

STANDARDS COMMITTEE

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| Date of Meeting | Monday, 4 th March 2019 |
| Report Subject | Public Services Ombudsman for Wales (PSOW) Casebook Issue 18 (July – September 2018) |
| Report Author | Deputy Monitoring Officer |

EXECUTIVE SUMMARY

The Public Services Ombudsman for Wales (PSOW) considers complaints that Members of Local Authorities in Wales have broken the Code of Conduct (the Code). There are four findings the PSOW can arrive at:

- (a) that there is no evidence of breach;
- (b) that no action needs to be taken in respect of the complaint;
- (c) that the matter be referred to the authority's Monitoring Officer for consideration by the Standards Committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales (APW) for adjudication by a tribunal.

The PSOW summarises those complaints that he has investigated on a quarterly basis in the Code of Conduct Casebook (the Casebook). In reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the Standards Committee or APW have been concluded and the outcome of the hearing is known. This edition covers July to September 2018.

This edition highlights that ten complaints were investigated by the PSOW during this time of which there were four findings of no evidence of breach, four findings of no action necessary, one referral to the relevant Monitoring Officer for consideration by the relevant Standards Committee and one referral to the APW for adjudication by a tribunal.

RECOMMENDATIONS

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| 1 | To note the findings of those complaints that were investigated by the PSOW during July to September 2018, as summarised in issue 18 of the Casebook. |
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REPORT DETAILS

| 1.00 | BACKGROUND |
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| 1.01 | <p>The PSOW considers complaints that Members of Local Authorities in Wales have broken the Code. The PSOW investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act. Where the PSOW decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the PSOW can arrive at, namely:</p> <ul style="list-style-type: none">(a) that there is no evidence that there has been a breach of the authority's Code of Conduct;(b) that no action needs to be taken in respect of the matters that were subject to the investigation;(c) that the matter be referred to the authority's Monitoring Officer for consideration by the Standards Committee;(d) that the matter be referred to the President of the APW for adjudication by a tribunal (this is usually only the more serious cases) |
| 1.02 | <p>In terms of findings (c) and (d) it is for the Standards Committee or tribunal to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.</p> |
| 1.03 | <p>The Casebook contains summaries of reports issued by the PSOW for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the Standards Committee or APW have been concluded and the outcome of the hearing is known. This edition (issue 18) covers July to September 2018.</p> |
| 1.04 | <p>The summary of the findings in this edition of the Casebook, in respect of the 4 possible findings are as follows:-</p> <p><u>No evidence of breach</u></p> <p><u>Saltney Town Council – Disclosure and registration of interests</u></p> |
| 1.05 | <p>The PSOW investigated a complaint that a Councillor (“the Councillor”) may have breached the Code by participating in, and voting on, a decision to award a grant to a charitable organisation of which she was Chair. The PSOW concluded that the Councillor's position as Chair of the organisation was likely to have given rise to a personal and prejudicial interest and as such the Councillor should not have taken part unless an exemption applied, or she had received a dispensation from the relevant Standards Committee. The investigation found that the Councillor had recognised this and had considered applying for a dispensation. However, she was advised by a County Council Officer that this was not necessary as an exemption at paragraph 12(2) (a) (ii) of the Code applied and she could therefore participate. This exemption applies when the item of business relates to another public body or body exercising functions of a public nature in which the Member holds a position of general control or</p> |

