



PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES

# Adjudication Panel for Wales

## Annual Report

### 2013 – 2014

January 2015

**OGL**

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## Foreword

### By the President J Peter Davies

This is my eleventh annual report as President of the Adjudication Panel for Wales (“APW”), which covers the period April 2013 to March 2014. I hope you find the report informative and user friendly.

We aim to ensure that the tribunal serves the interests of all those in Wales by upholding standards in public life and dealing with cases referred by the Public Services Ombudsman for Wales (“PSOW”) and appeals made against the determinations of standards committees, efficiently and effectively. We make every effort to ensure that all those involved in our proceedings are satisfied that the disputes have been adjudicated fairly within as short a time as is reasonable.

As you can see from the statistics set out in the report, this reporting year has been quiet, with only one case being referred to the panel by the PSOW. However, we have adjudicated upon a further two references from PSOW and three appeals against the determination of standards committees that were carried over from the previous reporting year.

In November, the APW held its annual seminar which provided useful updates and training on current issues and gave the members an opportunity to discuss their experiences on the cases that had been before them.

We welcome any comments on our work. If you would like to get in touch with us, please contact the tribunal secretariat, details of which can be found on page 7 of this report.



## Section I – About Us

In this section:

- **Background**
- **Overview**
- **Members of the Tribunal**
- **Appointments**
- **Training and Appraisal**
- **Contacting the Tribunal**

### Background

The Adjudication Panel for Wales is an independent tribunal set up to determine alleged breaches by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities, against their authority's statutory Code of Conduct.

The Adjudication Panel for Wales was established under Part III of the Local Government Act 2000.

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.

### Overview

The overriding aim of the Adjudication Panel is to:

- provide a high performing, cost effective customer service for tribunal users and its members,
- ensure that all aspects of the tribunal's work are administered in such a way as to achieve fair, independent and timely adjudications, and
- operate within the legislative framework applicable in Wales.

The tribunal is committed to providing an equally high performance service for both Welsh and English speakers who use the tribunal.

Legislation governing the tribunal's procedures are:

- The Local Government Act 2000,
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, and
- Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001.

At a tribunal hearing, the tribunal panel is usually composed of 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 representations. 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. Hearing arrangements take account of any special requirements of those attending, such as wheelchair access, interpreter, hearing assistance etc. The person who is the subject of the allegations is entitled to give evidence and call witnesses.

Details of upcoming tribunals and tribunal hearings and tribunal decisions are published on the Adjudication Panel's website and in the local press as appropriate.

Decisions of interim case tribunals and case tribunals established by the Adjudication Panel can be appealed to the High Court. Permission to appeal must be sought initially from the High Court.

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.

Full information and guidance about the tribunal and its procedures, are provided on the Adjudication Panel's website. Alternatively please contact the tribunal secretariat for further information or if you would like to receive the tribunal's publications in a different format.

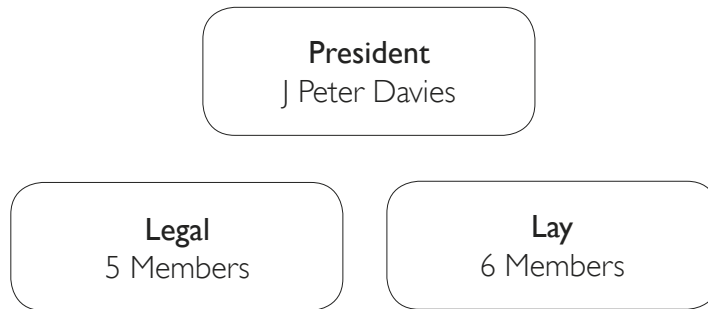
## Members of the Tribunal

Welsh Ministers are responsible for making the appointment and re-appointment of the President, legal and lay members. Appointments are made following the advertisement of vacancies and competitive interview by a panel convened by the Welsh Government.

<b>President</b>	The President has judicial responsibility for the tribunal and its members.
<b>Legal members</b>	Legal members are lawyers and have responsibility for conducting proceedings at hearings and advising the tribunal on matters of law. Legal members write tribunal decisions and give directions where necessary.
<b>Lay members</b>	Lay members have a wide range of knowledge and experience relevant to the work of the tribunal.
<b>Secretariat</b>	The day to day administration is largely delegated to the tribunal secretariat who deal with all the preliminary paperwork and the processing of applications to the tribunal. The secretariat consults the President and/or legal members on any legal points arising during the preliminary pre-hearing stages of the proceedings and passes on any rulings and directions in writing to the parties. The secretariat provides a point of contact for the tribunal members and tribunal users and attends all tribunal hearings to ensure the efficient running of proceedings.

## Section I – About Us

### Adjudication Panel for Wales



### Appointments

There were no new appointments to the Adjudication Panel for Wales during the reporting period.

