

# Public Document Pack

Gareth Owens LL.B Barrister/Bargyfreithiwr  
Head of Legal and Democratic Services  
Pennaeth Gwasanaethau Cyfreithiol a Democraidd



To: Patricia Jones (Chair)

CS/NG

Councillors: David Cox, Hilary McGuill and  
Arnold Woolley

4 March 2014

## **Co-opted Members**

Robert Dewey, Jonathan Duggan-Keen, Phillipa  
Ann Earlam, Edward Michael Hughes and Kenneth  
Harry Molyneux

Sharon Thomas / 01352 702324  
sharon.b.thomas@flintshire.gov.uk

Dear Sir / Madam

A meeting of the **STANDARDS COMMITTEE** will be held in the **CLWYD COMMITTEE ROOM, COUNTY HALL, MOLD CH7 6NA** on **MONDAY, 10 MARCH, 2014** at **6.00 PM** to consider the following items.

**Please note that a training session for Standards Committee members will be held from 6.00pm until 6.30pm.**

Yours faithfully

Democracy & Governance Manager

## **AGENDA**

- 1 **APOLOGIES**
- 2 **DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**
- 3 **MINUTES** (Pages 1 - 4)

To confirm as a correct record the minutes of the meeting held on 2 December 2013.

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The Council welcomes correspondence in Welsh or English  
Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

4 **DISPENSATIONS** (Pages 5 - 8)

5 **ADJUDICATION PANEL FOR WALES ANNUAL REPORT 2012/13** (Pages 9 - 34)

To receive and note the report of the Adjudication Panel for Wales.

6 **NORTH WALES STANDARDS FORUM**

To receive a verbal update regarding the meeting to be held on 29 April 2014 hosted by Flintshire and for the Committee to assist in preparing the host presentation.

7 **FORWARD WORK PROGRAMME** (Pages 35 - 36)

For the Committee to consider topics to be included on the attached Forward Work Programme.

## **STANDARDS COMMITTEE** **2 DECEMBER 2013**

Minutes of the meeting of the Standards Committee of Flintshire County Council held at Clwyd Committee Room, County Hall, Mold on Monday, 2 December 2013

**PRESENT:** Mr Edward Michael Hughes (Vice-Chair in the Chair)  
Councillors: David Cox, Hilary McGuill and Arnold Woolley

Co-opted members: Robert Dewey, Jonathan Duggan-Keen, Phillipa Ann Earlam and Kenneth Harry Molyneux

**APOLOGY:** Mrs Patricia Jones

**IN ATTENDANCE:** Head of Legal & Democratic Services, Democracy & Governance Manager and Committee Officer

### **36. WELCOME TO NEW MEMBER OF THE COMMITTEE**

The new co-opted member, Mr. Kenneth Molyneux, was welcomed to his first meeting of the Standards Committee.

### **37. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**

Councillor Arnold Woolley declared an interest in Agenda Item 7: Public Services Ombudsman's Annual Letter 2012/13. The Head of Legal & Democratic Services advised that this was a personal interest and that there was no requirement to withdraw from the meeting for that item.

### **38. MINUTES**

The minutes of the meeting held on 4 November 2013 had been circulated with the agenda.

#### Accuracy

Councillor Hilary McGuill said that her apology had been given at the meeting and asked that this be recorded.

Minute 32: Audit of Declarations of Interest - Mrs. Phillipa Earlam suggested that the words 'the individual Member held' be removed from the first sentence of the second paragraph.

#### Matters Arising

Minute 34: Forward Work Programme - the Head of Legal & Democratic Services referred to the training session which had taken place on 7 November 2013 and advised that a further session would be arranged in 2014.

## **RESOLVED:**

That, subject to the two amendments, the minutes be approved as a correct record and signed by the Chair.

### **39. DISPENSATIONS**

None were received.

### **40. AUDIT OF DECLARATIONS OF INTEREST**

The Head of Legal & Democratic Services presented a report which shared current practice in other Welsh councils on the auditing of declarations of interest, in response to discussion at the previous meeting on an audit carried out on a sample of meetings in Flintshire. He explained that Members who declared an interest at meetings were responsible for ensuring that they submitted a completed form and that failure to do so would result in the declaration being invalid. Improvements to the process would help in chasing forms which had not been returned and it was suggested that a form used by Anglesey Council could be adopted for Flintshire.

Variances in practice between other Welsh Councils who had shared information on auditing declarations of interest showed that Flintshire was one of a minority who had undertaken audits of this nature. However, positive feedback from some other Councils seemed to indicate that this was an emerging area of good practice.

In response to a suggestion by Mr. Jonathan Duggan-Keen on changes to the small print in section 3 of the proposed form, the Head of Legal & Democratic Services explained that the wording would need to reflect that in the Code of Conduct, namely that the personal interest was 'likely' to prejudice judgement.

Following a comment from Councillor Hilary McGuill on the need for declaration of interest forms to be made available at each meeting, the Democracy & Governance Manager reiterated that the improved process would involve keeping an updated record of interests taken from completed forms and that forms would continue to be made available for any additional unrecorded interests. He suggested that the bottom of the proposed form should reflect that Members were required to complete and return forms to the Committee Services officer after the meeting rather than during the meeting. The Head of Legal & Democratic Services gave examples where the completion of forms was not required as the information was held elsewhere.

