORT OF MONITORING OFFICER

ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS

BACKGROUND PAPERS

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)
– 01443 424105

Tudalen wag

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW001/2018-019/CT

RE*:* REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT- COUNCILLOR GRAHAM DOWN

RESPONDENT:	Councillor Graham Down
RELEVANT AUTHORITY:	Mathern Community Council (formerly of Monmouthshire County Council).

Procedural background.

1 On 22nd March 2019 the Case Tribunal was convened to hear the substantive hearing of this matter, preparatory steps having been taken by the parties following a listing direction dated 19th February 2019.

2 The Case Tribunal was to determine whether the Respondent had breached paragraph 6(1)(a) of the Code of Conduct for members and co-opted members of Mathern Community Council ("the Code"). The failures alleged and referred by the Public Services Ombudsman for Wales ("PSOW") were:

i. That at a public hearing of the Adjudication Panel for Wales ("APW") on 19th July 2018 after the Panel announced its decision the Respondent said;
"I cannot be part of a system where I am required to suppress my conscience. I will not do so, nor will I stand up for, defend or promote the hideous and sickening perversions of shirt-lifters."

ii. On 24th July 2018, the Respondent wrote to the APW and stated;
"*I believe homosexuality to be a sickening, depraved practice and I shall continue to say so."*

These matters, the subject of this decision, will be described as 'the second referral'.

3. In responding to the initial Notice of Reference from the PSOW to the APW, the Respondent in his Reply form and covering letter dated 22nd November 2018 said *".....it is questionable as a matter of law that there are any grounds for referral to the Panel."* He did not elaborate further. The PSOW in his response to the APW commented on Councillor Down's letter and indicated that the legal basis for the referral was set out in section 69(4)(d) of the Local Government Act 2000 ("the Act") and the Ombudsman was satisfied that the referral was in the public interest.

4. The Panel considered the various documentation, submissions and evidence before issuing the listing direction. The Panel in that direction said, in relation to the Respondents contention about the legality of the referral

> "*With regard to the first point, the Ombudsman suggests, in his representation to the panel that the legal basis for the referral is set out in paragraph 69(4)(d) of the Local Government Act 2000. The Case Tribunal agrees that this is a correct statement of the law and that the referral was lawful, that is, it was based on legal grounds."*

5. Upon further consideration of the matter prior to the substantive hearing, the Case tribunal was concerned that, whilst section 69(4)(d) of the Act does indeed empower the PSOW to refer matters that are the subject of the PSOW's investigation to the president of the APW, that (notwithstanding the view expressed in the listing direction that the referral was based on lawful grounds), in fact the Case tribunal required further information about the investigation and whether it accorded with section 69 (1) of the Act with regards to the alleged breaches of the Code in this case. The Case tribunal was also mindful that it had not heard any detailed argument or submissions on this point prior to completing the listing direction and that it was procedurally fair and correct to raise the issue of the investigation with the parties.

6. At the hearing on 22 March 2019, Miss Sinead Cook on behalf of the PSOW confirmed that the written allegation relied upon as the basis for the Ombudsman's investigation in the current case (the second referral) was the same written allegation as for case number APW/003/2017 – 018/CT (the first referral). Councillor Down argued that the comments that are the subject of the first allegation in this case were made during a previous legal hearing and therefore cannot constitute a fresh breach of the Code of Conduct. The Case tribunal gave directions for both parties to provide submissions and argument on the question of whether the Ombudsman's investigation in this case has been undertaken in accordance with section 69 (1) the Act.

7. The parties duly provided their submissions. The Respondent's submissions were to have been filed by 3 May 2019. In the event they were not received by the APW until 7 May 2019 however, in the circumstances nothing turns upon this short delay. The PSOW by email of 9th of May 2019 asked whether the Panel would consider this matter without a hearing in order to save public funds and the tribunal by letter of 5th of June 2019 to the Respondent asked if he was in agreement with this suggestion. By letter of 13th of June 2019 (received by the APW on 18th 2019) the Respondent agreed that this aspect of the case should be dealt with on the papers. Under regulation 15 of The Adjudications by Case

Tribunal's and Interim Case Tribunal's (Wales) Regulations 2001 the tribunal may determine an adjudication or any particular issue without a hearing if every accused person so agrees in writing. Accordingly this matter has been determined on the basis of the totality of the written evidence and representations without an oral hearing.

Factual background.

8. The first referral (case number APW/003/2017 – 018/CT) related to breaches of the Code of Conduct by the Respondent Councillor Down when he was a County Councillor at Monmouthshire County Council. Full details can be found in the decision report of the APW dated 10 August 2018 following a hearing on 19 July 2018. Broadly, the PSOW investigated two sets of email exchanges between the Respondent and Mr Paul Matthews the Chief Executive of Monmouthshire County Council. Mr Matthews written complaint was received by the PSOW on 12 October 2016 and it related to email exchanges on 12 February 2016 (the first day of Monmouthshire County Council's LGBT+ youth conference) and further exchanges in early October 2016.

9. On 1st November 2016 the PSOW wrote to Councillor Down to inform him that he would be investigating the complaint made against him by Mr Paul Matthews. On 18 July 2017 the Ombudsman wrote to Councillor Down and explained that the first stage of the investigation into the complaint made against him by Paul Matthews had now been completed and invited him for interview. On 24th of August 2017 Councillor Down was duly interviewed by the PSOW's representatives.

10. The first referral Case Tribunal found the Respondent's comments in three of his emails were in clear breach of paragraph 4(b) of the Council's Code of Conduct, and concluded that the Respondent should be suspended from acting as a member of Mathern Community Council for a period of two months, or, if shorter, the remainder of his term of office.

11. It was at the announcement of the tribunal's findings at the conclusion of the hearing on 19 July 2018 that the Respondent made the comments recorded at paragraph 2 i above. Councillor Down was sent the APW's decision by letter of 20th July 2018 and he responded to the Panel by letter of July 24th 2018 and included the comment that *"...I believe homosexuality activity to be a sickening, depraved practice and I shall continue to say so."* Councillor Down, by letter of 23rd August 2018 to the PSOW, included a copy of his letter of July 24th to the APW. The Ombudsman said "*I decided to investigate whether Councillor Down's actions at the public hearing may amount to a further failure to comply with the Code."* (Paragraph 3 on page 3 of "The investigation of a complaint against Councillor Graham Down of Mathern Community Council" A report by the Public Services Ombudsman for Wales 26th October 2018).

12. That investigation report was duly sent to the APW by the Ombudsman by letter of 26 October 2018 (the second referral) and thereafter preparatory steps were undertaken to hear this case including the listing direction and the subsequent directions given at the hearing on 22 March 2019.

The law.

13. The relevant law is to be found in Chapter lll of the Local Government Act 2000 as amended. The sections relating to our considerations starting with section 69 are set out below;

"*69— Investigations by the Public Services Ombudsman for Wales*.

(1) The Public Services Ombudsman for Wales may investigate–

(a) ***cases in which a written allegation is made to him by any person*** *that a member or co-opted member (or former member or co-opted member) of a relevant authority has failed, or may have failed, to comply with the authority's code of conduct, and*

(b) ***other cases*** *in which he considers that a member or co-opted member (or former member or co-opted member) of a relevant authority has failed, or may have failed, to comply with the authority's code of conduct and* ***which have come to his attention as a result of an investigation under paragraph (a).***

(2) If the Public Services Ombudsman for Wales considers that a written allegation under subsection (1)(a) should not be investigated, he must take reasonable steps to give written notification to the person who made the allegation of the decision and the reasons for the decision.

(3) The purpose of an investigation under this section is to determine which of the findings mentioned in subsection (4) is appropriate.

(4) Those findings are–

(a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned,

(b) that no action needs to be taken in respect of the matters which are the subject of the investigation,

(c) that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned, or

(d) ***that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(1).***

(5) Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority , the reference in subsection (4)(c) to the monitoring officer of the relevant authority concerned is to be treated as a reference either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority (and accordingly if the Public Services Ombudsman for Wales reaches a finding under subsection (4)(c) he must decide to which of those monitoring officers to refer the matters concerned).

***70— Investigations: further provisions**.*

(1) The National Assembly for Wales may by order make provision with respect to investigations under section 69 (including provision with respect to the obtaining or disclosure of documents or information).

(2) The provision which may be made by virtue of subsection (1) includes provision which applies or reproduces (with or without modifications)–

(a) any provisions of sections 60 to 63 as those sections had effect immediately before their repeal by the Localism Act 2011, or

(b) any provisions of sections 13 to 15 and Part 2B of the Public Services Ombudsman (Wales) Act 2005.

*(3) **The Public Services Ombudsman for Wales may cease an investigation under section 69 at any stage before its completion.***

(4) Where the Public Services Ombudsman for Wales ceases an investigation under section 69 before its completion, he may refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned.

(5) Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority, the Public Services Ombudsman for Wales may, if he thinks it more appropriate than making such a reference as is mentioned in subsection (4), refer the matters which are the subject of the investigation to the monitoring officer of that other relevant authority.

71— Reports etc.

(1) Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under section 69(4)(a) or (b) is appropriate–

(a) he may produce a report on the outcome of his investigation,

(b) he may provide a summary of any such report to any newspapers circulating in the area of the relevant authority concerned,

(c) he must send to the monitoring officer of the relevant authority concerned a copy of any such report, and

(d) where he does not produce any such report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation.

(2) Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under section 69(4)(c) is appropriate he must–

(a) produce a report on the outcome of his investigation,

(b) subject to subsection (4)(b), refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned, and

(c) send a copy of the report to the monitoring officer, and the standards committee, of the relevant authority concerned.

*(3**) Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under section 69(4)(d) is appropriate he must–***

(a) produce a report on the outcome of his investigation,

(b) refer the matters which are the subject of the investigation to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(1), and

(c) send a copy of the report to the monitoring officer of the relevant authority concerned and to the president of the Adjudication Panel for Wales.

(4) Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority –

(a) the references in subsections (1)(b), (c) and (d), (2)(c) and (3)(c) to the relevant authority concerned are to be treated as including references to that other relevant authority, and

(b) if the Public Services Ombudsman for Wales reaches a finding under section 69(4)(c) he must refer the matters concerned either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority.

(5) A report under this section may cover more than one investigation under section 69 in relation to any members or co-opted members (or former members or co-opted members) of the same relevant authority.

(6) The Public Services Ombudsman for Wales must–

(a) inform any person who is the subject of an investigation under section 69, and

*(b) **take reasonable steps to inform any person who made any allegation which gave rise to the investigation,***

of the outcome of the investigation.

72— Interim reports.

*(1) Where he considers it necessary in the public interest, the Public Services Ombudsman for Wales may, **before the completion of an investigation under section 69,** produce an interim report on that investigation.*

(2) An interim report under this section may cover more than one investigation under section 69 in relation to any members or co-opted members (or former members or co-opted members) of the same relevant authority.

(3) Where the prima facie evidence is such that it appears to the Public Services Ombudsman for Wales –

(a) that the person who is the subject of the interim report has failed to comply with the code of conduct of the relevant authority concerned,

(b) that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b), and

(c) that it is in the public interest to suspend or partially suspend that person immediately,

the interim report may include a recommendation that that person should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned for a period which does not exceed six months or (if shorter) the remainder of the person's term of office.

(4) Where the Public Services Ombudsman for Wales produces an interim report under this section which contains such a recommendation as is mentioned in subsection (3), he must refer the matters which are the subject of the report to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(2).

(5) A copy of any report under this section must be given–
(a) to any person who is the subject of the report,
(b) to the monitoring officer of the relevant authority concerned, and
(c) to the president of the Adjudication Panel for Wales.

(6) Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority –
(a) the second reference in subsection (3) to the relevant authority concerned is to be treated as a reference to that other relevant authority, and
(b) the reference in subsection (5)(b) to the relevant authority concerned is to be treated as including a reference to that other relevant authority.

***74. Law of defamation**.*

For the purposes of the law of defamation, any statement (whether written or oral) made by the Public Services Ombudsman for Wales in connection with the exercise of his functions under this Part shall be absolutely privileged."

Save for the headings of the sections above, the other highlighted sections in bold are to emphasise wording of particular relevance to this decision.

The Ombudsman's written representations.

14. The Ombudsman cited section 69 (1) of the 2000 Act and submitted that this effectively creates two ways in which the PSOW can acquire the jurisdiction to undertake an investigation, firstly cases where he receives a written allegation that a breach of the code has been committed or may have been committed and secondly "cases" where the PSOW "considers" that a breach of the code has or may have been committed "and which have come to his attention as a result of an investigation under paragraph (a)." The PSOW received a written allegation in relation to what they described as the first referral (namely the earlier proceedings in case number APW/003/2017 – 018/CT arising from the email exchanges of February and October 2016) and relied upon section 69 (1) (a) as the jurisdiction to investigate that first referral complaint. The PSOW "did not receive a written allegation regarding the events which led to the PSOW's investigation and the current case being referred to the APW. (APW/001/2018 – 019/C T – the second referral)."

15. The PSOW "contends that the wording in section 69 (1) (b) "which have *come to his attention as a result of an investigation under paragraph (a)" is sufficiently*

broad enough to cover information which came to the PSOW's attention at the case tribunal hearing which was a culmination of "an investigation under paragraph (a)". The Ombudsman further adds *"such information came to the attention of the PSOW as a result of his earlier investigation under paragraph (a) because the hearing on 19th of July would not have occurred but for the PSOW's previous investigation under section 69 (1) (a) (APW/003/2017 – 018/CT).*

16. At the hearing on 22 March 2019 Councillor Down argued that as the comments which the PSOW investigated and which led to the current referral to the APW were made during a previous legal hearing, they cannot constitute a fresh breach of the Code of Conduct. The Ombudsman made representations on this issue and on the question of core immunity with reference to the cases of Darker v Chief Constable West Midlands [2001] 1 AC 435, and A & B v Chief Constable of Hampshire [2012] EWHC1517, submitting that there is no legal basis for the argument that core immunity gives any councillor core immunity from an investigation under the 2000 Act by the PSOW or an adjudication by the APW for things said during an APW hearing.

The Respondent's written representations.

17. Councillor Down submitted that the Ombudsman's case must fail on two grounds, firstly that he fails to specify which authority's code of conduct he alleges has been breached; and secondly that the alleged breach did not come to his attention as a result of his investigation. He pointed out that the first referral was instigated following a written complaint by the Chief Executive of Monmouthshire County Council in October 2016 at which time he was a member of that County Council. By the time of 19 July 2018 and the incident that led to the 2nd referral he had ceased to be a member of Monmouthshire County Council and argued that he was not bound by the provisions of its code of conduct.

18. The Respondent argues that section 69(1)(b) refers to "authority" in the singular and submits that the PSOW cannot stretch his investigation to alleged breaches of a second authority's code about which there has been no written complaint. He argues that he cannot have been in breach of Monmouthshire County Council's Code of Conduct because he was not a member of that council on 19 July 2018 and there has not been any complaint, written or otherwise that he has breached Mathern Community Council's Code of Conduct.

19. The Respondent submits that the investigation that gave rise to the first referral commenced on or about 1 November 2016 and concluded with the publication of the Ombudsman's report some months later and the referral of the allegations to the panel. He argues that "*it would be manifestly unjust for any further allegations which happen to come to the attention of the PSOW to be "tagged on" to that investigation once it was concluded. I contend that there should be a new investigation initiated in the proper way, that is to say by way of a written complaint under section 69 (1)(b)."* He adds; "*furthermore, the expression used and upon which the PSOW bases his referral was not "a result of an investigation" but a result of the decision of the Panel. It was made in a highly charged, emotional moment and whilst I do not retract the words used, I regret my conduct and apologise to the Panel for the outburst."*

20. The Respondent also argued, (by reference to the two cases cited in paragraph 16 above), that participants in court proceedings have the benefit of immunity and that his statement which formed the basis of the report and the second referral by the PSOW was made during the course of proceedings before the Panel on 19th July 2018 and was therefore covered by immunity.

Case tribunal's decision.

21. We do not find the Respondent's submissions in relation to the wording of section 69(1)(b) as referring to 'authority' in the singular to be persuasive, on the basis that the section clearly refers to member of former member of a relevant authority in Wales, however in the light of our conclusions below, this is not central to the decision.

22. There is no dispute of fact that Councillor Down said the words attributed to him at the hearing on 19 July 2018 or that he wrote the comments in his letter of 24 July 2018 which together comprise the second referral to the APW. The preliminary issue for the Case Tribunal is whether this case has been properly referred to the APW in accordance with the law? There was no written allegation received by the PSOW in respect of the second referral matters at all as acknowledged by the PSOW. In the Ombudsman's letter to the Respondent of 17th August 2018 the Ombudsman's Investigation and Improvement Officer Sinead Cook wrote;

> *"Section 69(1)(b) states that the Public Services Ombudsman for Wales may investigate cases in which he considers a member of a relevant authority in Wales has failed, or may have failed, to comply with the authority's Code of Conduct and which has come to his attention as a result of an investigation.*
>
> *The Ombudsman has decided to investigate whether your actions at the hearing may amount to a failure to comply with paragraph 6(1)(a) of the Code...."*

23. However the Case Tribunal consider that to be a misleading and inaccurate statement of the law, since section 69(1)(b) actually says *"which have come to his attention as a result of an investigation under paragraph (a)."* Section 69(1)(a) says that the PSOW may investigate "*cases in which* ***a written allegation*** *is made to him by any person...".* There is a clear and obvious connection between the written allegation and the investigation in section 69(1)(a) that is triggered by it. Section 69(1)(b) is conjunctive with 69(1)(a). The Case Tribunal is of the unanimous view that the meaning of 69(1)(b) is that, where the PSOW is investigating the particular written allegations that he receives, if during the course of that investigation, other apparent breaches of the code by a member of a relevant authority in Wales come to his attention that were not the subject of the initial written allegations, then the PSOW may also investigate such apparent breaches. In other words the investigation is not constrained solely by the written allegation. This is a perfectly practical provision since it may hypothetically be the case that an investigation into a written allegation against a certain member may, reveal other behaviour of which the original complainant was unaware by that member or others which may also constitute a breach of

the code. It would plainly be perverse if the Ombudsman in such a scenario was unable to investigate and refer such matters.