### Training and Appraisal

A training seminar was held during November 2013. A regular programme of performance appraisal for tribunal members has been completed over previous years. It is anticipated that the next round of performance appraisal for tribunal members will start during the course of the 2014/15 year.

### Contacting the Tribunal

Contact details for APW are as follows:

<b>Tribunal Address:</b>	Adjudication Panel for Wales Government Buildings Spa Road East Llandrindod Wells Powys LD1 5HA
<b>Tribunal Helpline:</b>	01597 829805
<b>Tribunal Fax:</b>	01597 829801
<b>Tribunal E-mail:</b>	<a href="mailto:adjudication.panel@wales.gsi.gov.uk">adjudication.panel@wales.gsi.gov.uk</a>

## Section 2 – Performance and Progress

In this section:

- Numbers and statistics
- Summary of Case Tribunals
- Summary of Appeal Tribunals
- Hearings
- Onward appeals
- Achievement against key performance indicators
- Complaints

### Numbers and Statistics

A Tribunal year runs from April to March. The following statistics are collated:

- number of references and appeals received and registered;
- outcome of references and appeals;
- number of breaches by type.

### Number of references and appeals received and registered April 2013 – March 2014

In the period April 2013 to March 2014 one case was referred to the Adjudication Panel by the Public Services Ombudsman for Wales. We also dealt with a further two references carried over from the 2012-2013 reporting year.

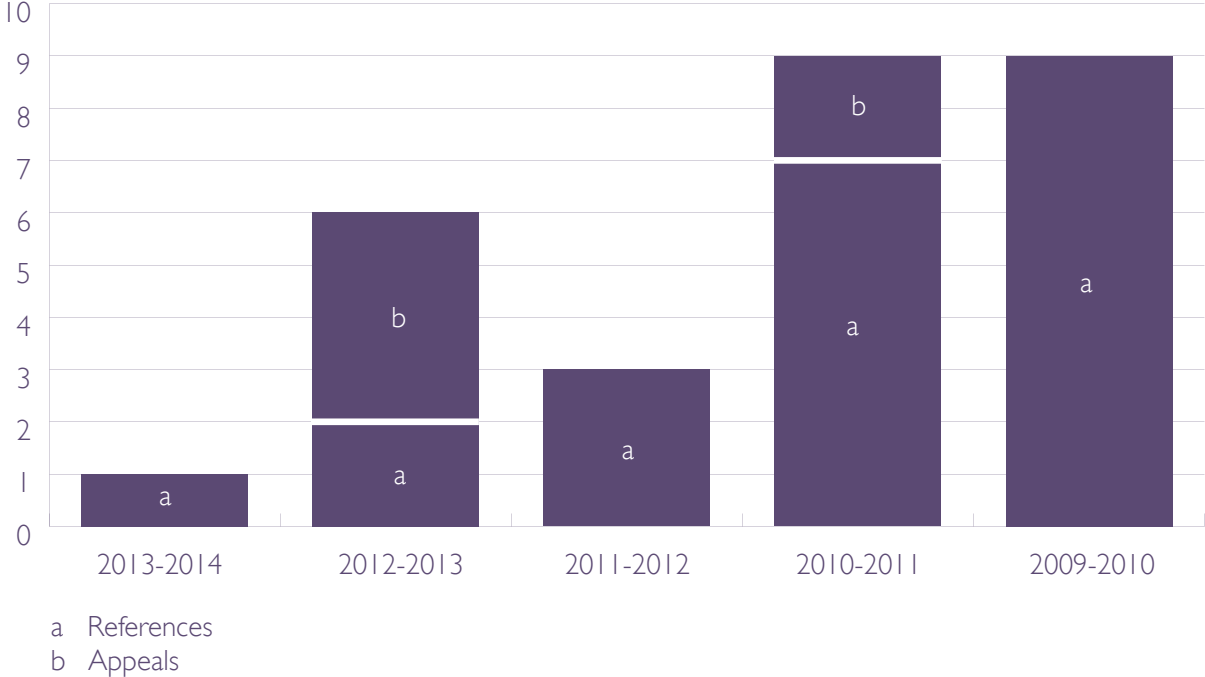
No appeals were made to the Adjudication Panel during this period; however we dealt with three appeals carried over from the previous reporting year.



