



# Complete Agenda

**Democratic Service**  
Swyddfa'r Cyngor  
CAERNARFON  
Gwynedd  
LL55 1SH

Meeting

**STANDARDS COMMITTEE**

Date and Time

**10.30 am, MONDAY, 8TH NOVEMBER, 2021**

Location

**Virtual Meeting - Zoom**

Contact Point

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(DISTRIBUTED 29/10/21)

# **STANDARDS COMMITTEE**

## **Membership**

### **Elected Members (3)**

Councillors

Anne Lloyd Jones  
Beth Lawton  
Dewi Wyn Roberts

### **Independent Members (with a vote) (5)**

Aled Jones  
Margaret E. Jones  
David Wareing  
Einir Young  
Hywel Eifion Jones

### **Community Committee Member (with a vote) (1)**

Richard Parry Hughes

# **A G E N D A**

## **1. APOLOGIES**

To receive any apologies for absence.

## **2. DECLARATION OF PERSONAL INTEREST**

To receive any declaration of personal interest.

## **3. URGENT ITEMS**

To note any items that are a matter of urgency in the view of the Chair for consideration.

## **4. MINUTES**

4 - 8

The Chair shall propose that the minutes of the meetings of this committee held on the following dates be signed as true records:-

- 14<sup>th</sup> June, 2021
- 7<sup>th</sup> July, 2021 (Special Meeting)

## **5. REVIEW OF THE ETHICAL STANDARDS FRAMEWORK FOR WALES**

9 - 64

To consider the report of the Monitoring Officer.

## **6. ALLEGATIONS AGAINST MEMBERS**

65 - 67

To consider the report of the Senior Solicitor (Corporate)

## **7. OMBUDSMAN'S ANNUAL REPORT 2020-21**

68 - 211

To consider the report of the Monitoring Officer.

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## STANDARDS COMMITTEE 14/06/21

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**Present:-**

**Elected Members:-** Councillors Anne Lloyd Jones, Beth Lawton and Dewi Roberts.

**Independent Members:-** Mr Aled Jones, Mr Hywel Eifion Jones, Miss Margaret E. Jones and Dr Einir Young (Chair)

**Also in Attendance:-** Iwan Evans (Monitoring Officer), Sion Huws (Senior Solicitor - Corporate), Miriam Roberts (Professional Trainee - Legal) and Eirian Roberts (Democracy Services Officer).

**1. ELECTION OF CHAIR**

**RESOLVED to elect Dr Einir Young as chair of this committee.**

**2. ELECTION OF VICE-CHAIR**

**RESOLVED to elect Mr Hywel Eifion Jones as vice-chair of this committee.**

**3. APOLOGIES**

Apologies had been received from Mr Richard Parry Hughes (Community Council Member) and Dave Wareing (Independent Member).

**4. DECLARATION OF PERSONAL INTEREST**

No declarations of personal interest were received.

**5. URGENT ITEMS**

No urgent matters were raised.

**6. MINUTES**

The Chair signed the minutes of the previous committee meeting held on 22 February 2021 as a true record.

Matter arising from the minutes  
Item 5 – Self Assessment and Work Programme

The Monitoring Officer noted that it had not been possible to present an overview of the training arrangements for this meeting, but it was intended to report on this at the next meeting. It was also intended to reinstate the element of the training plan for community councils, when circumstances allowed.

**7. THE STANDARDS COMMITTEE'S ANNUAL REPORT 2020/21**

Submitted – the report of the Senior Solicitor (Corporate) enclosing a draft of the committee's annual report for 2020/21. The committee's observations and approval of the document were invited.

Members were asked to contact the Senior Solicitor (Corporate) if there were any updates to their biographies.

The Monitoring Officer noted that the Local Government and Elections (Wales) Act 2021 placed the annual report of the Standards Committee on a statutory basis from next year onwards.

It was suggested that a reference should be included in the annual report to a matter raised in the full Council on numerous occasions regarding the public interest test. In response, the Monitoring Officer explained that the Government was undertaking initial work on a review of the ethical framework in its entirety, and that it was likely that a discussion about the public interest test would arise as part of this. He did not wish to raise hopes as there were so many factors that could influence this. However, there may be an opportunity to contribute to this in order to highlight how the arrangements worked for community councils when the threshold was set on a county council level, and he agreed to draft a wording to that effect as part of the foreword to the annual report.

Referring to the proposal under the Local Government and Elections (Wales) Act 2021 to place a statutory duty on the Leaders of Political Groups in relation to members' standards of conduct, it was suggested that the training provided to Leaders could assist in relation to the matter that had been raised on a number of occasions in the Council, as Leaders could explain to their members what problems faced the Standards Committee, the type of work dealt with by the committee, etc.

**RESOLVED to approve the annual report to be submitted to the full Council on 8 July, subject to adding an introduction and foreword by the Chair and Monitoring Officer.**

#### **8. LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021 – CHANGES TO THE ETHICAL FRAMEWORK**

Submitted - the report of the Monitoring Officer detailing the changes to the ethical framework as part of the Local Government and Elections (Wales) Act 2021, with specific reference to the statutory duty on Leaders of Political Groups in relation to the standards of conduct of their members.

It was suggested that it would be beneficial to arrange a workshop to include the Leaders of Political Groups and members of this committee in order to nurture a positive relationship between them.

#### **DECISION**

- (1) Subject to the publication of guidance by Welsh Government, steps should be taken to provide training for Political Group Leaders on the requirements and how they can be met.**
- (2) The Standards Committee should establish a Protocol for implementing, co-operating and monitoring implementation of the duty by December 2021, and do so in co-operation with Leaders and Deputy Leaders of the current Political Groups.**
- (3) These matters should be incorporated into the Committee's Work Programme.**
- (4) Invite the Monitoring Officer to continue with the work, and arrange a workshop at a particular point in order to nurture the relationship between Leaders of Political Groups and members of this Committee.**

#### **9. THE OMBUDSMAN'S CODE OF CONDUCT CASEBOOK**

Submitted – the report of the Senior Solicitor (Corporate) enclosing a copy of the Ombudsman's latest quarterly Casebook.

It was noted that it would be interesting to know the outcomes of the cases that were referred to the Standards Committee or to the Adjudication Panel for Wales. It would also be interesting to know whether there was a cumulative impact, e.g. whether the same complaints were submitted by the same person, or from the same area each time, were there any common themes, etc?

It was noted that it appeared that the outcome of a number of cases that were referred to a Standards Committee or to the Adjudication Panel for Wales were made public in the press, and it was suggested that it would be beneficial for the committee to be informed of them. It was also suggested, given that the Casebook was a public document, that it would be beneficial if more detailed reports of the cases were available to members of standards committees. In response, the Monitoring Officer noted that the Adjudication Panel had published guidance on how to deal with cases, and that it was available to the Standards Committee. He also explained that the outcome of cases that were referred to the Standards Committee and the Adjudication Panel were published on the websites of the relevant bodies. However, there was no central list of the outcomes of cases, apart from through the Ombudsman, and it would be difficult to achieve without approaching each individual council to ask for the outcome.

**RESOLVED to accept the report.**

#### **10. ALLEGATIONS AGAINST MEMBERS**

Submitted - the report of the Senior Solicitor (Corporate) presenting information about the Ombudsman's decisions on formal complaints against members.

