

Adjudication Panel for Wales

Annual Report



2011 - 2012

Foreword

This report reviews the work of the Adjudication Panel for Wales during the financial year 2011-12.

During 2011-12, the Panel received only 4 new referrals from the Public Services Ombudsman for Wales and carried over 8 cases from 2010-11. Although relatively low in numerical terms, the Panel's work in terms of tribunal hearings has been dominated primarily by a single ongoing tribunal in Flintshire.

While overall the low number of new cases is to be welcomed, it has meant that there have been limited opportunities for the new members appointed in the autumn 2010 to sit alongside their more experienced colleagues in order to learn from their knowledge and experience. I am pleased, therefore, that the Minister for Local Government and Communities has recently agreed that I and the other members of the Panel first appointed in 2002 should be offered limited 3 year reappointments to 2015. This will provide a further period during which new members can continue to sit with the original members and gain from their experience.

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.'* It is anticipated that the Panel's administration will transfer to the Administrative Justice and Tribunals Unit within the Welsh Government during the course of the current year. The transfer is a challenge to the business continuity of the Panel's work in the short term, but also offers longer-term opportunities for more effective and efficient delivery of tribunal services as part of the new Unit. The reappointment of members will provide stability for the judicial functions of the Panel during this transitional period.

An important part of my role is ensuring that the lessons from tribunal hearings are shared with stakeholders throughout Wales. In part, this is achieved through the publication of this report and the Panel's website. I was again this year pleased to be asked to speak at the Standards Conference Wales 2011, hosted by Powys County Council. The annual conference provides an ideal opportunity for



those involved with the code of conduct and the promotion of high standards to meet and share experiences.

2011-12 saw the first challenge in the Courts to a decision of an Adjudication Panel for Wales tribunal. The case centred on issues concerning the member's right to free expression under the common law and Article 10 of the European Convention on Human Rights. The High Court found that the Tribunal took an over-narrow view of what amounts to political expression and that the finding of breach was a disproportionate interference with the member's Article 10 rights. A brief summary of the Tribunal case and the Court reference is at section 3.3 of this report. My Panel colleagues and I are considering carefully the implications of the judgement for future cases.

In addition to case law provided by the Courts, in making their determinations Tribunals have due regard to guidance on the code of conduct published by the Ombudsman. Revised guidance on the code of conduct published by the Ombudsman reflects the Court's judgement in the above mentioned case.

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.



J PETER DAVIES
President of the Panel



Contents

1.	Background	4
1.1	Local Government Act 2000	4
1.2	Principles of Conduct/Code of Conduct	4
1.3	Role of the Public Services Ombudsman for Wales	5
1.4	Role of the Adjudication Panel for Wales	6
2.	Members of the Adjudication Panel for Wales	8
3.	Allegations of Misconduct	11
3.1	Overview	11
3.2	Summary of Case Tribunals	12
3.3	Summary of Appeal Tribunals	17
3.4	Ongoing Cases	18
4.	Overview of Procedures	19
5.	Support Unit	21
	Annex	
	Summary of sanctions imposed by case tribunals and appeal tribunals	22



1. Background

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, national park authorities and police authorities.

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 (with the exception of police authorities) - 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.

Police authorities in Wales are subject to separate principles and code of conduct prescribed by the UK Government. However, at the time of writing, it is anticipated that police authorities will be abolished with effect from the autumn 2012.

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

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

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

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-
2012

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-
2012

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-
2012

Mr Hywel James is a District Judge.



2002-
2012

Mr Stewert Sandbrook-Hughes is a barrister in Swansea.