Section 2 – Performance and Progress

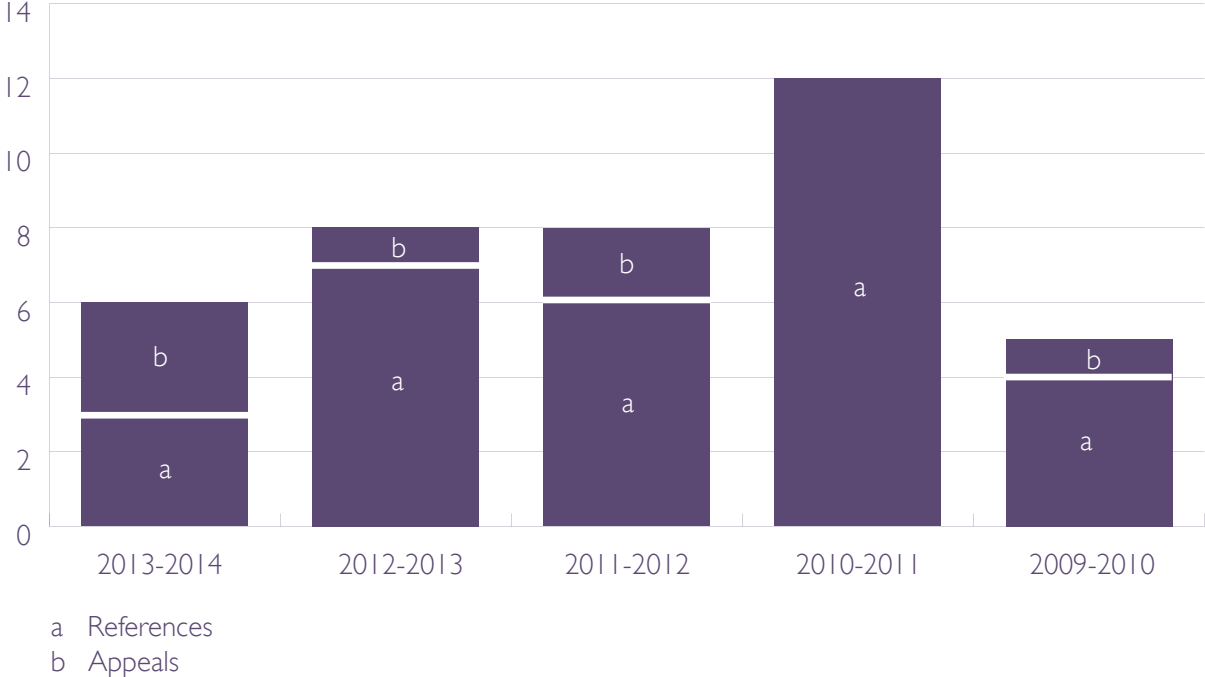
**Graph 2.1 Number of references and appeals received and registered by year April 2009 – March 2014**

The chart below shows the number of references and appeals received and registered by the Adjudication Panel over the last 5 years.



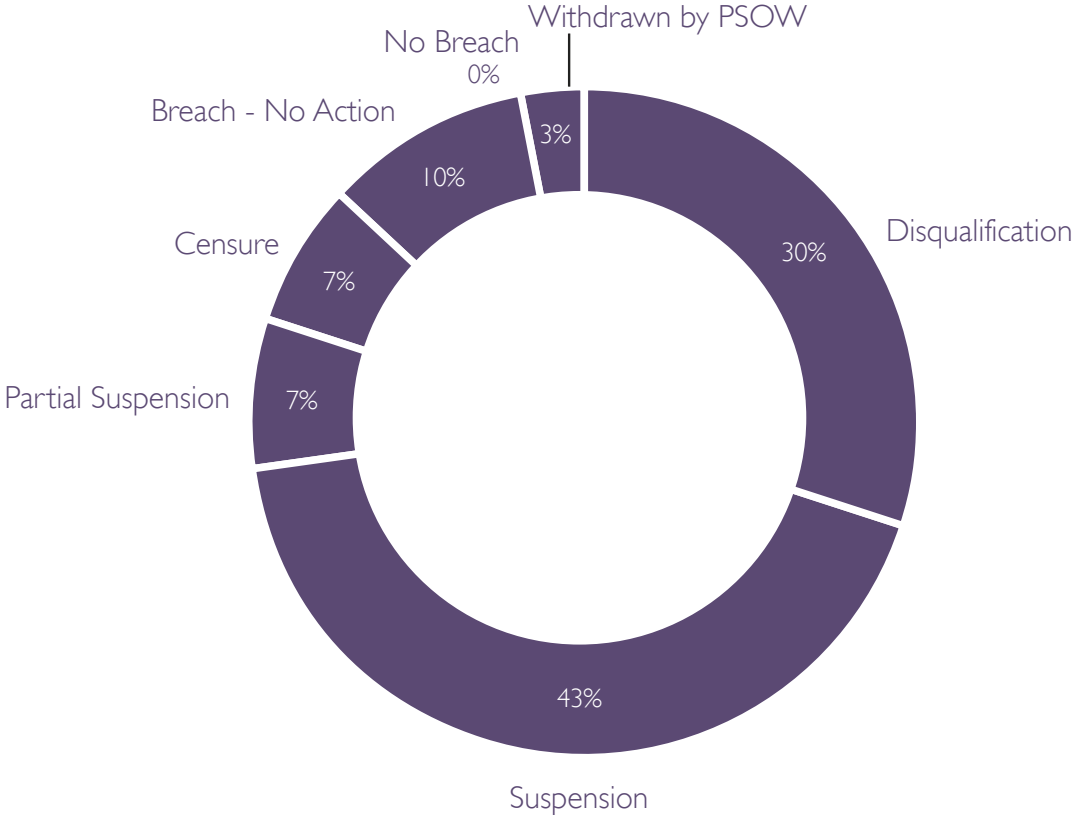
**Graph 2.2 Number of references and appeals decided by year April 2009 – March 2014**

The chart below shows the number of references and appeals decided over the last 5 years.