Mr. Robert Dewey pointed out that the wording in section 4 of the proposed form should reflect that there was only one box to tick. Councillor Arnold Woolley felt it be clarified that section 4 only applied if the relevant box in section 3 was ticked. He proposed that the form, incorporating all the suggested changes, be approved for adoption and this was duly seconded.

**RESOLVED:**

That, with the inclusion of the aforementioned amendments, the form at Appendix 1 to the report be adopted.

**41. PUBLIC SERVICES OMBUDSMAN'S ANNUAL LETTER 2012/13**

The Head of Legal & Democratic Services presented a report to receive and note the Annual Letter of the Public Service Ombudsman for Wales. In summarising the key statistics for Flintshire as set out in the report, he pointed out that the number of complaints which had taken over six weeks to deal with included some which were more complex long-standing issues. There was a high rate of response times within four to five weeks to allow adequate time to provide a good response, which was reflected in the above average outcomes. The Head of Legal & Democratic Services then gave a brief update on an outstanding matter.

In response to a query from Mr. Kenneth Molyneux, the Head of Legal & Democratic Services advised that there were no legal sanctions on response times but that a speedy response or quick fix was favoured by the Ombudsman. It was hoped that smaller issues would be resolved internally and that more quick fix complaints through the use of local protocols could further reduce the need for involvement by the Ombudsman.

Councillor Hilary McGuill felt that the selection of case summaries appended to the report were helpful in providing context on the decisions reached by the Ombudsman, and asked if summaries on all cases could be included. The Head of Legal & Democratic Services explained that the Ombudsman had chosen only to summarise outcomes on cases which he considered to be of wider importance and that information from across all Councils in Wales was available in the publication 'The Ombudsman's Casebook'.

Councillor Arnold Woolley referred to recognition in the Ombudsman's Letter of 'stretched resources' within Councils and commented on the likelihood for this problem to increase.

In response to a comment from the Chair on outcomes, the Head of Legal & Democratic Services said that whilst the aim was to try to resolve complaints quickly, it was more important to reach a positive resolution rather than a speedy one.

Following remarks on the Ombudsman's recognition of numerous health complaints, it was explained that this was in relation to the NHS. There had been no health complaints under the Council's responsibility in 2012/13.

As no recommendations were made by the Committee, Councillor Woolley proposed that the contents of the report be noted, which was agreed.

**RESOLVED:**

That the contents of the letter be noted.

**42. PLANNING CODE OF PRACTICE**

The Democracy & Governance Manager introduced a report to consider whether a review of Flintshire's Planning Code of Practice was appropriate at the present time.

In detailing the background, he explained that the Council's Planning Strategy Group had decided to delay carrying out a review of the Planning Code of Practice whilst awaiting the outcome of national proposals arising from recommendations from a recent Welsh Government (WG) study. It was noted that the current Planning Code of Practice was sufficiently comprehensive in covering most of the areas included in the recommendations and that a report was due to be submitted to the Constitution Committee in 2014. In light of this, the Democracy & Governance Manager suggested that the review be delayed but gave assurance that progress would be shared on the national proposals.

**RESOLVED:**

That the contents of the report be noted and that a further report be received in a few months' time when the national proposals should have progressed.

**43. FORWARD WORK PROGRAMME**

The Head of Legal & Democratic Services invited the Committee to consider the current Forward Work Programme and to suggest items for discussion or specific training at future meetings. A training session held prior to the meeting had identified the need for training on differences between Executive and Council functions.

The Democracy & Governance Manager suggested that an update on the review of the Planning Code of Practice be scheduled for April 2014. Following a suggestion made by Councillor Hilary McGuill that relevant training be provided prior to consideration of this topic, it was agreed that officers would look at practice in other Councils and schedule the training for March 2014.

**RESOLVED:**

That the Forward Work Programme be updated accordingly.

**44. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE**

There were no members of the press or public in attendance.

(The meeting started at 6.00 pm and ended at 7.20 pm)

.....  
**Chair**

Buckley.....TOWN/COMMUNITY COUNCIL

**APPLICATION FOR DISPENSATION TO THE  
STANDARDS COMMITTEE  
BY MEMBER OF THE COUNCIL**

Name of Councillor	CAROL ANN ELLI
Address	8 Selsdon close Buckley CH7 2NR
Ward	Buckley Mountain
Nature of Dispensation sought	TO be present and vote in matter relating TO Hawkesbury community centre
Level of Dispensation sought (i.e. to speak only or to speak and vote)	SPEAK and vote (SPEAK only if finance involved)
Relevant Paragraph under which Dispensation is requested (See overleaf)	H
Details of the Prejudicial Interest	Committee Member / Trustee with NO vested Interest
Details of any Position of responsibility/control held on Council (e.g. Chairman/Vice-Chairman)	NONE

Signed: 	Date: 2/2/14
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## **Circumstances When A Standards Committee May Grant Dispensations**

The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 specifies that the Council's Standards Committee may grant dispensations under Section 81(4) of the Local Government Act 2000 where:

