

## 1. Introduction



I am pleased to introduce this, my fourth, annual report since taking up my post as Ombudsman (and the sixth annual report of the Public Services Ombudsman for Wales following the introduction of the office in 2006).

The theme for this year's annual report is 'Improving Access: Delivering Improvement'. This recognises the work done to improve access to the complaints procedures of bodies within my jurisdiction, other public service providers, ombudsmen services (including my own service) and other complaint handling schemes. This has been done by raising awareness, making access easier for people with protected characteristics and through the Complaints Wales signposting service we have provided more information on how people can access advice and advocacy services to help them in making their complaints.

Delivering improvement reflects our work in improving public service delivery in Wales, by ensuring that the recommendations in my investigation reports are complied with, working with regulators to ensure that the changes introduced are sustained and effective, and working to share the lessons from those investigations with other public service providers.

The year 2011/12 was the final year of my three year Strategic Plan. The achievements against that Plan have been substantial. As well as achieving the objectives set there have been other key achievements that were unforeseen at the time of its initial development. Not least of these was the creation of the Complaints Wales service. This innovative telephone and web service provides advice to those members of the public who wish to complain about a public service but do not know how to do so. I talk about this in greater detail later in this report, however, I am particularly pleased that as far as the international community of ombudsmen is concerned, we in Wales appear to be a world leader in offering such a service and many others are now contemplating going down the same road.

With regard to our core activity, the complaints I receive about public services continue to rise, being 13% up on the number received during 2010/11. The NHS Redress Measure was introduced on 1 April 2011 and whilst this can account for some of this increase, it is only one factor. Concerningly, code of conduct complaints rose by 49% and I address this at Section 4 of this report.

We have over the past three years made great strides in improving efficiency in the way we consider complaints. In particular, I am pleased that although there has been a significant increase in the enquiries and complaints that we receive, we have still managed to exceed our performance targets. We also upgraded our complaints handling system during the course of the year with a view to getting new technology to take some of the strain of some of the administrative tasks associated with

complaint handling. I will over this next year be looking to see what more we might be able to do to improve efficiency. However, I am conscious that there is only so much that we can do in terms of increasing productivity and streamlining our ways of working before the robustness and quality of work is threatened.

During the past year, with the involvement of all my staff, I also produced my Strategic Plan for the next three years. We will be working towards a slightly revised vision for the service over this period, which is:

To put things right for users of public services and to drive improvement in those services and in standards in public life using the learning from the complaints we consider.

Work was also undertaken during the course of the year to produce a Strategic Equality Plan. This was in accordance with the Equality Act 2010 and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. Also under the specific duties, I am required to produce an equality annual report. I have decided that it is most appropriate to do so within this Annual Report. Accordingly the activities of my office in relation to equality and diversity issues are reported at Section 8.

We have also continued with activities to raise awareness of the office and its work. This included holding a seminar for voluntary organisations in Wales. We also met with individual advice and advocacy bodies during the year. It was also a particular pleasure to welcome Mrs Rosemary Butler, the Assembly's Presiding Officer, to the office. My staff appreciated the time that she gave to them and the interest that she took in their individual roles.

I have previously reported on the work of a Welsh Government group that I was asked to chair, with the task of developing a common complaints procedure. I was very pleased that the advice offered to the First Minister on a Model Policy and Guidance for complaint handling for adoption by all public service providers in Wales was issued by the Welsh Government in July 2011. I know that some organisations, including the Welsh Government itself, have already put these new arrangements in place and I will be taking a keen interest over the next year to see what steps other bodies within my jurisdiction are taking to introduce the policy.

I have also welcomed the opportunity to be able to engage in discussions concerning the Social Services (Wales) Bill. Whilst at the time of writing this is still out to consultation, I am pleased that there is a proposal to bring private providers of care homes and domiciliary care agencies, as well as independent palliative care services into my jurisdiction. In particular, it has seemed unjust to me that a resident in a care home who has his or her care paid for by the state can complain to me about poor care, while a resident who pays for their own stay at the same care home cannot.

During the course of the year I also reviewed the governance arrangements of my office. I took the view that the office would better be able to demonstrate openness and transparency through the creation of an Advisory Panel. An open recruitment process began at the end of the year, with a view to members being appointed at the beginning of 2012/13.