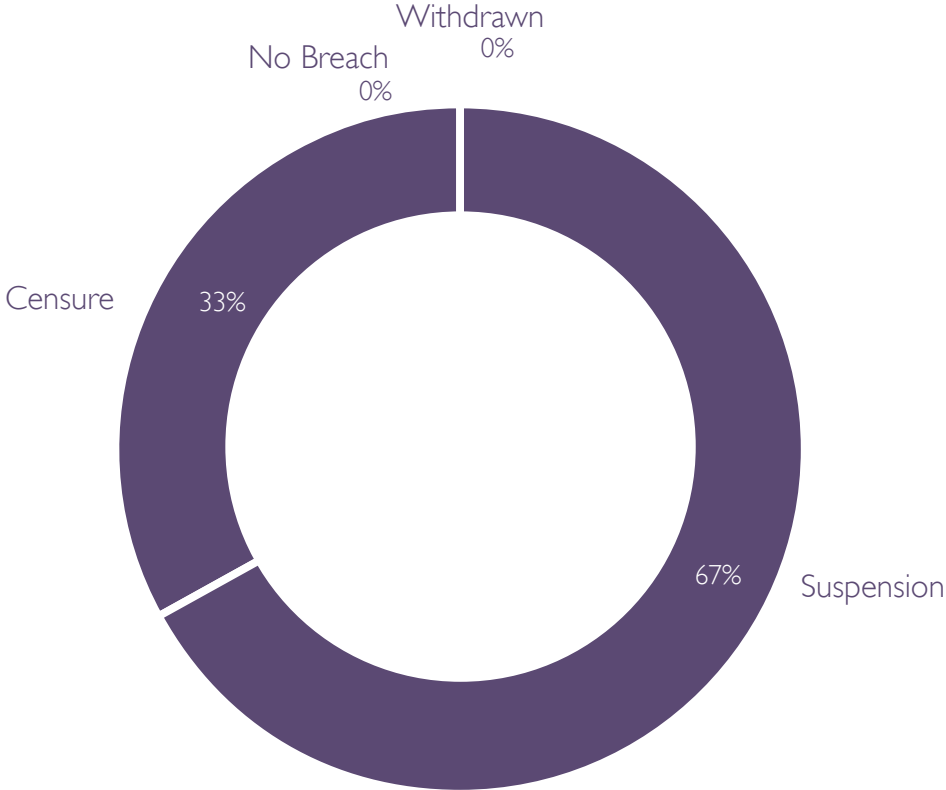


Graphs 2.3 and 2.4 Outcomes of references and appeals April 2009 – March 2014

The chart below shows the outcome of references decided by the Adjudication Panel over the last 5 years.



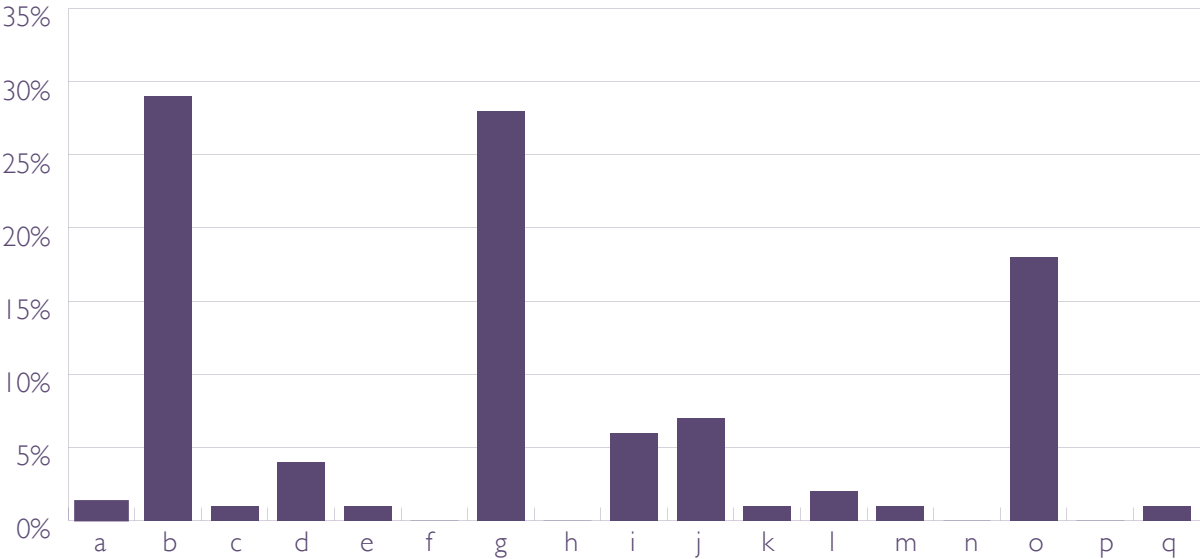
The chart below shows the outcome of appeals decided by the Adjudication Panel over the last 5 years.