- (a) no fewer than half of the Members of the Council or of a committee of the Council (as the case may be) by which the business is to be considered has an interest which relates to that business;
- (b) no fewer than half of the Members of the Executive of the Council (i.e. Leader and Cabinet) by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;
- (c) Members' inability to participate would upset the political balance of the Council, or any of its committees by which the business is to be considered, to such an extent that the outcome would be likely to be affected;
- (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 Council's business;
- (e) the interest is common to the Member and a significant proportion of the general public;
- (f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise;
- (g) the registerable interest relates to business, which is to be considered by an Overview and Scrutiny Committee of the Council, and the Member's interest is not a pecuniary/financial interest;
- (h) the business relates to the finances or property of a voluntary organisation of whose management committee or board the Member is a member otherwise than as a representative of the Council and the Member has no other interest in that business, provided that any dispensation shall not extend to participation in any vote with respect to that business; or
- (i) it appears to the Standards Committee to be in the interests of the inhabitants of the area of the Council that the disability should be removed, provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within 7 days. Such a notification should specify the Member to whom the dispensation would apply and the Standards Committee's reasons why the disability should be removed.



.....Buckley.....TOWN/COMMUNITY COUNCIL

**APPLICATION FOR DISPENSATION TO THE  
STANDARDS COMMITTEE  
BY MEMBER OF THE COUNCIL**

Name of Councillor	David Ellis
Address	8 SELSDON CLOSE BUCKLEY, FLINTSHIRE CH7 2NR
Ward	Buckley Mountain
Nature of Dispensation sought	TO BE PRESENT AND SPEAK
Level of Dispensation sought (i.e. to speak only or to speak and vote)	TO SPEAK ONLY
Relevant Paragraph under which Dispensation is requested (See overleaf)	H
Details of the Prejudicial Interest	CHAIRMAN OF HAWKSBURY COMMITTEE, BUT NO VESTED INTEREST IN THE BUILDING
Details of any Position of responsibility/control held on Council (e.g. Chairman/Vice-Chairman)	CHAIRMAN OF HIGHWAYS & LEISURE

Signed: 	Date: 2.2.14
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- (c) Members' inability to participate would upset the political balance of the Council, or any of its committees by which the business is to be considered, to such an extent that the outcome would be likely to be affected;
- (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 Council's business;
- (e) the interest is common to the Member and a significant proportion of the general public;
- (f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise;
- (g) the registerable interest relates to business, which is to be considered by an Overview and Scrutiny Committee of the Council, and the Member's interest is not a pecuniary/financial interest;
- (h) the business relates to the finances or property of a voluntary organisation of whose management committee or board the Member is a member otherwise than as a representative of the Council and the Member has no other interest in that business, provided that any dispensation shall not extend to participation in any vote with respect to that business; or
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# Adjudication Panel for Wales

## Annual Report



2012 – 2013



# Foreword

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This report reviews the work of the Adjudication Panel for Wales during the financial year 2012-13.

During 2012-13, the Panel received 5 new referrals from the Public Services Ombudsman for Wales and 4 appeals against the decisions of local authority standards committees. A further 4 cases were carried over from 2011-12. A summary of the cases that were determined can be found in Section 3.

Although the numbers of new cases are still relatively low, the new members appointed in 2010 have now had an opportunity to sit on tribunal hearings. I believe that training and development of Panel Members is of prime importance and once again this has been an important part of the Panel's activities over the past year. In October the Adjudication Panel for Wales held its training seminar which, as well as providing useful updates and training on current issues, also gave the new members an opportunity to discuss their experiences with the original members.

The Welsh Government continues to progress the recommendations of the report of the Welsh Committee of the Administrative Justice and Tribunals Council following its *'Review of Tribunals Operating in Wales.'* The Panel's administration transferred to the Administrative Justice and Tribunals Unit within the Welsh Government on 1 April 2013. As part of the transfer I welcome Leon Mills as the new Registrar to the Panel replacing Stephen Phipps, who provided support over the transition period.

I take this opportunity to express my thanks to Stephen Phipps for the hard work and commitment he has shown the panel over his time with the Adjudication Panel. I also express my thanks to John Davies and Jason Plange for their time within the Support Unit and also to Carol Webber, whom left the Support Unit during the reporting period, for all the assistance they provided to the Adjudication Panel.

Finally, I hope you will find this report and the case summaries contained within it of interest. Once again, the report is being published via the Panel's website in order to save on printing costs.

A handwritten signature in black ink that reads "J Peter Davies". The signature is written in a cursive style with a large initial 'J'.

J PETER DAVIES  
President of the Panel



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# 1. Background

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## 1.1 Local Government Act 2000

Part III of the Local Government Act 2000 (“the 2000 Act”) established a new framework to promote observance of consistent standards of conduct by local government members in England and Wales. In essence, the framework comprises:

- a set of ten general principles of conduct (derived from the “Seven Principles of Public Life”);
- separate statutory codes of conduct for members and officers;
- local standards committees to advise members and relevant authorities on standards of conduct;
- the investigation of alleged misconduct by members in Wales by the Public Services Ombudsman for Wales or local authority monitoring officers; and
- the adjudication of such investigations by local standards committees or, generally in more serious cases, the Adjudication Panel for Wales (“the Adjudication Panel”).

“Relevant authorities” under Part III of the 2000 Act in relation to Wales are county, county borough councils, community councils, fire and rescue authorities and national park authorities.