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In discussing governance, it would be remiss of me not to express here my appreciation for the work that Mr Laurie Pavelin has undertaken as Chair of the Audit Committee. His six years in the position came to an end on 31 March 2012. I have truly valued his wise counsel and support since the time I took up the office of Ombudsman and thank him for it.

Finally, thanks must also go to my staff. Every individual within the office has an important role to play in our success. The year has been one of innovation in terms of the introduction of a new service, enhanced communication methods and information technology developments. However, it has been equally notable for the continued hard work which has enabled us to stay on top of an ever-growing workload - in this regard, with the financial constraints on public services, I cannot see the trend reversing. I do not underestimate the challenges ahead of us.



Peter Tyndall  
Ombudsman

## 4. Code of Conduct Complaints

### Headline figures

- We received 412 new complaints, **up 49%** on 2010/11
- We referred 19 investigation reports to either a standards committee or the Adjudication Panel for Wales, **down 58%** on 2010/11.
- We closed 345 cases, **down 1%** on 2010/11
- We had no investigations older than 12 months old open at 31 March 2012

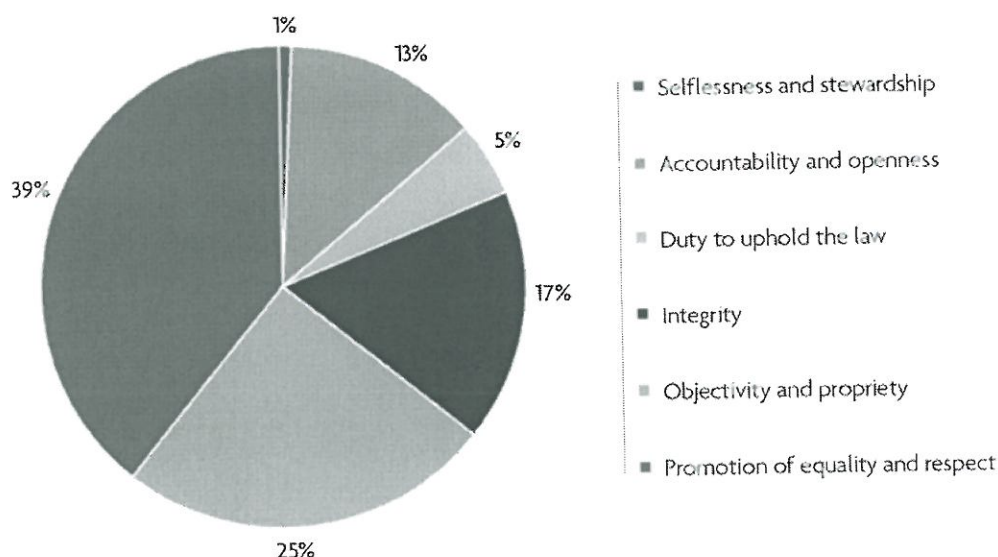
### Complaints received

The table below gives a breakdown of the Code of Conduct complaints received by type of authority. Whilst last year I was pleased to report a decline in the number of complaints received, I have been particularly concerned to see the increase in the number of complaints received this year, which has increased by 49%. I address this increase later in this section.

	2011/12	2010/11
Community Council	206	141
County/County Borough Council	177	135
National Park	28	1
Police Authority	1	-
<b>Total</b>	<b>412</b>	<b>277</b>

### Nature of Code of Conduct complaints 2011/12

As the chart below shows, the majority of complaints received during 2011/12 related to matters of 'equality and respect' (39% compared to 57% in 2010/11). However, there was a noticeable increase in the number of complaints relating to 'objectivity and propriety' over the past year, accounting for 25% of the Code of Conduct complaints received compared to 10% in 2010/11.



### Summary of Code of Conduct complaint outcomes

Of the Code of Conduct cases considered in 2011/12, the majority were closed under the category shown below as 'Closed after initial consideration'. This includes decisions such as:

- there was no 'prima facie' evidence of a breach of the Code
- the alleged breach was insufficiently serious to warrant an investigation (and unlikely to attract a sanction)
- the incident complained about happened before the member was elected (before they were bound by the Code).

The number of cases which I concluded should be referred to either an authority's standards committee or to the Adjudication Panel for Wales was 19 compared to 45 in 2010/11.