**RESOLVED to note the information and the intention to arrange a special meeting to deal with the outcome of an investigation that has been referred to the Standards Committee by the Public Services Ombudsman for Wales**

The meeting commenced at 10.30 am and concluded at 11.20 am

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**CHAIRMAN**

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## SPECIAL MEETING OF THE STANDARDS COMMITTEE 7/07/21

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### Attendance:

**Elected Members:** Councillors Beth Lawton and Dewi Roberts

**Independent Members:** Mr Aled Jones, Mr Hywel Eifion Jones, Miss Margaret E. Jones, Mr David Wareing and Dr Einir Young (Chair)

**Community Committee Member:** Mr Richard Parry Hughes

**Also in attendance:** Sion Huws (Senior Solicitor – Corporate) and Eirian Roberts (Democracy Services Officer)

### 1. APOLOGIES

An apology was received from Councillor Anne Lloyd Jones.

### 2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received.

### 3. URGENT ITEMS

No urgent matters were raised.

### 4. EXCLUSION OF PRESS AND PUBLIC

**RESOLVED** to exclude the press and public from the meeting during the discussion on the following item due to the likely disclosure of exempt information as defined in paragraph 18C, Section 4, Schedule 12A, Local Government Act 1972. This paragraph applied because it concerned the deliberations of the Standards Committee in reaching a decision on a matter referred to it by the Public Standards Ombudsman for Wales. It was believed that the information should not be disclosed so that the councillor was not prejudiced by any possible publicity of the case before a hearing. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

### 5. REPORT BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES ON AN INVESTIGATION INTO A COMPLAINT AGAINST A COUNCILLOR

Submitted – the report of the Senior Solicitor (Corporate) inviting the committee to consider the Ombudsman's report regarding an investigation into a complaint against a councillor, and reaching a decision in accordance with the requirements of the relevant regulations.

#### **RESOLVED**

- (a) To invite the person who was the subject of the investigation to submit observations, either orally or in writing, in relation to the conclusions of the investigation and any allegation that he / she had failed to comply with the relevant authority's code of conduct.
- (b) To convene a special meeting of the Standards Committee to consider and make a decision on the matter.

- (c) To invite the Ombudsman to the hearing to present the report and/or explain any matters in it.**
- (ch) That officers, in consultation with the Chairman, would arrange a date (and earmark two other dates) for conducting the hearing.**

The meeting commenced at 2.00 pm and concluded at 2.50 pm

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**CHAIRMAN**

<b>MEETING</b>	<b>Standards Committee</b>
<b>DATE</b>	<b>8 November 2021</b>
<b>TITLE</b>	<b>Review of the Ethical Standards Framework for Wales</b>
<b>AUTHOR</b>	<b>Monitoring Officer</b>

1. The current Ethical Standards Framework was created by the Local Government Act 2000. The initial Model Code was substantially reviewed in 2008 into it's current form but there has been no significant review of the Welsh framework in total since its original Inception. Welsh Government appointed Richard Penn to review the entire framework and make recommendations. His report has now been published by the Government. The statement of Rebecca Evans, MS, Minister for Finance and Local Government announcing it's publication is at Appendix 1 and the published report at Appendix 2.
  
2. The review took evidence on a wide range of topics, looking at, amongst others, the following issues:
  - whether there was still a need for the code;
  - whether the current code is up to date and fit for purpose;
  - whether the investigation and enforcement of complaints was effective
  - how Standards Committees encourage compliance through the use of policies and training;
  - whether the code was appropriate for Town and Community Councils and their capacity to comply with its provisions

As the report explains a range of consultees were involved and I am aware that the Mid and North Wales Standards Committee Forum was included. However, it must be noted that there were also some omissions which were surprising.

3. I understand that there is no intention to pass any legislation in response to the review before the end of this local government term. There are a number of recommendations some of which have the potential to have material resource requirements. The report will need careful consideration and there will be consultation on significant changes.

**Recommendation**

**That the Committee accepts the report for information.**

## **Appendix 1**

### **Written Statement: Review of the Ethical Standards Framework for Wales**

**Rebecca Evans, MS, Minister for Finance and Local Government**

**First published: 14 October 2021**

“The Ethical Standards Framework for Wales was established by Part 3 of the Local Government Act 2000 to promote and maintain high standards of ethical conduct by members and officers of relevant authorities in Wales. A ‘relevant authority’ is a county or county borough council (“a principal council”), a community council, a fire and rescue authority and a National Park authority in Wales.

The Framework consists of ten general principles of conduct for members (derived from Lord Nolan’s ‘Seven Principles of Public Life’). These are included in the Conduct of Members (Principles) (Wales) Order 2001. Further, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (“Model Code of Conduct”) provides for a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.

An independent review of the Framework was undertaken by Richard Penn between April and July 2021 to assess whether the Framework remains fit for purpose. The review took into account the new legislative requirements set out in the Local Government and Elections (Wales) Act 2021 and the current equality and diversity policy context. I thank Richard Penn and all the stakeholders who participated in this review.

The final Report which has been published today, concludes the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct. I will be considering the recommendations to amend the Model Code of Conduct in the short term. Any legislative change will be subject to a technical consultation.

Action to address other recommendations will be taken forward in partnership with key stakeholders in the medium to longer term. “

# Independent Review of the Ethical Standards Framework in Wales

**Richard Penn**  
**Independent Consultant**

**July 2021**

## Table of contents

1.	Executive summary	3
2.	Background and methodology	10
3.	The current ethical standards framework for local government in Wales	15
4.	My findings	28
5.	Conclusions and recommendations	42

# 1 Executive summary

1.1 In March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the ethical standards framework for local government in Wales that was established by the Local Government Act 2000 and which has remained largely unchanged to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework. I was commissioned to undertake this review with the aim to report to Welsh Government Ministers by the end of June 2021. The intention is for any agreed changes to be made ahead of the local government elections in May 2022.

1.2 The review was to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff;
- consideration of the current sanctions and whether they are still appropriate.

1.3 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome and met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

1.4 The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

1.5 The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and viewed by many as far superior to that currently used in English local government. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations being significantly reduced. The outcome of this first phase of the review builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. The already high ethical standards in Welsh local government would be further enhanced as a result.

1.6 My key findings and recommendations for change are detailed in Section 5 of this report and are summarised below:

- ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.

- ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

- ***Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements***

The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision. However, I have proposed a number of amendments to the Code:

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.

- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

*'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'*

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately.

- **Increased use of local resolution of complaints**

The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

- **Restricted reporting orders**

The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask for amendments to the Appeal Tribunal

procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

- ***Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

- There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.
- ***An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

- ***Consideration of the current sanctions and whether they are still appropriate***

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, there is support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

- **Accessibility of the ethical standards framework**

The ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, a member of the public would have great difficulty in finding helpful information if they wished to complain, particularly if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. If the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

## **2 Background and methodology**

- 2.1 At a meeting of the Partnership Council for Wales on 1 March 2021 the then Minister for Housing and Local Government discussed a range of issues connected to the implementation of the Local Government and Elections (Wales) Act 2021. One of the issues discussed was her intention to commission an independent review of the ethical standards framework. Council Leaders agreed this was timely in light of the changes to the framework set out in the Act and the time which has elapsed since the framework was first established.
- 2.2 The ethical standards framework in Wales was established by the Local Government Act 2000 and has remained largely unchanged, though there have been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016. The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.
- 2.3 The Local Government and Elections (Wales) Act 2021 which received Royal Assent on 20 January 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. There are a number of provisions which are fundamental to greater transparency and openness between local Councils and communities, and the Act includes measures to combat bullying and harassment amongst elected members and Council staff.
- 2.4 Since the framework was established the Welsh Government has continuously set out its commitment to equality and diversity, including through the making of the Well-being of Future Generations Act 2015. Most recently the Government has published the Gender Equality Review and is currently consulting on its new Race Equality Action Plan.
- 2.5 It is with this new legislation and policies in mind that Welsh Government concluded that the ethical standards framework needed to be reviewed to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework.
- 2.6 In taking this work forward it was seen to be essential to ensure that the local government family in Wales is fully involved in the review and informs the outcome. This should include, but not exclusively, local government members (Principal and Community Councils), monitoring officers, standards committees, heads of democratic services, the Welsh Local Government Association (WLGA), Lawyers in Local Government, One Voice Wales, Society of Local Council Clerks, the Public Services Ombudsman for Wales and citizens/representative organisations. This involvement needed to be demonstrated as part of the outcome of this work.

