

# The Code of Conduct Casebook

Issue 2 May 2014

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## A word from the Ombudsman

The Code of Conduct Casebook was introduced by my predecessor, Peter Tyndall, as a mechanism for focussing attention on the work of this office in investigating complaints about alleged breaches of the Code of Conduct applicable to all councillors, in whatever capacity they may be serving and irrespective of the Council on which they sit. Mr Tyndall has now moved to a new post as the Ombudsman and Information Commissioner for Ireland and, thus, it falls to me as the Acting Public Services Ombudsman for Wales to provide the introduction for this second edition.

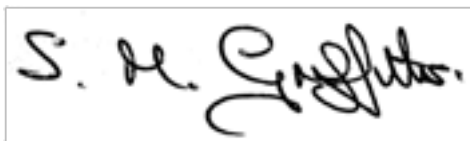
It is pleasing that the number of complaints we have received concerning alleged breaches of the code of conduct has fallen. It is too early to tell whether this is a long term trend and whether we will again receive a high number of complaints during an election year, but this may partly be down to local resolution processes which have now been in operation across Wales for some time. There are for those taken into investigation by this office four possible outcomes, as detailed more fully in the Introduction to this Casebook; namely, no evidence of breach of the code or no action needed and referral to an authority's standards committee or the Adjudication Panel for Wales. Given the sheer volume of work that is undertaken by Council Members, it is very pleasing to note that the numbers of members who are complained about are relatively few, leading to the conclusion that the vast majority of such work is undertaken without any adverse issues arising. This is undoubtedly to the benefit of constituents.

Reviewing the complaints which have arisen in the last six months, it is noteworthy that there are three main areas that give rise to disputes.

The first relates to the difficulty that councillors may have differentiating between activities undertaken in their official role and things done in a private capacity. It can be a difficult line to draw. More significantly, constituents may only see the official persona and always expect their councillors to behave in a manner befitting the role and not act in any way that might bring their office into disrepute.

The second theme relates to the relationship between councillors themselves and between councillors and officers. It is to be expected that councillors will be passionate about pursuing the interests of their constituents but it may be that there is a legitimate difference of opinion between fellow councillors or between councillors and officers as to how this is best to be achieved. Naturally, it is crucial that forceful lobbying does not step over the mark into bullying or harassment, either of which would involve a breach of the Code.

Finally, councillors should always be aware of the divide between, on the one hand, their actions as a councillor representing their constituents and, on the other hand, their political activities. This distinction can be crucially important in relation to the use of council facilities which will be legitimate when acting as a councillor but unacceptable when being utilised for political purposes.



Professor Margaret Griffiths  
Acting Ombudsman

## Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman 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 Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (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 Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains the summaries of all reports issued by this office for which the findings were one of the four set out above. In reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers October 2013 to March 2014, but also includes the summaries of older cases for which the standards committee or Adjudication Panel hearings were concluded during this period.

## Case Summaries

### No evidence of breach

#### **Blaenau Gwent County Borough Council – Promotion of equality and respect Case reference 201305131 – March 2014**

The Ombudsman received a complaint that, following a meeting of the Council on 21 November 2013, a Councillor ('the complainant') felt he had been bullied by another Councillor. The complainant stated that the Councillor had clenched his fist and threatened to "sort him out". The complainant stated that he had felt in fear of being punched.

During the course of the investigation, information was received from the Council and witnesses were interviewed. While there was evidence of a heated discussion between the complainant and the Councillor at the end of the meeting, there was no evidence to support the complaint that the complainant had been threatened by the Councillor.

Having reviewed the evidence, the Ombudsman concluded that there was no evidence that the Councillor had breached of the Code of Conduct.

#### **Cardiff County Council - Promotion of equality and respect Case reference 201204852 – February 2014**

A member of Cardiff County Council ('the complainant') complained about the conduct of a fellow Councillor. The complainant stated that the Councillor had failed to show him respect and consideration during a coffee break at the meeting of the full Council in October 2012; in failing to do so, the Councillor had brought the role of member and the Authority into disrepute. The complainant also complained about the language used by the Councillor to describe him when corresponding with members of the public by email in February 2013.

During the course of the Ombudsman's investigation, information was obtained from the Council and a number of elected members who were in the vicinity at the time of the alleged incident.

The evidence obtained in relation to the incident during the coffee break did not support the allegation made. Further, the Ombudsman was mindful that the complainant was not specifically named in the emails sent to the members of the public by the Councillor. In the absence of any specific reference to the complainant, the Ombudsman was unable to conclude, on balance, as to who was being referred to in the emails. The Ombudsman concluded that the evidence gathered during the investigation did not suggest that the Councillor had breached the Code of Conduct.