Section 2 – Performance and Progress

Graph 2.5 Number of breaches by type April 2009 – March 2014

The chart below show the number of breaches found by type of breach for the last 5 years.



- a Other body's code
- b Failure to show respect/equality/bullying
- c Compromising the impartiality of employee
- d Disclosing confidential information
- e Withholding information
- f Committing a criminal offence
- g Bringing office/authority into disrepute
- h Vexacious or malicious complaints
- i Failure to co-operate with Ombudsman
- j Misuse of position
- k Misuse of authority's resources
- l Failure to reach decisions on merit/in the public interest
- m Failure to have regard to officer advice
- n Failure to lead by example (local provision)
- o Failure to disclose an interest and/or withdraw
- p Failure to have regard to standards committee advice
- q Failure to observe the rules for claiming expenses

## Summary of Case Tribunals

The Public Services Ombudsman for Wales referred one case to the Panel during 2013-14 and two cases were carried over from the previous year. Summaries of the three cases determined by the Panel during the year appear below.

### APW/005/2010-011/CT

#### Flintshire County Council

The allegations were that the councillor had breached Flintshire County Council's Code of Conduct by failing to show respect and consideration for officers of the Council; using bullying or harassing behaviour; attempting to compromise the impartiality of officers and, in so doing, conducting himself in a manner likely to bring his office or the Council into disrepute.

The incidents complained of related to the councillor's conduct in relation to a People and Performance Overview and Scrutiny Committee Meeting, an application for mutual exchange of two council houses, a meeting arranged by Senior Sheltered Housing Officers, a Director of Flintshire County Council, prior, during and subsequent to a Visioning Day, comments concerning a Director of Flintshire County Council and comments to a senior officer also concerning the Director of Flintshire County Council, a meeting with Officers of the Authority relating to housing allocation matters, a meeting of the Community Housing Overview and Scrutiny Committee, the Head of Planning appointment process and selection meetings, the Head of Housing appointment process and selection meetings and a Homelessness Prevention Interview.

The Case Tribunal found by unanimous decision that the councillor failed to comply with Flintshire County Council's Code of Conduct as follows:

#### 2001 Code of Conduct

Conduct towards officers of the Council at a meeting of the People Performance Overview and Scrutiny Committee (paragraph 4(a) - Failure to show respect and consideration for others).

Conduct relating to a proposed mutual exchange by Council housing tenants (paragraphs 4(a) and 4(b) – conduct which compromises, or which is likely to compromise, the impartiality of the authority's employees).

Writing an inappropriate letter to a Council housing tenant (paragraphs 4(a) and 6(1)(b) – bringing the office of member or the authority into disrepute).

#### 2008 Code of Conduct

Conduct towards an officer of the Council prior to a Sheltered Housing Visioning Day (paragraph 4(b) - Failure to show respect and consideration for others; and paragraph 4(c) – Using bullying behaviour or harassing any person).

Making inappropriate comments about an officer of the Council (paragraph 4(b)).

Conduct towards an officer of the Council at a meeting on (paragraphs 4(b) and 4(c)).

## Section 2 – Performance and Progress

Conduct towards officers of the Council at a meeting on 18 December 2008 and at a homelessness interview on 25 February 2009 (paragraph 4(b)).

Conduct towards officers of the Council at a Head of Housing selection meeting on 12 February 2009 (paragraph 4(b)).

Conduct towards officers of the Council at Head of Planning selection meetings (paragraphs 4(b) and 4(c)).

The Case Tribunal found that the councillor did not breach the Code of Conduct as follows:

### 2001 Code of Conduct

Comments made about the Council's Adult Social Care Directorate at a meeting of the People Performance Overview and Scrutiny (paragraph 4(a)).

Writing an inappropriate letter to a Council housing tenant (paragraph 7(a) – using position improperly to confer on, or secure, for any person ...an advantage or disadvantage).

### 2008 Code of Conduct

Conduct towards an officer of the Council at a Sheltered Housing Visioning Day (paragraphs 4(b), 4(c) and 6(1)(a - bringing the office of member or the authority into disrepute).

Comments made about an officer of the Council (paragraph 4(b)).