2.7 The following were the key components of delivery:

- an audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could / should be made to the current arrangements.
- consideration of the role of standards committees, including their role in relation to Community Councils and whether the establishment of sub-committees has any impact on the process of supporting Community Councils and dealing with complaints.
- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and authorities' approach to addressing concerns.
- consideration of the current sanctions and whether they are still appropriate.

2.8 The review will take place in two phases:

- The first phase involved engagement with partners to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase was to be a roadmap for building on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published will also be explored as part of this work.
- Phase two of the work will focus on working with partners and stakeholders to deliver the necessary changes.

2.9 I am a former Chief Executive of two major local authorities in England, and amongst the other posts that I have held since returning home to Wales I was the first NAW Commissioner for Standards from 2000 to 2012.

- 2.10 I welcomed the opportunity lead this review and to collect the widest possible evidence about the strengths and weakness of the current ethical standards framework from those involved in the operation of the framework, how it might be improved and how the requirements of the recent legislation will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 2.11 I was required to produce a report on the review with my findings, conclusions and any relevant recommendations.
- 2.12 I was referred initially to a range of documents in the public domain and in the course of my review I received a large number of other relevant documents, most of which are in the public domain but a number of which were submissions by individual consultees.
- 2.13 My investigation has included a review of all of these documents together with interviews with a wide range of stakeholders involved in the operation of the ethical standards framework in Wales.
- 2.14 I met with:

**Welsh Government officials**

Deputy Director, Local Government Democracy Division

Head of Democracy, Diversity and Remuneration Branch

Former Head of the Ethics and Regulations Team

Policy lead, Ethical Standards Framework

Head of Local Government Partnerships Policy

Local Government Partnerships Policy - Community Councils & Regulation

Head of Fire & Rescue Services Branch, Community Safety Division

Head of Landscape & Outdoor Recreation, Economy, Skills and Natural Resources

Head of Welsh Tribunals Unit

**Welsh Local Government Association**

Head of Policy (Improvement and Governance)

Policy and Improvement Officer (Democratic Services)

**One Voice Wales**

Chief Executive

Deputy Chief Executive and Resources Manager

**Society of Local Councils Clerks**

Wales Policy Liaison Officer

**Public Services Ombudsman for Wales**

Ombudsman

Director of Policy, Legal and Governance

**Adjudication Panel for Wales**

APW President

**Monitoring Officers**

Monitoring Officer of Caerphilly County Borough Council

Monitoring Officer of Cardiff Council

Monitoring Officer of Ceredigion County Council

Monitoring Officer of Conwy County Borough Council

Monitoring Officer of Denbighshire County Council

Monitoring Officer of Flintshire County Council

Monitoring Officer of Gwynedd Council

Monitoring Officer of Monmouthshire County Council

Monitoring Officer of Powys County Council

Monitoring Officer of Rhondda Cynon Taf County Borough Council (written submission)

Monitoring Officer of Vale of Glamorgan Council

Monitoring Officer of Wrexham County Borough Council

Meeting of Monitoring Officers Group

### **Fire and Rescue Authorities**

Monitoring Officer of South Wales Fire and Rescue Authority

### **National Park Authorities**

Monitoring Officer of Pembrokeshire Coast National Park Authority

### **Chairs of Standards Committees**

Mid and North Wales Forum for Chairs of Standards Committees

Chair of Cardiff Standards Committee

Chair of Rhondda Cynon Taff Standards Committee

Chair of Vale of Glamorgan Standards Committee

Chair of Mid and West Wales Fire and Rescue Authority Standards Committee

2.15 I thank all those that I interviewed as part of this review for their willingness to share with me openly and comprehensively their experience and their professional observations, opinions and conclusions about the operation of the ethical standards framework in Wales, and what needs to change to ensure that the framework is fit for purpose.

### 3 The current ethical standards framework for local government in Wales

3.1 Part III of the Local Government Act 2000 (the 2000 Act) sets out an ethical standards framework for local government in Wales. It created a power for the National Assembly for Wales to issue a Model Code of Conduct to apply to members and co-opted members of all relevant authorities in Wales (a county/county borough council; community council; fire and rescue authority; and a national park authority). This power was transferred to Welsh Ministers by the Government of Wales Act 2006. In 2008 (as amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

3.2 **The Model Code of Conduct** sets out what is required of all elected members in respect of appropriate standards of conduct in public office. For example, the Code requires members to show respect and consideration for others and not to use bullying behaviour or to harass any person. Councillors must act objectively and in the public interest, having regard to the advice of officers, and they must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent or unless required by law to do so.

3.2.1 The Local Government Act 2000 empowered the National Assembly to issue principles which those elected to relevant authorities must have regard to when undertaking their role. The Code of Conduct is based on these principles which are designed to promote the highest possible standards of conduct. These principles draw on the 7 Principles of Public Life which were set out in the Nolan Report 'Standards of Conduct in Local Government in England, Scotland and Wales'. Three more principles were added to these: '*a duty to uphold the law*', '*proper stewardship of the Council's resources*' and '*equality and respect for others*'. The current principles were set out in a statutory instrument (1. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166))

3.2.2 Members elected to relevant authorities give generously of their time and commitment for the benefit of their communities. The 10 principles provide a framework for channelling that commitment in a way which will reflect well on the Councillor and their authority, and give the local community confidence in the way that the authority is governed.

3.2.3 The individual sections of the Code of Conduct are designed to support the implementation of the 10 Principles of Public Life as detailed below.

#### 1. *Selflessness*

*Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on, or to avoid a disadvantage for, themselves or to improperly confer an advantage or disadvantage on others.*

#### 2. *Honesty*

*Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.*

### 3. Integrity and propriety

*Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.*

### 4. Duty to uphold the law

*Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.*

### 5. Stewardship

*In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.*

### 6. Objectivity in decision-making

*In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.*

### 7. Equality and respect

*Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.*

### 8. Openness

*Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.*

### 9. Accountability

*Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.*

### 10. Leadership

*Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.*

3.2.4 The Principles are not part of the Model Code of Conduct and failure to comply with the Principles is not of itself indicative of a breach of the Code. However, it is likely that, for example, a failure to adhere to the Principle concerning 'equality and respect' would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

3.2.5 All relevant authorities in Wales were required to adopt the Code in its Model form in its entirety, but could make additions to the Code provided these were consistent with the Model Code. This was intended to give certainty both to elected members and to the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for those elected members who serve on more than one authority and for the general public.

3.2.6 All elected members, when they sign the Declaration of Acceptance of Office, confirm that they will comply with their Council's Code of Conduct. It is the member's personal responsibility to ensure that they understand their obligations under the Code and act in a way which shows that they are committed to meeting the high standards of conduct that are expected of them as a member. Ultimately, as a member, they are responsible for the decisions they take and can be held to account for them. However, this does not imply that they can take decisions which breach the Code or which are contrary to advice simply because the decision is theirs to take.