24. The Case Tribunal notes the PSOW's contention in the written submissions that the wording in section 69 (1)(b) *"which have come to his attention as a result of an investigation under paragraph (a)" is sufficiently broad enough to cover information which came to the PSOW's attention at the case tribunal hearing* ***which was a culmination of "an investigation under paragraph (a)".*** *Such information came to the attention of the PSOW as a result of his earlier investigation under paragraph (a) because the hearing on 19th July would not have occurred but for the PSOW's previous investigation under section 69(1)(a)(APW/00302017-018/CT)".* (our emphasis).

25. The Case Tribunal do not accept this submission nor the reasoning behind it. The hearing was not a culmination of the investigation. The Case Tribunal find that the investigation into the first referral was completed on 20th December 2017 when the Ombudsman said that "my report on this investigation should be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal." Indeed in the PSOW's submissions there are contradictions as there is reference to the PSOW's previous investigation, thereby tacitly accepting that the previous investigation was complete.

26. It is clear that in investigating the first referral matters that the focus was on whether e mails sent in February and October 2016 constituted a breach of the code. When the Respondent was interviewed on 24th August 2017 about this, he was told by the PSOW's interviewer that once the Ombudsman has considered the information and the available evidence, that if there were not any further enquiries he can reach his determination. It was explained that one of those determinations or options was referral to the APW (see page 34 of the transcript of the Respondent's interview). Indeed the Respondent was encouraged to provide any further information that he wanted to be taken into account in the two weeks whilst waiting for the interview transcript to be produced and told that *"we will strive to give you a determination on this then as quickly as we possibly can."*

27. Section 71(3) of the Act (see paragraph 13 above) relates to reports when the PSOW determines that a referral to the President of the APW is appropriate. Section 71(3)(a) requires the PSOW to produce a report on the "***outcome of his investigation.***" In other words, the investigation is clearly concluded and the report will refer to that. The investigation does not remain open ended to be added to at a future date. Further, at 71(6)(b) the Ombudsman is to take reasonable steps to inform any person who made any allegation which gave rise to the investigation, of the **outcome** of the investigation.

28. Section 72 of the Act on Interim Reports allows the PSOW *"before the completion of an investigation under section 69"* to produce an interim report. Whilst there were no interim reports in either the first or second referral against the Respondent, the wording of this section with reference to the completion of the investigation further fortifies the Case Tribunal's view that the investigation report of the PSOW that is referred to the APW constitutes the completed report and the conclusion of the investigation. The subsequent hearing before the

Case Tribunal is not the culmination or the continuance of the investigation by the PSOW but the testing of the allegations and evidence revealed by that investigation.

29. It is also noteworthy that the first referral investigation report related to potential breaches of 4(b) of the Code which were pursued before the July 2018 Case Tribunal, whereas the second referral and investigation report related to paragraph 6(1)(a) of the Code. The Case Tribunal does not accept that the second referral information has come to the attention of the PSOW as a result of the first referral investigation. That first investigation related to events of 2016 and had been completed in December 2017, many months before the events of July 2018. **It follows that the Case Tribunal find that the second referral to the APW and the subject matter of this case was not in accordance with the requirements of section 69(1)(a) or (b) of the Act in that there was no written complaint about the alleged breaches of the Code and the potential breaches of the Code did not come to the PSOW's attention as a result of an investigation under 69(1)(a) and accordingly we dismiss the application.**

30. There are very obvious practical policy (as well as legal) reasons for the requirements of section 69 and the need for a written complaint from any individual outside the PSOW's office to be observed. Under the Act the PSOW is to investigate complaints from third parties, not to **initiate** the complaints or the investigation himself. It is not for the PSOW to proactively investigate potential breaches of the Code absent a written allegation (save for in the circumstances in section 69(1)(b) that the Case Tribunal has determined do not apply here.)

31. In the light of the Case Tribunal's decision to dismiss the case, it is not necessary to examine the respective submissions on core immunity.

Signed…… …… Date 17th July 2019
Richard Payne
Chairperson of the Case Tribunal

Sian Jones
Panel Member

Richard Nicholas
Panel Member

Tudalen wag

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2018-019/CT

REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Councillor Roderick

RELEVANT AUTHORITIES: Powys County Council
Brecon Beacons National Park Authority

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal on 19 November 2019 at the Welshpool Magistrates Court. The hearing was open to the public.

1.3 The Public Services Ombudsman for Wales was represented by Mr Hughes, counsel and Councillor Roderick attended and was represented by Mr Daycock, counsel. The Monitoring Officers of both relevant authorities were also present.

1.4 References in square brackets within this Decision Report are to pages within the bundle of Tribunal Case Papers unless otherwise stated.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 7 December 2018, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Roderick. The allegations were that Councillor Roderick had breached Codes of Conduct of the Council and the Authority by;

(i) Slapping the bottom of a female Councillor before a meeting of the Authority (alleged breaches of paragraphs 4 (b) and 6 (1)(a) of the Code); and

(ii) Threatening to divulge information about the Councillor if she pursued the complaint (alleged breaches of paragraphs 4 (b), 6 (1)(a) and 7 (a)).

2.1.2 The circumstances of the first complaint were that, shortly before the start of a meeting of the Brecon Beacons National Park Authority in the Meeting Committee Room in Plas Y Ffynon, Brecon on 8 December 2017, Councillor Roderick allegedly slapped the complainant's bottom as councillors were gathering at the start of the meeting. The complainant lodged a complaint on 5 January 2018 [B21].

2.1.3 The second complaint arose from two conversations which Councillor Roderick subsequently had with Ms Doel, the then Chairman of the Authority, and Ms Foxley, the then Monitoring Officer. During the first conversation on 15 January 2018, Councillor Roderick indicated that he had information about the complainant's behaviour which her husband would have been interested in. Ms Doel understood that he was threatening the disclosure of the information if the complaint was pursued. During the second conversation on 23 January, it was alleged that Councillor Roderick said that he would make public something that the complainant would not have liked and that he would "*hang her out to dry*". Ms Doel's complaint was dated 4 April 2018 [B23-4].

2.2 The Councillor's responses to the Complaints and Reference

2.2.1 Councillor Roderick responded to the complaints on a number of separate occasions;

(i) In respect of the first complaint;

- On 17 January 2018, Councillor Roderick emailed the Ombudsman and stated that he had given the complainant a "*friendly tap on the backside*"..."*with the back of* [his] *hand*" [B196-7];

- On 16 October 2018, during an interview, Councillor Roderick further stated that he had "*just tapped her with the back of* [his] *hand, on the bottom*". He denied that the contact had been a slap and described it as a '*flick*'. He stated that she had reacted by turning around sharply and saying "*oi don't do that*" [B159-177];

- In the Councillor's solicitors' letter of 22 November 2018, the contact was described as a "*light tap with the back of his hand*" [B200-2];

- In the Reply to the Notice of Reference dated 23 January 2019, the Councillor restated his position and denied breaches of the Code of Conduct ([C3-16] and [C33-38]).

(ii) In respect of the second complaint;

- Councillor Roderick emailed the Ombudsman on 14 May 2018 and stated that he did not accept that Ms Doel's complaint accurately reflected the words which she had used. He nevertheless accepted the 'thrust' of the account and accepted that he may have inadvertently breached paragraph 4 (b) of the Code of Conduct [B198-9];

- During the further interview which took place on 16 October 2018, the Councillor stated that he had been "*looking for payback*" when

he had spoken to Ms Doel and Ms Foxley on 15 and 23 January because he felt that the complaint had been defamatory [B176-192];

- In his Reply to the Notice of Reference dated 22 March 2019, no further details of the response were put forward [C19-32].

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman responded to the Councillor's representations on 10 April 2019 [D3-7].

2.4 The Councillor's further representations

2.4.1 By a letter dated 12 November 2019, Councillor Roderick's solicitors wrote to indicate a significant change of stance to the allegations;

> "*Having reviewed matters with our client, our client has instructed us that he will not seek to contest the facts as presented to the Tribunal and accepts that he has breached the code in relation to the two complaints that the panel will be considering.***"**

3. EVIDENCE

3.1. The Case Tribunal received a bundle comprising the Tribunal Case Papers and a DVD.

3.2 In light of the change of stance to the allegations referred to in paragraph 2.4.1 above, the Case Tribunal heard no oral evidence from the witnesses to the complaints who had been identified within the Ombudsman's report.

3.3 The Tribunal did, however, hear evidence from two character witnesses (see further below).

4. FINDINGS OF FACT

4.1 In light of Councillor Roderick's solicitors' letter of 12 November, the Case Tribunal found the following material facts. Where there were discrepancies between the witnesses' accounts within the Ombudsman's Report, the Tribunal made findings on the balance of those accounts as follows, although those discrepancies were not considered material to the issues:

<u>First complaint</u>

4.1.1 The Respondent and the complainant to the first complaint are Councillors. They are members of the Brecon Beacons National Park Authority and of the Powys County Council.

4.1.2 The Respondent received training on the National Park Authority's Code of Conduct on 16 June 2017 and signed an undertaking to observe it on that date too ([B40] and [B43]). He signed a similar declaration in relation to the Powys County Council Code on 9 May 2017 [B42].

4.1.3 There was a meeting of the National Park Authority on 8 December 2017 in the Meeting Committee Room, on the first floor of Plas Y Ffynnon, Brecon. A plan and photographs of the room were produced [F10-18]. The distances shown on the plan were set out within paragraphs 10-12 of Mr O'Connor's witness statement [F6-7].

4.1.4 The Respondent and a female Councillor, ('the complainant'), were both present. In total, approximately 21 people were present.

4.1.5 At the beginning of the meeting, some members were moving around the room and gaining access to the register of gift declarations. The complainant was signing the register when there was physical contact between the Respondent's hand and her bottom. She described the Respondent as having used the open palm of his hand to make contact with the force of a smack or slap. She reacted by saying "*I could have you struck off for that*" and some others in the room, but certainly not all, recalled her reacting, either by saying the words she maintained, or by exclaiming with surprise and/or by standing up and looking around. One Councillor remembered her appearing to have been close to tears at the start of the meeting (Ms Perkin [B130]).

4.1.6 On 5 January 2018, Councillor Durrant made a complaint to the Ombudsman about the Respondent's conduct on 8 December 2017. The Respondent was informed of the complaint on 8 January.

Second complaint

4.1.7 There was a conversation between the Respondent and Ms Doel, the Chairman of the National Park Authority, on 15 January 2018 during which he asked if a roundtable discussion could have been arranged to resolve the complaint which he then knew was being investigated by the Ombudsman. He then indicated that, if the complaint was pursued, he had information about the complainant's conduct or behaviour that her husband would have been interested in.

4.1.8 There was a subsequent conversation between the Respondent and Ms Foxley, the Monitoring Officer of the National Park Authority, on 23 January 2018 during which he said that, if the matter (i.e. the complaint) went against him, he would make something public that the complainant would not have liked and/or that he would '*hang her out to dry*' and involve his lawyer.

4.1.9 During the interview which took place on 16 October 2018, the Respondent stated that he had been "*looking for payback*" when he had spoken to Ms Doel and Ms Foxley because he felt that the complaint had been defamatory [B176-192].

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSED A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

5.1 The Code of Conduct

5.1.1 The relevant parts of the Code of conduct were as follows;

Paragraph 4 (b);

"*You must-*
(b) show respect and consideration for others;"

Paragraph 6 (1)(a);

"*(1) You must –*
(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;"

Paragraph 7 (a);

"*You must not –*
(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;"

5.2 Case Tribunal's Decision

5.2.1 In light of the contents of the Respondent's solicitor's letter of 12 November 2019 and the evidence set out above, the Tribunal confirmed their unanimous view that breaches occurred as follows;
(i) In respect of the first complaint; breaches of paragraphs 4 (b) and 6 (1)(a);
(ii) In respect of the second complaint; breaches of paragraphs 4 (b), 6 (1)(a) and 7 (a).

6. ACTION TO BE TAKEN

6.1 The Respondent's Evidence and Submissions

6.1.1 Councillor Roderick called evidence as to his character from;
- Councillor Pritchard [C51];
- County Councillor Van-Rees [C45].

6.1.2 He also relied upon a number of written character references which the Case Tribunal read and considered;
- County Councillor Harris [C40];
- Councillor Weale [C41];
- Mrs Lynette Thomas [C42];
- Councillor Alexander [C43];
- Councillor Price [C44];
- Mr Chris Davies MP [C46];
- Mrs Janet Watkins [C48-9];
- Mrs Ann Webb [C50];
- Councillor Pugh [C56].

6.1.3 Lengthy submissions were made on his behalf by Mr Daycock, in which it was contended that Councillor Roderick was apologetic and contrite. Mr Daycock alluded to his lack of experience as a councillor, having

been elected in 2017, but he also referred to his extensive work for his ward and community over many years.

6.1.4 In relation to the first complaint, it was important to note that the Respondent had accepted that his actions had not been appropriate and/or intended as disrespectful with hindsight and that he offered to apologise [B174-5].

6.1.5 In relation to the second complaint, it was noteworthy that the Respondent had accepted that he had not expressed himself as thoughtfully as he would have liked and had admitted an inadvertent breach of paragraph 4 (b) of the Code at an early stage [B198-9].

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all of the facts of the case and the Respondent's submissions in mitigation (see above). It applied The Guidance issued by the President under s. 75 (10) of the Local Government Act 2000, it considered the Nolan Committee's Principles for Public Life from which the National Assembly for Wales' core principles were derived.

6.2.2 First, the Case Tribunal had to assess the seriousness of the breaches and their consequences. It considered that the Respondent's conduct on 8 December had degraded and humiliated the complainant and had long been considered wholly unacceptable in any public arena. It was described by Mr Hughes on behalf of the Ombudsman as '*shocking and extraordinary*'.

6.2.3 In relation to the second complaint, however, the Case Tribunal considered that the threats that the Respondent made could have been described as akin to blackmail. It was not clear to the Tribunal on what basis the Respondent had denied breaches of the Code, despite admitting the thrust of the allegations in relation to the complaint. Mr Daycock realistically accepted that it was the more serious complaint, an issue with which the Tribunal readily agreed, not only because his conduct had been repeated on 15 and 23 January, but also because the conduct itself was more likely to have brought his office as a Councillor and/or the Authority into disrepute. It was short sighted and naive for him to have believed that two similar conversations with the Chair and Monitoring Officer would not have resulted in action having been taken against him.

6.2.4 In terms of the broad sanction that was appropriate in the circumstances, the Tribunal considered that the option of suspension was most applicable. The Tribunal started its considerations by considering whether it could take no action and then a partial suspension but, in the case of the former, it considered the conduct to have been too serious and, in the case of the latter, there was no particular aspect of the Respondent's conduct which made a partial suspension appropriate. The Tribunal was also conscious that the Respondent's role on the Authority had been derived from his role as a County Councillor.

6.2.5 The Tribunal then considered both mitigating and aggravating features of the breaches.

6.2.6 In the Respondent's mitigation in relation to the first complaint, the Tribunal noted that a degree of contrition had been expressed at a relatively early stage in interview and that it had been a one-off incident. There was no systemic conduct or protracted harassment.

6.2.7 Mr Daycock informed us that Councillor Roderick was inexperienced and was described by Councillor Van Rees as '*not a sophisticate*'. He was not familiar with the heightened level of formality and the ethos of committee environment. He accepted that he had made an error of judgment but that no malice had been meant. The Tribunal accepted as much.

6.2.8 Unfortunately, the Respondent had denied the gravity and nature of the incident until recently, thereby potentially extending the period of upset to the complainant. It was a concession nevertheless which had to stand to his credit. Mr Daycock informed the Tribunal that the delay was attributable to the fact that the Councillor's representatives did not have a good understanding of the code of conduct.

6.2.9 In relation to the second complaint, the Tribunal noted the Respondent's degree of insight; that he '*didn't express himself as thoughtfully as he would have liked and accepted and inadvertent code breach*'. Nevertheless, the conduct had been repeated and, by its very nature, there had been an attempt to use his position for gain.

6.2.10 In more general terms, the Tribunal considered a strong set of character references. The Respondent clearly commanded a broad range of respect and trust, which made his conduct all the more surprising and out of character. His level of dedication to his community was impressive. He had no prior record of misconduct with the Ombudsman.

6.2.11 The Case Tribunal considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards expected in public life. It concluded by unanimous decision that **Councillor Roderick should be suspended from acting as a member of authorities for a period of 4 months**.

6.2.12 The sanction applied to both positions held by the Councillor. The Tribunal could discern nothing in the nature of the conduct and/or the breaches which suggested that the Respondent's behaviour was peculiar to, or specifically arose from, his work with the Authority. His position on the Authority was derived from his role with the Council and both the Council and Authority were relevant authorities under ss. 69 and 79 for these purposes.

6.2.13 The authorities and their Standards Committees have been notified accordingly.

6.2.14 The Respondent has the right to seek the permission of the High Court to appeal the above decision. Any person considering an appeal was advised to take independent legal advice about how to appeal.

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Case Tribunal made the following recommendation to the authorities;

7.1.1 That Councillor Roderick receive further training in relation to his duties under the code of conduct from or on behalf of the Monitoring Officer of the Brecon Beacons National Parks Authority by 31 January 2020.

Signed…… Date…20 November 2019……
John Livesey
Chairperson of the Case Tribunal

Ms C Jones
Panel Member

Dr G Jones
Panel Member

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2019-020/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Councillor Aaron Shotton

RELEVANT AUTHORITY: Flintshire County Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal at Llandudno Magistrates Court on 27, 28 and 29 January 2020. The majority of the hearing was open to the public and only a limited amount of evidence in relation to the precise extent of any relationship was heard in private.