	2011/12	2010/11
Closed after initial consideration	270	194
Complaint withdrawn	12	16
Investigation discontinued	9	43
Investigation completed: No evidence of breach	7	13
Investigation completed: No action necessary	28	38
Investigation completed: Refer to Standards Committee	15	21
Investigation completed: Refer to Adjudication Panel	4	24
<b>Total Outcomes – Code of Conduct complaints</b>	<b>345</b>	<b>349</b>

(A detailed breakdown of the outcome of Code of Conduct complaints investigated, by local authority, during 2011/12 is set out at Annex C.).

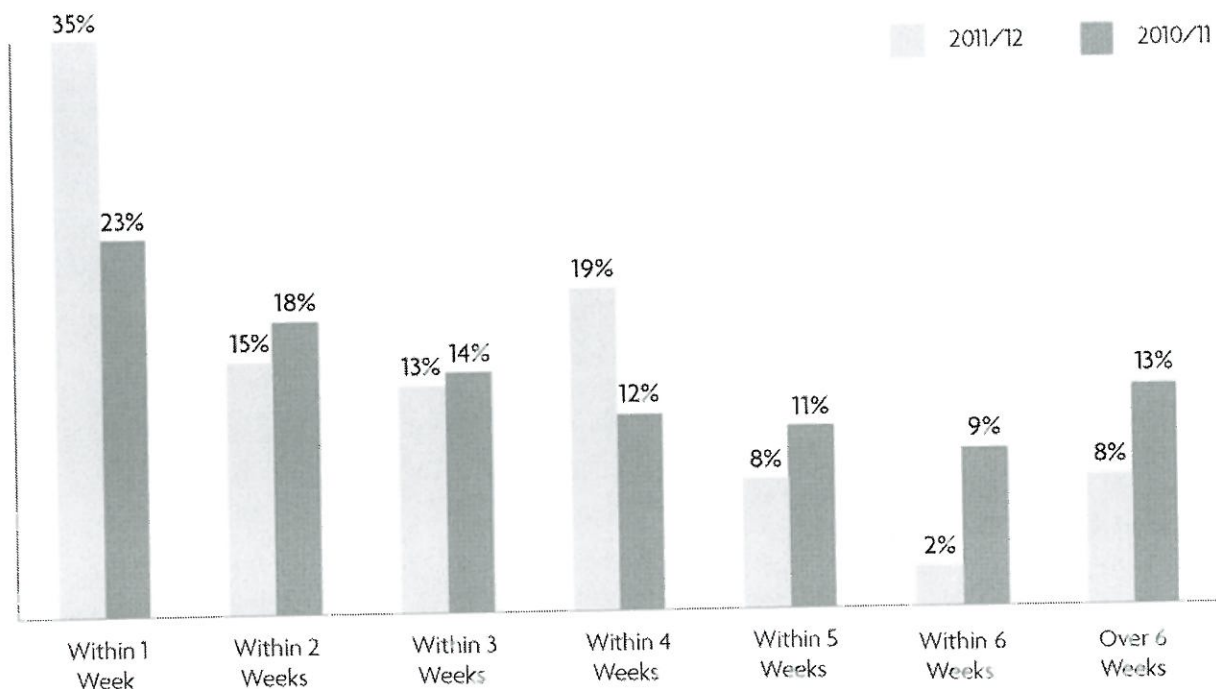
## Decision times

Below are the decision times for Code of Conduct complaints. The time targets set for Code of Conduct complaints are similar to those for complaints about public bodies, i.e.

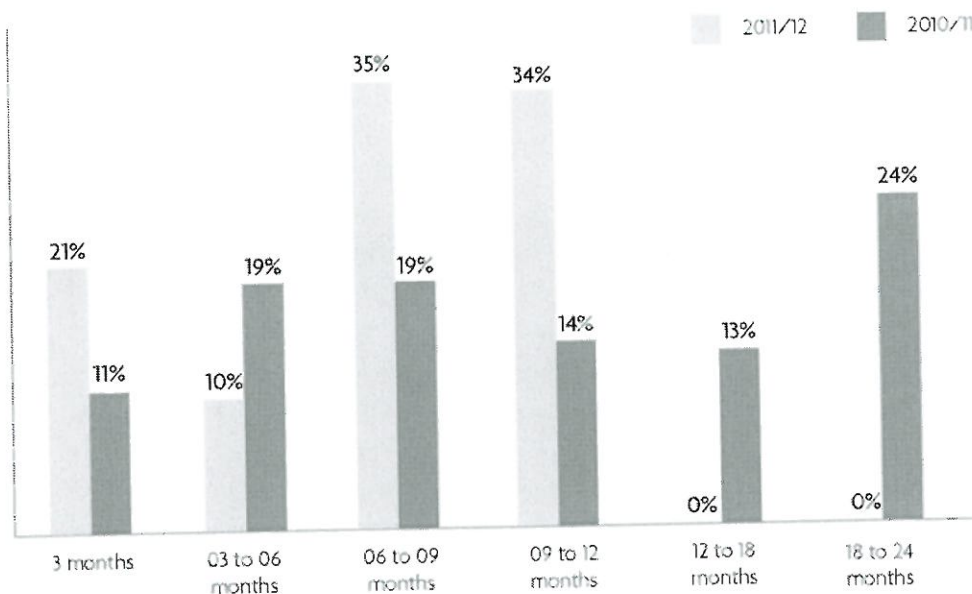
- to tell complainants within 4 weeks whether we will take up their complaint from the date that sufficient information about the complaint is received
- to conclude cases within 12 months from the point that a decision is made to take up a complaint (that is, to commence investigation of a complaint).