3.2.7 The Public Services Ombudsman for Wales has issued very helpful guidance to assist Councillors in deciding when the Code of Conduct applies to them:

- Conduct in public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply when he or she is acting as an elected member or acting as a representative of the Council. However, as there may be circumstances in which a member's behaviour in private life can impact on the reputation and integrity of the Council, some of the provisions of the Code apply at all times. When reaching a decision as to whether the Code applies at a particular time the Ombudsman has regard to the particular circumstances and the nature of the conduct at that time.

- When does the Code apply?
  - whenever a member acts in an official capacity, including whenever they are conducting the business of their authority or acting, claiming to act, or give the impression that they are acting, in their official capacity as a member or as a representative of their authority.
  - at any time, if the member conducts themselves in a manner which could reasonably be regarded as bringing their office or their authority into disrepute or if they use or attempt to use their position to gain an advantage or avoid a disadvantage for themselves or any other person or if they misuse their authority's resources.

- where a member acts as a representative of their Council on another relevant authority, or any other body, they must, when acting for that other authority, comply with their Council's Code of Conduct. When nominated by their Council as a trustee of a charity they are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission.
- if a member is acting as a representative of his or her Council on another body, for example on an event committee, which does not have a Code of Conduct relating to its members, the member must comply with their Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.
- if a member refers to them self as Councillor, the Code will apply. This applies in conversation, in writing, or in the use of electronic media. There has been a significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter. If the member refers to their role as a Councillor in any way or comments that they make are clearly related to that role then the Code will apply to any comments that are made there. Even if the member does not refer to their role as a Councillor, the comments may have the effect of bringing their office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code. The Welsh Local Government Association has produced useful guidance on social media entitled 'Social Media: A Guide for Councillors'. The guidance aims to provide members with a clearer idea about how they can use social media, the possible pitfalls and how to avoid them.
- if a member is suspended from office for any reason, they must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while they are suspended.

3.3 The ethical standards framework in Wales is intended to promote high standards of conduct by Councillors. The **Standards Committees** of principal councils established under section 53 of the 2000 Act have a key role in this regard. They are made up of independent lay members together with elected members of the authority with an independent member as Chair.

3.3.1 The 'general functions' of a Standards Committee are:

- promoting and maintaining high standards of conduct by members of the authority;

and

- assisting members to observe the Code of Conduct adopted by the Council

3.3.2 A Standards Committee also has the following 'specific functions':

- advising the authority on the adoption or revision of a Code of Conduct;

- monitoring the operation of the Code of Conduct;

and

- advising, training or arranging training for members on matters relating to the Code of conduct.

3.3.3 Under other provisions of the 2000 Act, Standards Committees also consider applications by members for dispensation to participate in business for which they have a prejudicial interest. They consider and adjudicate on alleged breaches of the Code of Conduct following investigation by the Public Services Ombudsman or, less often, the relevant Monitoring Officer. Although there has been a tendency for some Committees to see the latter as their key role, their primary focus should be on proactive measures to support members of their Council to maintain appropriate standards of conduct and thereby avoid breaches of the Code. Standards Committees do this through a variety of means, such as working with political group leaders, attending and monitoring Council meetings and reporting annually to Councils on their activities and the standards of conduct within the authority.

3.3.4 The Standards Committee of a principal Council also exercises the above functions in respect of members of Town and Community Councils in its area. However, subject to consultation with those Councils in its area, a sub-committee may be established to undertake all the functions of a Standards Committee in relation to Community Councils. Standards Committees of principal Councils are required to assist members and co-opted members of Community Councils in their area to observe the Code of Conduct, and to arrange for advice and training to be provided. Whilst Community Councillors do not act on decision-making bodies such as Planning Committees they are called upon to take decisions on the allocation of funding from the Council's precept and to offer guidance, drawing on valuable local knowledge, to the County Council about the impact of planning applications. It is imperative that Community Council members are fully aware of the Code of Conduct and its implications for their decision-making and whether they should be involved in making a decision.

3.3.5 When a case is referred to a Standards Committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. Hearings are normally conducted in public unless there are valid reasons for not doing so to promote public confidence in standards in public life. Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke,

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

3.3.6 A member subject to a sanction may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a Standards Committee

3.4 **The Public Services Ombudsman** for Wales has powers to investigate allegations that individual Councillors in Wales have failed to comply with their Council's Member Code of Conduct. A complaint about a failure to comply with the Code of Conduct must be made direct to the Ombudsman, who will decide whether it is appropriate to investigate the matter.

3.4.1 Where the Ombudsman considers a complaint warrants investigation, the investigation will usually be undertaken by the Ombudsman. However, the Ombudsman has powers to refer complaints to the appropriate local authority Monitoring Officer for investigation and determination by the local Standards Committee. The Ombudsman may refer a report on the outcome of an investigation by his office to the relevant Standards Committee or, generally in more serious cases, the Adjudication Panel for Wales.

3.4.2 The Public Services Ombudsman for Wales investigates complaints that members of relevant authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code the Ombudsman uses a two-stage test:

- the first stage is to establish whether there is direct evidence that a breach of the Code actually took place. The level of proof that is required is 'on the balance of probabilities'
- if that first evidential stage is met, at the second stage the Ombudsman considers whether an investigation or a referral to a Standards Committees or the Adjudication Panel for Wales is required 'in the public interest'. Public interest factors include:
  - the seriousness of the breach
  - whether the member deliberately sought personal gain for themselves or another person at the public expense
  - whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
  - whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
  - whether there is evidence of previous similar behaviour on the part of the member

- whether the investigation or referral to a Standards Committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a Standards Committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (the Ombudsman takes account of the outcomes of previous cases considered by Standards Committees across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a Standards Committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

3.4.3 These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case. The Ombudsman has a wide discretion as to whether to begin or continue an investigation. He has revised the two-stage test adopted by his predecessor in order to provide greater clarity on how he will usually exercise his discretion and to secure a degree of consistency and certainty in the decisions that he reaches.

3.4.4 When the Ombudsman has investigated a complaint he may refer the matter to a relevant Standards Committee or to the Adjudication Panel for Wales for determination. This will depend on the nature of and individual circumstances of the alleged breach. When issuing his report the Ombudsman reflects on and analyses the evidence gathered and draws his conclusions as to whether it is likely that a breach of the Code has occurred. However, the authority and responsibility to make a determination of breach rests solely with a Standards Committee or the Adjudication Panel for Wales.

### 3.5 **Local Resolution Process**

Most principal councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there are a number of Community Councils that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code of Conduct or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Ombudsman about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

3.5.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

### 3.6 **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent tribunal established under Part III of the Local Government Act 2000 that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

3.6.1 The Adjudication Panel for Wales has two statutory functions in relation to breaches of the Code of Conduct:

- to form Case or Interim Case Tribunals to consider references from the Public Service Ombudsman for Wales following his investigation of allegations that a member has failed to comply with their authority's Code of Conduct;

and

- to consider appeals from members against the decisions of local authority standards committees that they have breached the Code of Conduct in Appeal Tribunals.

