



STANDARDS COMMITTEE

Date of Meeting	Monday 10 May 2021
Report Subject	Public Services Ombudsman for Wales Casebook Issue 24 (January 2020 – December 2020)
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The Public Services Ombudsman for Wales (PSOW) considers complaints that Members of Local Authorities in Wales have breached 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 (the APW) for adjudication by a tribunal.

The PSOW summarises the 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 January to December 2020.

This edition highlights that 13 complaints were investigated by the PSOW during this time, of which 10 were findings of no action necessary, 2 were referred to the relevant Monitoring Officer for consideration by their Standards Committee and 1 was referred to the APW.

RECOMMENDATIONS

1	Having reviewed the cases summarised in the issue 24 of the Casebook the committee is satisfied no action needs to be taken at Flintshire County Council to avoid similar complaints.
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REPORT DETAILS

1.00	BACKGROUND
1.01	<p>The PSOW considers complaints that Members of Local Authorities in Wales have breached 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 4) covers January to December 2020. There were 2 referrals under findings (c) and 1 under (d) during this period.</p>
1.04	<p>The summary of the findings in this edition of the Casebook, are as follows:-</p> <p><u>No evidence of breach</u> There are no summaries in relation to this finding.</p>

	<u>No action necessary</u>
1.05	<p>Wrexham County Borough Council – Duty to uphold the law</p> <p>The PSOW received a complaint about a Member of Wrexham Council. It was alleged that the Members' conduct and behaviour had brought the Council into disrepute in breach of the Code. The PSOW investigated the matters complained about.</p>
1.06	<p>The PSOW determined that it would not be in the public interest to pursue matters further and that no action should be taken in respect of the matters investigated.</p>
1.07	<p>Pembrey & Burry Port Town Council – Promotion of equality and respect</p> <p>The PSOW received a complaint that a Member of Pembrey & Burry Port Town Council had breached the Code. It was alleged that the Member did not show respect and consideration for others, used bullying behaviour, and behaved in a manner which could reasonably be regarded as bringing the Council into disrepute. During the early stages of the investigation, the Member provided an account. He said that he believed his actions to have been justified and offered an apology if his assertiveness had been perceived differently by the Complainant. The PSOW considered the Member's response and his offer of an apology to be sufficient to resolve the complaint, and therefore, considered that no action needed to be taken.</p>
1.08	<p>St Donats Community Council – Disclosure and registration of interests</p> <p>The PSOW received a complaint that a Member ("the Member") of the Council had breached the Code. It was alleged that the Member failed to declare a personal and prejudicial interest when she sat on the Interview Panel during an interview for the role of Co-opted Member of the Council. The PSOW found that the Member had a personal interest in the interview by virtue of her relationship with the applicant's estranged brother and admittance that there was tension between them. It was the PSOW's view that a Member of the public, with knowledge of the circumstances, would regard the Member's interest as so significant as to prejudice her judgement of the public interest. The investigation established that the Member was advised by the Clerk that she was not required to declare an interest in the interview. Whilst a decision to declare an interest is the responsibility of each individual Member, it was not unreasonable for the Member to have acted upon the Clerk's advice.</p>
1.09	<p>The investigation considered whether the Member's failure to declare a personal and prejudicial interest caused any harm and whether it affected the decision to appoint to the role of Co-opted Member. There was no documentary evidence or written record of the interviews. Therefore, the</p>