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| | <p>management. The PSOW found that the Councillor was therefore acting in good faith on the basis of the advice she had received. He therefore concluded that the evidence did not suggest that she had breached the Code.</p> <p><u>Powys County Council – Promotion of equality and respect</u></p> |
| 1.06 | <p>A complaint was received about a behaviour of a Member (“the Councillor”), during a shortlisting meeting to discuss the applications for a new Head teacher post. An investigation was commenced to consider whether the Councillor had breached parts of the Code which concern respect and consideration, bullying and harassment, and disrepute. The PSOW determined that there was no evidence to suggest that the Councillor breached the Code and therefore no action needed to be taken.</p> <p><u>Manorbier Community Council – Promotion of equality and respect Case</u></p> |
| 1.07 | <p>The PSOW received a complaint that a Councillor (“the Councillor”) was verbally abusive and bullying to a member of the public during a Community Council meeting. An investigation was commenced to consider whether the Councillor had breached parts of the Code which concern to treating others with respect and consideration, bullying and harassment, and disrepute. Five witnesses were interviewed and the consensus was that the Councillor did not say or do anything during the meeting that gave them undue concern. The PSOW determined there was no evidence to suggest that the Councillor had breached the Code.</p> <p><u>Abertillery & Llanhilleth Community Council – Promotion of equality and respect</u></p> |
| 1.08 | <p>The PSOW investigated a complaint that a Councillor (“the Councillor”) may have breached the Code by disclosing confidential human resources and financial information.</p> |
| 1.09 | <p>Having considered the information available to him, the PSOW concluded that there was no evidence to suggest that the Councillor had improperly shared any information and, that there was no evidence that a breach of the Code had occurred.</p> <p><u>No action necessary</u></p> <p><u>Sully and Lavernock Community Council – Promotion of equality and respect</u></p> |
| 1.10 | <p>The PSOW received a complaint that a Member (“the Member”) of Sully and Lavernock Community Council (“the Council”) had breached the Code of Conduct by sending an email to his fellow Councillors which was disrespectful and offensive about another Councillor.</p> |
| 1.11 | <p>The Member was interviewed, as were the Councillor who was subject of the email and two other Members of the Council. At interview, the Member acknowledged that he should not have sent the email and that it was inappropriate. The Member expressed regret for his actions and said that he would not act in that way again. In mitigation, the Member said that</p> |

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| | relationships within the Council were currently difficult, and he had received a number of critical emails from the Councillor concerned. The Member said that he had not intended to copy the email to all the Members of the Council, but had done so by accident, when replying to a previous email. |
| 1.12 | <p>The PSOW concluded that it was likely that the Member had breached paragraphs 4(a) and 4(b) of the Code, which require that Members should carry out their duties with due regard to equalities issues and must show respect and consideration to others. However, in view of the mitigating factors, the Member's contrition and his promise not to act in that way again, the PSOW concluded that it would not be in the public interest to refer the matter to the Standards Committee.</p> <p><u>Carmarthenshire County Council – Promotion of equality and respect</u></p> |
| 1.13 | <p>The PSOW received a complaint that a former Member of Carmarthenshire County Council ("the Councillor") had brought the office of a Member of the Council into disrepute as a result of behaviour which failed to show respect and consideration for others. The complaint related to the Councillor's behaviour towards the Council's Chief Executive and her conduct towards Officers of the Council on 2 December 2016. The investigation considered whether the Councillor may have breached paragraphs 4(b), 6(1) (a) and 7(a) of the Code.</p> |
| 1.14 | <p>As the Councillor was not re-elected at the May 2017 election, the PSOW considered that the matters were not sufficiently serious for it to be in the public interest to pursue further. The PSOW found that no action needed to be taken in respect of the matters investigated.</p> <p><u>Clyro Community Council – Disclosure and registration of interests</u></p> |
| 1.15 | <p>The PSOW investigated a complaint that a Councillor ("the Councillor") may have breached the Code by participating in a discussion and voting on a local planning application without declaring an interest. In addition, the PSOW investigated whether the Councillor had a closed mind when he attended two Community Council meetings in September and October 2017.</p> |
| 1.16 | <p>Having considered all the information available to him, the PSOW concluded that there was no evidence that the Councillor had a personal interest in the planning application and it therefore followed that he did not have a prejudicial interest. In addition, the Ombudsman concluded that the Councillor was predisposed and not predetermined when he attended the initial meeting and voted. The PSOW did not consider that there was sufficient evidence to support a contention that the Councillor had predetermined his position at the second meeting. There was no evidence that a breach of the Code of Conduct had occurred.</p> <p><u>Llay Community Council – Objectivity and propriety</u></p> |
| 1.17 | <p>The PSOW received a complaint that during a meeting of Llay Community Council a Member ("the Member") had breached the Code. It was alleged that the Member's behaviour had been disrespectful and, that he had</p> |

disclosed confidential information. It was also alleged that the Member had used his position to confer a disadvantage on a local resident and failed to declare an interest in the matter. Finally, it was alleged that the Member had brought his office of Member into disrepute. Information was sought from the Council and interviews were undertaken with witnesses to the meeting and the Member. The investigation found that, the Member had made representation to the Council on this matter on behalf of his constituent. There was no evidence to suggest that the Member had used his position to secure disadvantage for the Member of the public or, that he had an interest in this matter. The investigation also found that, whilst the Member did disclose information during the meeting, it was not of a confidential nature.