3.6.2 The Adjudication Panel for Wales' procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended);

and

- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

3.6.3 The Adjudication Panel for Wales operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the Panel are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the Adjudication Panel for Wales clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Panel. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

3.6.4 Anyone wishing to respond to a reference from the Public Services Ombudsman for Wales or to make an application for permission to appeal to the Adjudication Panel for Wales must complete and send the relevant form to the Panel. At an Adjudication Panel for Wales Hearing the Panel is composed of a legally qualified chairperson and two lay members. Legally qualified members can also sit as a lay member. Panel Hearings are normally held in public and take place close to the authority area. The Adjudication Panel for Wales publishes its decisions on its website. Decisions of Case Tribunals can be appealed on limited grounds to the High Court, and permission to appeal to the High Court must first be sought from the High Court.

3.6.5 When the Public Services Ombudsman refers a case to the Adjudication Panel for Wales its role is to determine whether a member has breached the Code and whether a sanction should be imposed. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

3.6.6 Where either a Standards Committee or the Panel suspends or partly suspends a member or co-opted member that member is still subject to the Code of Conduct, in particular the provisions set out in paragraphs 6(1)(a) (*'bringing the office of member or authority into disrepute'*) and paragraph 7 (*'improperly using the position of member'*).

### 3.7 The role of the **Monitoring Officer** of a principal council

The Monitoring Officer is an officer employed by the County or County Borough Council. Among many other things they advise and assist County Councillors. Monitoring Officers may offer some training and advice to Community Councils in their area. The Monitoring Officer has a significant role in the local resolution process outlined earlier and they will also work closely in advising the Council's Standards Committee.

### 3.8 The role of the **Clerk** of a Community Council

The Clerk has a complex role and advises Community Councillors on relevant legislation, including matters relating to the Code of Conduct and on the Council's Standing Orders. The Clerk will work closely with the Chair to ensure that appropriate procedures are followed at meetings and that all necessary information is available to Councillors so that they may make informed decisions. Clerks may approach their relevant County or County Borough Council's Monitoring Officer for advice and support.

3.8.1 The Clerk is an employee of the Council and is not required to abide by the Code of Conduct. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Public Services Ombudsman for Wales cannot consider complaints regarding the performance of the Clerk as this is a matter for the Council as the Clerk's employer.

### 3.9 **Complaints to the Public Services Ombudsman for Wales**

3.9.1 In 2019/20 the Public Services Ombudsman received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

	2019/20	2018/19
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	231	282

3.9.2 This decrease in 2019/20 related almost wholly to the reduction in complaints made by or against members of Community Councils. The Ombudsman found this encouraging and suggested in his Annual Report for 2019/20 that standards of conduct of members of

these bodies may be improving and/or that the local resolution of issues may be taking place with good effect. Nevertheless, he is still receiving complaints in respect of a small number of Community Councils which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues. When I spoke with him he exemplified this by referring to one complaint he had received that one member of a Community Council had been clicking his biro aggressively at another member. 18% of the Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. The Ombudsman has, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

- 3.9.3 In 2019/20 135 of the 231 complaints considered by the Public Services Ombudsman for Wales concerned Community Councillors, a welcome 18% reduction from the 190 complaints about Community Councillors considered by the Ombudsman in 2018/19. However, whilst the Ombudsman hoped that this was a sign that standards of conduct in Community Councils in particular was improving, and although the Ombudsman's Annual Report for 2020/21 is not yet published, when I spoke with him he gave me advance notice of a 47% rise in the number of complaints he received in 2020/21. He also told me that the early indications are that there will be a further significant increase in the current year (2021/22). He expressed concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view mandatory training of all Councillors combined with increased local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
- 3.9.4 As in previous years, the majority of the Code of Conduct complaints received during 2019/20 related to matters of '*promotion of equality and respect*' (49%) and '*disclosure and registration of interests*' (17%). The Ombudsman expressed concern that these themes continue to dominate and that there has been a year on year increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of principal councils/County and County Borough Councils or Community Councils. He considers that members could benefit from training or refresher training on these subjects although his impression from investigations is that many members of Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.
- 3.9.5 The Ombudsman's view, endorsed by all of those I met with during my review, is that Code of Conduct training is essential to becoming a 'good Councillor', and that members should undertake this training as soon as they become elected/co-opted and that there should be regular refreshment on the provisions and requirements of the Code of Conduct. There is currently no statutory obligation for members of Community Councils to complete such training although they are required to comply with the Code.
- 3.9.6 In 2019/20, 202 or approximately 86% of all Code of Conduct complaints were closed after assessment against the Public Services Ombudsman's two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%). The remaining complaints taken forward to

investigation represented the most serious of the complaints received.

3.9.7 During the Ombudsman's investigation, evidence gathered is reviewed to assess whether it remains in the public interest to continue the investigation. Where it appears that investigating a matter is no longer in the public interest, the decision is made by the Ombudsman to discontinue that investigation. Sometimes the investigation finds no evidence of a breach. Finally, when an investigation is concluded, the Ombudsman can determine that '*no action needs to be taken*' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour may be suggestive of a breach of the Code and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned. The Ombudsman made one or the other of these above determinations in 85% of the Code of Conduct investigations in 2019/20.

3.9.8 In cases which cannot be concluded in this manner or which point to serious breaches of the Code, it is necessary for the Ombudsman to refer the case to a relevant local Standards Committee or to the Adjudication Panel for Wales for consideration. In 2019/20 5 referrals were made, 2% of all the Code of Conduct complaints that were closed, compared to 8 or 3% in 2018/19. In 2019/20 these referrals were:

- 4 referrals to Standards Committees
- 1 referral to the Adjudication Panel for Wales

3.9.9 The Adjudication Panel for Wales or the relevant local Standards Committee considers the evidence, together with any defence put forward by the member concerned. It then determines whether a breach of the Code has occurred and if so, what penalty, if any, should be imposed.

3.9.10 The 4 referrals to Standards Committees in 2019/20 concerned behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct indicating bullying behaviour towards an employee of a contractor of the authority. When the 2019/20 Annual Report was published, the Adjudication Panel for Wales was considering an appeal on the issue of sanction only in that case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. When the 2019/20 Annual Report was published, these two referrals were awaiting determination.

3.9.11 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing their authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

3.9.12 Between 2016/17 and 2018/19, the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 88% of referrals by the Ombudsman. In 2019/20 Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by the Ombudsman. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice the Ombudsman's investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

3.9.13 As is clear from these statistics above, the Public Services Ombudsman for Wales makes referrals to a Standards Committee or the Adjudication Panel for Wales only in a very small number of cases, and he does not believe that the case referrals are indicative of a wider decline in member conduct in Welsh local government. Nevertheless, the outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them. Even when the Ombudsman does not refer a case, the investigation is used as an opportunity to promote good practice, and the members investigated are reminded of their obligations under the Code and, where relevant, further training or engagement with the authority to prevent further possible breaches is proposed. Members are also sometimes made aware that the matter could be taken into consideration in the event of any future complaints of a similar nature. The Ombudsman is clear in his report that it is important that innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned should be deployed.

## 4 My findings

4.1 In the course of my review I have met with most of those individuals and organisations that are involved in the operation of the ethical standards framework in Wales. The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and a large number of those that I consulted proposed that '*if it ain't broke don't fix it*'. Many respondents commented that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being significantly reduced, and that the already high ethical standards in Welsh local government could be further enhanced.