I am pleased that in terms of the overall caseload of complaints we received (both public body and Code of Conduct), we have surpassed the overall general target of achieving the four week deadline 80% of the time. However, we have to deal with Code of Conduct complaints in their initial stages in a different way compared to those in respect of public bodies. In respect of Code of Conduct cases we achieved the target 82% of the time. But again, this is an improvement on last year's position, when the target was achieved 67% of the time. The detailed position is set out in the chart below.

### Decision times for informing complainants we will take up their complaint



### Decision times for concluding Code of Conduct investigations



I have commented in previous Annual Reports about my concern about the time it has been taking to deal with Code of Conduct investigations. I have also previously explained that this is partly due to the consequences of members increasingly engaging legal representation. In 2009/10 we changed our process with a view to improving performance. I am pleased to be able to report therefore the changes introduced are now bearing fruit. As the chart above indicates, no code of conduct investigations took longer than 12 months to complete.

### Commentary on the increase in the number of Code of Conduct complaints

It is not surprising that the increase in the number of Code of Conduct complaints received has occurred during the year in the run up to county council elections. I am extremely disappointed that it appears that the Code is being used in this way.

I am also concerned about certain practices emerging amongst town and community councils. It became necessary during the year to correspond with the Clerk of Prestatyn Town Council in relation to our mutual concern about the number of complaints I receive in respect of members of Prestatyn Town Council. During 2011/12, I received 65 complaints out of a total of 206, representing 32% of the complaints about town and community councils. This level of complaints is entirely disproportionate. Such a level of complaints, in my view, reflects a very hostile set of interactions between councillors and must inevitably lower the esteem in which the Council is held by its electors. I have urged the Council to reflect on the culture which is giving rise to these complaints and how behaviour might be changed to reverse this trend. I am also aware that some of these complaints are being made by a small number of members of the public and one person in particular. I will actively consider what further steps are available to me to tackle the problem. In particular, if there is no reduction in the number of complaints by members against other members, the Code has explicit provisions regarding vexatious

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complaints and I will not hesitate to invoke them. I have urged the members of Prestatyn to develop the Council so that its reputation steadily improves.

### **Code of Conduct for local authority members – changes to practice**

In recognition of concern about certain aspects of the Code and the use of complaints for political purposes, I have been in discussion with the Welsh Local Government Association (WLGA), the Association of Council Secretaries and Solicitors (ACSeS) and the Welsh Government on a range of measures designed to reform the current Code of Conduct system, which can be achieved without the need for legislation. The aim is that these measures will enable a local resolution process to be introduced across Wales which should greatly reduce the number of complaints brought by councillors against other councillors which need to be considered by my office.

The first element of this new approach was introduced at the beginning of 2012, and applies to members of county/country borough councils and community/town councils. When I am minded not to investigate a complaint or having commenced an investigation I am minded to close my investigation, I will write to the Monitoring Officer. This will arise when I judge that even if the Standards Committee did find that there had been a breach of the Code, it would be unlikely to administer a sanction. It will then be for the Monitoring Officer to consider the matter. If they take a different view on the likelihood of the Standards Committee applying a sanction if they decide that there has been a breach of the Code then I will transfer the investigation to them for local consideration.