Police authorities in Wales were subject to separate principles and code of conduct prescribed by the UK Government. However, police authorities were abolished in November 2012 and have now been replaced by 4 Police and Crime Commissioners (PCCs) that cover Wales. The PCCs are overseen by the Police and Crime Panels which are formed to scrutinise the Commissioners decisions.



## 1.2 Principles of Conduct/Code of Conduct

Following commencement of the Government of Wales Act 2006, the Welsh Ministers are empowered under the 2000 Act to specify general principles of conduct and to make a model code of conduct for elected members and co-opted members with voting rights. The principles draw on the 'Seven Principles of Public Life' which were set out in Lord Nolan's report 'Standards of Conduct in Local Government in England, Scotland and Wales.'

The general principles are encapsulated in the current model code of conduct prescribed by the Welsh Government in 2008. All local government bodies in Wales – i.e. county and county borough councils, town and community councils, national park authorities and fire and rescue authorities – are required to adopt a code of conduct encompassing the provisions of the model code. All elected and co-opted members (with voting rights) must give a written undertaking to observe their authority's adopted code of conduct.

## 1.3 Role of the Public Services Ombudsman for Wales/ Standards Committees

Under the 2000 Act, any person may make a written allegation to the Public Services Ombudsman for Wales ("the Ombudsman") that an elected or co-opted member of a relevant authority in Wales has failed or may have failed, to comply with their authority's code of conduct.

Where the Ombudsman considers that an allegation warrants investigation the Ombudsman may arrange for the investigation to be undertaken by his/her office. Alternatively, the Ombudsman may refer the matter to the relevant monitoring officer for investigation and report to the local standards committee.

The Ombudsman may conclude upon investigation that there was no breach of the code or that no further action needs to be taken. However, where there is prima facie evidence of a breach of the code, the Ombudsman will produce a report on the completed investigation and send it either to the monitoring officer of the relevant authority concerned or to the President of the Adjudication Panel for Wales for final determination.

## 1.4 Role of the Adjudication Panel for Wales

The Adjudication Panel has two statutory functions:

- To form case or interim case tribunals to consider reports from the Ombudsman following the investigation of allegations that a member has failed to comply with their authority's code of conduct; and
- To consider appeals from members against the decisions of local authority standards committees that they have breached the code of conduct.

### Case and Interim Case Tribunals

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Where the Ombudsman sends a report to the President of the Adjudication Panel, a "case tribunal" formed from the Panel will be convened to consider the report, to receive evidence and to determine whether there has been a breach of the code of conduct.

If the tribunal determines that a failure to comply with an authority's code of conduct has occurred, it has powers to suspend, or partially suspend, a member for up to one year; or it can disqualify a member for up to five years.

Where a case tribunal decides that a person has failed to comply with an authority's code of conduct, that person may seek the permission of the High Court to appeal that decision, or any decision of the tribunal as regards the sanction imposed.

Where the Ombudsman considers it necessary in the public interest, the Ombudsman may make an interim report to the President of the Adjudication Panel recommending that a member be suspended while an investigation is ongoing. An interim case tribunal will decide whether the member should be suspended or partially suspended for up to six months.

## Appeal Tribunals

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Where the Ombudsman has referred the matter to a monitoring officer and the standards committee has determined that there has been a failure to comply with the code of conduct, the member concerned has a right of appeal to the Adjudication Panel. This right must be exercised within 21 days of the member's receipt of notification of the standards committee's determination. Where an appeal tribunal agrees that there has been a breach of the code, it may endorse the penalty set by the standards committee, or refer the matter back to the committee with a recommendation that a different penalty be imposed. An appeal tribunal can also overturn the determination of a standards committee that a member has breached the code of conduct.

## 2. Members of the Adjudication Panel for Wales

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The current members of the Adjudication Panel are shown below. Between them, the members have a wide range of relevant knowledge and experience which they bring to the work of the Panel and its tribunals. They are located around Wales which facilitates the appointment of tribunals on a geographical basis.

The President, four legal members and one of the lay members are Welsh speakers.

### President and Legal Members



2002-  
2015

The President of the Adjudication Panel, **Mr J Peter Davies** runs his own legal practice in Cardiff specialising in civil and commercial litigation and, in particular, regulatory matters. He is a Deputy District Judge and chair of the Solicitors Disciplinary Tribunal.



2010-  
2015

**Ms Kate Berry** is the former Solicitor and Monitoring Officer with the City and County of Cardiff. She has a background in private and public sector law and is a former town councillor in Nailsworth.



2010-  
2015

**Mrs Emma Boothroyd** is currently an adjudicator with the Solicitors Regulation Authority. She has a background in private law.



2002-  
2015

**Mrs Helen Cole** is a senior partner in a general practice in West Wales specialising in non-contentious private client work.



2010-  
2015

**Mr Gwyn Davies** is a solicitor with experience in a range of legal jurisdictions in the private and public sectors. He is a former Chair of Neath, Port Talbot County Borough Council's Standards Committee.



2002-  
2015

**Mr Hywel James** is a District Judge.

## Lay Members



2010-  
2015

**Mr Andrew Bellamy** is a non-executive Director with Estyn and peer reviewer with the Health Inspectorate Wales. He has a National Health Service background.