1.3 Councillor Shotton attended and was represented by Ms Joanne Clement, Counsel and the Public Services Ombudsman for Wales ("the Ombudsman") was represented by Mr Gwydion Hughes, Counsel. The Monitoring Officer or Deputy Monitoring Officers of Flintshire County Council were also present throughout the proceedings.

1.4 References in square brackets within this Decision Report are to pages within the bundle of Tribunal Case Papers unless otherwise stated.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

In a letter dated 10 June 2019 [B1], the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against the Respondent. The allegations were that the Respondent had breached the Code of Conduct of the Relevant Authority by failing to comply with Paragraphs 6(1)(a), 7(a) and 7(b) of the Code of Conduct in relation to certain events connected to interactions with his Personal Assistant ("PA") in 2012 and also in 2016 and 2017.

2.2 The alleged breaches of the Code of Conduct

The three alleged failures under consideration were as follows:-

2.2.1 **Allegation 1**

Whether the Respondent, in his official capacity or otherwise, used or attempted to use his position improperly to confer on or secure for himself or his PA, an advantage or create or avoid for himself or his PA a disadvantage by providing an opportunity to view questions before her interview for the permanent role of PA and also whether he thereby conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

2.2.2 **Allegation 2**

Whether the Respondent used, or authorised his PA to use the resources of the authority (hire of vehicles):-

(i) imprudently;
(ii) in breach of the authority's requirements;
(iii) unlawfully;
(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which he had been elected or appointed;
(v) improperly for political purposes; or
(vi) improperly for private purposes.

and also whether he thereby conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

2.2.3 **Allegation 3**

Whether the Respondent conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute by sending and/or encouraging his PA to send inappropriate messages, to include messages of a sexual nature, during office hours.

2.3 Summary of circumstances leading to alleged breach.

2.3.1 The three allegations arose as a result of the discovery by the PA's husband of a series of "WhatsApp" messages and a subsequent complaint to the Chief Executive of the Relevant Authority and an investigation leading to disciplinary proceedings involving the PA.

2.3.2 The circumstances surrounding **Allegation 1** were that the PA had been seconded to the role of PA to the Leader in May 2012 and had previously supported Councillor Woolley who had been Leader and was succeeded by the Respondent as Leader in May 2012. An interview took place for the permanent PA role on 29 November 2012. The PA was the only remaining candidate by that time, another candidate having withdrawn her application the week before.

2.3.3 **Allegation 2** arose during the course of the disciplinary investigation when e-mails recovered from the Council's computer systems revealed private hotel bookings made by the Respondent using his Council e-mail address which, in three cases, coincided with hire-car bookings made by the PA using the Council's booking system and paid for by the Council. In each case the cost of hire was £11 per day.

2.3.4 **Allegation 3** arose from the discovery of WhatsApp messages which were forwarded to the Chief Executive and Monitoring Officer of the Relevant Authority, some of the messages apparently having been sent during working hours.

2.4 The Councillor's Response to the Investigation and Reference

2.4.1 The Respondent e-mailed the Ombudsman's investigating officer on 2 July 2018 [B533] following notification of the complaint and said that he and his family had been extremely distressed by the complaint, level of press coverage and social media comments it attracted.

2.4.2 Two officers from the Ombudsman's office conducted a lengthy interview with the Respondent on 12 November 2018 in which he denied **Allegations 1** and **2.** The Respondent agreed that a certain WhatsApp exchange between himself and his PA was not appropriate however in relation to **Allegation 3** [B286].

2.4.3 The Respondent's solicitor, Ms Randle of Steel and Shamash, (later Edwards Duthie Shamash), wrote a detailed response to the Ombudsman's draft Report on 31 May 2019 [B533] stating; "We note that you have provided a very clear and concise report into the allegations made against Councillor Shotton in spite of the huge amount of material which you had to take into account, evidenced by the 497 pages of appendices with the draft report. As a consequence of your efforts to distil some of this evidence into a comprehensive narrative, we are concerned to note, however, that some important details have been omitted. On a few occasions, we are concerned that this gives an impression, albeit unintentionally, of our client's conduct or the context which he found himself, which is not entirely accurate." The solicitor then urged the Ombudsman to accept a number of points to expand certain paragraphs of the Report.

2.4.4 Ms Randle completed a formal Reply to the Notice of Reference from the Ombudsman on 5 July 2019 [C1]-[C23] and provided a detailed response to the material facts set out in the Ombudsman's Report.

2.5 The Ombudsman's Written Representations

2.5.1 The Ombudsman responded to Ms Randle's letter of 31 May 2019 on 10 June 2019 [B543] and stated that the investigating officer had carefully considered the comments in the letter and had made some minor amendments to her analysis as a result, however stated that the overall conclusions were unchanged. It was also stated that consideration is generally given at pre-hearing stage of any requirement to conduct a hearing in private based on the assessment of the public interest.

2.5.2 The Ombudsman provided a concise formal response to the Reply to the Notice of Reference on 18 July 2019 [D1]-[D7].

3. PRE-HEARING REVIEW AND DIRECTIONS

3.1 General Directions were issued on 10 October 2019 [A1]-[A5] which included the listing of the matter for pre-hearing review on 10 December 2019. The Case Tribunal convened the Pre-Hearing Review of its own motion for the efficient discharge of the proceedings.

3.2 Listing Directions were issued following the pre-hearing review on 18 December 2019 [A6]-[A15] to identify the list of relevant disputed and undisputed facts, to confirm the allegations, to direct that certain limited evidence on the precise extent of any relationship would be heard in private at the final hearing, to make directions accordingly with regard to the Tribunal Bundle and to agree the list of witnesses to be called.

3.3 General Directions were also issued on the 22 January 2020 [A16]-[A17] in relation to the Tribunal Bundle.

4. PRELIMINARY MATTERS AND APPLICATIONS MADE DURING THE HEARING

At the outset of the hearing and during the course of proceedings the following applications were made and the following issues arose:-

4.1 A small number of documents had been omitted from the Bundle and these were numbered B395(a) to (n). The quality was not particularly good and clearer copies were agreed by the parties and the Case Tribunal directed that these be included in the Bundle.

4.2 The Directions Section (A) of the Bundle had been expanded and numbered to include the General Directions dated 10 October 2019 [A1] to [A5], Listing Directions dated 18 December 2019 [A6] to [A15] and further General Directions dated 22 January 2020 [A16] to [A17].

4.3 Ms Clement made an application to file a witness statement on behalf of the Respondent and the Case Tribunal directed that the statement be admitted into the Bundle.

4.4 At the pre-hearing review the parties had indicated that they would wish the first witness to provide evidence as to character as well as evidence as to fact at the first stage of the proceedings. Mr Hughes did not object on behalf of the Ombudsman and the Case Tribunal duly directed this course of action.

4.5 Ms Clement raised a preliminary point during the proceedings with regard to the particular points that could be raised during the public and private sessions of the hearing and wished to receive precise legal directions as she considered there to be

one or two grey areas. In particular Ms Clement did not consider that cross-examination of the issues as to the hire-car allegation, **Allegation 2**, could be easily separated into issues which could be examined in public and those which could be examined in private. The Case Tribunal did not agree and directed that the administrative and practical matters relating to the hire-cars be heard in public as it related to financial probity and that it could be separated from cross-examination regarding the motivation for and relationship background given that an inappropriate relationship was an undisputed fact. The Case Tribunal directed that questions to Mr Everett regarding the precise extent of the relationship would be heard in private and evidence regarding the PA's interview for a permanent post, **Allegation 1**, would be heard in public. **Allegation 3**, with regard to the inappropriate messages during office hours, would be heard in private only to the extent that it would go to the precise nature of any relationship.

4.6 Ms Clement also requested clarity with regard to **Allegation 3** at Paragraph 4.3.3 [A7] and whether this allegation extended to messages outside office hours. The Case Tribunal confirmed that the wording should read; "Whether Councillor Shotton conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute by sending and/or encouraging his PA to send inappropriate messages, to include messages of a sexual nature, during office hours" (the comma having previously been omitted).

4.7 During the course of the hearing, the PA said that she wished to correct one of her witness statements. As a result, the Respondent's representative applied for disclosure of the transcript and recording of the interview together with all correspondence between the Ombudsman's investigator and the PA relating to the drafting and finalisation of the PA's witness statement. In the interests of proportionality, the interests of justice and expeditious disposal of the case, the Case Tribunal did not order disclosure of the transcript and recording. It did however order the disclosure of draft statements and all related written correspondence [H1] to [H38] in the interests of natural justice and these were supplied during the course of the hearing.

4.8 In connection with this matter, Ms Clement also invited the Case Tribunal to issue a warning to the PA with regard to giving evidence on oath and the Tribunal Chairperson duly proceeded with this course of action.

4.9 During the adjournment to arrange for disclosure as per 4.7 above, the Monitoring Officer also provided the parties with additional documentation with regard to **Allegation 1** and it was agreed by the parties and directed by the Case Tribunal that this be included in the Bundle [G1] to [G5].

4.10 An agreed position statement was read out to the Tribunal and then submitted in written format with regard to the question of whether there had been a second candidate for the post of PA. (There had been a second candidate who withdrew her application a week before the interview).

4.11 Finally, Ms Clement applied for the witnesses as to character who were due to provide oral evidence, to give their evidence before submissions on the Disputed Facts were made by Counsel for each of the parties. There being no objection from

Mr Hughes, the Case Tribunal agreed to this course of action in order to release the witnesses.

5. THE HEARING

The Case Tribunal considered the contents of the Bundle including the witness statements of the witnesses who provided oral evidence as well as the complainant's witness statement and heard submissions and oral evidence as follows. The Monitoring Officer and Deputy Monitoring Officer were provided with opportunities throughout the proceedings to comment on the evidence and to clarify policy and governance issues in relation to the Relevant Authority.

5.1 The Ombudsman's presentation of the investigation report

Mr Hughes briefly introduced the Ombudsman's investigation report.

5.2 Witnesses as to Fact

5.2.1 Mr Everett, Chief Executive at the Relevant Authority

Mr Everett gave evidence as to the layout of the open plan Executive office where the PA worked and as to the dates of the 2017 local government and general elections. He was however unable to assist the Case Tribunal as to the precise details of the Council's flexible work/home-working scheme. With regard to the Respondent's working hours as Leader, these were not fixed or standard working hours although the Leader should make his availability known generally. Mr Everett was aware of the arrangement for hiring vehicles for official purposes but unaware of any policy or the specific procedures for booking such vehicles, although a PA would normally make travel arrangements for senior Members and he was not sure of any approval processes either at the relevant time or currently. Mr Everett said there was no ban on the use of private mobile phones and that such a ban would be unrealistic.

Between 2016 and 2017 Mr Everett had some temporary line management responsibilities for the PA in view of the absence of the line manager due to ill-health. Before 2017, he had no concerns about the nature of the relationship between the Respondent and the PA and he would have expected to have known if there were any concerns as the Executive team was close-knit and as the offices were highly visible.

It was confirmed that the press coverage surrounding this case had impacted negatively after Mr Everett had worked hard with the Respondent to improve the Council and to build a good reputation. In response to questions from Ms Clement regarding salacious reports in certain newspapers which focused on sexual claims which did not form the basis of the allegations, Mr Everett made it clear that he did not read the same.

Mr Everett then gave limited evidence in private session.

5.2.2 Ms Sharron Jones, former Executive Office Manager

Ms Jones stated that the PA had given a good interview. Ms Jones did not recall having said that the PA must have received the questions in advance. She might have said it in jest but did not think so as that would not have been very professional. If she had, it would have been a compliment and never a suggestion that the PA had the questions in advance. She did not recall any joke in the office on the subject either and nothing was said in her presence as manager.

Ms Jones had not had any concerns about the Leader and the PA and thought that the relationship was professional.

With regard to interview questions, these would have been written by the HR officer and Ms Jones explained the type of questions that would have been asked. Different questions would have been asked at the interview for the permanent role as compared with the initial secondment which would not have been formal. No-one else had expressed interest in that secondment opportunity.

5.2.3 Ms Hayley Selvester, former PA

The former PA was asked by Mr Hughes to confirm the contents of her witness statements and her signature, one dated 9 August 2018 [190]-[B194] and the other 1 May 2019 [B204]-[206]. She stated that not all of her first statement was true and that paragraphs 12, 14 and 15 of that statement were incorrect. It was correct that the Respondent was meant to be interviewing her and that he told her that the questions were on his desk, however it was incorrect to say that he was joking by saying that the questions were on his desk or that it was a joke that she had seen the questions. He did allow her to see the questions and she did look at them. She said that there had been another internal applicant for the post of PA.

The PA continued to give her evidence on the second day of the hearing and, following Ms Clement's invitation to issue the same, the Tribunal Chairperson warned the PA of the consequences of providing a false statement, informed of the duty to tell the truth to the Tribunal and of the right to refuse to answer questions which could leave her or her spouse open to criminal proceedings.

The parties' representatives had agreed a statement overnight to the effect that the second applicant for the role of PA had withdrawn her application and the PA was the only remaining candidate interviewed on 11 December, had scored highly in interview and was appointed to the role.

The PA confirmed that she had not been in a personal relationship with the Respondent at the time of the interview in 2012.

Allegation 1

The PA confirmed her application for the role of PA [G1]. She would like to think that she placed the interview in the Respondent's diary, however confirmed that the

Respondent in fact attended a School Budget Forum meeting instead and not a Scrutiny meeting as she had previously stated [B345].

The PA could not remember Ms Jones giving the Respondent an interview pack, however he must have been given a pack. She could not remember the words as this was back in 2012, however he made it clear that if she wanted to, she could have a look and that they were on his desk and that the text messages in 2017 make that clear. The PA said that this admission in the hearing was just as damaging for her as it was for the Respondent.

She could not remember the exact detail but said that the pack contained her application, questions and a sheet for the interviewer's own notes. She said she did not take the questions home or copy them. Following interview, she couldn't recall being told that she had done well and did not recall being teased by anyone.

Ms Clement then cross-examined the PA on the contents of a WhatsApp exchange with the Respondent dated 26 March 2017 [B53] where she expressed an interest in working with an AM. The exchange progressed and referred to flirting one's way into a job, progressing to; "Can you not remember leaving me the questions for the interview!" The response was "Did I" and culminating in three messages from the PA within the same minute 12:12 as follows: "Nope…you were meant to interview me with shaz and hr", "You gave me the questions the night before", "Then you didn't turn up for interview…still in committee so told shaz to go ahead without you!" then a 'shocked face emojee'. The Respondent wrote 12:13; "Oh…yea I forgot about that". The PA believed that he was referring to the interview questions.

Ms Clement referred to the Investigatory Interview of the PA on 29 June 2018 [B451], where the importance of being open and honest had been stressed, however she accepted that she had tried to hide the truth in certain respects. She agreed that she had also referenced joking about the questions being on his desk and agreed that at the time she had said; "no I would never [look at questions left on the desk]". She said that she had lied as she was under extreme pressure in her personal and family life at the time, so she panicked and lied.

The PA was also taken to her witness statement [B190] and to the Ombudsman's correspondence with regard to signature of statements [H1-H38] and opportunities to add or better explain her position and to the disciplinary hearing outcome [B477] where it was recorded that the PA had strongly refuted that she had looked at the interview questions and that she had no motivation for lying when she had come clean about the other allegations. The PA said she was now being truthful as she was under oath although she had lied to a number of previous investigators. She said it would have been easier to have said the same to this Tribunal, however the Respondent did leave the questions for her.

The PA was referred to newspaper articles and she responded that it was absolutely ridiculous to suggest that she was the source of any leak. She had not been angry about losing her job, she did not seek revenge against the Respondent and did not want to see him 'go down'.

When asked to compare her interview answers to the model answers which had accompanied the questions in the interview pack, she agreed that they were very similar and she recognised interview question/model answers sheet [G2-G3].

Allegation 2

The PA agreed that she booked hire cars through the Council system for private journeys in question. She was referred to her second statement [B204] and she explained the standard system for booking cars at the relevant time, including an "authorisation summary" [B395]. Normally a Member would not authorise such a booking and would simply request the arrangement of travel. She agreed that in her statement she had referred to booking hire cars for three separate occasions "at his request and/or with his knowledge".

The PA described each of the three occasions 27-29 February 2016, 11-13 April 2016 and 20-23 May 2016 when she had booked hire cars for private purposes [B395-B399]. She said that she had discussed arrangements with the Respondent as to how to arrange meetings. She said that she would see if they could hire a car as they were at good rates however she was aware that they couldn't be booked in this way for personal use. She said that the Respondent did not offer to pay personally for the bookings and she did not say that she would do so. The Respondent paid for the petrol.

The PA agreed that the Respondent would not be copied in to the booking and he would not have seen the details. The cost of hire at that time was £11 per day however Ms Clement asked the PA whether she was asking the Tribunal to believe that the Respondent would indeed risk it all to save a few pounds, she answered "yes".

It was put to the PA that when made aware of this allegation, she realised that she would get into yet more trouble and that she had been looking for someone else to take the blame. The PA denied this and said that there was equal blame. She explained her reluctance to sign her second witness statement and to engage with the process at that time.

On the third day of the hearing, the PA gave a limited amount of her evidence in private in accordance with the Listing Directions dated 18 December 2019 in relation to **Allegation 3.**

5.2.4 Councillor Shotton, the Respondent

The Respondent's evidence in chief was comprised firstly of the witness statement forwarded to the Tribunal on the evening of 24 January 2020 and the Respondent confirmed the contents of this statement and his signature. Ms Clement asked further questions in chief.