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-
2012

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



2002-
2012

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-
2012

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



2002-
2012

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 2012, the Adjudication Panel made determinations on 37 references from the Ombudsman and 10 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 2012

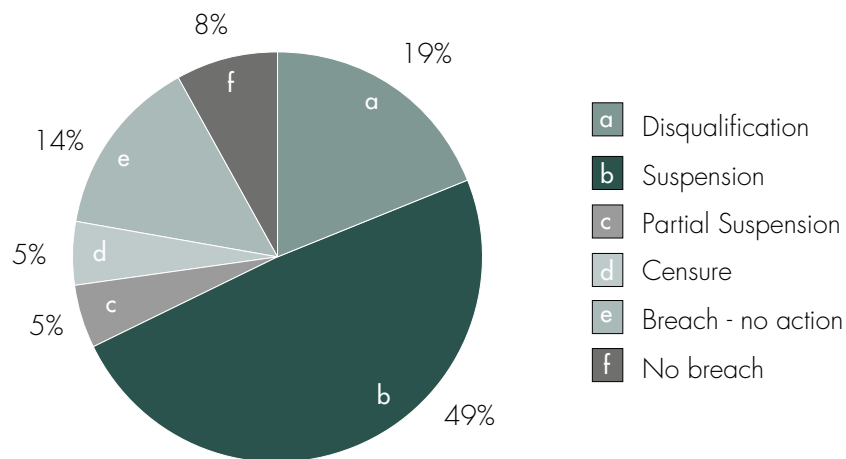


Figure 2: Appeal tribunal decisions - October 2002 to March 2012

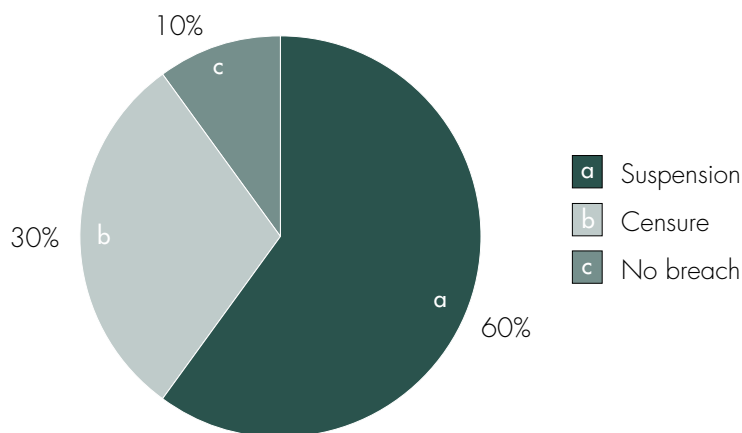
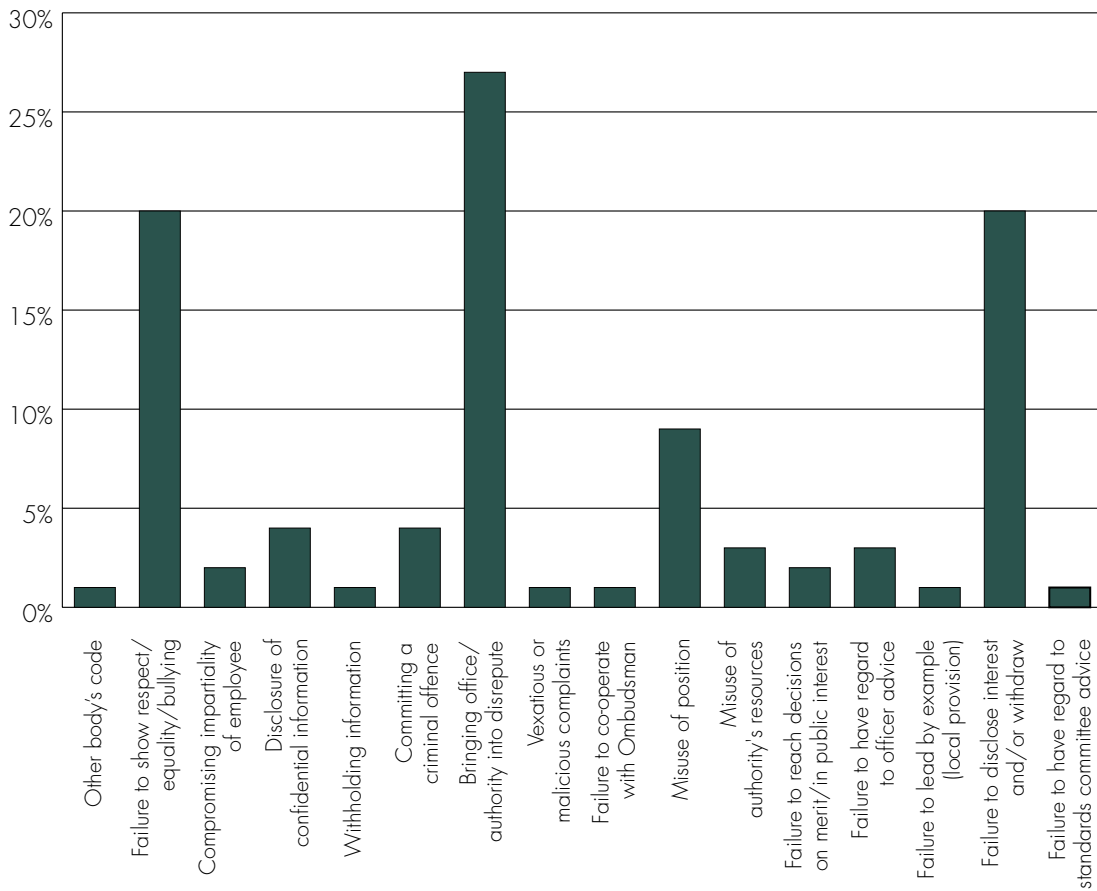