- 1.18 The PSOW did, however, have some concern about the personal comments the Member made about a member of the public while addressing the Council. The comments did not add any value to the Council's consideration of the matter and were neither appropriate nor necessary. However, the PSOW found that no action needed to be taken in respect of the matters investigated.

Ceredigion County Council – Disclosure and registration of interests

- 1.19 The complainant alleged that an elected Member of the Council (“the Councillor”) had breached the Code when he attended a meeting that a Council Officer had advised him not to attend. He also complained about the Councillor's conduct towards specific persons at the meeting.

- 1.20 The PSOW investigated the complaint on the basis that the Councillor may have breached paragraphs 8(a), 4(b), 4(c) and 6(1)(a) of the Code relating to showing respect, bullying behaviour, disrepute and having regard to advice provided by a Council officer.

- 1.21 The PSOW did not find any evidence that the Councillor had been advised not to attend the meeting by a Council Officer, or that the manner in which he spoke to most of the meeting attendees exceeded the boundaries of professional conduct.

- 1.22 However, the PSOW did find that the Councillor's robust manner had an effect on one individual at the meeting and that the Councillor should have amended his behaviour towards him specifically as he had previously met him and described him as ‘nervous’. Whilst the Councillor was reminded to modify his behaviour for his audience, the PSOW concluded that, on balance, it was not in the public interest to refer the matter to a Standards Committee or the APW and, therefore, no further action should be taken.

Referred to Standards Committee

Neyland Town Council – Disclosure and registration of interests

- 1.23 The PSOW received a complaint that a Member of Neyland Town Council (“the Councillor”) may have used his position improperly by trying to stop a project that the Town Council had already agreed to support. It was alleged that the Councillor had a business interest in the matter. The PSOW obtained relevant information about the matter and interviewed

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| | witnesses. The Councillor provided his comments on the complaint at the outset of the investigation but did not respond to a request to be interviewed. |
| 1.24 | The PSOW found that there was evidence to suggest that the Councillor may have breached the Code and referred the matter for consideration by the Council's Standards Committee. |
| 1.25 | The Standards Committee concluded that the Councillor had breached the Code. |
| 1.26 | Accordingly, the Committee decided that the Councillor should be censured. <u>Referred to APW</u> <u>Monmouthshire County Council</u> |
| 1.27 | The PSOW received a complaint that a Councillor ("the Councillor) had sent emails to the complainant, when acting in his capacity as a Member of the Council, which the complainant considered contained comments which failed to show respect and consideration for Members of the LGBT community. |
| 1.28 | The PSOW considered that the comments made were egregious and there was no reason to use such language to obtain the information he required, about the way the Council used its funds or even to express his view. The PSOW found that the comments made and the language used may amount to a failure to show respect and consideration for others and that there was evidence suggestive of a breach of paragraph 4(b) of the Code of Conduct. |
| 1.29 | The Ombudsman referred the matter to the APW for adjudication by tribunal. |
| 1.30 | The Tribunal concluded that the Councillor had breached the Code. Accordingly, the Tribunal decided that the Councillor should be suspended from the Council for a period of two months. |

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| 2.00 | RESOURCE IMPLICATIONS |
| 2.01 | None |

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| 3.00 | CONSULTATIONS REQUIRED / CARRIED OUT |
| 3.01 | N/A |

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| 4.00 | RISK MANAGEMENT |
| 4.01 | N/A |

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| 5.00 | APPENDICES |
| 5.01 | None. |

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| 6.00 | LIST OF ACCESSIBLE BACKGROUND DOCUMENTS |
| 6.01 | <p>https://www.ombudsman.wales/wp-content/uploads/2019/01/Code-of-Conduct-Casebook-Eng-Issue-18-October-2018-F.pdf</p> <p>Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk</p> |

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| 7.00 | GLOSSARY OF TERMS |
| 7.01 | <p>APW – The Adjudication Panel for Wales is an independent tribunal whose function is 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.</p> <p>LGBT – The Lesbian, Gay, Bisexual and Transgender community.</p> <p>PSOW - Public Services Ombudsman for Wales is independent of other bodies and has legal powers to investigate complaints about public services and independent care providers in Wales and to investigate complaints that Members of local government bodies have broken their authority’s Code of Conduct.</p> |