2002-  
2015

**Mr Ian Blair** was County Surveyor with Powys County Council and has been an invited lecturer for the University of Wales, Aberystwyth. He was a former member of the Courts Board for Mid and West Wales.



2002-  
2015

**Cllr Colin Evans** is a Labour councillor with Carmarthenshire County Council.





2010-  
2015

**Miss Susan Hurds** is a lay member of the Employment Tribunals for England and Wales. She has a background in the National Health Service, latterly with the Ceredigion Local Health Board. She is also a Panel Chair of the Nursing and Midwifery Council.



2002-  
2015

**Mrs Christine Jones** is a former member of Conwy County Borough Council. She is also a Board member with Cartrefi Conwy Housing Association.



2002-  
2015

**Ms Juliet Morris** runs an organic farm business in Carmarthenshire. Previously, she worked in social and public sector policy for organisations including the Local Government Information Unit, the Wales Consumer Council and independent advice sector in Wales.



# 3. Allegations of Misconduct

## 3.1 Overview

In the period October 2002 to 31 March 2013, the Adjudication Panel made determinations on 44 references from the Ombudsman and 11 appeals against the decisions of a standards committee. Figures 1 to 3 give a breakdown of the outcomes of those determinations. A summary of the sanctions imposed is in the Annex to this report.

Figure 1: Case Tribunal decisions – October 2002 to March 2013

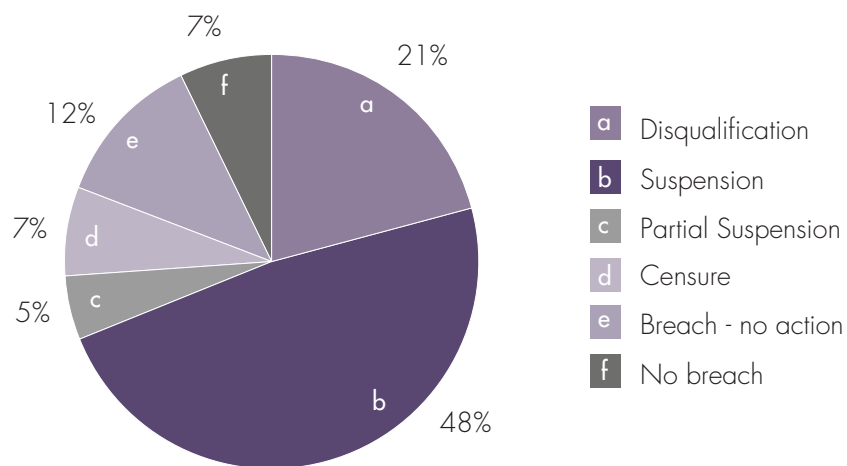


Figure 2: Appeal Tribunal decisions – October 2002 to March 2013

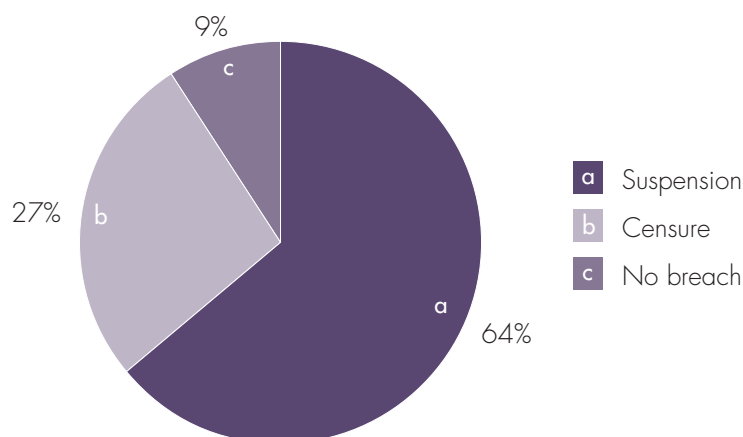
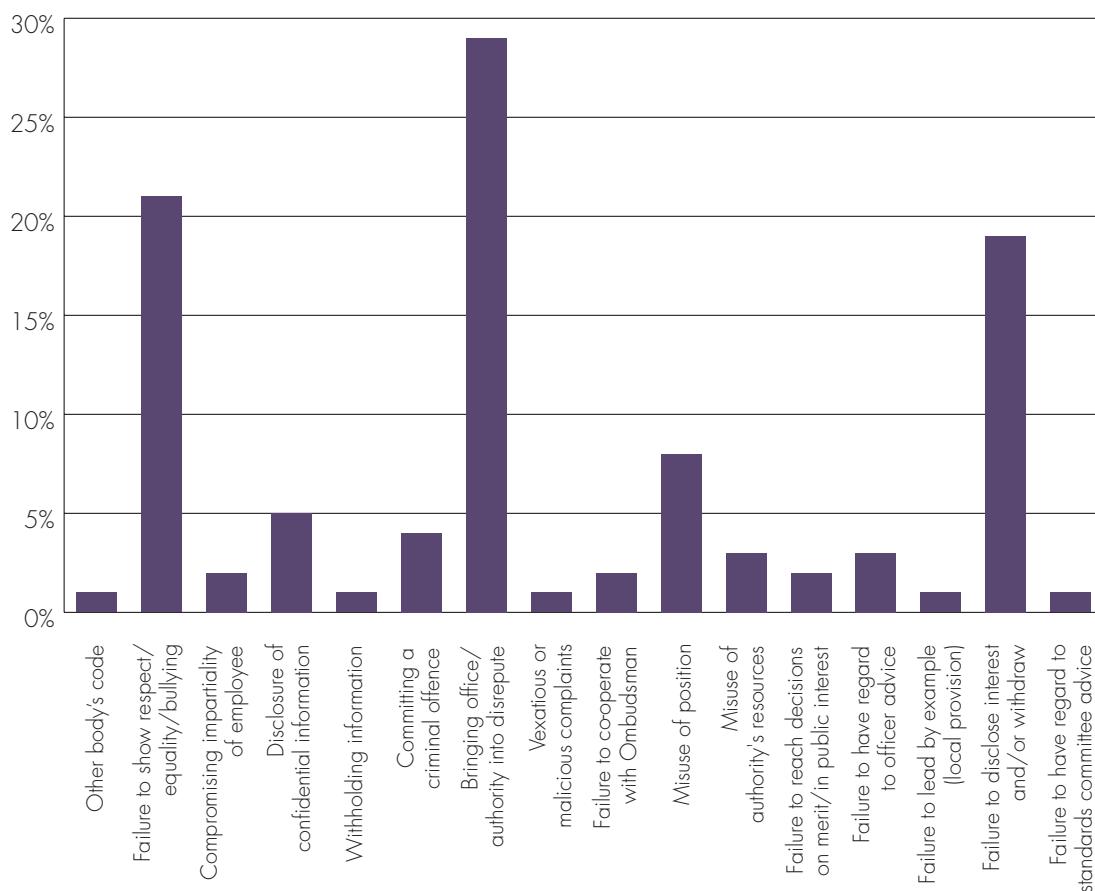