### 4.2 The Model Code of Conduct

4.2.1 Clear, relevant, and proportionate Codes of Conduct are central to maintaining ethical standards in public life. Codes of Conduct were identified by the Committee on Standards in Public Life in its first report in 1995 as one of the essential 'strands' in promoting and maintaining ethical standards in public life, at a time when many public sector organisations did not have them. Codes of Conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

4.2.2 The power to issue a Code of Conduct was transferred to Welsh Ministers by the Government of Wales Act 2006, and in 2008 (amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt. In Wales, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a Councillor behaves in a way that could '*reasonably be regarded as bringing [their] office or [their] authority into disrepute*'. This includes any time a Councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. As noted earlier, the Public Services Ombudsman for Wales has also issued guidance of the application of the Code of Conduct to social media use.

4.2.3 I was required as part of this review to conduct an audit of the Codes of Conduct adopted by all the relevant authorities in Wales against the Model Code to identify any local variances and to consider whether the ten 'principles' of conduct are still relevant and whether the Model Code of Conduct needs updating. This would include identification of areas where improvements could/should be made. The Monitoring Officers of all

principal councils, National Parks Authorities, and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a County Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half of local authorities also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

- 4.2.4 Paragraph 17 of the Model Code requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's monitoring officer, or in relation to a Community Council, to the authority's 'proper officer' of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations but a number of authorities have specified a threshold beyond which there must be a declaration. This ranges from £21 to £100 and there is agreement that the threshold should be specified in the Code to ensure consistency across Wales.
- 4.2.5 I was also required to explore options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Local Government and Elections (Wales) Act 2021 to stop Councillors' addresses being published. As I understand it, the law requiring the publication of the home addresses of Councillors was changed in the Local Government and Elections (Wales) Act 2021 so Councils will no longer do this from May 2022. This is for the safety and privacy of members, and reflects the fact that email or phone is now a more usual way of contacting members. However, Regulations issued under the Local Government Act 2000 still require members to include their home address in the Council's Register of Interests so the legislation is not in alignment. There is agreement that the Code of Conduct should not require Councillors to disclose their home address to declare the home address, and that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

*'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'*

- 4.2.6 The Public Services Ombudsman has raised an issue in relation to the definition of 'person', a term frequently used in the Model Code of Conduct. A 'person' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Ombudsman has had to rely on the definition in the Interpretation Act 1978 which is 'a body of persons corporate or unincorporate'. The Ombudsman has been challenged when he has tried to use his powers to obtain information from a company or a charity and he has to threaten and or use powers to formally bring criminal proceedings and or contempt proceedings under current legislation for failing to cooperate with the investigation by the Ombudsman. So a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

4.2.7 Paragraph 4a of the Model Code of Conduct requires that a member must:

*'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'*

There is concern that this provision does not include all protected characteristics, and the view from consultees is that even though no problems have resulted as yet from the narrow coverage of this provision it should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

4.2.8 It is clear that there is the potential for breaches of the Code of Conduct resulting from the extensive and increasing use being made by elected members of a range of social media. The Welsh Local Government Association has produced useful guidance on social media in *'Social Media: A Guide for Councillors'*. The guidance provides members with advice about how to use social media, the possible pitfalls and how to avoid them. It reminds members that whenever something is posted on social media it becomes a publication, and is effectively made a broadcast in the public domain that is subject to both the Code of Conduct and to various laws. The WLGA guidance reminds members that the Code of Conduct applies to members whenever they are *'Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority'*, and the Code applies if a member conducts them self *'in a manner which could reasonably be regarded as bringing your office or your authority into disrepute'*. If a member can be identified as a Councillor when using social media, either by the account name or how they are described or by what they comment on and how they comment, the requirements of the Code of Conduct apply. If a member says something that could be regarded as bringing their office or authority into disrepute the Code applies even if the member is not apparently acting in an official capacity or does not identify him or herself as a member. The Ombudsman's guidance states that:

*'Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute'*, and in the same way that you are required to act in Council meetings or in your communities you should:

- show respect for others - do not use social media to be rude or disrespectful
- not disclose confidential information about people or the Council
- not bully or intimidate others - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- not try to secure a benefit for yourself or a disadvantage for others

- abide by the law on equality - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010, even as a joke or *'tongue in cheek'*

This helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.

#### 4.2.9 Criminal convictions

6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. It states:

*(You must) 'report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty)'*

In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened until the Monitoring Officer's DBS checks have identified convictions or the matter has been reported in the press. The Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

### 4.3 Training for Councillors

4.3.1 Without exception, every individual or organisational representative that I met in the course of this review expressed the view that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. As was demonstrated in the audit of the Codes of Conduct adopted by all the relevant authorities mandatory training on the Code of Conduct is already a requirement of more than half of the principal councils so this would not be a controversial development for members of principal councils. However, although all members of Community Councils are currently required under the 2004 Order to be bound by the Code of Conduct it may be seen as a matter of controversy for them to be required also commit to training without due notice so advice that this is the case could be provided to all those considering standing for

election. Alternatively, it may be easier to amend the Code of Conduct to require those subject to the Code to undergo appropriate training on the Code.

4.3.2 If initial and refresher training on the Code is made mandatory there will need to be consideration of how that training can be resourced and delivered. At the moment many Monitoring Officers provide training on the Code of Conduct not only to their own members but also to members of Community Councils in the area. Some of the larger Community Councils arrange the training themselves, often using the training materials developed by One Voice Wales on the Code of Conduct and wider governance matters. Sometimes One Voice Wales provides the training direct but this has resource implications particularly for the smaller Community Councils.

#### 4.4 **Standards Committees and Independent Chairs**

4.4.1 I met with a number of Independent Chairs of Standards Committees and also attended a meeting of the North Wales Forum for Chairs of Standards Committees in the course of this review. I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Community Councils in their area. In a number of authorities the Independent Members of the Committee attend meetings not only of their own Council but also meetings of the Community Councils in their area, recording their assessment of the meeting generally and the conduct of members specifically and feeding this assessment back to the Clerk and Chair of the Community Council. They stand ready to intervene if necessary to assist the Council and its Clerk to deal with challenging and inappropriate behaviour by members of that Council and, in one case, the Independent Chair monitors the situation in particularly problematic Community Councils in his or her area and intervenes to 'police' the behavior of the members involved.

4.4.2 There needs to be a consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the local situation for the principal authority concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

4.4.3 The Local Government and Elections (Wales) Act 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. The Act includes a number of provisions which are fundamental to greater transparency and

openness between local Councils and communities, as well as measures to combat bullying and harassment amongst elected members and Council staff. These provisions include:

- a new duty on leaders of political groups in principal councils to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- a requirement for the group leader(s) to co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct across the Council
- new functions for Standards Committees to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties
- a requirement for the Standards Committee to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards. This report at the end of each financial year should describe how the Committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the Council. The Council will be obliged to consider the report within three months of its receipt. This new duty will help to ensure that all Standards Committees adopt good practice and that standards issues are considered regularly (at least annually) by all Council members.
- a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include provision of training on the Code of Conduct at appropriate intervals.

4.4.4 There is seen to be a need for initial training of members of Standards Committee members, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The initial training should be refreshed immediately prior to a case being heard as well.

4.4.5 There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and that the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently would encourage consistency of approach and the adoption of best practice across Wales.

4.4.6 The Public Services Ombudsman for Wales accepts that there is a need for more references back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to *'nip things in the bud'* at a local level.

4.4.7 I was asked as part of my review to consider whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of its Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

#### 4.5 **Community Councils**

4.5.1 There is agreement by all those that I met in the course of the review that local resolution combined with the mandatory training of all members has the potential to provide a means for resolving many issues locally before they get out of hand, and to prevent low-level complaints and 'grumbles' about fellow members turning into formal complaints to the Ombudsman that he either has to deal with or refer back for local consideration. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime must remain in place to deal with instances of serious misconduct.