Allegation 1

The Respondent explained that his experience of staff interviews was in relation to senior officers where questions may have been considered in advance then taken back and only handed to Members just prior to interview to make sure that nothing untoward happened. In relation to the PA's interview, he could not recall an interview pack and did not know what happened to any pack that may have been prepared for him. He said he hadn't seen the interview questions [G2] before and he would have recalled seeing them. When asked whether he might have been allocated questions to ask, he said that he had no idea. He said he was struggling with the question as to whether or not he was intended to be part of the interview process. He attended the Schools Forum at the same time set for the interview, it may have been the first of the administration as it did not meet regularly and as Finance Cabinet Member and Leader, he would not have missed them.

His initial stance was that no interview had taken place [B117]. He agreed that it was fair to say that he had been expected to take part in the interview in view of the evidence contained in two e-mails from Ms Jones, one preparing for interview, the other on the day of interview referring to the Respondent putting the interview back to 10.30 [B518]-[B519]. He did not know how he responded however and could not recall whether he was hoping to do both, however he could not "for the life of him" understand why he would attend the interview and thought it would have been irregular for him to have been observing, let alone to have been participating in the interview. He accepted however that there had been a lot of water under the bridge since 2012 and that the interview would have been utterly routine and that it would not have required much preparation.

He agreed that the questions were quite generic and easy to answer if you had experience of the role; for instance, the Authority's priorities were well known as there was focus in the new administration on injecting pace and political direction. There was a detailed manifesto which was translated into documents such as the Council's improvement plan. Boards were set up across a range of Directorates to consider sub-priorities.

The Respondent agreed that the PA had scored highly at interview [G4] and did not recall the PA's good performance in interview as being a big issue and he would have expected her to have performed well as she had already been doing the job for some time. He said he would not have made it clear that the PA could look at the questions.

It was accepted by the Respondent that there would be no reason to be lying in the WhatsApp messages between himself and the PA as these were unguarded messages and neither expected them to be shared with anyone else. He agreed that by the reference to flirting her way into a separate employment role, the PA was making the link with her own position. As to which previous message "Oh yes I forgot about that" was referring to, the Respondent said that it was difficult to recall, however he said that there was a WhatsApp etiquette around answering each question in turn and he felt confident that he was answering the first in the sequence. If the PA had read the questions in advance, the Respondent said that it would be inappropriate to speculate as to how else she could have received them.

Allegation 2

The Respondent had not seen any policy on the use of hire cars for private purposes and never saw documents in relation to car-hire bookings.

On 27 February 2016, he filled the hire car up with petrol with the corporate credit card in connection with the official council business [B395a]. He would always fill the car up with petrol before taking it back. In connection with what he thought was a separate and private hire event on 28 February, he would have filled up the car again and would have paid this out of his own pocket. He had never been accused of misusing funds before and had never done so.

The Respondent said that he wanted to be confident about how he and the PA would reach their meetings and did not want to travel in either of their private cars and he did also look into booking a hire car privately. In his witness statement, he stated that the PA had said that staff could hire cars at the rates within the Council contract. He contended that she had assured him that she would arrange the car hire and pay for it as he was paying other expenses associated with their meetings. He further stated that he asked the PA on a number of occasions as to whether he could pay for the car hire and he was given the clear response that as he was paying for the hotels, she was adamant that she would "sort" or "cover" the hire car.

With regards the February booking, he was surprised that the hire car had been booked later than he had believed as he had committed and paid for a hotel meeting on the 5th February on a non-refundable basis. It was later that the Cardiff business trip was mentioned. He accepted what the PA said and had no reason to question her so he did not check the arrangements.

It was put to the Respondent that as he usually paid for his own mileage and did not claim legitimate expenses, he might regard the small occasional cost for private use of hire cars as a case of "swings and roundabouts". The Respondent denied this and said it was not a political stance but it was not in his character. Members would have known his stance and he would not have needed to do what was suggested. On other occasions, he would refuse to go to meetings and use video conferencing instead to save money for the Council.

If the PA had told her that she was not paying, he would not have put himself at risk for this amount. She did not tell him however.

The Respondent then gave a limited amount of his evidence in private in accordance with the Listing Directions dated 18 December 2019 in relation to **Allegation 3.**

5.3 Witnesses as to Character

The Respondent called evidence as to character as follows:-

Mr Everett

Mr Everett had known the Respondent in his Council roles for 13 years and for 2 to 3 years previously in a WLGA context. He referred to the special relationship between CE and Leader. They co-lead and co-run the Council, dealing with many sensitive issues along the way. Trust is an absolute requisite. Mr Everett considered that the Respondent had been an excellent Leader who had demonstrated vision, determination and wished to make a positive difference. They held similar values in terms of public ethos and had worked hard in the context of housing and an anti-poverty strategy. He also referred to high profile work on the Regional Ambition Board in North Wales and within the WLGA where the Respondent had been highly regarded and respected. He had no concerns regarding the Respondent although he referred to one unrelated private matter. There had been no suggestions previously of any misuse of public funds and there was scrutiny and publication of expenses. In any event, the Respondent did not claim the mileage which he was entitled to claim. Mr Everett had continued to work with the Respondent following the allegations and their professional relationship remained as strong through tense and turbulent times. He had felt mixed emotions regarding the Leader's resignation.

Evidence as to character was also given by the following:-

Councillor Roberts
Councillor Thomas
Councillor Bithell

The three Councillors provided oral evidence regarding the Respondent's good character, integrity, public commitment, leadership qualities through difficult economic times and his WLGA and North Wales Economic Ambition Board roles. He had steered a smooth ship, showed vision and taken his Finance portfolio role seriously. He had been respected and his resignation was seen as a serious loss by many colleagues

The Respondent also relied upon a number of written character references which the Case Tribunal read and considered;

Councillor Jones
Councillor Butler
Councillor Mullin
Councillor Wilcox, Baroness Wilcox of Newport
Councillor Siencyn, Leader of Gwynedd Council

5.4 The Monitoring Officer

The Monitoring Officer clarified certain points which had been raised in Mr Everett's evidence. Firstly with regard to the Member/Officer protocol, this had been reviewed in 2014/15 and approved by the Council. The Officer Code had also been reviewed in 2015 and again in 2019. With regard to the Council's flexible working scheme, there were no "core hours" but there were "band-widths" which varied depending on the needs of the service. With regard to the relevant IT policy, it does allow use of official e-mail for private use which must not be excessive. Certain specified uses such as shopping and social media accounts were prohibited however.

5.5 The Ombudsman's Submissions

Mr Hughes said that for the large part, the determination of Disputed Facts 2.1 and 2.2 depended on whether the Case Tribunal preferred the evidence of the Respondent or the PA. Disputed Facts 2.3 and 2.4 coalesced to a degree and there had been agreement for the most part regarding the messages and the factual position.

Much of what had been said regarding an inappropriate relationship involved dishonesty as both parties will have lied to their respective spouses and the motive will have been the product of fear of discovery and the consequences of discovery for political and/or employment prospects. Both lied to Mr Everett as to the nature of the relationship.

The Tribunal may feel that the path to the current evidence of the PA may be relevant. Her evidence had moved from a position of limited or no culpability to an admission of everything which was the conventional path. What the Respondent was saying was that the path had been from honest denial to dishonest culpability. This would be an odd progression and improbable.

Mr Hughes submitted that one reason for there being more evidence of the PA's less than honest answers than for the Respondent was that her disciplinary process had progressed and was now over.

He also submitted that there was independent evidence to assist. If there was confusion over who to believe, it was possible to look at the text messages themselves and also the close correlation between model answers and answers given by the PA at interview [G2] and [G4] which spoke for themselves. The texts contained unguarded and honest comments, albeit including lightweight comments, jokes and fantasy and no-one expected this lengthy review at that time. The exchanges were relatively independent and with regard to the interview questions, indicated that the Respondent allowed the PA to have sight of the questions and that was the most straightforward meaning. The Respondent's interpretation was strained.

5.6 The Respondent's Submissions

Ms Clement said that only Disputed Facts 2.1 and 2.2 remained and that there was common ground on Disputed Fact 2.3 and it was in the context of acceptance that there were only a small number of inappropriate messages and that these were sent on the 7 April 2017. The question of office hours was complex in view of the nature of the flexible working scheme and that there were minimum break times. The Respondent accepted that it was probable that some were sent during office hours however.

The PA confirmed that they frequently sent work-related messages and that the inappropriate messages were limited and she had thought she was on lunch break. With regard to Disputed Fact 2.4, no-one had previously probed what had been meant by the language used by the PA in describing the relationship in her second draft statement [H11] and due to the now common view, cross-examination had been unnecessary.

Ms Clement addressed the Tribunal as to the respective credibility of the Respondent and the PA, she asserted that the former was a high-flying deeply committed public servant who had never had a previous complaint against him and who had co-operated with the investigation and the other being a self-acknowledged liar when it suited her own interests and who "took delight" in changing her formal witness statement in court. She also referred to the view expressed in the disciplinary hearing outcome letter [B480]. There was a motive to lie in order to destroy the Respondent's career as he was still in a job and she was not. Ms Clement submitted that the current event met the description of the anonymous source in a newspaper article, "predicting fireworks".

Ms Clement submitted that retrieved electronic information previously deleted by the PA regarding the hire-cars showed that the PA was in trouble and all she could do was confer "equal blame" and shift as much of the responsibility as possible.

With regard to the Respondent, it was submitted that he had made early admissions where appropriate and had not sought to hide from the truth. He deeply regretted his error of judgment in entering an inappropriate relationship and was paying for it to this day.

He did not lie to the Chief Executive however wished that he had been more frank. Ms Clement also sought to differentiate between lying to a spouse and lying during formal investigations.

Regarding the WhatsApp exchange referring to the interview, it was submitted that the last response referred to the first point (that the Respondent was supposed to attend the interview) and that it was unclear whether the Respondent ever had the interview pack or if he was intended to be at the interview in the light of the timing of the Schools Forum. The PA could not remember any details of what was said and she had previously been equally adamant that she had not had prior sight of the interview questions. As to the similarity between the model answers and the actual answers, the PA did not get a perfect score and was simply good at her job. It was submitted that the evidence therefore fell far short on the balance of probabilities test.

As for the Respondent, he had been too honourable to speculate as to what occurred and whether he was the only person who may have had access to the interview questions.

Ms Clement referred to the Ombudsman's own Report [B29] as he had not been persuaded that there had been improper use of the Respondent's position in relation to the interview process.

With regard to the car hire, it was the PA who booked the hire-cars, received the invoices and without a shadow of a doubt knew that the Council had paid for private use. The Respondent did not and never saw any of the documents. It made no sense that he would have filled the car up twice with petrol in relation to the February 2017 booking, one on the corporate card and one personally if he was then allowing the Council to pay for the private element of the hire.

Finally Ms Clement submitted that the only thing the PA could do was to attribute equal blame to the Respondent and to try to shift as much of the responsibility as possible and that the Respondent did not know and had no reason to suspect that the Council was paying for car-hire for private purposes, particularly as Cabinet Member of Finance who had denied himself expense claims.

6. FINDINGS OF FACT

6.1 The Case Tribunal found the following **undisputed** material facts

6.1.1. The Respondent is a Councillor and the former Leader at Flintshire County Council ("the Council"). He was first elected to the Council in 1999 and was Leader of the Council from 2012 until his resignation in April 2019.

6.1.2 The personal assistant ("PA") was seconded to the role of PA to the Leader and Deputy Leader on 28 May 2012. The PA was interviewed for the permanent role of PA on 29 November 2012 and was duly appointed to the role. The Respondent was due to take part in the interview however did not attend in the end.

6.1.3 The Respondent received training on the Council's Code of Conduct for Members in 2013 and signed an undertaking to observe the Code.

6.1.4 The Respondent conducted an inappropriate close personal relationship with the PA which involved hotel meetings and 'sexting' between January 2016 and May 2017.

6.1.5 The Respondent used hire cars paid for by the County Council on 27 and 28 February 2016, 11 to 13 April 2016 and 21 and 22 May 2016 which included personal purposes in relation to the hotel meetings.

6.2 The Case Tribunal found the following in respect of the **disputed** material facts:

6.2.1 The Respondent did use his position improperly to confer an advantage on the PA by providing an opportunity to view questions before her interview.

6.2.2 The Respondent was not aware nor could he have been expected to be aware that he was using hire vehicles for private purposes at the Council's cost.

6.2.3 The Respondent sent and encouraged the PA to send inappropriate messages, to include messages of a sexual nature, during office hours.

6.2.4 Insofar as there was any difference in accounts, Disputed Fact 2.4 in relation to the precise extent of any relationship required no formal finding and therefore did not impact on the assessment of credibility of either the Respondent or the PA.

6.3 Credibility of the Witnesses

6.3.1 The Case Tribunal found Mr Everett and Ms Jones to have been honest witnesses in relation to the background and contextual issues, although certain policy issues and issues regarding the PA's interview needed to be corrected, clarified or expanded by the Monitoring Officer during the course of the hearing.

6.3.2 The Case Tribunal noted that the PA had been evasive in interview with the Chief Executive, had been adamant as to her innocence in relation to the interview questions during her disciplinary interview and had signed a witness statement during the Ombudsman's investigation to this effect, a position from which she now resiled. The Tribunal considered this to be a serious matter, however it found her evidence on oath to be compelling in relation to the interview questions, in particular as that evidence was not only detrimental to the Respondent but also detrimental to herself. The interview was a life-event of great significance to a PA on a temporary secondment and a permanent role would have meant employment security and a considerable degree of prestige. The events running up to interview would have been memorable for her.

6.3.3 With regard to the hire-car bookings, the PA's evidence was that the cars had been booked at the Respondent's "request and/or with his knowledge." She believed that the Respondent would have been aware that the Council would be paying for the car on each occasion "as they were usually booked on the back of council or political events". When her attention was drawn to the relevant documentation however, the PA conceded this was the case in only one instance and she was not able to recall the detail of any discussions with the Respondent about the arrangements for using

hire cars. The Case Tribunal found her evidence on this matter to be vague to the point that it lacked credibility.

6.3.4 In relation to the third allegation, her recollection broadly matched that of the Respondent.

6.3.5 The Case Tribunal found the Respondent to be a credible and honest witness with regard to **Allegations 2** and **3**. In relation to the interview questions, the Respondent could barely recall the event and indeed in his initial communication with the Ombudsman [B117], doubted that the PA had any job interview during his time as Council Leader. During his interview with the Ombudsman's investigator he could not recall anything about the interview process. In giving evidence at this hearing, he said that he struggled to accept that it had been intended that he should participate in the interview process, despite the written evidence in the bundle to the contrary [B518] and [B519]. The Case Tribunal did not find this surprising as this would not have been a memorable or high-level event in the early days of being a Leader of a new administration with far more pressing duties and where there was only one candidate for a job which the PA had already been doing for quite some time.

6.3.6 With regard to the hire-cars, the Respondent was clear that he understood that the car-hire for meetings with the PA was a private arrangement made independently of the Council contract. He was consistent in his assertion that the PA had said that she was paying for the car and that when he had offered to pay for the private bookings, she said that she had "sorted" or "covered" this element of cost as her contribution. In this respect, the Tribunal found the Respondent to be far more reliable in his recollection than the PA. His wish to pay was consistent with his strong ethos in terms of financial probity and his unwillingness to claim expenses to which he was entitled.

6.4 The bases for the above findings are as follows:-

Allegation 1

6.4.1 Having considered the credibility of each witness and in particular that of the PA and the Respondent, on the balance of probabilities, the Case Tribunal found the PA's evidence on oath to be consistent with the unguarded and unstructured remarks made in the WhatsApp exchange of 26 March 2017 in the context of an unconnected job role [B54] and [B55]. The exchange contained the clear statement; "You gave me the questions the night before". The inappropriate exchange of 7 April 2017 showed that the Respondent and the PA had not concluded their WhatsApp relationship and there was therefore evidence of a trusting relationship at that time with no reason to be joking about this statement.

6.4.2 The Respondent had no recollection of the interview or the surrounding circumstances. This is not in the least surprising in the first year of a new administration when there would have been a huge number of events,

meetings and responsibilities to attend to. The interview of a PA who was the only remaining candidate and who had already been carrying out the role for a lengthy period of time meant that she was almost certain to gain the role of PA. The sharing of interview questions with a candidate was wholly inappropriate as the Leader was in a position of power and would have been expected to lead by example, however this would not necessarily have been a memorable event or one that was given any proper thought and consideration.

6.4.3 The Tribunal also agreed that for the PA to move from a position of honest denial to a position of dishonest culpability would be unusual. It did not accept that the comment "Oh…yea i forgot about that" naturally referred to the initial comment only in the series of three comments and agreed that this would be a strained construction. It was more likely to refer to all three, including the comment; "You gave me the questions the night before".

6.4.4 In her answers during disciplinary interview [B465], the PA clarified that the Respondent had hinted that the questions were on his desk rather than him having physically given them to her. Although the PA could not recall the exact wording, it was apparent to the Tribunal that the PA had seen model answers to the interview questions, the similarity in answers to the model answers was too great to be a mere coincidence. More directly, in her evidence on oath she confirmed that she recognised the questions and those model answers and that she had seen them the day before interview. The most obvious explanation was that the Respondent had allowed the PA to view the questions. No other explanation was advanced to explain how the PA could have accessed those questions and answers. As the Respondent conceded, any other explanation would have been speculation. In conclusion, the Case Tribunal accepted the PA's evidence on **Allegation 1** and preferred it to the Respondent's evidence. The Case Tribunal's conclusions included consideration of the character evidence called on the Respondent's behalf.

Allegation 2

6.4.5 Conversely, having considered the credibility of each witness, the Tribunal accepted the Respondent's evidence on **Allegation 2**. As Cabinet Member for Finance who led by example in terms of Members expenses, having not claimed significant sums to which he was entitled and which the Independent Remuneration Panel for Wales expected Members to claim, it would be extremely unlikely for the Respondent to knowingly or recklessly allow or encourage the PA to book travel for private purposes at the cost of the Council and to risk financial criticism for relatively small sums.