Figure 3: Breaches by type October 2002 to March 2013



### 3.2 Summary of Case Tribunals 2012 – 2013

The Public Services Ombudsman for Wales referred 5 cases to the Panel during 2012-13 and 4 cases were carried over from the previous year. Summaries of the 7 cases determined by the Panel during the year are below.

#### APW/002/2011-012/CT – Isle of Anglesey County Council

The referral concerned allegations that the councillor had breached the Council's code of conduct by making repeated personal attacks of an offensive nature against the then Director of Legal and Democratic Services and Monitoring Officer and the former Interim Managing Director and by making numerous requests for information thereby placing excessive demands and significant burden upon the Council's Corporate Information Officer.



Matters commented upon by the councillor were that when making the comments at the heart of the complaint made against him, the councillor was acting as a member of the council in bringing to light activities which he perceived as improper. He was discharging the duties placed upon him as an elected representative of the Isle of Anglesey County Council. By exposing the seemingly questionable practices of others he was actively contributing to the good governance of the area, effectively representing the interests of the electoral division concerned and was trying to ensure that the highest standard of conduct and ethics were maintained.

The tribunal found that the councillor, by his actions towards the then Director of Legal and Democratic Services, in particular the language used, failed to show respect and consideration and that his actions also amounted to bullying and harassment.

The tribunal found that as a more senior officer, the actions of the councillor did not amount to bullying or harassment of the Interim Managing Director. The tribunal did however find that making unfounded allegations in the public media that the Interim Director was dishonest and corrupt did fail to show respect and consideration in breach of paragraph 4(b) of the Code.

The tribunal found no breach in relation to his conduct towards the Information Officer. The Tribunal was satisfied that the councillor had made his requests perfectly properly and his letters to the Information Officer were appropriate in content and tone.

The tribunal also found that the councillor's actions amounted to a breach of 6(1)(a) of the code, in that the repeated unfounded allegations of a serious nature against senior officers of the council in public was bound to undermine the Authority and bring it into disrepute. In addition the language used by the councillor and the fact that the tribunal found his motives were not genuine further brought the office into disrepute.

The tribunal concluded by unanimous decision that the councillor should be suspended from acting as a member of the council for a period of 12 months.

## APW/003/2011-012/CT, APW/005/2012-013/CT & APW/007/2012-013/CT – Coedpoeth Community Council

There were 3 separate referrals from the Ombudsman which were considered by a single tribunal.

The allegations were that the former councillor had breached the above Community Council's code of conduct by his behaviour and consequent arrest for a breach of the peace during a demonstration, failure to show respect and consideration to the Clerk of the Community Council, his behaviour, arrest, subsequent imprisonment and non-cooperation with the relevant authorities arising from a protest at a County Court and his lack of cooperation with the Ombudsman's investigation of these allegations.

In the absence of any proper or meaningful response by the former councillor the tribunal concluded by unanimous decision that the former councillor had, by his actions in breaching the code of conduct and in his unacceptable attitude to the investigation and general disregard to the code, demonstrated that he was unfit to hold public office and was unlikely to become fit over the next 5 years.

Accordingly the tribunal decided that the councillor be disqualified for 5 years from being or become a member of the community council or any other relevant authority.

## APW/001/2012-013/CT – Llantrisant Community Council

The allegations were that the councillor had breached Llantrisant Community Council's code of conduct by posting unsubstantiated and highly offensive comments about a former neighbour on Facebook.

