

**SUMMARY OF PSOW INVESTIGATION OUTCOMES CONCERNING ALLEGED MEMBERS' CODE OF CONDUCT BREACHES - 1<sup>ST</sup> APRIL 2023 – 29TH AUGUST 2023**

**Duty to uphold the law: Abertillery & Llanhilleth Community Council**

Report date - 03/05/2023

Outcome - Referred to Standards Committee

The Ombudsman's office received a complaint that a Member ("the Member") of Abertillery & Llanhilleth Community Council ("the Council") had breached the Code of Conduct. The report on the investigation was referred to the Monitoring Officer of Blaenau Gwent County Borough Council for consideration by the Council's Standards Committee. This summary will be updated following the Standards Committee's decision.

**Duty to uphold the law : Abergele Town Council**

Report date - 15/05/2023

Outcome - No Action Necessary

The Ombudsman received a complaint that a Former Member ("the Member") of Abergele Town Council ("the Council") had breached the Code of Conduct because of failings when acting in their capacity as Clerk to a Board under the control of this and a neighbouring council ("the Board").

The Member was appointed as Clerk to the Board. At the time of the appointment, the Member and the Board members believed the Board to be an autonomous body.

The complaint was that the Member failed to complete required tasks, incorrectly asserted that the Board was an autonomous body, when it was not, and that they inappropriately took a wage from the Board. The complaint suggested that these actions resulted in a critical report from Audit Wales which had a negative impact on the reputation of the Board and the councils associated with it.

The investigation considered the actions of the Member and the Board by reviewing documents and interviewing relevant witnesses. The investigation found that the Board and the councils associated with it were all acting under the misunderstanding that it was an independent body and there was no evidence to suggest action was taken by anyone to identify the correct legal position.

The investigation found that the Clerk was appointed through a recruitment process, and that all involved believed they were eligible to perform the role. The accounts and

documents were poorly maintained and while the Member bore some responsibility for that, there was little to no oversight from the Board or the associated councils.

The investigation found that the Member was not acting in their capacity as an elected member when they undertook their role as Clerk, so the whole Code of Conduct was not engaged.

The responsibility for the poor governance of the Board lay with all those involved. It was also found that the Member took the wage in good faith and did not mislead anyone regarding her role or remuneration for that role. However, the Ombudsman considered that the Member was in large part responsible for failing to establish the legal position of the Board and that the Member should have undertaken proper research sooner. Failing to do so put the reputation of the Board and the Council at risk and is suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

While it is noted that the Member's actions were suggestive of a breach of the Code of Conduct, significant mitigation arose because all those involved were acting under the same mistaken belief that the Board was a separate entity and no one sought independent advice on this matter. Even if a referral to the Standards Committee would be made it seems that, given the mitigation, and the fact that the Member is also now retired from public life, it is unlikely, even if a breach of the Code of Conduct were proven, a sanction of any kind would be imposed. Therefore under Section 69(4)(b) of the Local Government Act 2000, the finding is that no action needs to be taken in respect of the matters investigated.

### **Promotion of equality & respect: Bannau Brycheiniog National Park Authority**

Report Date - 28/06/2023

Outcome - No Evidence of Breach

The Ombudsman received a complaint that a Member ("the Member") of the Brecon Beacons National Park Authority ("the Authority") had breached the Authority's Code of Conduct ("the Code"). It was alleged that during 2 specific Authority meetings, the Member failed to treat a member of staff, an officer of the Authority, with respect and used bullying behaviour towards her.

The Ombudsman's investigation considered whether the Member's conduct may have breached paragraphs 4(b), 4(c) and 6(1)(a) of the Code. Information was obtained from the Authority, including relevant correspondence and emails. A video recording and transcript of a relevant meeting was obtained. Witness information was also obtained.

The Ombudsman's investigation found that, with regard to the first Authority meeting, the Member was frustrated with the way in which the meeting was administered. The Member engaged in a robust discussion and voiced his concerns about the meeting's administration. The Ombudsman found that such criticism of ideas and opinions is considered part of democratic debate.

The Member's comments were political in nature and therefore attracted enhanced protection under the ECHR. The Ombudsman acknowledged that the member of staff may have been upset at the criticism of the way in which the meeting had been handled, but the Ombudsman did not consider there was evidence that the Member's comments were personally or gratuitously offensive. The Ombudsman found on the basis of the evidence and, in particular, the video recording of the first meeting, that the Member was not particularly forceful or aggressive, although it is clear he was frustrated. The Ombudsman did not consider that the Member's comments were sufficiently offensive, intimidating or insulting to amount to bullying or disrespectful behaviour within the meaning of the Code. As a result, the Ombudsman was not persuaded that there was evidence to suggest a breach of paragraphs 4(b) or 4(c) of the Code.

In relation to the second meeting, the Ombudsman's investigation found that there was a disagreement between the Member and the member of staff about the working arrangements and governance in the Authority. The Ombudsman found, on the basis of the evidence, that the Member's comments during the second meeting were political comments about the Authority's policies and administration. The Ombudsman found that the Member's comments fell within the realms of freedom of expression and were not sufficiently offensive, intimidating or insulting to amount to bullying or disrespectful behaviour within the meaning of the Code. As a result, the Ombudsman was not persuaded that there was evidence to suggest a breach of paragraphs 4(b) or 4(c) of the Code.

The Ombudsman found that, in view of her findings above, there was also no evidence to suggest the Member had brought his office as Member or his Authority into disrepute.

The Ombudsman found that under Section 69(4)(a) of the Local Government Act 2000, there was no evidence of any failure to comply with the Code.