	<p>PSOW's decision was guided by the fact that the decision to appoint the successful applicant was taken unanimously by the Interview Panel. On the basis of the information available it was not considered that the applicant's application was adversely affected by the Member's presence and involvement in the interview process and therefore no further action was necessary. However, the PSOW recommended to the Clerk of the Council that training on Members' interests and their obligations under the Code is provided to the Council.</p>
1.10	<p>St Harmon Community Council – Disclosure and registration of interests The PSOW received a complaint that a Member of the Council had breached the Code. It was alleged that the Member had failed to show respect and consideration to others, and that he had failed to take appropriate action in respect of a personal and prejudicial interest he had in a co-option process the Council undertook. During the course of the investigation, information was sought from the Council as well as from a number of witnesses. The evidence gathered did not substantiate that the Member's behaviour had demonstrated a failure to show respect and consideration to others such that could be considered a breach of the Code. However, the evidence suggested that whilst the Member had failed to take appropriate action in relation to a personal and prejudicial interest he had in the co-option process he did not influence the decision taken on co-option in any way, he had already acknowledged, accepted and apologised for his actions and he had taken steps to seek training on his obligations under the Code. Therefore, the PSOW determined that no action needed to be taken.</p>
1.11	<p>Carmarthenshire County Council – Integrity The PSOW received a complaint that a Member of the Council had breached the Code. It was alleged that the Member had failed to treat Members of staff at the Council with respect and consideration, had breached confidentiality, and had brought the office of Councillor into disrepute in relation to 2 incidents which occurred during the selection process for the Council's new Chief Executive. The first incident was that the Member had deliberately informed the unsuccessful candidate for the post that they had not been successful, thus circumventing the Human Resources (HR) procedures in place. The second incident was that the Member had ignored a clear instruction that Councillors should not publicise the identity of the successful candidate for 30 minutes.</p>
1.12	<p>The PSOW interviewed a number of witnesses and found that the evidence suggested the Member had accidentally informed the unsuccessful candidate that they had not been successful and had not intended to circumvent HR procedures. The PSOW accepted that the Member had shown remorse and had apologised. The PSOW determined that no breaches of the Code had occurred as this had been a genuine</p>

	<p>error by the Member. The PSOW determined that there was evidence that the Member had ignored a clear instruction not to publicise the identity of the successful candidate, and that this may have amounted to a breach of the Code. The Member had not considered the impact on the candidates, their wider friends and families, or the staff employed by the Council with due respect when publishing the result. Further, the information had been confidential until the proper procedures to publicise it had been completed, which the Member had pre-empted. The PSOW determined that these actions were capable of bringing the office of Councillor into disrepute. However, the PSOW was not persuaded that it would be proportionate and in the public interest to make a referral to the Standards Committee, due to the short period of time the information was disclosed before the official announcement and taking into account the opinions of the candidates that the effect on them was limited; however, he considered that it had been appropriate for the matter to be referred to him. The PSOW found that no action needed to be taken in respect of the matters investigated.</p>
1.13	<p>Llantwit Fardre Community Council – Promotion of equality and respect</p> <p>The PSOW received a complaint that a Member of the Council breached the Code. It was alleged that the Member made several accusations against serving Councillors during a Council meeting. It was further alleged that the Member then shared a written copy of his address, in which he accused councillors of bullying the former Clerk of the Council, before Members of the press and public.</p>
1.14	<p>The investigation considered the following paragraphs of the Code:</p> <ul style="list-style-type: none"> • Paragraph 5(a) – disclosing confidential information. • Paragraph 6(1)(a) – disrepute. • Paragraph 6(1)(c) – reporting breaches of the Code to the Monitoring Officer. • Paragraph 6(1)(d) – vexatious, frivolous or malicious complaints. • Paragraph 8(a) – having regard to the advice of the authority’s officers.
1.15	<p>The investigation established that the Member addressed the Community Council at its meeting on 24 September 2019, where Members of the press and public were present. There was no evidence to suggest that the Member disclosed confidential information during the meeting. The investigation found that during his address, the Member made several accusations against other Members of the Council. Rather than airing his concerns in public the Member should have raised his concerns through the proper processes available for doing so. Raising accusations in such a public forum when those being accused did not have a fair opportunity to respond could amount to a breach of paragraph 6(1)(a) of the Code.</p>
1.16	<p>The investigation found that the Member disregarded advice from the Clerk of the Council and that his actions were in breach of paragraph 8(a)</p>