The councillor submitted that it was a private family matter and was never intended to be in the public domain. The councillor explained that she had acted on the spur of the moment and had posted the comments to defend her son. The councillor submitted that she never intended to cause anyone harm or distress and was acting as a mother not as a councillor.

The tribunal found that the councillor made 3 postings through her Facebook account and noted that the councillor's profile page makes reference to her position as a community councillor. The tribunal was satisfied that making such public postings without appropriate corroborative evidence was conduct which fell short of

that expected of an elected member. The tribunal considered that making offensive comments on a social networking site and the councillor's failure to take immediate steps to remove those comments was conduct which the tribunal considered brought the office of community councillor into disrepute.

The tribunal considered all the facts of the case and in particular the fact that this was an isolated incident which arose out of what should be a private family matter. The tribunal noted the excellent references received in support of the councillor and the work that she does in the community. The tribunal noted the effect that these proceedings had had on the councillor and the upset caused to the whole family. Nevertheless the tribunal were concerned that the councillor did not fully appreciate the seriousness of her actions. The tribunal took into account her refusal to apologise to the complainant and the fact she had not taken any positive steps to remove the comments. The tribunal took into account that the councillor believed her comments to have been true but nevertheless considered that her actions were inappropriate in the circumstances. The tribunal considered that the conviction in the Courts of a breach of Section 4 of the Public Order Act 1986 was a serious matter for a community councillor.

In all the circumstances the tribunal concluded by unanimous decision that the councillor should be suspended from acting as a member of Llantrisant Community Council for a period of 6 months or, if shorter, the remainder of her term of office. The tribunal considered that this sanction was necessary to reflect the serious nature of the misconduct and to uphold standards in public life. The tribunal considered that a period of suspension was appropriate in the circumstances of this case to give the councillor an opportunity to reflect on her actions. The tribunal considered that a 6 month period of suspension was proportionate in these circumstances.

## **APW/002/2012-013/CT – Merthyr Tydfil County Borough Council**

The allegations were that the former councillor had breached Merthyr Tydfil County Borough Council's code of conduct by sending an email to all members of the Council in which he misrepresented the outcome of a previous tribunal hearing; by co-operating with the Merthyr Express to produce a story about his suspension; misrepresenting the decision of the tribunal when he wrote to the Merthyr Express; publishing a confidential letter and other similar material on his blog for which he had already been suspended by the Adjudication Panel; participating in a live

radio programme phone-in during which he misrepresented Council policies and failed to state that he was, at the time, suspended from the Council.

The tribunal found that the councillor had persistently and deliberately misrepresented his position as a councillor following his suspension by a previous tribunal, in emails, blogs letters and articles to the press and a radio phone-in in a 3 month period following the tribunal finding; deliberately and persistently misrepresented the findings of the previous tribunal; misrepresented the Council and its policies; and, despite the finding of the previous tribunal, had knowingly published confidential information and failed to seek advice from the appropriate authorities.

The tribunal concluded by unanimous decision that the former councillor should be disqualified for 3 years from being or becoming a member of Merthyr Tydfil County Borough Council or any other relevant authority within the meaning of the Local Government Act 2000, with immediate effect.

## APW/004/2011-012/CT – Denbighshire County Council

The allegations were that the councillor had breached paragraphs 4(a), 4(b) and 6(1)(a) by on 2 separate occasions making inappropriate comments relating to Muslims, gypsies and travellers at meetings of the Corporate Equalities Group.

The tribunal found by unanimous decision with regard to both allegations that the former councillor had failed to comply with paragraph 4(b) of the council's code of conduct. The tribunal further found that the councillor did not breach paragraphs 4(a) and 6(1)(b).

The tribunal concluded that the former councillor's conduct merited a censure as it was not acceptable for any councillor to use language and express opinions in a way that would be inappropriate or offensive to others.

### 3.3 Summary of Appeal Tribunals 2012 – 2013

There was 1 appeal tribunal hearing during the reporting year.

#### APW/003/2012-013/A – Anglesey County Council

An appeal was received against the decision of Anglesey County Council's standards committee that the councillor had breached the Council's code of conduct and should be suspended for a period of 6 months.

The allegations were that the councillor had breached paragraph 6(1)(a) of the Council's code of conduct as a consequence of receiving a criminal conviction for failing to declare his full income when applying for Incapacity Benefit, thereby bringing his office or authority into disrepute.

The tribunal found that it was clear that the councillor showed an unwillingness to be frank and showed a reluctance to provide full and accurate disclosure of information to those investigating the allegation unless and until pressed to do so.

The tribunal found that it was significant that the councillor appeared to have been unwilling or unable to learn any lessons from the fact that he was prosecuted in the Magistrates Court on criminal charges because of a failure to make full disclosure of his circumstances when making a claim for benefits. If the councillor had learned from that experience he should have realised that, in cooperating with the subsequent investigation by the Ombudsman and his appearance before the standards committee, it was the councillor's duty to provide full, carefully checked and accurate information so that there could be no possibility of misunderstanding and any doubts about his integrity could be assuaged.

It was also incumbent on him to act in a way that members of the public and fellow councillors would consider to be exemplary, notwithstanding his criminal conviction. Instead his conduct had engendered doubts about his sincerity and the level of his contrition.

