



**RHONDA CYNON TAF COUNTY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**19 NOVEMBER 2021**

**PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS  
AGAINST MEMBERS – 1<sup>ST</sup> APRIL 2021 – 31<sup>ST</sup> OCTOBER 2021**

**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 1<sup>st</sup> April 2021 – 31<sup>st</sup> October 2021.

**2. RECOMMENDATIONS**

- 2.1 To consider the contents of the report and provide any comments/feedback on the complaints received by the Ombudsman during the period 1<sup>st</sup> April 2021 – 31<sup>st</sup> October 2021.

**3. BACKGROUND AND DETAILS OF COMPLAINTS**

- 3.1 In determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test. At the first stage, he will aim to establish whether there is direct evidence that a breach of the Code has occurred. At the second stage the Ombudsman considers whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether 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 the circumstances.
- 3.2 Members will note below the summary of anonymised complaints made against Members and submitted to the Ombudsman for the period 1<sup>st</sup> April 2021 – 31<sup>st</sup> October 2021:

Date Complaint Received by the Ombudsman	Body & Cllr	Nature of Complaint	Ombudsman Investigation Yes/No
19/4/21	Taffs Well & Nantgarw Community Council (Community Cllr)	<p>Mr K's complaint against Cllr H related to an ongoing investigation that was at the time being conducted by the Ombudsman. Mr K had come into possession of evidence that was being used as part of that ongoing investigation which was provided to the original recipient in confidence.</p> <p>As the complaint (and evidence supplied by the complainant) was connected to an ongoing investigation it was not appropriate for the Ombudsman to consider a complaint about that at this stage.</p> <p>If at the conclusion of the investigation process there were any outstanding matters which have not been addressed it was open to the complainant to raise a fresh complaint.</p>	No
16/6/21	Llantwit Fardre Community Council (Community Councillor)	<p>Cllr C complained Cllr A failed to declare an interest at a meeting, where as a statutory consultee, the Council was asked for its views towards a recently registered planning application in relation to land owned by Cllr A.</p> <p>Cllr A was said to have denied having any interest when it was raised with them, as although it was on land they owned they were not the applicant. Cllr C explained that in their opinion Councillor A benefited from the success and rental fees relating to their land, and as such had a prejudicial interest which they should have declared.</p> <p>This was also highlighted in Cllr A's own declaration of interests, in that they had declared a "beneficial interest in a class of securities that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of a body" related to the planning application.</p> <p>It was stated that Cllr A may have breached the following paragraphs of the Code:</p> <ul style="list-style-type: none"> <li>• 10(2)(a)(iv) [Members] must regard [themselves] as having a personal interest in any business of [their] authority if any corporate body which has a place of business or land in [their] authority's area, and in which [they] have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body.</li> <li>• 10(2)(c)(i) [Members] must regard [themselves] as having a personal interest in any business of [their] authority if a decision upon it might reasonably be regarded as affecting their well-being or financial position.</li> <li>• 11(1) Where [members] have a personal interest in any business of [their] authority and [they] attend a meeting at which that business is considered, [they]</li> </ul>	No

must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

• 14(1)(a) - Where [members] have a prejudicial interest in any business of [their] authority [they] must, unless [they] have obtained dispensation from [their] authority's Standards Committee withdraw from the room, chamber or place where a meeting considering the business is being held whenever it becomes apparent that that business is being considered at that meeting.

The Ombudsman's guidance on the Code of Conduct explains that personal interests relate to issues where a member or a close personal associate may have some link to a matter under discussion. In the first instance members are required to decide if they have a personal interest and whether they should disclose it, and if so, to declare it as soon as it becomes apparent. Members with a personal interest can remain in a meeting and speak and vote on a relevant matter unless the personal interest is also prejudicial. These interests become prejudicial where an informed independent observer could conclude that the interest would prejudice their judgement of the public interest or influence the members vote or decision.