Figure 3: Breaches by type October 2002 to March 2012



3.2 Summary of Case Tribunals

The Public Services Ombudsman for Wales referred 4 cases to the Panel during 2011-12 and 6 cases were carried over from the previous year. Summaries of the 6 cases determined by the Panel during the year are below.

APW/006/2010-011/CT & APW/010/2010-11/CT - Merthyr Tydfil County Borough Council

There were two separate referrals from the Ombudsman which were considered by a single Tribunal.

The allegations were that the councillor had breached the Council's code of conduct by using his Council laptop to set up an inappropriate poll about Amanda Knox; by publishing inappropriate comments on the internet about Housing Benefit claimants; sending inappropriate emails; misusing Council resources; breaking the

Council's Internet Security policies; failing to show respect and consideration for others; disclosing a confidential letter; publishing a deliberately misleading press release; and bringing the office of councillor and his authority into disrepute.

The councillor denied that the online poll had been set up by him and that the inappropriate comments published on the internet were made in a personal or private capacity. However, the Tribunal found that in using the council provided laptop, internet access and referring to his council email address the councillor was in breach of paragraphs 4(b) and 7(b) i to vi.

The Tribunal found that the councillor while representing his authority on another body, had disclosed information contained in a letter that had been marked "confidential" in breach of paragraphs 3(a) and 5(a).

The Tribunal found the media attention generated by the councillor's actions brought his office and authority into disrepute in breach of paragraph 6(1)(a).

The councillor was suspended for a period of nine months and advised to undertake further training on the code of conduct.

APW/007/2010-011/CT - Torfaen County Borough Council

The referral concerned allegations that the councillor had breached the code of conduct by failing to declare an interest and using his position improperly when making donations to local organisations under the Council's Small Schemes Allowance.

The councillor had completed application forms requesting donations to local organisations but had failed to disclose that he had personal or prejudicial interests in those organisations at the time of the donation, in breach of paragraphs 6(1)(a), 7(a), 10(1), 11(2)(a) and 14(1)(d).

The Tribunal found that the councillor had on previous occasions, declared interests in the very organisations for which he subsequently signed forms stating he had no interest. The Tribunal was satisfied that although the councillor had not attempted to gain financially for himself he did have a personal and prejudicial interest. The Tribunal was concerned that the councillor was too busy to attend training on the code of conduct and sought to excuse his breaches by his other commitments.



