

STANDARDS COMMITTEE

Date of Meeting	Monday 2 November 2020
Report Subject	Public Services Ombudsman for Wales (PSOW) Casebook Issue 23 (October 2019 – December 2019) and the Annual letter from the PSOW
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The 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 October to December 2019.

This edition highlights that 2 complaints were investigated by the PSOW during this time, of which both were findings of no action necessary. There were no referrals to Monitoring Officers for consideration by their Standards Committees and there were no referrals to the APW for adjudication by a tribunal.

The PSOW writes an annual letter to all County and County Borough Councils in Wales to set out the number of complaints received both in respect of service complaints and complaints relating to breaches of the Code in respect of County and Town and Community Councils. The letter must be presented to the Council's Cabinet to assist in their scrutiny of the Council's performance and actions related to that are to be reported back to the PSOW by the 30 November 2020.

RECOMMENDATIONS

1	Having reviewed the cases summarised in Issue 23 of the Casebook the Committee is satisfied no action needs to be taken at Flintshire County Council to avoid similar complaints.
2	Having had regard to the PSOW's annual letter and having already considered and acted upon the outcome of the case referred to the APW, and having noted that the other complaints submitted during 2019/20 were not investigated by the Ombudsman, the Committee concludes that no action is needed.

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 23) covers October to December 2019. There were no referrals under findings (c) or (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 action necessary</u></p>
1.05	<p>Merthyr Tydfil County Borough Council – Duty to uphold the law Case Number: 201805269 - Report issued in December 2019</p>

	<p>The PSOW received a complaint that a Member (“the Member”) of Merthyr Tydfil County Borough Council (“the Council”) had breached the Code by voting on the setting of the rate of Council Tax at a meeting of Full Council in March 2018 when he was in arrears of Council Tax for a former home. It is an offence under s106 of the Local Government Finance Act 1992 for a Member to vote on setting the rate of Council Tax when they are themselves in arrears.</p>
1.06	<p>The relevant parts of the Code in this case are paragraphs 6(1)(a) relating to bring the authority into disrepute and paragraphs 10(1), 11(1) and 14(1)(a), (b) and (c) about the actions a Member should take if they have a personal and prejudicial interest in a matter the authority is considering. The PSOW obtained relevant documentary evidence, including copies of the Council Tax records for the property involved. He also viewed the webcast for the meeting of Full Council and interviewed the Council’s Monitoring Officer and the Member.</p>
1.07	<p>The Ombudsman considered that the evidence suggested that the Member had breached the Code as he accepted that he had not declared an interest and had voted on setting the Council Tax rate. The Member also accepted that at the time of that meeting he was in arrears of Council Tax for the former property. However, the Ombudsman decided that it would not be in the public interest to pursue the matter given the significant mitigating circumstances in this particular case. These included the personal circumstances that had led to the Member incurring the original debt and the fact that the Member was inexperienced. He had apologised, paid off the arrears and said that it would not happen again. In view of the mitigating circumstances, the Ombudsman concluded that no further action needed to be taken.</p> <p><u>Merthyr Tydfil County Borough Council – Disclosure and registration of interests.</u></p>
1.08	<p>Case Number: 201807334 – Report issued in December 2019. The PSOW received a complaint that a Member (“the Member”) of Merthyr Tydfil County Borough Council (“the Council”) had breached the Code of Conduct. It was alleged that, contrary to the Monitoring Officer’s advice that a conflict of interest existed, the Member accepted a specific Cabinet position. It was also alleged that the Member had failed to declare an interest in such matters.</p>
1.09	<p>During the investigation, information was sought on the Monitoring Officer’s advice, and the Member was interviewed. The Member explained that he had considered the advice of the Monitoring Officer and was confident that an appropriate strategy had been formulated to manage and mitigate any potential conflicts of interest. The Member said that he and the Leader of the Council had undertaken research to identify where similar scenarios had occurred in other Councils and the impact it had on those authorities. The Member also produced evidence of declarations of interest that he had made.</p>
1.10	<p>Although the PSOW was satisfied that the Member had regard to the Monitoring Officer’s advice, the lack of transparency in relation to aspects of the appointment (including the timing of the Member’s resignation from</p>

	<p>employment which would have conflicted with the appointment) was of concern and caused others to reasonably question the appointment. As the Member had eventually resigned from his former employment and taken up his role the PSOW found that it was not in the public interest to pursue the matter further and found that no further action needed to be taken. Given the potential for a conflict of interest to arise, the Member was reminded of the need to seek advice from the Monitoring Officer in future matters.</p> <p><u>The PSOW's Annual Letter for the year 2019/20 (the letter)</u></p>
1.11	The letter is attached as Appendix 1 to this report. The Standards Committee is only concerned with the ethical complaints element of the letter with the service complaints being in the remit of the Cabinet and the Overview and Scrutiny Committees of the Council.
1.12	The points to note in respect of the ethical complaints relating to alleged breaches of the Code by County and Town and Community Councillors are contained at Sections E (in respect of County Councillors) and F (in respect of Town and Community Councillors) at page 6 of the letter. The letter also explains that complaints related to breaches of the Code that were referred to the Standards Committee or the APW are down to 2% from 3% in the previous year.
1.13	In respect of Code complaints that were closed during the year relating to County Councillors, there were 2 in total of which one was closed after initial consideration and the other after referral to the APW. The Committee has already considered the actions to be taken following the outcome of the case referred to the APW
1.14	In respect of Code complaints that were closed during the year relating to Town and Community Councillors, there were 14 in total of which all were closed after initial consideration. The 9 complaints at Northop Hall Community Council are actually 1 complaint against 9 Community Councillors.
1.15	Another relevant matter referred to in the letter is that the Public Services Ombudsman (Wales) Act 2019 was passed by the Welsh Assembly (on the 22 May 2019).

2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The letter is reported to the Council's Cabinet.

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Appendix 1 - The Annual Letter from the PSOW for the year 2019/20

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>PSOW casebook issue 23 https://www.ombudsman.wales/wp-content/uploads/2020/06/CoC-casebook-October-December-2019.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	<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>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>