It is noted that Cllr A had previously declared a personal interest on the Register of Members' Interests in respect of the company which operates on their land. The Community Council was being consulted on this application. It was noted that the Council was not the decision-making body as such regarding the planning application, and the Ombudsman found no evidence that Cllr A had taken part in any decision at that meeting concerning the planning application, or voted on anything in respect of decisions concerning the planning application.

The Ombudsman considered that as the owner and/or landlord of the land affected by the application Cllr A had a personal interest which could also be deemed prejudicial and they should potentially have declared this. However, they did not consider it would be proportionate or in the public interest to investigate Cllr A's actions at that meeting in this circumstance. Whilst their conduct may suggest a technical breach of the Code, it appeared to the Ombudsman that even if the breach were to be found it is unlikely, given the reasons outlined, that a sanction would be imposed. Cllr A was advised however that they should be mindful of their obligations under the Code to disclose their interests orally and to consider whether they need to withdraw when matters relating to the planning application are discussed.

5/7/21	Ynysybwl Community Council (Community Councillor)	<p>Cllr E complained Cllr P failed to appropriately chair a meeting of the Community Council and accused Cllr E of misleading the Community Council during a previous meeting. Also that Cllr P ignored that a member arrived late to a meeting and allowed them to speak and vote on the matter, despite not being present at the start of the discussion. Cllr P also failed to invite Cllr E back to the meeting after the discussion in which Cllr E had a personal interest had finished.</p> <p>The Ombudsman will not investigate a complaint unless there is reasonably strong evidence to suggest that the member concerned has breached the Code of Conduct. It was the Ombudsman's understanding that Cllr E had left the meeting when the events complained about happened and therefore they did not witness the events. They had not provided any additional evidence in support of their complaint. In the absence of any evidence the complaint did not meet the first stage of the Ombudsman's two-stage test and therefore would not be investigated.</p> <p>In any event the Ombudsman was not persuaded that the matters which were alleged amounted to a breach of the Code of Conduct. This is because it appeared that the complaint related to how a meeting was chaired and conducted rather than Cllr P performing functions as a councillor. It is for the Chair to apply the rules of debate and procedure (standing orders) as appropriate to prevent disorderly conduct at council meetings.</p>	No
13/7/21	<p>Community Council (Community Councillor)</p> <p><i>Community Council not named as complaint linked to ongoing investigation</i></p>	<p>Cllr V complained Cllr T failed to obtain planning permission before starting to develop a commercial business on land. They also complained about an email received from Cllr T which they believed to be bullying.</p> <p>In relation to the complaint that Cllr T failed to obtain planning permission, it appeared to the Ombudsman that the breach of the Code which was alleged was not sufficiently serious to warrant investigation. Cllr T had intended to place containers on the land and had started to clear the relevant site and level the ground before applying for planning permission. It was alleged Cllr T only sought planning permission after they were prompted to do so by an RCTCBC officer. From the evidence provided in support of the complaint, it was not clear whether Cllr T was prompted to obtain planning permission from an RCTCBC Officer or whether they sought planning permission of their own accord. In any event, given that Cllr T did apply for planning permission prior to placing the shipping containers on the land the Ombudsman was not persuaded that the information he considered was suggestive of a breach of the Code and did not consider it in the public interest to investigate that element of the complaint.</p> <p>In relation to the complaint about the content of Cllr T's email as the Ombudsman was already in the process of investigating a complaint about bullying behaviour by Cllr T the complaint would be used as witness evidence</p>	No (linked to ongoing investigation)