6.4.6 The Respondent's evidence with regard to filling the car with petrol using the Council's corporate card to pay for the official purposes and then filling the car at his own expense for private purposes supported his account that, at the time, he believed there to be two entirely separate bookings, one for business use and one for private use. In the view of the Case

Tribunal, this corroborated the evidence of lack of intention to travel for private purposes at the Council's expense.

6.4.7 The PA had been responsible for booking the hire-cars, for the paperwork and for liaising with the hire company. She was the expert in that respect and at the relevant time, there were no additional checks and balances with regard to authorisation and as such, she was in a position of knowledge and power.

6.4.8 The Tribunal preferred the evidence of the Respondent that he had been led to believe that the PA had "sorted" and was "taking care" of the cost of the hire cars for private purposes and that he had offered to pay for this on each occasion. It came as a shock to him that the hire cars were paid for by the Council. In his statement he said that it had "floored" him and that he would not have travelled in the cars if he had "thought for one second" that the Council was paying for them. [B303].

6.4.9 As to whether the Respondent used the resources of the Council "imprudently", the Case Tribunal considered that this required an element of knowledge on the part of the Respondent, which the Tribunal found to be absent. The phraseology "improperly for private purposes" likewise implied knowledge and a dishonest intent which the Tribunal found to be absent. As to "in breach of the authority's requirements", there was no formal policy in place, nor formal requirements (although it would have been patently obvious that the Council would not pay for private use).

Allegation 3

6.4.10 The Respondent and the PA had by the last day of the Tribunal hearing reached an agreed position that the Respondent had sent and/or encouraged his PA to send inappropriate messages, to include messages of a sexual nature, during office hours on the 7 April 2017.

6.4.11 In the circumstances, the Tribunal noted that this was no longer a Disputed Fact or allegation.

7. FINDINGS OF WHETHER DECIDED FACTS/ALLEGATIONS AMOUNT TO A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

7.1 The Ombudsman's Submissions

7.1.1 With regard to **Allegation 1**, Mr Hughes stated that the finding led to the inevitable finding of a breach of Paragraph 7(a) of the Code of Conduct and was also capable of bringing the office and authority into disrepute.

7.1.2 It was stated that with regard to **Allegation 3**, this was more complex in the context of Paragraph 6(1)(a) of the Code of Conduct. He referred to the need for a fine balancing exercise between the Code and Article 8 of the ECHR in relation

to the text messages during working hours and the need to differentiate between the man and the office. He urged caution in relation to the Livingstone judgment which referred to an earlier version of the statutory regime with reference to Section 52 of the Local Government Act 2000.

7.1.3 Mr Hughes referred to numerous paragraphs of the judgment, however he contended that each case was fact sensitive. He said that Section 52 was framed in such a way that interference in private issues was more limited than in a councillor's public role.

7.1.4 In the context of Article 8 ECHR, consideration would need to be given as to what extent the state should interfere in relation to private texts exchanged in work time.

7.2 The Respondent's Submissions

7.2.1 With regard to **Allegation 1**, Ms Clement acknowledged the cross-over between Disputed Fact 2.1 and Paragraph 7(a) of the Code of Conduct and the factual finding would determine that there was a breach, however she resisted an additional finding of breach of Paragraph 6(1)(a), particularly as the factual circumstances were not so serious in the light of the surrounding circumstances, being that there was only one candidate, that the PA was well qualified and would have got the job in any event.

7.2.2 Ms Clement contended with regard to **Allegation 3** that the following were the reasons as to why the finding did not lead to breach of the Code. With regard to Livingstone, there were two distinct aspects. One argument was around the Respondent being 'off-duty', which she conceded was not an argument open to her in this Case. The alternative argument however was binding and that related to the distinction between the man and the office [paragraph 40].

7.2.3 Ms Clement also produced a report regarding a Code of Conduct investigation concerning a Member of Parliament which she acknowledged was not binding on the Case Tribunal but potentially persuasive in illustrating actions that should be taken in cases of this nature. She referred to various paragraphs of the relevant report and drew parallels with the Respondent's case. She submitted that the Respondent had not brought his office into disrepute because he had damaged his own reputation rather than that of the role.

7.2.4 Ms Clement's second line of argument built on the first and she contended that these were entirely private messages in relation to private actions using private phones. The allegation came about not through the Respondent's actions but through the unlawful actions of a third party who showed private messages to members of the public and a third party who had leaked highly personal data to the Press. She therefore submitted that any damage to reputation occurred not so much because of the actions of the Respondent but because of the actions of another. The messages upon which much of this case was based should never have been made public.

7.2.5 Ms Clements' third line of argument was to look at what had caused the damage to reputation. She submitted that it was based on an untrue version of the nature of the Respondent's personal relationship with his PA and not based upon the facts which had been found by this Case Tribunal. She contended that the Respondent did not cause the disrepute because any disrepute was due to false press reporting. In fact, there were a small number of inappropriate messages sent from private phones over a very short period, over one working day and this was not capable of amounting to disrepute.

7.2.6 The final line of argument on behalf of the Respondent was in relation to Article 8 of the ECHR. Finding that there had been a breach of the Code of Conduct based on the limited messages would amount to a disproportionate interference with the Respondent's right to a private life in Ms Clement's submission. She contended that there were two ways in which it could apply. Firstly, the facts said to constitute a breach fell squarely within the scope of the Respondent's right to a private life, and therefore "right at the heart" of that which is protected by Article 8. If one interprets the Code of Conduct properly so as to avoid a breach of Article 8, the conclusion should be that these private matters cannot truly amount to "disrepute". Secondly, even if it is necessary in a democratic society to find a breach when one considers the protection of the "rights and freedoms of others", the pursuit of any such legitimate aim has to take account of the weight of the Respondent's right to a private life. The importance of the Respondent's right to a private life outweighs any legitimacy in punishing the Respondent's behaviour by characterising it as "disrepute" and so the Case Tribunal should refrain from doing so. In effect, Ms Clement contended that any legitimate aim in this case was not sufficiently weighty to trump Article 8.

7.3 Relevant Paragraphs of the Code and Article 8 ECHR

The relevant Paragraphs of the Code which were considered by the Case Tribunal were as follows:-

7.3.1 Paragraph 6(1) of the Code states that; "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

7.3.2 Paragraph 7(a) of the Code states that; " You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or to secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;

7.3.3 Paragraph 7(b) of the Code states that; "You must not use, or authorised others to use, the resources of your authority-

(i) imprudently;
(ii) in breach of the authority's requirements;
(iii) unlawfully;

(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which he had been elected or appointed;
(v) improperly for political purposes; or
(vi) improperly for private purposes.

Article 8 of the ECHR states as follows:-

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

7.4 The Case Tribunal's Decision

On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Relevant Authority's code of conduct as follows:-

7.4.1 The Case Tribunal found **Allegation 1** proved and found that the Respondent had breached Paragraphs 6(1)(a) and 7(a) of the Code of Conduct for Members of Flintshire County Council.

7.4.2 The Tribunal agreed with Counsel for the Respondent that there was a cross-over between the finding of Disputed Fact 2.1 and the wording of Paragraph 7(a) and by necessity, this amounted to a breach of the Code.

7.4.3 The Case Tribunal was also satisfied that the facts amounted to a breach of Paragraph 6(1)(a). The type of behaviour complained of was the type of behaviour which dented the reputation of local authorities. The Leader was in a position of power and influence and whereas he showed commendable passion for leading and acting with financial prudence and integrity, employment practice was another area of local authority work which naturally attracted the attention and scrutiny of the public who would expect complete integrity and transparency in the employment of staff to roles within the Council. The internal workforce also deserved to know that appointments would be made entirely on merit and with no suggestion of interference or manipulation of process. The Leader would be expected to lead by example in this respect.

7.4.4 The PA role was a key role which demanded integrity and a close and trusting professional relationship with the Leader and his Deputy and the process for the appointment to such a role equally demanded trust, integrity and professionalism. The Case Tribunal was therefore satisfied that allowing a candidate, albeit a lone

candidate who was almost certain to succeed in interview, to view the questions in advance of their interview could reasonably be regarded as an action which could bring the office of Leader and the Authority into disrepute.

7.4.5 The Case Tribunal also found **Allegation 3** proved and that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct.

7.4.6 The Case Tribunal agreed that the wording of Section 52 of the Local Government Act 2000 had since changed and also agreed with Ms Clements that, whilst binding on the Tribunal in certain respects, Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) ("the Livingstone case") could not be directly translated into the legal position in Wales where the legislation and the mandatory provisions of the Code set out in the relevant Welsh Regulations had, by clear wording, spelt out that Paragraph 6(1)(a) extended to a Member's conduct "at all times and in any capacity" as per Paragraph 2(1)(d) of the Code.

7.4.7 The Respondent and the PA had used their personal mobile phones interchangeably for work and private purposes and it was the Respondent's evidence that he preferred to use this method of communication for work purposes over his Council-provided "BlackBerry" device. The PA's evidence was that inappropriate messages were not usually exchanged during working hours, however the Case Tribunal considered that this blurred proper boundaries of communication. The evidence was clear however that the Respondent was well aware that on 7 April 2017 he was sending and encouraging his PA to send inappropriate message during working hours.

7.4.8 The Case Tribunal considered that the close professional working relationship between Leader and PA had likewise become blurred at the relevant time with an inappropriate close personal relationship. Members have a duty of trust and confidence towards staff and vice versa and the Case Tribunal considered that the exchange of inappropriate messages during working hours inevitably conflicted with work itself as well as that fundamental duty. Time spent engaging in such activities would have been at the cost of the Council and ultimately the public purse. Such inappropriate exchanges during work hours would adversely affect the working environment, leave Members and officers open to criticism, pressure, mistrust, resentment and ultimately could lead to lies and at worst, blackmail. In a situation where there is a power differential such as that between Leader of the Council and a relatively junior member of staff who works directly for the Leader and Deputy Leader, the risks are even greater.

7.4.9 The Case Tribunal was clear that the mere fact of any personal relationship between a Member and Officer did not amount to a breach of the Code of Conduct although it could clearly lead to difficulties, hence the wording of paragraph 9.1 of the Protocol on Office/Member relations of the Relevant Council; "Members and Officers will not allow a working relationship to become so close or appear to be so close as to bring into question the Officer's ability to deal impartially with other members, political groups and other Officers." [B97]. **Allegation 3** related purely to sending and/or encouraging the PA to send inappropriate messages during office hours however.

7.4.10 In conclusion, the Case Tribunal considered that the Respondent could not divorce himself from his role as the PA's quasi-employer and that when sending or encouraging his PA to send inappropriate messages during working hours, unlike the Livingstone case, the Respondent was acting in his official capacity when engaging in message exchanges during his PA's working hours on 7 April 2017.

7.4.11 Even if it could be argued that the Respondent was acting in an entirely private capacity rather in connection with his role as Leader and Member when exchanging messages from the Labour Conference, the Case Tribunal considered that the Respondent's conduct would nevertheless have breached Paragraph 6(1)(a) of the Code as the Welsh Code was clear and specific in stating that a Member may bring the office and/or authority into disrepute by his actions in a private capacity and also as the behaviour was so serious and so integrally linked to his role as Leader and therefore to his role as quasi-employer.

7.4.12 With regard to the Respondent's second line of argument, the Case Tribunal disagreed that the messages were entirely private, relating to private actions, using private phones. The Respondent's phone was used interchangeably for official and private purposes with the PA and the series of e-mails of 7 April 2017 started with a commentary relating to party political issues and then went on to discuss what was happening in the office, that is, that one member of staff was finishing early and that there was no-one else down at the bottom end of the office, about an office communication system called "Same Time" as referred to in the Respondent's interview [B280] and about office furniture. Exchanging inappropriate messages did bring the office and the authority into disrepute in this instance due to a third party copying private texts which referred to the office context and then leaking them to the Press. More fundamentally however, the conduct itself "could reasonably be regarded as bringing the office or authority into disrepute" in any event.

7.4.13 Thirdly, and linked to the above, the Case Tribunal did not agree that the damage to reputation was caused by newspaper reporting which was based on inaccurate information rather than the facts which have been found in this case. The basis for the damage to reputation was the inappropriate close personal relationship involving inappropriate messages during office hours. Nevertheless, reports referred to messages regarding the office and from the contents of the reports it is highly probable that these included the WhatsApp exchange of 7 April 2017 [e g B508], albeit that the newspapers provided exaggerated interpretations of the messages.

7.4.14 Finally, with regard to Article 8(1) of the ECHR, everyone has the right to respect for his private life and his correspondence. Article 8(2) states that there shall be no interference with the exercise of this right except as is in accordance with the law and is necessary in a democratic society…for the protection of health and morals, or for the protection of the rights and freedoms of others. The Code of Conduct is a Code of ethics and it governs the behaviour of Members to ensure, for example, that the public can expect public resources to be used and staff to provide public services and so that employees can expect a dignified working environment where each staff member is treated fairly and equally with no special privileges such as lax, unprofessional and inappropriate working arrangements or allowing inappropriate message exchanges [B142]. This is exemplified by the disciplinary

interview where the PA stated “As we are more than work colleagues, the relationship is less formal” [B473]

7.4.15 The Respondent had accepted that he had sent inappropriate messages to his PA during office hours and albeit that the messages may have been intended to be private and not sent by the Respondent whilst exclusively engaged in his Leader and Member function, they nevertheless could not be divorced from the fact that he was writing to a member of staff during working hours and talking about working arrangements amongst other more personal matters. There could not be the same expectation of privacy in the circumstances. This was taken fully into account in the careful balancing of Article 8(1) rights with Code duties. The public would expect behaviour of this nature to be regulated by the Code and the Respondent could not hide behind the shield of privacy when the behaviour was so inappropriate and so serious and breached the relationship of trust and confidence between employer and employee. It is for good reason that the Protocol on Member/Officer Relations paragraph 9.1 of the Relevant Authority [B97] stated that; “Members and Officers will not allow a working relationship to become so close or appear to be so close as to bring into question the Officer’s ability to deal impartially with other Officers”. Any penalty or sanction implied in characterising such inappropriate behaviour as “disrepute” is a legitimate and proportionate interference with the Respondent’s Article 8 rights that is “necessary in a democratic society in the interests of…the protection of the rights and freedoms of others.”

7.4.16 Finally, the Case Tribunal considered that the Decision of the Parliamentary Commissioner in relation to the alleged breach of the House of Commons, Code of Conduct for Members, whilst helpful so far as it explored a separate standards regime, had limited value in relation to the case under consideration. The facts were significantly different, there being no employment connection between the parties in that case.

8. SUBMISSIONS ON ACTION TO BE TAKEN

8.1 Evidence of previous conduct

The Clerk to the Tribunal reported that there had been no previously reported instances of breach of the Code of Conduct with regard to the Respondent.

8.2 The Ombudsman’s submissions

8.2.1 Mr Hughes said that it was not the practice of the Ombudsman to suggest a particular penalty to the Case Tribunal.

8.2.2 With regard to mitigating factors, he said that there was evidence of good public service by the Respondent over a long period of time and that the behaviour which had been established was relatively confined.

8.2.3 Regarding aggravating factors, the length of service and extent of responsibilities was relevant. In relation to the interview questions, it was also deliberate conduct resulting in advantage for another, albeit not someone who was

particularly close to him at that stage and the Respondent was therefore exploiting his position of trust. In one sense there was lack of acceptance of the behaviour in question in that the Respondent had continued to deny the allegations.

8.3 **The Respondent's Submissions**

8.3.1 In mitigation, Ms Clement also referred to the Respondent's previous record of dedicated and long service. She said that, in her experience, it was unprecedented for the numbers of character witnesses to coming forward in such numbers and in the way in which they spoke of the Respondent. She said that the incidents were one-off incidents within a long timeframe.

8.3.2 The Respondent had expressed deep regret for his behaviour and had acknowledged that none of this should have happened. He had apologised to all affected by his behaviour, although not in relation to the interview questions which he said he did not provide. He had co-operated with the Ombudsman's investigation and there had been no suggestion of any breach of the Code since the adjudication.

8.3.3 With regard to his previous long service, Ms Clement noted that this could be an aggravating as well as a mitigating feature. She contended that this was not a case of deliberate exploitation for gain however and this was not a case of numerous breaches of the Code. She argued that the aggravating factor in relation to disrepute did not apply and that there had been no previous adverse determinations against the Respondent. She reminded the Case Tribunal that the Respondent had resigned from his role as Leader and she stated that neither incident will ever be repeated.

8.3.4 Ms Clements contended that the appropriate sanction would be no sanction at all in relation to **Allegation 1** in the factual context. There had been limited consequential harm and the Respondent stepped down as Leader voluntarily. Ms Clements contended that if the Case Tribunal did not agree that a "no action" finding was appropriate, a warning or partial suspension from the role of Leader could be appropriate.

8.4 Case Tribunal's Decision

8.4.1 The Case Tribunal considered all the facts of the case and considered in particular the mitigating and aggravating factors referred to in the APW Sanctions Guidance.

8.4.2 The Case Tribunal concluded by unanimous decision that the Respondent should be suspended from acting as a member of Flintshire County Council for a period of three months or, if shorter, the remainder of his term of office.

8.4.3 It considered that both proven **Allegations 1** and **3** were serious, **Allegation 3** being particularly egregious, both comprising of the type of behaviour that would normally attract lengthy suspension or disqualification, particularly in the light of a Leader's vital role in improving a Council's culture and building its good reputation.

8.4.4 As well as the factual context of each proven Allegation, the Case Tribunal carefully considered it's published Sanctions Guidance. It took account of the aggravating factors which also included long experience, seniority and position of responsibility, deliberate conduct and abuse and exploitation of a position of trust. It also consisted of deliberate or reckless conduct with little or no concern for the Code.