**Powys County Council – Accountability and openness**  
**Case reference 201204510 – November 2013**

Mr G complained that a member of Powys County Council built properties on his land without planning permission and that, when the member in question accepted a position on the Brecon Beacon's National Park Authority planning committee, he breached the Code of Conduct. Mr G said that planning history for this site was complex and the Council had sought legal advice.

The Councillor said that he had erected a house in 2007 on the basis of approved planning permission. He had purchased his property in 2000 and included copy of planning permission for the erection of motel units and private accommodation issued in 1994. The Councillor said that, where possible, his wife or agent took the lead so that his position was not compromised, although this would not obviate his requirement to abide by the Code. He said that his property, was outside the boundaries of the National Park and he was not a member of Powys Council's Planning, Tax Licensing and Rights of Way Committee.

The Ombudsman found that there was no evidence to suggest the Councillor had been involved in planning decisions relating to his land, and that there was no evidence of a breach of the Code of Conduct.

## **No action necessary**

### **Torfaen County Borough Council – Disclosure and registration of interests Case reference 201306694 – March 2014**

A member of Torfaen County Borough Council referred herself to the Ombudsman for consideration of a potential breach of the Code of Conduct to the Ombudsman. The Councillor said that she may have breached the Code by failing to declare a personal and prejudicial interest in a small schemes grant payment she made in November 2013. The Councillor explained that she considered whether she had a personal interest when making the application for a grant for an organisation within which she is a member, but following discussions with an officer of the Council concluded that she did not.

The matter was highlighted by the relevant scrutiny committee and, having considered the matter further, the Councillor felt it was appropriate to make a self referral. The Councillor accepted full responsibility for the potential breach and made unreserved apologies in respect of her actions.

The circumstances of the grant were considered and it was determined that, by reason of the Councillor's regular attendance at meetings and her membership of the organisation, she had a personal interest and that this interest would also be prejudicial. It therefore followed that her conduct, in failing to declare these interests, suggests of a breach of the Code of Conduct.

However, having taken into consideration the Councillor's conduct in referring this matter, her acceptance of responsibility and apology, the Ombudsman determined that no action should be taken in respect of the matters investigated.

### **The City and County of Swansea – Promotion of equality and respect Case reference 201203127 – November 2013**

A complaint was made by Mr X about a member of the City and County of Swansea. Mr X complained that the Councillor had bullied and harassed fire officers, visited fire stations without permission, solicited confidential information from fire brigade officers and involved himself in Fire Brigade Union business.

Having conducted an investigation, the Ombudsman found that the complaints that had been made were serious and called into question the Councillor's behaviour towards officers within the fire service.

The Ombudsman found that, whilst it was appropriate for Mr X to make the referral because it raised serious concerns about what the Ombudsman described as the Councillor's potentially divisive, manipulating and disrespectful behaviour, no further action should be taken in this matter. The Ombudsman decided that, whilst the evidence did not exonerate the Councillor, it did show that, in the majority of the incidents complained of, he was not acting in his official capacity, and the evidence available was not sufficiently conclusive to show that he had brought his office or authority into disrepute.

With respect to the remaining issues, the evidence was contradictory and lacked independent corroboration. Finally, consideration was also given to the Councillor's Article 10 human rights insofar as he was entitled to raise any concerns about the fire authority that had been brought to his attention in his capacity as a Member. The Ombudsman decided that no further action was necessary.

## Referred to standards committee

### **Pembrokeshire County Council – Duty to uphold the law** **Case reference 201203889 – November 2013**

An individual stated that they had anonymously received a DVD that appeared to show that a Councillor had used the Council's computer system to create election materials for colleagues. An examination of the DVD showed that the Councillor had been either responsible for the creation, or had been the user to have last 'saved' 21 documents of a political nature on the Council's computer system. This appeared to be a breach of the paragraph of the Code of Conduct which states that the resources of the authority must not be used for political purposes.

The Councillor was interviewed and admitted that he had helped colleagues prepare their election material, but was clear that Council equipment had not been used for printing these items. The Councillor said that some files had been created in his role as Secretary and he then believed that he could occasionally use the Council computer for other purposes. He accepted that this was not the case. The Councillor stated that the information received by the complainant had been stolen from his computer.

The Ombudsman decided that the matter should be forwarded to the Monitoring Officer for consideration by the Council's Standards Committee. It concluded that the Councillor had breached the Code of Conduct and determined that he should be suspended for two weeks. The decision of the Standards Committee can be found [here](#).