		in that investigation.	
13/7/21	Community Council (Community Councillor) <i>Community Council not named as complaint linked to ongoing investigation</i>	Cllr E complained about comments made by Cllr T at a Council meeting. As the Ombudsman was already investigating an identical complaint it would inform the complainant of the outcome of that investigation in due course.	No (linked to ongoing investigation)
21/7/21	Community Council (Community Councillor)  <i>Community Council not named as complaint linked to ongoing investigation</i>	Mrs B complained that Cllr T had used bullying or intimidating behaviour towards them and shown respect. The Ombudsman is currently investigating this complaint. The complaint is being investigated on the basis that there may have been a failure to comply with the following paragraphs of the Code:  <ul style="list-style-type: none"> <li>• 4(b) – you must show respect and consideration for others.</li> <li>• 4(c) – you must not use bullying behaviour or harass any person.</li> <li>• 4(d) – you must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.</li> <li>• 6(1)(a) – you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.</li> <li>• 11 – disclosure of personal interests.</li> <li>• 14 – disclosure of prejudicial interests.</li> </ul>	Yes (ongoing)
28/7/21	Community Council (Community Councillor)  <i>Community Council not named as linked to ongoing investigation</i>	Mr L complained about a failure by Cllr T to show respect and consideration towards others and that their behaviour was bullying. They also alleged that Cllr T had attempted to influence members of the Community Council to support a planning application.  The Ombudsman was already in the process of investigating these matters. It was confirmed the complaint would be used as witness evidence in that investigation.	No (linked to ongoing investigation)
19/8/21	Ynysybwl Community Council (Community Councillor)	Miss D complained Cllr W posted a video on Facebook. It was alleged Cllr W posted the video without their consent and that the video accused them of leaving dog mess in a public lane, which was not true. Miss D said that they found Cllr W's actions to be detrimental to their character and considered that their actions were intimidating and constituted bullying. In addition they alleged that when they contacted Cllr W on Facebook about the video their response was rude and unprofessional. They said that Cllr W's refusal to remove the video was in breach of GDPR regulations. The Code of Conduct only applies when a councillor is acting as a private individual in very specific circumstances, which did not appear to apply in this case. The Ombudsman had not seen any evidence that	No

		<p>Cllr W was acting as in their role as a councillor at the time of the conduct complained about. The Code of Conduct usually only applies when a member of a council is performing functions as a councillor or seeking in some way to rely upon their status as a councillor.</p> <p>Most of the provisions of the Code (including the requirement to show respect and consideration to others) do not apply to comments which councillors make in their personal capacity. The Ombudsman was therefore only able to consider that when making the comments, Cllr W may have brought their Council or their office as a councillor into disrepute. The Ombudsman had not seen any evidence that Cllr W named the complainant in the video. Therefore the Ombudsman stated that whilst posting the video on Facebook may be deemed by Miss D to be discourteous they did not consider that the matters complained about were sufficiently serious to warrant investigation. It was also noted that the video had limited reach and Miss D was able to share their version of events, therefore, they were not persuaded that even if the alleged breach were to be proven, an investigation would be in the public interest.</p> <p>In addition any concerns regarding a breach of GDPR would be more appropriately raised with the Information Commissioner's Office.</p>	
21/9/21	Llantwit Fardre Community Council (Community Council)	<p>Cllr G complained Cllr E, at the Management Committee of the Council repeatedly called them a liar on a matter that was not the business of the Committee.</p> <p>It was stated Cllr E may have breached the following paragraphs of the Code of Conduct ("the Code"):</p> <ul style="list-style-type: none"> <li>• 4(b) – [Members] must show respect and consideration for others</li> <li>• 4(c) – [Members] must not use bullying behaviour or harass any person.</li> </ul> <p>The Ombudsman stated this was a complaint suitable for resolution under local procedures. The local resolution procedure would also provide Cllr G the opportunity to seek the withdrawal of the alleged comments.</p>	No (referred back to Community Council for Local Resolution)
27/9/21	<p>Community Council (Community Councillor)</p> <p><i>Community Council not named as complaint linked to ongoing investigation</i></p>	<p>Miss M complained that Cllr F had used bullying or intimidating behaviour towards them. The Ombudsman is currently investigating this complaint. The complaint is being investigated on the basis that there may have been a failure to comply with the following paragraphs of the Code:</p> <ul style="list-style-type: none"> <li>• 4(c) – you must not use bullying behaviour or harass any person.</li> <li>• 6(1)(a) – you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.</li> </ul>	Yes (ongoing)

**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**

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**STANDARDS COMMITTEE**

**19 NOVEMBER 2021**

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**Background Papers:** Freestanding matter

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