	<p>of the Code. When deciding whether to take further action in relation to these possible breaches of the Code, the PSOW carefully considered whether it was in the public interest for him to do so. The PSOW considered recent steps taken by Rhondda Cynon Taf's Monitoring Officer and the Chair of the Council's Standards Committee to meet with the majority of the Members of the Council in February to encourage better working relationships within the Council. It was understood that a collective agreement was reached on taking a fresh approach on how to deal with situations where disagreement had previously escalated into personal attacks. The Member was present at this meeting. As the events which were considered as part of this investigation took place some months before the meeting with the Monitoring Officer and Chair of the Standards Committee, it was not in the public interest to pursue this investigation further.</p>
1.17	<p>Torfaen County Borough Council – Promotion of equality and respect The PSOW received complaints that an elected Member of the Council had breached the Code. Two Police Community Support Officers (PCSOs) complained that, on 7 June 2020, the Member approached them at Cwmbran Boating Lake (the Lake) in an aggressive manner. They said that the Member was shouting and demanding that they dealt with people who were angling at the Lake whilst it was the closed season. They said that the Member did not accept that it was not a policing matter and identified himself as a Councillor to try and use his position to intimidate them. The PSOW received an account from the Member, obtained a witness account from another Councillor who was present at the Lake, and obtained information from Gwent Police. The PSOW found that on the balance of probabilities, the evidence indicated that the Member may have breached paragraph 4(b) of the Code by speaking to the PCSOs in a raised voice. The investigation found that there was no dispute that the Member identified himself as a Councillor. The Member explained that he had done so to explain his knowledge of angling legislation. The PSOW found that the Member did contact Gwent Police to seek clarification regarding the enforcement of angling legislation and to raise a concern that the PCSOs had not spoken to, or provided advice, to the anglers as they had informed him.</p>
1.18	<p>The PSOW did not find sufficient evidence that the Member had displayed bullying and/or harassing behaviour, or that he had brought the authority into disrepute. The PSOW found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue matters further. The PSOW asked the Member to be mindful of how his conduct may be perceived when acting in his role as a Councillor and suggested that he complete refresher training on the Code.</p>

1.19	<p>Glynneath Town Council – Promotion of equality and respect</p> <p>The PSOW received a complaint that a Member of the Council had breached the Code. A Member of the public complained that when the Member entered Glynneath Town Hall (“the Hall”) on 20 September 2019 she had been aggressive and shouted at them, and that the Member had threatened to “put paid” to their Hall Hire Agreement with the Council. The PSOW obtained conflicting witness statements from 3 Members of the public, as well as the complainant and the Member. The PSOW considered that on balance, the evidence obtained suggested that the Member may have breached paragraph 4(b) of the Code by shouting at the Member of the public. The PSOW did not find sufficient evidence that the Member had displayed bullying behaviour, or that they had brought their authority into disrepute. Furthermore, there was no supporting evidence that the Member had threatened the complainant’s future hire of the Hall, nor had the Member acted on such a threat.</p>
1.20	<p>The PSOW found that, whilst the evidence suggested that the Member may have breached paragraph 4(b) of the Code, it was not in the public interest to pursue further enquiries into the matter, given the conflicting nature of the evidence obtained. The PSOW recommended to the Council that it should arrange training on the Code for its Members as soon as is practicable.</p>
1.21	<p>Tywyn Town Council – Promotion of equality and respect</p> <p>An officer of the Council complained that a Member had written a disrespectful letter to a third party. The PSOW’s investigation considered whether the content of the letter may have breached paragraphs 4(b) and 6(1)(a) of the Code. The Member asserted that they were not acting in their capacity as Member when writing the letter. However, the PSOW found that, as the letter referred to Council business, it was reasonable to conclude that the Member gave the impression they were acting in their capacity as a Member of the Council when they wrote the letter. The PSOW found that the majority of the comments made by the Member were political in nature. However, the Member’s comments to the third party recipient of the letter were considered to be disrespectful. Whilst the PSOW considered that those comments were suggestive of a breach of paragraph 4(b) of the Code, having taken into consideration the information provided by the recipient and the wider evidence available, he did not consider it would be proportionate or in the public interest for any further action to be taken. The PSOW did not consider that there was evidence to suggest that the content of the letter sent by the Member was suggestive of a breach of paragraph 6(1)(a) of the Code.</p>
1.22	<p>Mumbles Community Council – Duty to uphold the law</p> <p>The PSOW received a self-referred complaint from a Member of the Council because they had been named in a Welsh Audit Office (“Audit</p>