4.5.2 Many of those I have spoken with expressed serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Community Councils. In particular, conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some Councils to retain members and Council officers. Less serious, but nonetheless disruptive behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of Council business. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Community Councils that have given rise to a disproportionate number of complaints in the past. His approach is that bullying and harassment, or lack of respect will simply not be tolerated. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and

inappropriate behaviour, including advice on formulating an effective complaint. This guidance for members of Community Councils emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration.

#### **4.6 Local resolution of complaints**

4.6.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

4.6.2 Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. This provides guidance relevant to Town and Community Councils in formulating and operating such protocols. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

#### **4.7 The Public Services Ombudsman for Wales**

4.7.1 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which Town and Community Councillors operate. Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the

operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of Standards Committees and the Adjudication Panel for Wales. The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

4.7.2 Section 69 of the 2000 Act empowers the Public Services Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority's Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman's attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by Standards Committees and the Adjudication Panel for Wales when exercising their respective functions.

#### 4.7.3 The two-stage Public Interest Test

The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman's discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of Town and Community Councils. The Ombudsman has continued to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The Ombudsman considers that the involvement of Standards Committees in applying the two-stage test is impractical, not least as it may be perceived as prejudicing the later consideration of any report of a subsequent investigation that has been referred back to a Committee. It would probably also require primary legislation to make this a function of a Standards Committee or some other person or body. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by Monitoring Officers. However, Monitoring Officers raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively. There is also a reluctance on the part of Monitoring Officers to be involved in the investigation of complaints against members of their own authorities for understandable reasons.

- 4.7.4 A number of consultees expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken, and the validity of the two-stage test was also questioned. The first stage of the test was considered to be objective and based on reasonably clear criteria. However, the second stage ‘public interest’ test was considered to be subjective and based mainly on the Ombudsman’s opinion. It was suggested that the ‘public interest’ test should be applied by a wider ‘audience’ appointed for the purpose, such as the Standards Committee of the principal council for the area. There was also concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. The exercise of the Ombudsman’s discretion more towards referral than at present would be welcome.
- 4.7.5 There is a concern that the investigations undertaken by the Ombudsman take too long, linked to a concern that the power to suspend the member concerned whilst the investigation is being carried out is not being exercised by the Adjudication Panel for Wales though a referral by the Ombudsman. This can mean that a member facing serious allegations of a criminal nature may still be able to act as a Councillor with potential implications for the safeguarding of members of the public, other Councillors and employees of the local authority. The Ombudsman responded to the concerns about the length of some investigations by pointing to the unavoidable delays resulting from the unavailability of witnesses and the need to gather evidence that had not been included as part of the initial complaint. He also reiterated his concern that too much of his organisation’s time and limited resources is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation.

## 4.8 **The Adjudication Panel for Wales**

- 4.8.1 The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the practices that apply to the Panel. The Panel is a creature of statute created by the Local Government Act 2000 but since devolution the underpinning of the Panel’s powers and processes result from a mixture of the LGA 2000 and a variety of Welsh Regulations, particularly The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and The Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (both amended). The Regulations were drafted by the Welsh Government, and it would be for Welsh Government to deliver any policy amendments. In addition, ‘practice directions’ need the approval of the First Minister and while it is for the President of the Panel to set out new procedures or changes for Appeal Tribunals, the First Minister must agree any changes. Presidential Guidance is a matter for President but it is not legally binding.

- 4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel's work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

#### 4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

#### 4.8.4 Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally. This is seen to avoid delay with the Panel procedure and allow both the accused member and the Tribunal to obtain additional evidence easily.

#### 4.8.5 Appeal Tribunal procedure

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. Service should be by first class post with deemed service rules in place and Panel should be given the express ability to anonymise witnesses. There is a grey area on the subject of witness summons – Case Tribunals expressly have the power to do this through the relevant Regulations but the Regulations for Appeal Tribunals say that the Panel President determines this with the consent of the First Minister. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

#### 4.8.6 Case Tribunal procedure

The Panel President considers that the Regulations are outdated in several respects. Service should be by first class post with deemed service rules in place, the ability to anonymise witnesses is required, and there is a Regulation that says Hearings can only be postponed with seven days notice given to the accused member. The ability to have part public and part private hearings is not expressly permitted currently.

#### 4.8.7 Permission to appeal procedure

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well – it only allows delegation of her power to another legal member if she is absent whereas she would prefer to have discretion about delegation, such as when the accused member is known to her, it requires her to make a decision within 21 days with an extension of time if further information is required but it is not clear from when the new deadline applies, and does not give the Public Services Ombudsman any opportunity to make submissions to the Panel. A Hearing is possible if there are special circumstances, but no extension of time is given to effectively allow this. The President proposes minor amendments to make the process more balanced and sensible.

#### 4.8.8 Sentencing powers

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or

- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

Monitoring Officers have confirmed that they would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

#### 4.8.9 Interim Case Tribunals

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high. This view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The fact is that the Ombudsman has never applied for such a Hearing. The process is lengthy and the LGA 2000 does not explain sufficiently what is required to deal with such hearings. The intention in the Act appears to be to allow an accused member to be suspended for six months (it is unclear whether this is one term of suspension or if it can be renewed on application) while the Ombudsman investigates if that Councillor through their role was interfering with the investigation or if for some other reason it was necessary to suspend on an interim basis. The issue has arisen several times where Councillors are being prosecuted for historic sex offences and there is a strong feeling from Monitoring Officers and Standards Committees that it is inappropriate to continue to remunerate a Councillor who is facing such charges, and that his or her continued activities as a Councillor could endanger members of the public, other Councilors or members of staff. A member who is charged with criminal offences is innocent until proven guilty, and in order for the Ombudsman to make an interim referral there would need to be strong evidence that it is in the public interest for a suspension to be imposed, particularly if the offences are historical. This could be met if, for example, there is evidence that the member represents a risk to the public at large or to a particular group in the locality. A neutral act of suspension akin to the practice in employment matters pending hearings taking place would provide some assurance to the public and to local authorities on the risk that the member concerned could reoffend or misuse their position/standing in the local community whilst being investigated or awaiting criminal trial. In addition, an Interim Case Tribunal would follow the same process as a full Case Tribunal, which means it would take at least three months to have a Hearing, and the Hearing would require a full Panel which would then present difficulties in constituting a new Panel for the final Hearing. There is no assistance in the legislation about how to manage such Hearings and 'public interest' is not defined. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with

the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

*'Where it appears to the Interim Case Tribunal that:*

- a) if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b) and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*
- and*
- c) and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

## **5 Conclusions and recommendations**

5.1 I welcomed the opportunity to lead this review and to collect the widest possible evidence

from those involved in the operation of the ethical standards framework about strengths and weakness of the current framework, how it might be improved and how the requirements of the recent legislation as it relates to ethical standards will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

5.2 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome. This involvement needed to be demonstrated as part of the outcome of this work. I have met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

5.3 The first phase of the review involved engagement with those individuals and representatives of organisations to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published have also been considered.