The Tribunal concluded that the councillor should be suspended for a period of one month and should also attend the next available training session on the Code of Conduct.

APW/011/2010-011/CT - North Wales Police Authority and Isle of Anglesey County Council

The referral concerned allegations that the councillor had breached the code of conduct for members of the North Wales Police Authority by attempting to engage the Temporary Assistant Chief Constable in conversation about a complaint against a constituent; criticising the way the police were dealing with the investigation against that constituent; displaying overbearing and intimidating behaviour towards 3 police officers during a visit to Holyhead Police Station and attempting to influence the course of a police investigation

The allegations in respect of the Isle of Anglesey County Council's code of conduct were that his behaviour at Holyhead Police Station was bullying and harassing and failed to show respect for others; that he disclosed confidential information about the health of a fellow councillor and that he brought his office or authority into disrepute.

The Tribunal was not satisfied that the North Wales Police Authority's code of conduct was engaged. The Tribunal was satisfied that the councillor had not given the impression that he was acting as a representative of that authority.

The Tribunal found no evidence that the councillor had disclosed information that could be regarded as confidential, that he had sought to confer an advantage for himself or his constituent, or that he had attempted to compromise the impartiality of those who were working for the North Wales Police Authority. The Tribunal was satisfied that his conduct during his conversation with one of the police officers at Holyhead Police Station had been inappropriate, and that he had failed to show her respect and consideration in breach of paragraph 4(b).

The Tribunal was satisfied that his conduct had brought both the office of councillor and the Council itself into disrepute in breach of paragraph 6(1)(a).

The Tribunal accepted that the councillor had given considerable public service to his community and that this was a one-off incident where the councillor had an



honestly held, but mistaken, belief as to what he could and should do about the situation in which he and his constituent had found themselves.

The Tribunal concluded that the councillor should be censured and warned about his future conduct.

APW/001/2011-012/CT - Torfaen County Borough Council

The referral concerned allegations that immediately following his appearance before an Adjudication Panel for Wales tribunal, which suspended him for 12 months, he resumed practices consistent with those that had brought him before that tribunal. He issued press releases regarding that hearing and the suspension he had received. He also expressed opinions about the integrity and honesty of the Council and its senior officers.

In the absence of a response from the, by then, former councillor within the statutory deadline, the Tribunal made its adjudication on the basis of the papers before it in exercise of its powers under paragraph 3(3) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001.

The Tribunal considered that the emails issued by the councillor breached paragraph 6(1)(a) of the code of conduct. The Tribunal also considered the Public Statement made by the councillor in which he challenged the legal basis for the existence of the Adjudication Panel for Wales accusing it of inherent bias. The councillor gave no factual or evidential basis to support any of his allegations.

The Tribunal noted that that the previous Tribunal had given very serious consideration to imposing a disqualification, but in reliance of the councillor's undertaking to adhere to the code of conduct, to moderate his behaviour and to act in a non-adversarial fashion in the future, it had suspended him for 12 months.

The Tribunal noted that despite the undertakings given at the earlier hearing, the following day he continued to issue press releases containing unsubstantiated allegations.

The Tribunal considered that the former councillor's conduct merited a disqualification from holding office for a period of 3 years.



APW/008/2010-2011/CT - Saltney Town Council and Flintshire County Council

The referral concerned allegations that the councillor had acted inappropriately during council meetings; caused distress to another person; failed to account for his mayoral allowance; disclosed confidential information and that his conduct had brought his office and the authorities into disrepute.

The Tribunal found that the councillor, when Mayor, had made inappropriate remarks about Saltney which he refused to withdraw; adjourned one council meeting contrary to the decision of the Town Council and prematurely closed another meeting; was abusive and discourteous to the Town Clerk and Deputy Mayor at the agenda meeting; referred to members as “wild bisons and spoilt brats” and refused to comply with the council’s own standing orders and motions in breach of paragraph 6(1)(a).