8.4.5 In terms of mitigating factors however, the Case Tribunal accepted that the Respondent had a previous record of good service over a long period of time and was a deeply committed politician who worked hard for his community and his Authority. With regard to **Allegation 3,** the Respondent had recognised his failure to abide by the Code, he had also shown deep remorse for the misconduct and its consequences, he was contrite and had apologised early in the investigation and throughout to all those affected, he had co-operated throughout the investigation and co-operated with the Adjudication Panel for Wales and finally, he had voluntarily resigned his position as Leader together with the relevant senior responsibility allowance. The Case Tribunal also accepted that the Respondent, as well as others, had already suffered a form of punishment through public humiliation and adverse publicity over a considerable period of time and the Case Tribunal was satisfied that the behaviour would never be repeated.

8.4.6 In all of the above circumstances and taking full regard of Article 8 of the ECHR, the Case Tribunal considered that a relatively short suspension of three months properly reflected all of the relevant mitigating and aggravating factors and the facts of the case. It considered that a period of three months' suspension was proportionate in all the circumstances and was the minimum sanction necessary to uphold the Code of Conduct. It noted that even if the Case Tribunal had considered that the Respondent had been acting in his private capacity in relation to sending and encouraging his PA to send inappropriate messages during office hours, it would nevertheless have considered that a short suspension of this nature would have been appropriate and proportionate having regard to Article 8 of the ECHR.

8.3.7 Flintshire County Council and its Standards Committee are notified accordingly.

8.2.8 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed  Date: 14 February 2020

Tribunal Judge Jones
Chairperson of the Case Tribunal

Ms Susan Hurds
Panel Member

Mr Tom Mitchell
Panel Member

Tudalen wag

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2019-020/AT

APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

APPELLANT: Councillor Neil McEvoy

RELEVANT AUTHORITY: Cardiff County Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Neil McEvoy ("Cllr McEvoy") against the decision of Cardiff County Council Standards Committee ("the Committee") of 14th January 2020 that he had breached the Cardiff County Council Code of Conduct and should be suspended as a Councillor for four months.

1.2 In accordance with the direction of the President of the Adjudication Panel for Wales dated 5th March 2020, the Appeal Tribunal only considered the sanction imposed, based on the findings of the Standards Committee about facts and breach alone.

1.3 In accordance with Cllr McEvoy's wishes, the Appeal Tribunal determined its adjudication by way of written representations on 22nd June 2020 at a meeting held remotely.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 This is an appeal against a decision of the Standards and Ethics Sub Committee (Hearings Panel) of the County Council of the City and County of Cardiff taken on 14th January 2020, to suspend the Appellant, Councillor Neil McEvoy, as a Councillor, for a period of four months. The Appellant is an elected Member of Cardiff Council. He is also Member of the Senedd Cymru for South Wales Central, a constituency that covers the area he represents as a Councillor.

2.1.2 In his signed declaration of acceptance of office dated 8th May 2017, the Appellant undertook:

"to observe the Code for the time being as to the conduct which is expected of Members of the County Council for the City and County of Cardiff and which may be revised from time to time."

2.1.3 On 25th May 2017 and again on 24th May 2018, the Appellant signed "The Cardiff Undertaking for Councillors" in which he formally recognised his duty to uphold the law and undertook to:

a. "Adhere to and respect the Members' Code of Conduct and have proper regard to the advice and guidance issued by the Standards & Ethics Committee; and

b. Adhere to and respect the provisions of any Local resolution Protocol proposed by the Standards & Ethics Committee and adopted by Council."

2.1.4 The Code of Conduct for Members and Co-opted Members of the County Council of the City and County of Cardiff ("The Code of Conduct" or "Code") was adopted by the Authority on 15th May 2008 and amended on 26th May 2016. At Part II, paragraph 4 of the Code of Conduct reads as follows:

"You must –

b. Show respect and consideration for others.

c. Not use bullying behaviour or harass any person."

2.1.5 Paragraph 6(1) of the Code of Conduct reads as follows:

"You must –

a. Not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

2.2.1 By letter dated 7th June 2019, the Monitoring Officer for Cardiff Council received a referral from the Public Service Ombudsman for Wales ("The PSOW" or "Ombudsman") in relation to misconduct allegations made against Cllr McEvoy. The Ombudsman's referral followed an investigation carried out in relation to a complaint submitted to the Ombudsman by the director of a private care home contracted to provide services to the Council. The complaint alleged that Cllr McEvoy's conduct on 29th April 2018; and on 11th May 2018 towards three employees of the private care home and his involvement in the case of a

child in its care (referred to as Child X) had been inappropriate, intimidating and bullying, in breach of the Members' Code of Conduct.

2.2.2 Having considered the complaint, the Ombudsman decided to investigate whether Cllr McEvoy had failed to comply with those provisions of the Code of Conduct requiring him:

a. To show respect and consideration for other (paragraph 4b).

b. Not to use bullying behaviour or harass any person (paragraph 4c); and

b. Not to conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute (paragraph 6(1)(a)).

2.2.3 Having investigated the allegations, the Ombudsman concluded that there was evidence to suggest that Cllr McEvoy's conduct may have amounted to a breach of the Members' Code of Conduct, specifically:

a. On 29th April 2018, there was evidence of a breach of paragraphs 4(b), 4(c) and 6(1)(a) of the Code; and

b. On 11th May 2018, there was evidence of a breach of paragraphs 4 (b) and 6(1) (a) of the Code.

2.2.4 A Hearings Panel (sub-Committee of the Standards and Ethics Committee) was convened, in accordance with arrangements approved by the Committee on 1st July 2019, to consider the allegations in relation to Cllr McEvoy. A hearing was held between 6th and 14th January 2020 at City Hall, Cardiff. The hearing was open to the public, except for certain parts of the proceedings when the Committee resolved to exclude the public. Cllr McEvoy attended the hearing. He chose not to be legally represented, but he was assisted by Ms Jacqueline Hurst, a social worker employed by Cllr McEvoy.

2.2.5 On 14th January, given its findings of fact, the Committee decided that:

a. In respect of the incident on 29th April 2018, Cllr McEvoy breached paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct; and that

b. In respect of the incident on 11th May 2018, Cllr McEvoy breached paragraph 6(1)(a) of the Code of Conduct.

2.2.6 The Committee then further decided that having regard to the number of aggravating circumstances, as well as the mitigation, Cllr McEvoy would be suspended as a Councillor for four months.

2.3.1 Notice of the Committee's decision was emailed to the Appellant on 24th January 2020. On 14th February 2020, the Appellant gave written Notice of Appeal against the Committee's decision, within 21 days, under Regulation 10 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales)) Regulations 2001. The Appellant's notice was received on 14th February 2020. He did not send a copy of the Committee's decision with his appeal form but the President of the Adjudication Panel for Wales decided that it would be in the interests of justice to ask for a copy from both the Appellant and the Monitoring Officer of Cardiff Council. This was provided to the President by the relevant authority on 18th February 2020, together with the bundle of papers provided to the Committee (including late evidence submitted during its hearing), draft minutes, and a copy of its hearing procedure (together with email correspondence with the Appellant regarding the issuing of the decision report).

2.3.2 In her decision dated 5th March 2020, the President considered all the grounds of appeal raised by the Appellant. At paragraph 8h of the Notice of Decision on permission to appeal, the President gave permission to appeal in the following terms:

"While the Appellant framed his objection to the sanction imposed primarily in terms that it was disproportionate due to discrimination, he did also comment that it was harsh in light of the findings made by the standards Committee. I cannot say in all the circumstances that there is no reasonable prospect of success for this ground of appeal, given an Appeal Tribunal considering the findings made by the standards Committee on both facts and breach of the Code may conclude that the sanction is disproportionate. I also note that there is no evidence as to whether the standards Committee took into account any sanctions guidance when reaching its decision, though it appears to have considered relevant factors and the use of such guidance is not mandatory. I make the decision to allow an appeal on this point, notwithstanding the fact that the Appellant refused to make any submission to the standards Committee on the issue of sanction. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be reconsidered by the standards Committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. It therefore will be considered by an Appeal Tribunal in due course, but its consideration will be based on the findings of the standards Committee about facts and breach alone."

2.3.3 This Appeal Tribunal has therefore been convened by the President of the Adjudication Panel for Wales to consider the remaining ground of the Appellant's appeal.

3. THE HEARING

3.1 The role of this Appeal Tribunal

3.1.1 Noting the President's direction to this Tribunal, and that its "…consideration will be based on the findings of the standards Committee about facts and breach alone", the Tribunal has considered the question of sanction afresh, setting on one side the reasoning of the Committee in order to form its own independent determination.

3.1.2 We remind ourselves that per Regulation 11 of the said Regulations: -

(1) Appeals from a determination of a Standards Committee will be conducted:

(b) by way of an oral hearing unless every person who has given notice of appeal consents to the appeal being conducted by way of written representations…

As noted, Cllr McEvoy has consented to this appeal being conducted by way of written representations.

3.1.3 We further remind ourselves that per regulation 12 of the said Regulations: -

An appeals tribunal must:

(a) uphold the determination of the relevant authority's Standards Committee that any person who was subject to the investigation breached the code of conduct and either:

(i) endorse any penalty imposed, or

(ii) refer the matter back to the Standards Committee with a recommendation that a different penalty be imposed;

….

and must inform any person subject to the investigation, the Local Commissioner for Wales and the Standards Committee of the relevant authority accordingly, giving reasons for the decision.

3.2 The findings of facts and breach

3.2.1 The Appeal Tribunal examined the Committee's findings on facts and breach. The Committee found that the following material facts were undisputed.

a. At the relevant time, Cllr McEvoy was a member of Cardiff Council and was acting in his capacity as a Cardiff Councillor (albeit, apparently in a “twin-hatted” capacity, in relation to his role as (then) a Welsh Assembly Member).

b. In January 2016, the Council adopted a Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults, which includes the following provisions:

i. The Council as a whole is ‘the corporate parent’ of all Looked After Children, which means that elected Members, relevant Council managers and staff all need to work together to discharge their different roles and responsibilities.

ii. It is not generally appropriate for an elected Member to act as an advocate for a service user, due to the potential conflict of interest and confusion over the role in which the Member is acting.

iii. If a Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Children’s Access Point or, if outside of office hours, to the Emergency Duty Team.

3.2.2 In the case relating to the events of 29th April 2018, the Committee found that the following material facts were undisputed.

a. On 29th April 2018 a telephone call was made by Cllr McEvoy to a residential children’s care home and the telephone call was answered by “Witness 2”.

b. Cllr McEvoy introduced himself as Assembly Member and Corporate Parent and said he wanted to visit a resident, Child X, at the care home that day.

c. Witness 2 said that Cllr McEvoy could not visit Child X because he was not named on the child’s care plan, and she advised Cllr McEvoy to arrange a visit through a social worker.

d. Cllr McEvoy said that he would be attending that day and that he would be bringing a colleague with him.

e. Witness 2 maintained that Cllr McEvoy was not authorised to visit Child X.

f. Cllr McEvoy said that he would be raising the matter at the Welsh Assembly.

g. Witness 2 said that if Cllr McEvoy attended at the care home without authorisation, she would have to call the police, because of her duty to safeguard the residents of the home.

h. Cllr McEvoy asked Witness 2 to speak with her Director and get back to him within a deadline that day.

i. Witness 2 called Cllr McEvoy back and repeated her previous advice.

j. Cllr McEvoy did not attend at the care home that day.

3.2.3 In relation to the telephone call on 29th April 2018, the Committee found the following disputed material facts to have been proved.

a. Another witness, "Witness 1" was physically present to witness part of the telephone call but could only hear a limited amount of the conversation. However, Witness 1 did provide evidence about the impact of the telephone call upon Witness 2.

b. Witness 2 was a credible and persuasive witness as to the event on 29th April.

c. On the basis that Cllr McEvoy insisted that he would be attending the care home, bringing a colleague with him, would raise the matter at the Welsh Assembly and giving her a deadline to speak to a Director and arrange authorisation for his visit, Witness 2 felt bullied and intimidated by Cllr McEvoy.

d. Witness 2 felt undermined by Cllr McEvoy's insistence, against her advice, that he would be attending the home.

3.2.4 On the basis of these findings, the Committee found that Cllr McEvoy failed to show respect and consideration for Witness 2 on 29th April 2018, in breach of paragraph 4(b) of the Code.

3.2.5 The Committee also found that Cllr McEvoy used bullying behaviour and harassment towards Witness 2, in breach of paragraph 4(c) of the Code. His conduct was intended to undermine her in her role and to exert pressure to ensure that she agreed to permit him to visit the care home that day. Cllr McEvoy would not accept the witness's decision that she was not going to allow him into the care home to visit the child as he was not mentioned on the child's care plan. Cllr McEvoy persisted with his view that he would be attending the care home

that day to the extent where Witness 2 advised Cllr McEvoy that she would contact the police if he attended the care home. During the telephone conversation, Cllr McEvoy advised Witness 2 that he would be attending the care home with a colleague. Witness 2 was a senior residential care worker in contrast to Cllr McEvoy who was an elected Councillor and Assembly Member and there is a power imbalance between them. Cllr McEvoy was aware of this power imbalance between himself and Witness 2 as he advised Witness 2 that he worked for the Welsh Assembly and was a corporate parent for Child X and used his position in an attempt to gain access to Child X.

3.2.6 Finally, in relation to the incident that took place on 29th April 2018, the Committee also found that Cllr McEvoy brought Cardiff Council into disrepute, in breach of paragraph 6(1)(a) of the Code. Cllr McEvoy persisted in his telephone call with Witness 2 that he would be attending the care home that day and continued to challenge the witness's decision. Cllr McEvoy also gave the witness a deadline to return his call on the issues he raised and would not accept the decision made that he could not attend the care home to the extent that the witness referred to requesting police assistance in the event that Cllr McEvoy did attend. This telephone call went on for approximately 15 minutes and given the limited issues discussed, it was the Committee's view that this evidenced persistence on the part of Cllr McEvoy. Whilst he may not have liked the decision of the witness, as a Councillor he should have accepted the decision that he could not attend the home and recognised that the witness was doing her job in safeguarding those children in her care. In the Committee's opinion, Cllr McEvoy should have understood that it was inappropriate to attend a care home to visit a child he had never met without the parents or a social worker present. His conduct had the potential to cause difficulties in the relationship between the parents and the child and Cardiff Children's Services and the care home who were responsible for safeguarding and meeting the needs of Child X and others in their care.

3.2.7 In the case relating to the events of 11th May 2018, the Committee found that the following material facts were undisputed.

a. On 11th May 2018, Cllr McEvoy attended the head office of the care home with the father of Child X with the aim of attending a scheduled therapy meeting for X. They gained access to the building.

b. Cllr McEvoy was invited to attend the therapy meeting by the Father, but he did not personally receive confirmation from the Council agreeing to his attendance at the meeting.

c. Cllr McEvoy and the father were met shortly after entering the building by "Witness 4". Cllr McEvoy and the father had two interactions with Witness 4.

d. Cllr McEvoy and the father subsequently had an interaction with “Witness 3”. Witness 3 passed on a message to the father and Cllr McEvoy telling them that the therapy meeting had been cancelled by a (referred to as “the”) social worker.

e. Part of the interaction with Witness 3 was covertly recorded by the father under the instructions of Cllr McEvoy. During this recorded interaction, Cllr McEvoy was on the telephone to the Council’s former Assistant Director of Social Services.

f. Cllr McEvoy said to the Assistant Director that he wished to make a complaint about Witness 3 and gave a description of him, which included the term ‘slightly overweight’.

g. Cllr McEvoy left the building with father.

3.2.8 In relation to the events of 11th May 2018, the Committee found the following disputed material facts to have been proved.

a. By the time Cllr McEvoy interacted with Witness 3, matters had escalated, and the situation had become heated within an increasingly hostile environment. The Committee did not consider that Cllr McEvoy behaved aggressively in terms of speaking with a raised voice. However, the Committee found that Cllr McEvoy followed Witness 3 to an office.

b. The social worker involved did not agree to Cllr McEvoy attending the therapy meeting.

3.2.9 On the basis of these findings, the Committee did not find that Cllr McEvoy’s conduct amounted to a lack of respect and consideration of others. The events that took place on 11th May were difficult for both the care home staff and Cllr McEvoy. Given that the witness would not provide his name to Cllr McEvoy, it inevitably followed that a physical description would be necessary, given that Cllr McEvoy wished to complain. The Committee considered the fact that this description did not necessarily have to be given in the presence of the witness himself. There were, however, clear inconsistencies in both Cllr McEvoy’s and Witness 3’s recollection of how Witness 3 was described by Cllr McEvoy. The interaction between them were difficult exchanges, which created tensions for all parties. The Committee found that whilst it was unfortunate that Cllr McEvoy chose to use the description he did of Witness 3, that was to be balanced with the hostile environment that clearly existed during the interaction between them, in terms of Cllr McEvoy requesting information and Witness 3 not readily providing this. Therefore, having considered the evidence, the Committee

was not satisfied that this amounted to a breach of paragraph 4(b) of the Code of Conduct.

3.2.10 However, the Committee was satisfied on the basis of these findings that Cllr McEvoy's conduct on 11th May 2018 brought Cardiff Council into disrepute, in breach of paragraph 6(1)(a) of the Code. Cllr McEvoy provided no evidence that he had the agreement to attend the meeting. He instructed Child X's father to record Cllr McEvoy's interactions with staff members and a telephone discussion. This recording was done covertly, without all parties present being aware of it at that time. There were three unfortunate interactions that took place in the presence of Child X's father and the father was also privy to a telephone conversation between Cllr McEvoy and the former Assistant Director of Cardiff Children's Services. In the Committee's view, the father should not have witnessed these events. He was vulnerable in his own right, as advised by Cllr McEvoy and witnessing these events would not have assisted him in his relationship with either Cardiff Children's Services or indeed the care home staff, particularly in light of the allegations made by Child X to his mother. The father in his evidence advised the Committee that he had a poor working relationship with Cardiff Children's Services, but that Cllr McEvoy had always encouraged them to engage with the service. Cllr McEvoy's conduct on 11th May 2018 would not have served to promote a positive working relationship with Child X's father, Cardiff Children's Services or indeed with the care home.