Conduct towards an officer of the Council at a meeting (paragraph 4(d) – conduct which compromises, or is likely to compromise, the impartiality of those who work for the Council).

Conduct towards officers of the Council at Head of Housing selection meetings on 18 and 19 February 2009 (paragraphs 4(b) and 4(c)).

Conduct towards officers of the Council at a meeting of the Community and Housing Overview and Scrutiny Committee (paragraphs 4(b) and 4(c)).

The Case Tribunal concluded by unanimous decision that the councillor should be disqualified for two years and six months from being or becoming a member.

The Order made by the High Court of 20 August 2013 to stay the disqualification imposed by the Case Tribunal on 19 July 2013 has been rescinded by the High Court by Order dated 5 September 2013.

The Case Tribunal decision was appealed to the High Court. The High Court dismissed the appeal in respect of the case tribunal's findings on breach, save for three findings of breach that were quashed. The High Court reduced the sanction from a disqualification of two and a half years to eighteen months – Ref: [2014] EWHC 1504 (Admin).

The case can be read on the British and Irish Legal Institute website.

### **APW/008/2012-013/CT**

#### **Ceredigion County Council**

It was alleged that the councillor had over-claimed mileage expenses over a period of 11 years. In 2010, a Council investigation found that the councillor had over-claimed expenses as a Member and as Chairman of the Council. The councillor repaid the money to the Council.

The Case Tribunal considered all the facts of the case and in particular the fact that the councillor had on demand, promptly repaid over-claimed expenses. The Case Tribunal also took into account the fact that the Council's procedures during the relevant period relating to councillors' expenses had on its own admission fallen short of the standard the public is entitled to expect.

The Case Tribunal concluded by unanimous decision that the councillor should be suspended for three months from being or becoming a member of Ceredigion County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

### **APW/001/2013-014/CT**

#### **Llandrindod Wells Town Council**

It was alleged that the councillor pursued a course of conduct towards the complainant which would amount to harassment. The councillor conducted a survey of members of the public which included a description of events which appeared to falsely accuse the complainant of committing a sexual offence against a minor; which in turn caused significant reputational damage to the complainant and forced them to speak publically about a historic private matter.

This matter and the subsequent Police Information notice issued to the councillor by the police were widely reported in the local press. The councillor indicated that he conducted the survey because he felt the complainant had breached the code of conduct, however he did not report the breach to the PSOW. The councillor resigned from his post and refused to engage in the investigation process.

The Case Tribunal considered all the facts of the case. They noted that the councillor had only been a town councillor for five months but had received training on the Code and would have been aware of his responsibilities. They were particularly concerned that the former councillor had persisted in a course of conduct, despite being provided with clear advice from the Monitoring Officer and the Police that he had no justification or reasonable basis to pursue the complainant. His actions were premeditated, and despite being warned twice by the police he still continued to carry out his survey. During the course of the subsequent investigation he failed to cooperate and has never apologised or shown any understanding of the possible consequences of his actions.

The Case Tribunal concluded by unanimous decision that the former town councillor should be disqualified for three years from being or becoming a member of Llandrindod Wells Town Council or of any other relevant authority within the meaning of the Local Government Act 2000.

## Section 2 – Performance and Progress

### Summary of Appeal Tribunals

There were three appeal tribunal hearings during the reporting year. Summaries of the three cases determined by the Panel appear below.

#### APW/009/2012-013/AT

##### Mumbles Community Council

The sub committee found that the councillor's conduct in relation to misleading statements he had made about his assets to an Employment Tribunal amounted to a breach of paragraph 6(1)(a) of the Code in that it had brought his office as Councillor and Mumbles Community Council into disrepute.

The councillor submitted that he had not misled the Employment Tribunal and did not accept the findings that had been made. He repeated his submissions that he did not consider that the Code applied to conduct in his private capacity.

The councillor submitted that he had never had any adverse comment about the matter and he had been re-elected. The councillor stated that he could not see how he had brought the authority or office into disrepute.

It was contended that a councillor's behaviour is subject to greater scrutiny and that the councillor's conduct could have been seen to have been dishonest and deceitful by anyone reading the articles. The article mentioned that the councillor was a Community Councillor in the Mumbles and this connection had a damaging effect on the reputation of that authority. The Ombudsman's representative submitted that the councillor was obliged to abide by the Code and should have taken steps to familiarise himself with his obligations.

The Tribunal considered that the findings made by the Employment Tribunal that the councillor had failed to disclose assets and the subsequent article in the South Wales Evening Post was liable to bring the office of Community Councillor and Mumbles Community Council into disrepute.

The Tribunal did not accept the councillor's submissions that the Code did not apply in these circumstances. The document presented by the councillor at the hearing made this position clear and referred to the Code of Conduct 2008 and when the Code applies. Page 4 of that document explicitly stated that in relation to conduct liable to bring the office or authority into disrepute the Code applies at all times. The Tribunal did not consider that the councillor should have been in any doubt about what was required of him. The Tribunal made a decision as a preliminary issue that the Code was engaged.