	<p>Wales”) Report concerning unauthorised Council expenditure. The PSOW considered whether the Member may have breached paragraph 7 (b) (i), (ii), (iii) of the Code for use of Council resources which was imprudent, in breach of the authority’s requirements and unlawful. The PSOW’s investigation found that a Planning Consultancy had billed the Council for work which had not been agreed, and the Planning consultancy said it had been instructed by the Member. The Member said at the time of the events he was new to the Council and he thought the work undertaken for the Council by the Planning Consultancy had been part of a previously agreed arrangement with the Council. The Member said he had not worked with planning consultants before and he had not realised that his specific communications with them would incur additional costs. The PSOW’s investigation found that the Member had a responsibility to fully understand the terms of the Council’s arrangements with the Planning Consultancy, and the Member’s actions and failure to do so, could reasonably be considered as a potential breach of paragraph 7(b) (i), (ii), (iii) of the Code. However, the PSOW also found that whilst the Clerk had suggested the Member should contact the Planning Consultancy, the Member had not been provided with clear guidance on the implications of doing so, and that the Member’s communications had a limited impact on the overall expenditure. In addition, Audit Wales had not engaged with the Member or the Planning Consultancy to establish what instruction it attributed to the Member. Having taken into consideration the evidence available and the information provided by the Member, the PSOW did not consider it would be proportionate or in the public interest for any further action to be taken.</p> <p><u>Referred to Standards Committee</u></p>
1.23	<p>Denbighshire County Council – Objectivity and propriety</p> <p>The PSOW received a complaint that a Member of the Council failed to observe the Code. It was alleged that the Member abused his position by visiting a Member of the public’s place of work and complaining to her employer about a private altercation between her and a constituent in a local store car park. The PSOW determined that there was evidence to suggest that the Member had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the Member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The PSOW determined that the Member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Code.</p>
1.24	<p>The PSOW referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.</p>

1.25	<p>Laleston Community Council – Duty to uphold the law</p> <p>The PSOW received a complaint that a Former Member (“the Former Member”) of the Council had failed to observe the Code. It was alleged that the Former Member had misused Council funds via unauthorised cashpoint withdrawals and debit card transactions between November 2018 and January 2019. A police investigation took place, and the Former Member subsequently resigned from the Council. The PSOW’s investigation established that at the time of the events the Former Member had taken on extra duties and been paid agreed allowances by the Council. It was found that the Former Member then took charge of the Council’s debit card and used it for purchases and cash withdrawals which were in excess of what he already received and could not be accounted for. The Former Member said he had accessed the Council’s finances in this way because he felt he was entitled to the funds; however, he did not provide any further information to suggest his transactions were for the benefit of the Council. The PSOW determined that the Former Member may have breached the Council’s Code of conduct, in particular, paragraphs 7(a) and 7(b) i), ii), iii), iv) and vi) as he has sought to gain a personal and financial advantage via unauthorised access to Council finances, and misused Council funds. The PSOW also found that the Former Member’s actions and conviction could reasonably be regarded as behaviour which might bring the office of Member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code. The PSOW referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.</p> <p><u>Referred to the APW</u></p>
1.26	<p>Sully and Lavernock Community Council – Integrity</p> <p>The PSOW received a complaint that a Member (the Member) of the Council failed to observe the Code. It was alleged that the Member made a series of public posts, on the social media platform Facebook, which could have the potential to damage the reputation of the Council. The PSOW found that 3 public posts, dated between 10 January and 11 March 2019, which made reference to high profile female politicians, were gratuitously offensive and could reasonably be regarded as bringing the Councillor’s Office or Authority into disrepute which was suggestive of a breach of paragraph of 6(1)(a) of the Code of Conduct. The PSOW considered that the language used went beyond political expression and was so egregious that, should a breach of the Code be found and a sanction imposed, it would be a proportionate interference with the Councillor’s right to freedom of expression. The PSOW also found that the Councillor had failed to supply evidence he claimed to hold in respect of the privacy of the posts and that, in refusing to provide information, he had failed to comply with a request in connection with the investigation which was suggestive of a</p>

	breach of paragraph 6(2) of the Code. The PSOW referred his investigation report to the APW for its consideration.
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2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	N/A

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	N/A

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>PSOW casebook issue 24 https://www.ombudsman.wales/wp-content/uploads/2021/04/CoC-casebook-Full-year-ENG.pdf</p> <p>Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	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>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>