3.2.11 The Committee also found that the interactions between Cllr McEvoy and Witness 3 and Witness 4, led to a hostile environment, where Witness 3 actively made a decision not to share information with Cllr McEvoy about how to make a complaint. Given the confrontation, Cllr McEvoy should have removed himself from the building when initially asked to leave and pursued making a complaint through formal channels.

3.2.12 The Committee found it difficult to accept Cllr McEvoy's suggestion that he feared he would be assaulted, given that he chose to remain in a situation he had opportunity to leave.

3.2.13 It was the Committee's view that it was not appropriate for Cllr McEvoy to continue to challenge staff, who were in effect delivering a message on behalf of Cardiff Children's Services, given that Cllr McEvoy was acting as a representative for Cardiff Council in his capacity as an elected Member.

3.2.14 The Committee therefore concluded in the light of these findings on breach that Cllr McEvoy should be suspended from acting as a member of Cardiff Council for a period of four months.

3.3 **Further evidence and documents submitted to and considered by the Tribunal**

3.3.1 From Cllr McEvoy, correspondence to the Adjudication Panel for Wales:

a. Cllr McEvoy's Notice of Appeal, in so far as it relates to sanction.

b. An email dated 21st April 2020 in response to the President's decision on permission to appeal.

c. An email dated 5th June 2020 in response to the Tribunal Chair's direction to both parties on further submissions.

3.3.2 From Cllr McEvoy, character evidence provided by:

a. Lady Lloyd Jones, of Cardiff.

b. Anne O'Regan, of Cardiff.

c. Bethan Phillips, a former employee of Cllr McEvoy.

3.3.3 From the PSOW:

a. Their response to Cllr McEvoy's Notice of Appeal, in so far as it relates to sanction.

b. A letter dated 11th June 2020 in response to the Tribunal Chair's direction to both parties on further submissions.

c. Two previous standards decisions, taken in relation to other Councillors.

3.3.4 From Cardiff Council by letter dated 9th April 2020 copies of:

a. A Hearings Panel decision made regarding Cllr McEvoy on 26th May 2014, following referral from the Ombudsman. This Tribunal notes that this finding was on a very different matter and was relatively minor, reflected in the fact that the Panel imposed no sanction.

b. A Hearings Panel decision made regarding Cllr McEvoy on 3rd October 2014, made under the Council's Local resolution Protocol. This Tribunal notes that that the Hearings Panel found no breach of the Code of Conduct in this case but did make a number of recommendations to Cllr McEvoy in respect of his conduct.

3.3.5 The decision report of the Adjudication Panel for Wales APW/002/2016-017/CT in re Cllr Neil McEvoy, dated 14th March 2017.

3.3.6 'Sanctions Guidance' issued by the President of the Adjudication Panel for Wales under 75(1) of the Local Government Act 2000.

3.4 **Submissions to the Tribunal**

3.4.1 The Appellant submits that a suspension of four months is "undemocratic", "excessive" and may have been unduly influenced by the disruptive behaviour of others, responding to the Committee's decisions, for which he was in no way responsible. If anything, he submits, he sought to calm others down and to assist.

3.4.2 Cllr McEvoy submits that those who would suffer from the sanction are those in the community who would benefit financially from his Councillor allowance, which he further submits that he donates to community and political causes and does not spend on himself. He nonetheless committed to representing his constituents as their elected Member of the Senedd in any event.

3.4.3 Cllr McEvoy also submits that "any reasonable person, without prejudice, would not approve of a 4 months suspension."

3.4.4 The Ombudsman disputes that the sanction was disproportionate due to discrimination; and further disputes that it was harsh in the light of the findings made. The Ombudsman submits that the sanction was considered in the light of the 'Sanctions Guidance'.

3.4.5 The Ombudsman further submits that the sanction is proportionate when considered in the context of other comparable cases; and when considered in the context of earlier findings against the Appellant.

3.4.6 The Ombudsman submits on the Committee's findings that the nature of the behaviour which has resulted in the breaches found clearly falls below the standards of behaviour expected of an elected member and is capable of undermining public confidence in the role of elected member more generally and ultimately the Council itself. The Ombudsman notes the potential impact on relations between Cardiff Council and the family at the heart of this complaint. They also noted the effect of Cllr McEvoy's behaviour, particularly on Witness 2, given the awareness of the "power imbalance" between them.

3.4.7 The Ombudsman submits that the Appellant's conduct demonstrated "a blatant disregard" for advice provided to members of Cardiff Council in the

Protocol explaining the role of elected Members in safeguarding vulnerable children and adults.

3.4.8 The Ombudsman also conducted an analysis of mitigating and aggravating factors involved.

4. THE APPEAL TRIBUNAL'S DECISION

4.1.1 Whilst they may be persuasive, the Tribunal attaches little weight to decisions taken by other panels or Committees on different facts in relation to different people, preferring instead to apply the 'Sanctions Guidance' in conjunction with directly relevant material and the operation of its collective judgment. This approach accords with best practice in other areas of law where sanctions guidance or guidelines have largely overtaken the citation of previous decisions. The Tribunal prefers to assess the facts of the case against the 'Sanctions Guidance' and come to a view as to any available range; and as appropriate, the Appellant's position within the available range.

4.1.2 Per paragraph 18 of the 'Sanctions Guidance', the purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

a. Provide a disciplinary response to an individual member's breach of the Code.

b. Place the misconduct and appropriate sanction on public record.

c. Deter future misconduct on the part of the individual and others.

d. Promote a culture of compliance across the relevant authorities.

e. Foster public confidence in local democracy.

4.1.3 The sanctions available to an appeal tribunal that has found a breach of the Code are:

a. Censure.

b. To suspend or partially suspend the member from the authority concerned for up to 6 months.

4.1.4 The Guidance offers broad principles for consideration, whilst respecting the details that make each case different. It does not propose a firm tariff from which to calculate the length of, for example, suspension that should be applied

to specific breaches of the Code. This Tribunal therefore exercises its own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors and taking into account the Tribunal's wider judicial obligations in regard to fairness, the public interest, proportionality, consistency, equality, impartiality and relevant human rights law.

4.1.5 This Tribunal adopts the five-stage process referred to in paragraph 33 of the Guidance.

4.1.6 The first step is the assessment of the seriousness of the breach and any consequences for individuals and/or Cardiff Council.

4.1.7 Whilst not of the utmost severity, the Tribunal considers this series of breaches to nonetheless be quite serious, bordering on very serious when considered in themselves and against other types of breach. Taken in the round, Cllr McEvoy's behaviour was perhaps not persistent, but it was certainly repeated. The Tribunal observes that he had time to consider his position and his actions between 29th April and 11th May but nonetheless he acted as he did on two occasions, incurring a total of four breaches of the Code. These incidents were not isolated, nor can they be considered sporadic, given the fact that Cllr McEvoy has been subject to previous sanction by the Adjudication Panel for Wales in March 2017 for a not-dissimilar matter.

4.1.8 However well they were intended, Cllr McEvoy's actions bore the potential to damage the Council's relationship with both a vulnerable child and a vulnerable family. To disregard protocols enacted to assist Councillors, families and Looked After Children is a serious feature of this case. The right approach to this situation was that identified by the Council and the sense in the relevant protocol was self-evident. Cllr McEvoy's taking matters into his own hands was very much the wrong approach. The protocol was not a matter for him to disregard. Cllr McEvoy is an experienced Councillor, not the mention, at that time an Assembly Member, now Member of the Welsh Parliament. To bring the Council and/or his office into disrepute in such a manner on two separate occasions was quite wrong.

4.1.9 Turning to the effect on others, we note the findings that Witness 2 felt "bullied", "intimidated" and "undermined" by Cllr McEvoy's behaviour. There was a clear differential of power between Cllr McEvoy and Witness 2, that would have been obvious to both parties. We accept the submission that she should not have been subject to such behaviour when providing advice in the performance of her duties in safeguarding the children in her care.

4.1.10 We also accept the submission by the PSOW that it should be noted that because of Cllr McEvoy's refusal to accept her advice, Witness 2 requested

police assistance in the event that he did attend. The potential for causing disrepute in this incident was exacerbated and aggravated by Cllr McEvoy's later behaviour on 11th May, when, as found, it was not agreed that Cllr McEvoy could attend the therapy meeting.

4.2.1 The Tribunal then moves to step two, to identify the broad type of sanction considered most likely to be appropriate, having regard to the severity of the breaches found. The Tribunal notes paragraph 39 of the Guidance and that in line with the principles of fairness and proportionality, the Tribunal should start its consideration of possible sanctions with that of least impact.

4.2.2 Given the Tribunal's assessment of the severity of this case taken together with the fact that none of the suggested circumstances at paragraph 39.1 of the Guidance apply to this case, the Tribunal cannot find that this is a case where no action is appropriate. Nor is it a case where a warning or the seeking of assurances as to future behaviour would be appropriate, given repeated breaches of the Code over a substantial period of time, because the Tribunal is not confident that there would not be a repeat of the misconduct, given the lack of insight shown.

4.2.3 The Tribunal therefore considers the options of suspension, for up to six months, and partial suspension. Cllr McEvoy's behaviour brought his office or authority into disrepute more than once, and other breaches of the Code have been incurred. His correspondence demonstrates that he shows no insight into his behaviour and offers no apology.

4.2.4 The Tribunal notes the observation in the Guidance at paragraph 39.5 that:

"A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions"; and that

"It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee".

4.2.5 Taking these observations together with the fact that Cllr McEvoy has already been suspended as a Councillor for a month by the Adjudication Panel for Wales, the Tribunal takes the view that this is a case that:

a. Merits suspension from office.

b. For a period of more than one month; and that

c. Partial suspension is not appropriate.

4.2.6 The Tribunal has then considered the range of sanction applicable, bearing in mind the maximum period of suspension possible is six months. Given findings to that point, this Tribunal takes the view that the appropriate range for sanction in this case that is quite serious, bordering on very serious, is a period of suspension of three to four months, subject to further adjustment as appropriate within that range, allowing for aggravating and mitigating circumstances (step three); and any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions such as the wider public interest (step four).

4.2.7 Given that the original decision was taken before the current national emergency, this Tribunal has considered the wider effect of suspension for such a period on Cllr McEvoy's electorate at this time.

4.2.8 Unusually, Cllr McEvoy's Council electorate has a voice in him, even if he is suspended as a Councillor because he is a member of the Welsh Parliament. Cllr McEvoy noted as much in his most recent correspondence to this Tribunal. Accordingly, the effect of any suspension in his case is not as harsh on his electorate as it might otherwise be at this time.

4.2.9 Using the Tribunal's knowledge and experience, upon which it is entitled to rely in its judgment, it also seems likely that for the period of any suspension, Cllr McEvoy may well be able to refer his constituents to another Councillor who may be able to take that constituent's concerns forward.

4.2.10 For these reasons, having considered the current national emergency, the Tribunal does not consider that it makes a material difference to the nature and quality of sanction in this case.

4.3.1 The Tribunal has then addressed step three and considered any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration. The Tribunal has worked through the examples set out at paragraph 42 of the Guidance, reminding itself that the list is not exhaustive, and reminding itself not to "double-count" any feature already accounted for in an earlier step.

4.3.2 In fairness to Cllr McEvoy, the Tribunal has considered neutrally the manner in which he conducted himself both at first instance and on appeal, preferring to simply deal with that as subject to his general right to argue his case and bring an appeal should he so wish, a process which he chose to invoke and to deal with by way of written submissions.

4.3.3 <u>Mitigating features</u>

a. Whilst the Tribunal accepts that Cllr McEvoy acted out of genuine concern and in the interests of a child, he did so in a manner that was badly misguided. This point is therefore of limited assistance to him.

b. The Tribunal does however note the character evidence relied upon and the general suggestion that Cllr McEvoy supports the rights of others, particularly the vulnerable. That is to his credit.

c. We therefore specifically reject any possible suggestion that Cllr McEvoy sought to assist Child X's family for their personal benefit.

d. The PSOW agrees that Cllr McEvoy has co-operated with their investigation into this case.

4.3.4 Aggravating features

a. Cllr McEvoy has long experience as a Councillor. We note that he had seniority due his position (then) as an Assembly Member. This factor has already been accounted for in the assessment of seriousness.

b. However, Cllr McEvoy has conducted himself before those who decided his case, it is nonetheless true that he has sought to unfairly blame others for his own actions and mistakes.

c. As already observed, Cllr McEvoy's behaviour, if not persistent, involved repeated and numerous breaches of the Code and engaging in a pattern of behaviour that involved repeatedly failing to abide by the Code; and recklessly and repetitiously ignoring the Council's protocol. In fairness, this factor has already been considered in the assessment on severity and so is of limited effect at this point.

d. Cllr McEvoy has shown a lack of understanding or acceptance of his misconduct and any consequences thereof.

e. As already noted, Cllr McEvoy's actions have brought Cardiff Council into disrepute.

f. The previous finding by the Adjudication Panel for Wales of failure to follow the Code is also an aggravating feature.

4.3.5 The Tribunal has taken the view that the seriousness of the case, taken together with the number of aggravating factors pushed this case towards the top of the available range.

4.4.1 The Tribunal then turns to step four, considering any further adjustment necessary to ensure the sanction achieves and appropriate effect in terms of fulfilling the purposes of the sanctions.

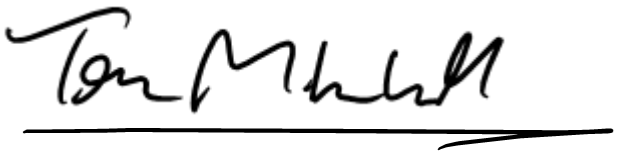
a. The public interest in upholding the standards of conduct in public life and maintaining confidence in local democracy is engaged, when reviewed against the previous decision taken by the Adjudication Panel for Wales against Cllr McEvoy; and considered against the value of a deterrent effect upon Councillors in general and wider public credibility.

b. The impact on the electorate has already been considered in so far as it is relevant. For the reasons already expressed, it does not act to mitigate the available sanction at this stage.

4.5.1 Taking all matters into account, the Tribunal therefore has moved to step five of the process and unanimously confirmed the decision on sanction taken at first instance. This was a serious case, that merited a sanction at the top of the identified, appropriate range.

4.5.2 This Appeal Tribunal therefore finds that Cllr McEvoy's suspension from office for four months was therefore justified, proportionate and appropriate in all the circumstances, given the findings of the Standards Committee about facts and breach alone. We endorse the sanction imposed. Therefore, this appeal is dismissed.

4.5.3 Cardiff County Council and its Standards Committee are notified accordingly.

Signed:  Date: 26 June 2020

Mr T Mitchell
Chairperson of the Appeal Tribunal

Mrs S McRobie
Panel Member

Mr E Jones
Panel Member

Tudalen wag

RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

27 NOVEMBER 2020

ADJUDICATION PANEL FOR WALES – PRESIDENTIAL GUIDANCE

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To allow Members to consider the Presidential Guidance which has been updated and issued by the President of the Adjudication Panel for Wales (APW).

2. RECOMMENDATION

2.1 The Committee is recommended to note the updated Presidential Guidance issued by the Adjudication Panel for Wales.

3. BACKGROUND

3.1 The ethical framework set under Part III of the Local Government Act 2000 included the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct. The operation of the Panel is governed by Regulations issued by the Welsh Government.

3.2 The Adjudication Panel for Wales has issued updated Presidential Guidance on:
(i) The Role of the Monitoring Officer (**Appendix A**);
(ii) Anonymity (**Appendix B**); and
(iii) Disclosure of evidence (**Appendix C**),

within APW proceedings ('the APW Guidance').

3.3 The Guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales ("APW") proceedings.

3.4 Although the APW Guidance does not apply to proceedings before the Committee's Hearings Panel, the Committee may nevertheless find it helpful to consider the general principles it sets out.

4. LEGAL IMPLICATIONS

4.1 There are no legal implications arising from this report.

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL AND RESOURCE IMPLICATIONS

7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

STANDARDS COMMITTEE

27 NOVEMBER 2020

REPORT OF MONITORING OFFICER

ADJUDICATION PANEL FOR WALES – PRESIDENTIAL GUIDANCE

BACKGROUND PAPERS

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)
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Tudalen wag

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

Presidential Guidance: The role of the Monitoring Officer in APW proceedings

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand the role of the monitoring officer within Adjudication Panel for Wales ("APW") proceedings. Nothing within this guidance constitutes legal advice and monitoring officers are reminded that this guidance does not supersede their duties, the requirements of the Code of Conduct for Employees or professional obligations.

The position of the monitoring officer

1. The monitoring officer of a relevant authority whose Code of Conduct is at the centre of APW proceedings is not a party to the proceedings, but is present to assist and inform the tribunal. They are notified of the proceedings and the hearing date, and receive copies of the listing directions and final decision. The monitoring officer normally adopts a neutral role.

Attendance at the final hearing

2. The monitoring officer is invited to attend the final hearing (or to send a deputy) to assist the tribunal and to make an appropriate observation or comment if they so wish at each stage of the proceedings. This is an opportunity for the monitoring officer to clarify any procedural points regarding the business of the relevant authority or to provide factual information to the tribunal in relation to any evidence already before it. It is open to the officer to make no comment.

3. The tribunal's invitation to speak at the oral hearing is not an opportunity for the monitoring officer to adduce new evidence not previously disclosed; any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the Public Services Ombudsman for Wales ("PSOW") for his consideration (see the disclosure section below).

4. The monitoring officer may ultimately be asked to provide or arrange further training to the councillor or to action matters relating to the exercise of the authority's functions, the authority's Code, or the authority's standards committee if so recommended by the tribunal. Their attendance at the hearing will also enable the monitoring officer to give a detailed report to the standards committee and Council and to deal with any press enquiries as appropriate.