The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of the Standards Committee that the councillor had breached Mumbles Community Council's Code of Conduct.

## APW/004/2012-013/AT

### Pentyrch Community Council

The allegations were that the councillor had breached Pentyrch Community Council's Code of Conduct by failing to show respect and consideration for others; using bullying behaviour and harassing another person; and failing to declare personal and prejudicial interests in relation to matters before the Council.

In relation to sanction the councillor submitted that he was not the only party to blame here; the clerk and the complainant had demonstrated "a high handed and high and mighty attitude". He submitted, if he was at fault he would accept so, but felt the clerk and the complainant should accept responsibility as well. He no longer wished to serve and is no longer a member.

The Appeal Tribunal found by unanimous decision that by his actions the councillor has breached paragraphs 4(b), 4(c), 11(1) and 14(1)(a) of the Code of Conduct and unanimously endorses the decision of the Standards Committee that the councillor should be censured.

## APW/006/2012-013/AT

### Gwynedd Council

An appeal was received against the determination of the standards committee that the councillor had breached Gwynedd Council's Code of Conduct by posting unfounded allegations on his blog that the complainant intended to retire soon, as headmaster, and stand for election to the Council in a seat held by another councillor.

The complainant had stated that the allegations were untrue and had complained that the councillor was in breach of paragraph 6(1)(a) of the Code of Conduct (bringing the office of councillor or the authority into disrepute) by making unfounded allegations against a person who was on the Council's payroll and in breach of paragraph 7(a) (using or attempting to use the position of councillor to create a disadvantage for another person) by making unfounded comments which had the potential to put the complainant at a substantial disadvantage professionally.

It is noteworthy that the Ombudsman had encountered severe difficulties during the course of his investigation to elicit responses or timely responses from the councillor. Even taking into account the fact that the councillor had unfortunately suffered flooding at his home which he alleged to have affected his ability to review his papers, his willingness to respond or respond in a timely manner to requests and correspondence sent to him in respect of the complaint against him and its investigation, is characterised by what can only be regarded as a scant or deliberate disregard for the process.

The Appeal Tribunal concluded by unanimous decision that the councillor's appeal should be dismissed. The Appeal Tribunal was satisfied that the grounds of appeal submitted by the councillor were without merit. The comments on the blog were untrue and unfounded and were personal remarks against the complainant and not political ones. The comments related to the complainant's employment and could have been damaging for him in terms of his relationship with his employer and those in the school where he worked.



## Section 2 – Performance and Progress

The Appeal Tribunal concluded by unanimous decision that the decision of the Standards Committee should be upheld. The councillor should be suspended for three months from being a member of Gwynedd Council. Further, he should as requested by the Standards Committee, apologise to the complainant and receive training in the Code of Conduct. The Appeal Tribunal also recommends that he should receive training on the WLGA Social Media: A guide for Councillors issued in August 2013.

### Further information

Copies of all decisions made by case, interim case and appeal tribunals are available to view on the Adjudication Panel for Wales' website at the following address:  
[www.apw.wales.gov.uk](http://www.apw.wales.gov.uk)

### Hearings

Between April 2013 and March 2014, three referrals from the Public Services Ombudsman for Wales and three appeals against the determination of standards committees, proceeded to tribunal hearing. The total number of tribunal hearing days for this period are twelve days (of which six days were in respect of a single complex tribunal case).

### Onward appeals

Applications for permission to appeal a decision of a Case Tribunal or Interim Case Tribunal to the High Court can be made on limited grounds. Over the period of this report, one application for permission was made and granted.