### **Gwynedd Council – Promotion of equality and respect** **Case reference 201100986 – April 2012**

The Ombudsman received a complaint that, on 6th July 2011, a Councillor had posted in his blog that the complainant had taken satisfaction at a third party's resignation as a Councillor. The Councillor had also said that the complainant intended to retire as a head teacher and would stand for election as a Councillor for a particular ward.

The complainant said that the suggestion that he intended to retire and stand for election were untrue. The complainant said he had no intention of retiring, and had chaired the meeting when the Member complained about had been nominated to represent a party during the forthcoming 2012 elections.

The complainant alleged that the Councillor had brought his office into disrepute. The complainant considered that the Councillor had created a disadvantage for the complainant in his professional capacity by spreading rumours about his alleged intended retirement which could create difficulties should he seek further employment. The complainant stated that the blog could have caused difficulties for him with his governing body, and confusion amongst his school staff and pupils' parents.



The Ombudsman found that the evidence suggested that the Councillor had breached the Code of Conduct and referred his report to the Monitoring Officer of Gwynedd Council for consideration by the Council's Standards Committee. It concluded that the Councillor had breached the Code of Conduct and determined that he should be suspended for three months.

The Councillor subsequently submitted an appeal against the decision of the Standards Committee to the Adjudication Panel for Wales. The tribunal upheld the decision of the Standards Committee. The decision of the Adjudication Panel for Wales can be found [here](#).

### **Pentyrch Community Council – Selflessness and stewardship** **Case reference 201002530 – January 2012**

The chairman of Pentyrch Community Council made a complaint against a Councillor in relation to concerns that his manner of conducting council business was inappropriate and constituted bullying and harassment of the Clerk and the Chairman himself. It was said that the Councillor made unreasonable demands and frequently asked for actions to be taken which were in conflict with the standing orders of the Community Council. This behaviour had gone on for around three years. It was also alleged that he had failed to declare a personal interest in matters that arose in Council business.

The Community Council provided extensive written record of the exchanges between itself and the Councillor, and he was given an opportunity to respond.

The Ombudsman's decided that there was evidence of multiple breaches of the Code of Conduct, and referred his report to the appropriate Standards Committee for consideration. The Standards Committee of Cardiff City Council found that breaches had occurred as outlined above. However, by the time of the hearing, the Councillor was no longer a member. As such, a censure was issued, and the Standards Committee commented that, had he still been a serving member, it would have applied a six month suspension as it viewed the breaches very seriously.

The Councillor submitted an appeal against the decision of the Standards Committee to the Adjudication Panel for Wales. The tribunal upheld the decision of the Standards Committee, having considered the implications of Article 10 of the Human Rights Act. The decision of the Adjudication Panel for Wales can be found [here](#).

## Referred to Adjudication Panel for Wales

### **Llandrindod Wells Town Council – Promotion of equality and respect Case reference 201202775 – April 2013**

A member of the Council ('the complainant') complained that a former Councillor ('the accused member') pursued a course of conduct towards him which would amount to harassment. The accused member approached the County Council about a naked photograph the complainant had taken of himself and sent to a fellow pupil while both were still at school. The incident had occurred three years before the complainant was elected and no criminal action was taken. The Council investigated the matter and advised the accused member that it had no child protection concerns.

The accused member conducted a survey of members of the public which included a description of the events which appeared to falsely accuse the complainant of committing a sexual offence against a minor. This caused significant reputational damage to the complainant and forced him to speak publicly about a historical private matter.

It appeared that the accused member may have breached a number of paragraphs of the Code of Conduct in his pursuit of the complainant and in misleading members of the public about the event. This matter, and the subsequent Police Information Notice issued to the accused member by the police under the Protection from Harassment Act 1997 (PHA), were widely reported in the local press. This appeared to amount to a further breach of the Code of Conduct.

The accused member indicated that he conducted his survey because he felt that the complainant had breached the Code of Conduct. However, as he did not report this alleged breach of the Code of Conduct to this office, this also appeared to be a breach of the Code of Conduct.

The accused member resigned from his post and refused to engage in the investigation process. The Ombudsman took the view that this may have been an attempt to frustrate the investigation process, which itself may also amount to a breach of the Code of Conduct.

As the evidence gathered suggested that the accused member may have breached multiple paragraphs of the Code of Conduct, the Ombudsman referred his report to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

The tribunal decided that the Councillor had breached the Code of Conduct and that he should be disqualified for a period of three years. The decision of the Adjudication Panel for Wales can be found here.

## More Information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to [James.Merrifield@ombudsman-wales.org.uk](mailto:James.Merrifield@ombudsman-wales.org.uk) or sent to the following address:

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