The Tribunal found that the councillor had exhibited bullying behaviour towards the Town Clerk during council meetings and in general communications in breach of paragraph 4(c) and had ignored his advice in breach of paragraph 8(a). He had caused distress to the widow of a previous mayor when he had approached her about her late husband’s mayoral allowance and had refused to apologise, in breach of paragraph 4(b).

The Tribunal found that despite the Business Task Group’s decision that their meetings were to be held in confidential session and that matters should not be shared with third parties, the councillor had divulged the comments made about the local Secondary School to the Head Teacher in breach of paragraph 5(a).

The Tribunal concluded that the councillor had breached the code of conduct for Saltney Town Council and should be suspended for 12 months. The Tribunal found no breach in respect of Flintshire County Council’s code of conduct.



3.3 Summary of Appeal Tribunals

There were 2 appeal tribunal hearings during the reporting year.

APW/009/2010-011/A - Manorbier Community Council

An appeal was received against the decision of Pembrokeshire County Council's Standards Committee that the councillor had breached the community council's code of conduct and that he should be censured and undertake training on the code of conduct.

The allegations were that the contents of the councillor's website postings comprising his opinions and comments about the character and ability of some of the members of the Community Council had breached the code of conduct by failing to show respect and consideration to others and bringing his authority into disrepute.

The councillor stated that he was not acting in his official capacity and that the comments on his website were legitimate political comment on the actions of the Community Council and individual councillors. He submitted that a finding of breach was an inappropriate infringement of his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR).

The Appeal Tribunal concluded that a member of the public reading the website would have gained the impression that the councillor was acting as a member of the Community Council. The Appeal Tribunal found that the postings, whether or not they were true, showed a lack of respect to individual members of the council and the council as a body. The Tribunal concluded that whilst Article 10 of the ECHR was engaged, the higher level of protection afforded to political expression did not apply.

The Appeal Tribunal upheld the determination of the Standards Committee that the councillor had breached the code of conduct and endorsed the sanction that he should be censured and undertake training on the code of conduct.

Note: the Appeal Tribunal and Standards Committee decisions were overturned following a Judicial Review by the High Court - Ref:[2012] EWHC 1172 (Admin).



APW/012/2010-011/A - Torfaen County Borough Council

An appeal was received against the decision of Torfaen County Borough Council's Ethics and Standards Committee that the councillor had breached the Council's code of conduct and should be censured. Whilst not appealing the finding of breach the councillor was appealing the sanction imposed.

The allegations were that the councillor had failed to maintain accurate records of his appointments and interests in the statutory register in breach of paragraphs 15(1) and 15(2). The councillor had completed application forms requesting donations under the Council's Small Schemes Allowance to Torfaen Access Coalition and Fairwater Comprehensive School but had failed to disclose that he had a personal and prejudicial interest in breach of paragraphs 11(2)(a) and 14(1)(d).

The Appeal Tribunal took into account the number of breaches found by the Standards Committee, the delay by the councillor in updating the register of interests and the declaration that the councillor had no interest when this was not the case.

The Appeal Tribunal decided by unanimous decision to endorse the decision of the Ethics and Standards Committee that the councillor should be censured.

3.4 Ongoing Cases

At September 2012, the Adjudication Panel had determined 3 cases in the current financial year and a further 5 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



4. Overview of Procedures

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

The Adjudication Panel is supported by:

Stephen Phipps, Registrar to the Panel

John Davies

Carol Webber

Jason Plange

The Panel's address is:

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Annex

Summary of Sanctions Imposed by Case Tribunals and Appeal Tribunals in the Period October 2002 to March 2012

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

Appeals	
Breach of code upheld/dismissed	9 (90%)/1 (10%)
Sanction endorsed	7
Different sanction recommended	1 increase/1 decrease
Not accepted/withdrawn <ul style="list-style-type: none"> • Out of time • Not in jurisdiction 	1 1