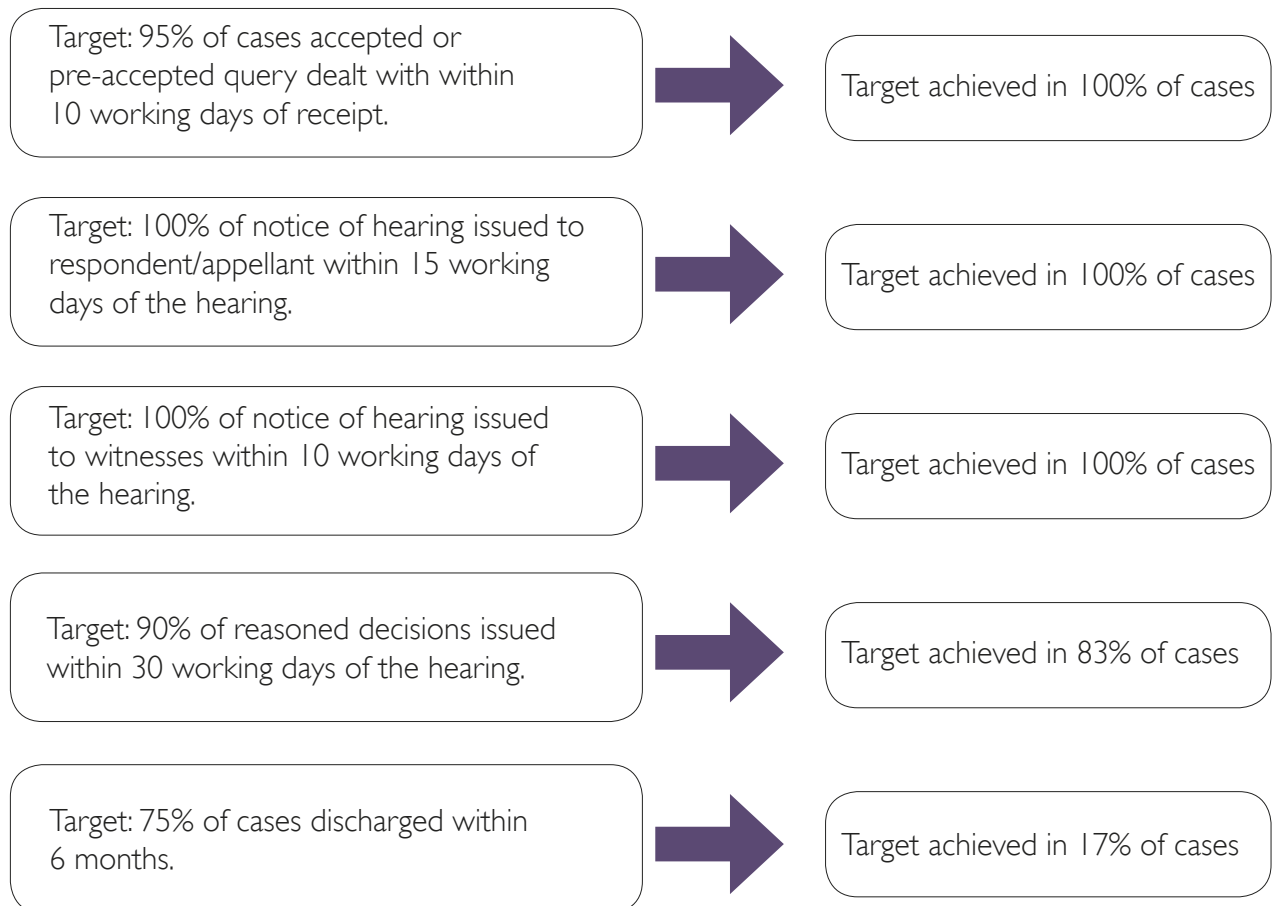
## Achievement against key performance indicators

To monitor how effectively services are delivered, we have key performance indicators aimed at measuring two key aspects of our work; the efficiency of our service and the quality of service through customer satisfaction.

To measure the efficiency of our service, we have a series of primary performance indicators based on the time taken to process a case – from receipt to the Hearing or disposal.

To measure customer satisfaction, we used an indicator that is derived from periodic tribunal user surveys.

### Efficiency of our service



### Complaints

The tribunal received no formal complaints during the course of the reporting year.

## Section 3 – Our Customers

In this section:

- **Tribunal user satisfaction survey**

### **Tribunal user satisfaction survey**

The tribunal secretariat strives to improve tribunal user service delivery and aims to put our users at the centre of everything we do.

The tribunal secretariat has recently established a tribunal user satisfaction survey. The survey results will enable us to gain a better understanding of our users' needs and give us a valuable insight into what the tribunal secretariat is doing well, as well as highlighting those areas where the tribunal secretariat needs to improve.

The survey was launched at the end of the reporting period, with four surveys having been issued. As yet we not received any completed forms. A summary of the feedback received will be published in future reports.

## Section 4 – Business Priorities

In this section:

- **Business Priorities for 2014-2015**

It is important that the Tribunal continues to develop in order to deliver the best possible service for our users. The Tribunal will build on its achievements by focussing on business priorities and our commitment to our users.

Business Priorities 2014-2015:

- publish and maintain a new website for the tribunal and monitor stakeholder feedback on the content of the website,
- plan and deliver an all members training conference,
- implement a new round of performance appraisal for tribunal members, and
- continue to deliver a high performing service, ensuring key performance indicators are met and customer satisfaction surveys are undertaken and monitored.

## Section 5 – Expenditure

In this section:

- Expenditure for 2013-2014

### Expenditure for 2013 – 2014

Members fees and expenses	£50,000
Venue costs	£12,000
Publishing costs (tribunal decisions)	£16,000
Audio recordings, telephoning conferencing and transcriptions costs (tribunal hearings)	£6,000
Legal costs	£2,000
TOTAL	£86,000

Rounded to nearest £1,000