It was also clear from the evidence that inaccurate or misleading information was provided by the councillor to the Ombudsman and to the standards committee. That standards committee was of the view that there was a perceived pattern of behaviour relating to a failure or unwillingness to provide full information.

The tribunal was satisfied that the standards committee gave the councillor every opportunity to substantiate his mitigation during the standards committee hearing. The tribunal was satisfied that appropriate credit was given by the standards committee for the mitigation put forward by the councillor, but that the mitigation was outweighed by other factors of the case including the councillor's credibility. The tribunal was satisfied that the standards committee applied due proportionality having regard to all the facts in deciding on the sanction that should be applied to the councillor.

The tribunal accordingly decided by unanimous decision to endorse the decision of the Isle of Anglesey County Council's standards committee, that the councillor should be suspended for 6 months.

### 3.4 Ongoing Cases

At September 2013, the Adjudication Panel had determined 2 cases in the current financial year and a further 3 were on going. These cover a range of potential breaches, such as failing to show respect, attempting to misuse their position as a member, intimidating and bullying behaviour towards council employees, making unsubstantiated public allegations about officers.

Further information on completed cases can be found in tribunal decision reports which are published on the Panel's website: [www.adjudicationpanelwales.org.uk](http://www.adjudicationpanelwales.org.uk)

## 4. Overview of Procedures

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The work of the Adjudication Panel for Wales is governed by Part III of the Local Government Act 2000 and subordinate legislation made by the National Assembly for Wales/Welsh Ministers and the UK Government (the latter in relation to police authorities).

The overriding aim of the Adjudication Panel is to ensure that all parties are able to have their cases presented and to have them considered as fully and fairly as possible.

Tribunals will normally comprise a legally qualified chairperson, plus two others. This may be varied at the President of the Adjudication Panel's discretion.

Tribunal hearings will normally be held in public except where the tribunal considers that publicity would prejudice the interests of justice, or where the respondent or appellant agrees that the allegations may be dealt with by way of written representatives. There may be other reasons from time to time for not holding a hearing, or part of a hearing, in public.

Hearings will usually take place in the relevant authority's area where suitable accommodation is available. Hearing arrangements take account of any special requirements of those attending, such as wheelchair access, interpreter, hearing assistance etc.

A simultaneous translation service is provided for those who wish a tribunal hearing to be conducted in Welsh.

The person who is the subject of the allegations is entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal on matters pertinent to allegations under consideration.

Details of tribunal hearings and their outcome are published on the Panel's web-site and in the local press as appropriate.

There is a right to seek the permission of the High Court to appeal the decision of interim case tribunals and case tribunals established by the Adjudication Panel. There is no right of appeal against the decisions of appeal tribunals, but, as a public body, the Adjudication Panel and its tribunals are subject to judicial review where appropriate.

Further information on tribunal procedures can be found on the Adjudication Panel's web-site.





## 5. Support Unit

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The Adjudication Panel is supported by:

Leon Mills, Registrar to the Panel

The Panel's address is:

Adjudication Panel for Wales

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# Annex

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## Summary of Sanctions Imposed by Case Tribunals and Appeal Tribunals in the Period October 2002 to March 2013

Sanction	Period	No of decisions
Case and Appeal Tribunals		
Disqualification	5 years	1
	3 years	2
	2 years 6 months	1
	2 years	1
	1 year 6 months	1
	1 year	3
	Suspension	12 months
Suspension	9 months	3
	6 months	7
	4 months	1
	3 months	2
	2 months	4
	1 month	3
	Partial Suspension	3 months
7 weeks		1
Censure	-	6
Breach – no action	-	5
No breach	-	4
Withdrawn	-	2

Appeals	
Breach of code upheld/dismissed	10 (91%)/1 (9%)
Sanction endorsed	8
Different sanction recommended	1 increase/1 decrease
Not accepted <ul style="list-style-type: none"> <li>• Out of time</li> <li>• Not in jurisdiction</li> </ul>	1 1

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**FLINTSHIRE COUNTY COUNCIL – STANDARDS COMMITTEE – FORWARD WORK PROGRAMME**

<b>Date of Meeting</b>	<b>Topic</b>	<b>Notes/Decision/Action</b>
<b>July 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> <li>• Retirement from Committee</li> </ul>	Independent Member – Mrs P Jones (July)
<b>June 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> <li>• Review of effectiveness and operation of Local Resolution Procedure</li> <li>• Review Members' Code of Conduct</li> </ul>	
<b>May 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> </ul>	
<b>April 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> <li>• Planning Code of Practice</li> </ul>	2/12/13 – Planning Code of Practice - a further report be received by when the national proposals should have progressed.
<b>March 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> <li>• N Wales Standards Forum</li> <li>• Review of the Officers Code of Conduct</li> </ul>	2/12/13 - Training on differences between Executive and Council functions.  NWSF – Flintshire to host - Tue 29 April at 2pm. Standards Committee assistance input required re host presentation.
<b>10 Feb 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> <li>• N W Standards Forum</li> <li>• Review of the Officers Code of Conduct</li> </ul>	Meeting cancelled
<b>Jan 2014</b>	<ul style="list-style-type: none"> <li>• Training</li> <li>• Review Officers Code of Conduct</li> </ul>	Meeting cancelled

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