Information required from the monitoring officer

5. Routine enquiries that may be made of the monitoring officer by either the PSOW or the tribunal through its directions or correspondence through the Registrar include confirmation as to when the councillor agreed to be bound by the Code, when the councillor received training on the Code or if the councillor is also a member of another relevant authority, such as a town or community council or national park authority. They will also be asked to confirm the dates of full council meetings or relevant council business that might affect the listing of the hearing, and their personal unavailability dates.

6. The Registrar of the APW will ask the monitoring officer to confirm if there have been any previous adverse findings made by a standards committee regarding a breach of the Code by the councillor; this information will not be disclosed to the tribunal unless it reaches the sanctions stage of the proceedings. At this stage, the clerk will provide this information to the tribunal but the monitoring officer will be given an opportunity to comment, amplify or update the information supplied orally at the hearing.

Disclosure

7. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.

8. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.

9. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.

10. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.

11. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.

12. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Tudalen wag

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

Presidential Guidance: Anonymity

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales ("APW") proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

Power to anonymise

1. The APW does not have the power to issue restricted reporting orders or control what is reported by the press or through social media. However, it does have the power to control its own proceedings and give directions to the parties, witnesses and third parties.

2. The law on the reporting of sexual offences and the naming of alleged victims (s.1 of the Sexual Offences (Amendment) Act 1992) applies to those publishing information about APW proceedings where relevant; where possible, the tribunal considering such matters will remind those in attendance of these provisions, but they apply whether or not such a reminder is given. The APW will give consideration about how to approach matters involving the possible commission of sexual offences and give the necessary directions to the parties prior to the start of the final hearing.

3. While in appropriate cases, the identity of a complainant, witness or third party may be anonymised at the direction of a APW tribunal or the President for the purposes of the hearing and decision, the identity of that individual will be known to the parties and the tribunal. The identity of the member subject to the proceedings will not be anonymised.

European Convention on Human Rights

4. The paramount object of the APW is to do justice in accordance with the right to a fair hearing, but if it is strictly necessary to withhold either evidence or the identity of an individual from public consideration because it is in the interests of justice to do so, this can be directed following a balanced consideration of the various rights of those involved and the open justice principle. The Convention entitles parties to a fair and public hearing, but the press and public may be excluded from all or part of the hearing where the interests of the parties so require, or to the extent strictly necessary where publicity would prejudice the interests of justice.

5. Rights that may be engaged include the right to privacy and the right to a family life, as well as the right to freedom of expression, which is generally always engaged in APW proceedings. Examples of when such rights may be engaged could include the disclosure of medical information pertaining to a witness (such information being confidential), painful and humiliating disclosure of personal information about a witness where there is no public interest in its being publicised, or disclosure of information affecting minors.

The approach of the APW

6. APW final hearings take place in public, except where the tribunal considers that publicity would prejudice the interests of justice. However, anonymisation can allow all or the majority of the hearing to take place in public, enabling the public to fully understand the proceedings without breaching the rights of the individual whose identity has been concealed. This is compliant with the open justice principle; it is less restrictive to anonymise individuals than to have a private hearing in whole or in part.

7. It is appreciated that some complainants will only make a complaint if anonymisation at the hearing is likely. The quality of the evidence given at a hearing may be diminished due to fear or distress if anonymity is not granted. Only the tribunal hearing the case or the President can make such a direction – no party can guarantee anonymity to a complainant, witness or third party.

8. When considering whether to direct anonymisation, the tribunal will consider and balance the rights of the individual involved against the open justice principle and the right to a fair hearing in public, and the likely effect of anonymisation (or failure to do so) on the evidence to be adduced It will also consider whether the identity of the individual is already widely known, rendering anonymisation pointless. Reasons will be provided to the parties for its decision.

9. If an interested person, such as the press, wishes to apply to set aside the anonymity order, they may apply to the tribunal for the application to be heard. It is a matter for the tribunal when the application is considered, but the views of the parties will be sought and considered. The view of the individual themselves may or may not be sought, depending on the approach adopted by the tribunal.

Practical measures

10. To guard against inadvertent disclosure, at the outset of the hearing and at the start of a relevant witness' evidence the chair will remind the parties, witnesses and the public that a particular individual's identity has been anonymised and they should be referred to as "Witness A/B/C/ etc" or "Mr/Ms A/B/C etc".

11. The hearing bundle may be redacted or altered to ensure that the name of the anonymised person is as directed, depending on the directions of the tribunal. The witness bundle and any press bundle (if prepared) must be so redacted or altered to avoid disclosure of the identity if inspected by the press or public.

12. The tribunal may direct use of special measures, such as a screen or video link, to enable the witness to give their evidence without disclosure of their identity.

13. Prior to the commencement of APW proceedings, if the parties anticipate that it is highly likely the identity of a witness or third party will be anonymised while gathering evidence, they may submit a suitably redacted version of the evidence (only anonymising the name of the individual and replacing with an appropriate anonymised name) to the APW for inclusion within the bundle. However, the original evidence must be disclosed to the other party, either before the matter is sent to the APW or when the redacted evidence is disclosed to the APW. The redaction must be brought to the tribunal's attention in a covering letter, and the letter must also include the reasons for the redaction and an application for directions permitting the anonymisation as sought.

14. The APW expects the parties to attempt to agree the issue of anonymisation before submitting an anonymised bundle to the panel, but if agreement cannot be reached, provided the process outlined above is followed, one party may request anonymity for an individual/s and submit an anonymised bundle for the approval of the panel or President.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Tudalen wag

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

Presidential Guidance: Disclosure

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales ("APW") proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

General

1. Unlike *inter partes* litigation (litigation where one party is suing another), the APW deals with references made by the Public Services Ombudsman for Wales ("PSOW") and appeals brought by members following a decision by a standards committee on the issue of whether the Code of Conduct for members has been breached (and if so, the appropriate sanction). In all cases, the member and the PSOW are parties and entitled to submit evidence, ask for witnesses to be called, and make representations. However, it is a matter for the tribunal to determine what evidence is before it, provided that a fair hearing is undertaken.

2. The tribunal may receive evidence of any fact which appears to the tribunal to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law. It shall not refuse to admit any evidence which is admissible at law and is relevant. In other words, the tribunal should allow evidence to be adduced if it is fair to do so (in the interests of justice) and the evidence is relevant to the determinations it must make; it can exclude irrelevant evidence.

3. The parties are reminded that disclosure is key to a fair hearing and that evidence should provided to the other party and the APW in advance and in good time before a final hearing; attempts to "*ambush*" the other party are not in accordance with the spirit of modern litigation practice. It is also inappropriate to ask those who are approached to give or supply evidence to keep the approach confidential from the other party or the APW, particularly monitoring officers, other officers or members of a relevant authority; this does not mean such a person cannot be asked to generally keep the approach confidential, but not in relation to the other party or the APW.

Before APW proceedings start

4. Prior to the commencement of APW proceedings, in the vast majority of cases the PSOW will have undertaken a full investigation (monitoring officers can conduct

investigations in certain circumstances, but generally they ask the PSOW to do so). The PSOW will have gathered evidence from the member, witnesses and relevant third parties, carried out interviews, and asked the member to comment on the draft report.

5. A final report is issued by the PSOW, setting out the allegations originally made, the evidence gathered, and his conclusions. The evidence relied upon by the PSOW is exhibited to the final report and served upon the member and either the standards committee or APW.

6. The PSOW has agreed to serve upon the member (and the APW when a reference is made) a schedule setting out what unused material exists to its knowledge (this is material not used to prepare the final report), what it is, and its location (as the PSOW may not hold such material; for example, the monitoring officer may hold it) when the final report is issued. The schedule of unused material may be in two sections – ordinary evidence and sensitive evidence. Sensitive evidence is defined for these purposes as evidence relating to national security, given in expectation of confidence, relating to a criminal investigation or proceedings, relating to a minor, or relating to the private life of a witness (not the member) or third party. If the member seeks disclosure of evidence listed within the unused material schedule, it should be sought within 28 days of receipt of the schedule to avoid unnecessary delay by the member or his representatives. The tribunal may also direct disclosure of a document from the unused material schedule, but it is not obliged to do so.

<u>Once APW proceedings start</u>

7. Once the reference is made by the PSOW or permission to appeal has been given by the President of the APW (or their delegate), the Panel becomes responsible for deciding what evidence may be adduced. It will give directions where appropriate, but broadly the following principles apply:

    a) The final report and evidence exhibited with it will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to paragraph *h* below);

    b) The response of the member or their application to appeal will form part of the hearing bundle;

    c) Evidence submitted by the member with their response will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to point h below);

    d) Any decision made by the standards committee and supporting evidence where provided by either the parties or monitoring officer (if not already within the PSOW's final report) will form part of the hearing bundle;

    e) Correspondence between the APW and the parties will form part of the hearing bundle, as will listing and other directions or orders;

f) Submissions from the parties may form part of the hearing bundle (unless made orally), but is not evidence;

g) Any additional evidence the parties wish to be considered, apart from paragraphs *a* – *e*, must either be the subject of an application made to the tribunal or included by way of directions from the tribunal on its own initiative. Applications should be made in good time before the final hearing commences to allow the tribunal to seek the view of the other party and deliver its decision; such applications should be made no later than 28 clear days before the final hearing commences, but the expectation is that such applications should be made before the listing conference. Applications to adduce evidence made at the final hearing or within the 28 day period preceding the start of the final hearing will be viewed as a late application and good reasons as to why the application could not have been made earlier will be required to be give, as will an explanation as to why late disclosure is in the interests of justice;

h) The tribunal has the right to exclude irrelevant evidence from the hearing bundle and to determine which witnesses will be called to give evidence. It is expected that the parties will be notified in advance and given reasons if evidence is to be excluded.

Powers of the APW

8. The APW has the power to require documents or ask for particulars from any person, whether or not they are a party or interested party to the proceedings. If a party requires evidence or information from any person in order to fairly put forward their case to the APW, and they have not been able to obtain it directly themselves (attention is drawn below to the special position of monitoring officers), they should apply to the APW for directions or an order to obtain the evidence or particulars.

9. Applications should be made in good time before the final hearing, and ideally before the listing conference. Such applications should not be made at the final hearing or within the 28 day period before the start of a final hearing as costs will already have been incurred by the parties and the APW which may be wasted (the parties should note that the APW does in certain circumstances have the power to make costs orders). The parties should bear in mind that sufficient time should be given to allow submissions to be made by the other party and for the tribunal to make a decision – this is likely to take at least 28 days.

The monitoring officer

10. The monitoring officer is notified of the proceedings and invited to attend the final hearing. The monitoring officer's role is set out in more detail in the Presidential Guidance "*The role of the Monitoring Officer in APW proceedings*". The section relating to disclosure and monitoring officers is repeated below for convenience and to ensure that the parties understand that the monitoring officer is neutral and has a key role in upholding standards.

11. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.

12. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.

13. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.

14. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.

15. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold <u>relevant</u> evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.

16. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Tudalen wag

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2020 - 2021

STANDARDS COMMITTEE

27 NOVEMBER 2020

APPLICATION FOR DISPENSATION – COUNTY BOROUGH COUNCILLOR P. JARMAN

REPORT OF THE MONITORING OFFICER

Author : Mr. Andy Wilkins (Deputy Monitoring Officer) (Tel: 01443 424189)

1. PURPOSE OF REPORT

To enable the Committee to decide whether to grant a dispensation to County Borough Councillor Pauline Jarman to speak and vote on all matters for the duration and adoption of the 2021-22 Budget process in her capacity as Leader of the Opposition.

2. RECOMMENDATION

2.1 To consider granting County Borough Councillor Pauline Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2021-22 Budget process in her capacity as Leader of the Opposition.

3. BACKGROUND

3.1 Paragraph 14 of the Code of Conduct sets out the procedures to be followed regarding participation in meetings when a Member has declared a personal and prejudicial interest.

3.2 However the participation by a Member in any business which is prohibited by Paragraph 14 is not a failure to comply with the Code if the Member has acted in accordance with a dispensation from the prohibition granted by the Standards Committee in accordance with regulations.

3.3 The relevant regulations are the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001. These regulations set out the grounds on which dispensations may be granted.

3.4 County Borough Councillor Pauline Jarman's son works in the Streetcare Department and lives with her at her home address. Councillor Jarman therefore seeks a dispensation to speak and vote on all services affected by the Budget. In her application for dispensation Councillor Jarman states that by virtue of being Leader of an Opposition Group (Plaid Cymru), her participation in the Budget process is justified.

3.5 One of the grounds for granting a dispensation is:-

> "(f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise."

3.6 It is therefore recommended the Committee consider granting Councillor Pauline Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2021-22 Budget process in her capacity as Leader of the Opposition.

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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27 NOVEMBER 2020

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APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR P.JARMAN	**Officer to contact: Mr. A.S. Wilkins Tel: 01443 424105**

Freestanding Matter

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2020 - 2021

STANDARDS COMMITTEE

27 NOVEMBER 2020

APPLICATION FOR DISPENSATION – COUNTY BOROUGH COUNCILLOR R. BEVAN

REPORT OF THE MONITORING OFFICER

Author : Mr. Andy Wilkins (Deputy Monitoring Officer) (Tel: 01443 424105)

1. PURPOSE OF REPORT

To enable the Committee to decide whether to grant a dispensation to County Borough Councillor Robert Bevan to speak and vote on all matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter who is employed by the Council in the Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed on an annual basis by the Standards Committee.

2. RECOMMENDATION

2.1 To consider granting County Borough Councillor Robert Bevan a dispensation to speak and vote on all matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter, who is employed by the Council in the Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed by the Standards Committee on an annual basis.

3. BACKGROUND

3.1 Paragraph 14 of the Code of Conduct sets out the procedures to be followed regarding participation in meetings when a Member has declared a personal and prejudicial interest.

3.2 However the participation by a Member in any business which is prohibited by Paragraph 14 is not a failure to comply with the Code if the Member has acted in accordance with a dispensation from the prohibition granted by the Standards Committee in accordance with regulations.

3.3 The relevant regulations are the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001. These regulations set out the grounds on which dispensations may be granted.

3.4 County Borough Councillor Robert Bevan's daughter works in the Community & Children's Services Group as the Programme Manager – Assistive Technology. Councillor Bevan therefore seeks a dispensation to speak and vote on all matters relating to the Community and Children's Services Group save for any specific matters that directly affect his daughter. Reference to matters 'directly affecting his daughter' in this context means matters which do not directly financially advantage or disadvantage, or give other direct benefit or dis-benefit to her.

3.5 Councillor Bevan acknowledges that any dispensation awarded cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect his ability to act purely on the merits of the case and in the public interest if he were to take part in the discussion.

3.6 In his application for dispensation Councillor Bevan further states that by virtue of being a Cabinet Member his participation in matters relating to the Community and Children's Services Group is justified.

3.7 Two of the grounds for granting a dispensation are:-

"(d) the nature of the Member's interest is such that the Member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business"; and

"(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise."

3.8 It is recommended the Committee consider granting Councillor Robert Bevan a dispensation to speak and vote on all matters for relating to the Community and Children's Services Group save for any specific matters that directly affect his daughter, who is employed by the Council in the Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed on an annual basis.

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR R.BEVAN	**Officer to contact: Mr. A.S. Wilkins Tel: 01443 424105**

Freestanding Matter

Tudalen wag

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2020 - 2021

STANDARDS COMMITTEE

27 NOVEMBER 2020

APPLICATION FOR DISPENSATION – COUNTY BOROUGH COUNCILLOR M. POWELL

REPORT OF THE MONITORING OFFICER

Author : Mr. Andy Wilkins (Deputy Monitoring Officer) (Tel: 01443 424105)

1. PURPOSE OF REPORT

To enable the Committee to decide whether to grant a dispensation to County Borough Councillor Michael Powell to speak and vote on all matters relating to the Children's Services department (within the Community and Children's Services Group), save for any specific matters that directly affect his wife who is employed by the Council in the Children's Services department as a Contact Worker, with such dispensation being reviewed on an annual basis by the Standards Committee.

2. RECOMMENDATION

2.1 To consider granting County Borough Councillor Michael Powell a dispensation to speak and vote on all matters relating to the Children's Services department (within the Community and Children's Group), save for any specific matters that directly affect his wife, who is employed by the Council in the Children's Services department as a Contact Worker, with such dispensation being reviewed by the Standards Committee on an annual basis.

3. BACKGROUND

3.1 Paragraph 14 of the Code of Conduct sets out the procedures to be followed regarding participation in meetings when a Member has declared a personal and prejudicial interest.

3.2 However the participation by a Member in any business which is prohibited by Paragraph 14 is not a failure to comply with the Code if the Member has acted

in accordance with a dispensation from the prohibition granted by the Standards Committee in accordance with regulations.

3.3 The relevant regulations are the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 (the 'Regulations). The Regulations set out the grounds on which dispensations may be granted.

3.4 County Borough Councillor Michael Powell's wife works in the Children's Services department as a Contact Worker. Councillor Powell seeks a dispensation to speak and vote on all matters relating to the Children's Services department, save for any specific matters that directly affect his wife. Reference to matters 'directly affecting his wife' in this context means matters which do not directly financially advantage or disadvantage, or give other direct benefit or dis-benefit to her. In his application Councillor Powell has stated his wife is not in a decision making position.

3.5 Any dispensation awarded cannot be used if the matter under consideration would confer a greater benefit on his wife than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect his ability to act purely on the merits of the case and in the public interest if Councillor Powell were to take part in the discussion.

3.6 The ground for granting a dispensation under the aforementioned regulations under which Councillor Powell has applied for his dispensation are as follows:

Ground:

(c) *the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;*

3.7 It is recommended the Committee consider granting Councillor Michael Powell a dispensation to speak and vote on all matters relating to the Children's Services department, save for any specific matters that directly affect his wife, who is employed by the Council in the Children's Services department as a Contact Worker, with such dispensation being reviewed on an annual basis on the ground that the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise as Leader of the RCT Independents Political Group.

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR M.POWELL	**Officer to contact: Mr. A.S. Wilkins Tel: 01443 424105**

Freestanding Matter

Tudalen wag