In April 2010, in response to requests from local authority monitoring officers and others, I issued guidance for local authority members on the Model Code of Conduct issued in 2008. This was developed following an initial consultation inviting local authorities to identify which aspects of the Code they would value guidance upon, and a subsequent consultation with the Association of Council Secretaries and Solicitors, One Voice Wales, the Welsh Assembly Government and the Adjudication Panel for Wales on the draft. That guidance however was revised at the end of 2011/12 to reflect the above changes, and has been placed on my website. I previously made it clear that the guidance should be a 'living' document and it is intended to make further revisions and provide additional guidance on the Code in the early part of 2012/13.

### **Standards Committee and Adjudication Panel for Wales's Hearings – Indemnity Cap**

I have also been in discussions with the WLGA regarding the scale of indemnity offered by Welsh local authorities to their members when defending themselves against alleged breaches of their Code of Conduct, especially when facing tribunals convened by the Adjudication Panel for Wales.

I have proposed that a cap of £10,000 should be put in place. As a councillor could face disqualification, I believe that in seeking a parallel, it is helpful to consider employment tribunals, where claimants may have lost their employment. In these instances, awards of costs are limited to £10,000, offering a useful comparator. I have said that I would then match the £10,000 cap in respect of my own costs. At the time of writing I am awaiting a formal response to my proposals on this matter.



**Annex C**

**Code of Conduct Complaints:  
Statistical Breakdown of Outcomes by Local Authority**

## COUNTY/COUNTY BOROUGH COUNCILS

County/County Borough Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Blaenau Gwent	4		1					5
Bridgend	3							3
Caerphilly	6	1		1				8
Cardiff	5			1				6
Cardiff							1	8
Cardiff								4
Cardiff								9
Cardiff								9
Cardiff								11
Cardiff								2
Cardiff								4
Cardiff								3
Cardiff								7
Cardiff								1
Cardiff								3
Cardiff								8
Cardiff								6
Cardiff								10
Cardiff								41
Cardiff								12
Cardiff								7
Cardiff								1
Cardiff								168
<b>TOTAL</b>	<b>142</b>	<b>2</b>	<b>2</b>	<b>9</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>168</b>

## COMMUNITY/ TOWN COUNCILS

Community/Town Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Blackwood Town	1							1
Brecon Town	1							1
Buckley Town					3			3
Caernarfon Royal Town	2						1	3
Caerphilly Town	1							1
Clydach Community	3							3
Coedpoeth Community						1		1
Cwmilynnfell Community	1							1
Dyffryn Ardudwy a Thalybont Community	1							1
Dyffryn Arth Community	1							1
Forden Community	1							1
Gorseinon Town	2							2
Gwersyllt Community	1							1
Holyhead Town	1							1
Kidwelly Town					3			3
Laleston Community	1							1
Llandulas and Rhyd y Foel Community				1				1
Llandegla Community	3							3
Llandrindod Wells Town	2							2
Llanedi Community	2							2
Llanfair (Gwynedd) Community	1							1
Llanfair Mathafarn Eithaf Community	1							1
Llangynwyd Lower Community	2						3	5
Llanidloes Without Community	1							1
Llay Community					1			1

**COMMUNITY/ TOWN COUNCILS (continued)**

Community/Town Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Maesteg Town	1							1
Magor with Undy Community	1							1
Manorbier Community	6		1					7
Mold Town	1						1	1
Murbles Community	3					1		5
Newtown & Llanllwchaïam Town	3							3
Pelenna Community					1			1
Penmaenmawr Town	3							3
Penmynydd and Star Community	2						1	3
Pentyrch Community						1		1
Porthcawl Town				2				2
Prestatyn Town	28	4	3	2				37
Pyle Community		2			6			8
Rhyl Town	1	1			8			10
Ruthin Town	1							1
Saltney Town	1							1
Seven Sisters Community	1							1
Shotton Town	1							1
St Arvans Community	2							2
St Brides Major Community	1							1
St Harmon Community	9							9
Sully Community					1			1
Towyn & Kimmel Bay Town	3							3
Trellech United Community	1							1
Wick Community	7			1				8
Ystrad Fflur Community	1							1
Ystrad Meurig	1							1
<b>TOTAL</b>	<b>107</b>	<b>7</b>	<b>5</b>	<b>19</b>	<b>11</b>	<b>1</b>	<b>6</b>	<b>156</b>

### NATIONAL PARK AUTHORITIES

National Park Authority	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Brecon Beacons	2							2
Pembrokeshire	16							16
Snowdonia	3							3
<b>TOTAL</b>	<b>21</b>							<b>21</b>