5.4 The following were required as key components of delivery:

- *An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances*
- *An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements*
- *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.*
- *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.*
- *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the*

*approach to addressing concerns.*

- *Consideration of the current sanctions and whether they are still appropriate*

5.5 This first stage of the review has covered each of these issues and my findings and recommendations for change below relate to the key components of delivery:

5.5.1 ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

I conducted an audit of the Codes of Conduct adopted by all the required authorities against the Model Code of Conduct to identify any local variances and to consider whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This included identification of areas where improvements could/should be made. The Monitoring Officers of all principal councils, National Parks Authorities and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a county Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half also have a mandatory training requirement again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

5.5.2 ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

All of those I met as part of this review consider that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales.

However, there are concerns by the Public Services Ombudsman and Monitoring Officers about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code of Conduct for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being

significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

**5.5.3 Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.**

The consensus is that the current framework is fit for purpose, works well in practice and a number of those that I consulted proposed that *'if it ain't broke don't fix it'*. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate - and superior to the Code of Conduct used in English local government - and not in need of major revision.

However, I have proposed a number of amendments to the Model Code of Conduct in respect of:

- Paragraph 17 of the Model Code that requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's Monitoring Officer, or in relation to a Community Council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations and a number of authorities have specified a threshold beyond which there must be a declaration. The threshold should be specified in the Code to ensure consistency across Wales.
- The law requiring the publication of the home addresses of Councillors has changed recently so Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. There is agreement that the Code of Conduct should not require Councillors to disclose their home address, and it is proposed that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

*'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'*
- A *'person'* is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Public Services Ombudsman has had to rely in conducting his investigations on the definition in the Interpretation Act 1978 which is *'a body of persons corporate or unincorporate'*. This has caused problems, and it is considered that a clear definition of what is meant by a *'person'* on the face of the legislation or in the Model Code would be beneficial.
- There is concern that the provision in Paragraph 4a of the Model Code of Conduct which requires that a member must:

*'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'*

does not include all protected characteristics. This provision should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

- The potential for breaches of the Code of Conduct as a result of the extensive and increasing use being made by elected members of a range of social media is a matter of concern. The helpful guidance on the use of social media by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened and the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

Every individual or organizational representative that I met proposed that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. The Local Government and Elections (Wales) Act 2021 includes a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include training on the Code of Conduct at appropriate intervals. If initial and refresher training on the Code is made mandatory for all councillors there

will need to be consideration of how that training can be resourced and delivered.

- **Increased use of local resolution of complaints**

Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. Members may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal authority's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Consideration should be given to whether the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

There is concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman has had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. Greater use of the Ombudsman's discretion for referral than is the case at present would be welcomed by Monitoring Officers and Chairs of Standards Committees. The Ombudsman is sympathetic to the view expressed by some of those I spoke with that his investigations take too much time and that too often quite serious complaints are simply not dealt with. He has expressed his concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the processes that apply to the work Panel.

- **Restricted reporting orders**

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically. The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well and proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are limited and the President would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England. The Public Services Ombudsman and Monitoring Officers have confirmed their support for this.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high, and this view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a

test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

*'Where it appears to the Interim Case Tribunal that:*

*a. if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*

*b. and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*

*and*

*c. and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

#### **5.5.4 Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.**

I was struck by the variation in the way that Standards Committees in Wales see their remit and at the different roles played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs

seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Town and Community Councils in their area. There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, but accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

The Local Government and Elections (Wales) Act 2021 includes a number of provisions that will have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.

There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently that would encourage consistency of approach and the adoption of best practice across Wales.

The Public Services Ombudsman for Wales accepts that there is a need for more reference back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to '*nip things in the bud*' at a local level.

I reviewed whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of the Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Town and Community Councils that have given rise to a disproportionate number of complaints in the past, and guidance prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and inappropriate behaviour. This is an issue that may be mitigated to some extent by a requirement for mandatory training of councillors and greater use of local resolution procedures, but it is a serious problem that will continue to need to be monitored and addressed where necessary by local Standards Committees and Monitoring Officers

**5.5.5 *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

**5.5.6 *Consideration of the current sanctions and whether they are still appropriate***

Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

A member subject to a sanction by a Standards Committee may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination.

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, the Public Services Ombudsman and Monitoring Officers confirmed their support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

#### **5.5.7 Accessibility of the ethical standards framework**

Although this was not an issue raised by any of those that I consulted there is nevertheless a concern that the ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, based on my own experience of searching principal Council websites as well as the Welsh Government website for information about the Code of Conduct, or the work of Standards Committees or how to complain about the conduct of a councillor, a member of the public would have great difficulty in finding helpful information if they wished to complain. And of course not every member of the public has internet access, and some members of the public have particular difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group' such as the traveler community or because of language problems. I have no practical recommendation about how this should be addressed but if the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

- 5.6 The second phase of the review will focus on working with partners and stakeholders to deliver any changes to the ethical standards framework that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

**Richard Penn**

**Independent Consultant**

**July 2021**



# Agenda Item 6

<b>Committee:</b>	<b>THE STANDARDS COMMITTEE</b>
<b>Date:</b>	<b>8 November 2021</b>
<b>Title:</b>	<b>Allegations against members</b>
<b>Author:</b>	<b>Senior Solicitor (Corporate)</b>
<b>Purpose:</b>	<b>For information</b>

## 1. Background

The purpose of this report is to inform the Committee of the Ombudsman's decisions on formal complaints against members.

## 2. Decisions

We have received the following decisions from the Ombudsman since the last report.

<b>Complaint</b>	<b>Decision</b>
<p><b>Complaint No. 202002960</b></p> <p>The complaint related to comments on Facebook. The complainant believed they were homophobic with the intention of bullying an employee.</p>	<p>Following an investigation, the Ombudsman decided that no further action was required.</p> <p>As the member was not, in the Ombudsman's view, acting as a councillor at that time, he could only consider an allegation of bringing his office or authority into disrepute.</p> <p>The member denied that his comments were homophobic and the Ombudsman accepted that they could be interpreted differently. The member stated that he did not intend or expect to cause any offence, that he regretted his actions and was willing to apologise.</p> <p>As the comments were not sufficiently linked to his role as a councillor, and in light of the member's explanation for the comments and his acknowledgment that he should not have made them, it was not in the public interest to take any further action.</p>

<p><b>Complaint No. 202102802</b></p> <p>Complaint from a clerk about correspondence from a member concerning the arrangements for a council meeting.</p>	<p>No investigation.</p> <p>The member's comments about holding council meetings and the council's complaints processes were political in nature and therefore unlikely to breach the code.</p> <p>It did not appear to the Ombudsman that the member had attempted to bully the complainant.</p> <p>The contents of a specific email were not rude or in breach of the Code, but contacting the complainant given his situation at the time was unwise and he would remind the member that a member has some responsibility for the health and welfare of employees the council.</p>
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### 3. Analysis of the Complaints

Below is an analysis of this year's complaints (2021/22) where a decision has been received:

<b>Member who is subject of the complaint</b>	
Member of community council	4
Member of Gwynedd Council	1
Member of Gwynedd Council and community council	
<b>Nature of the complainant</b>	
Councillor	1
Member of the public	3
Officer	1
<b>Nature of the allegation</b>	
General conduct	5
Declaration of Interest	
Conduct & Declaration of Interest	
<b>Outcome</b>	
No Investigation	4
Investigation – No evidence of breaching the Code of Conduct	0
Investigation - No further steps required	1

### 4. Open Cases

4.1 The situation in relation to other cases is as follows:

- **Ombudsman considering whether to investigate** 1
- **Ombudsman investigating** 2
- **Referred to Standards Committee** 1
- **Referred to Adjudication Panel for Wales** 1

## **5. Recommendation**

5.1 The Committee is asked to note the information.

# Agenda Item 7

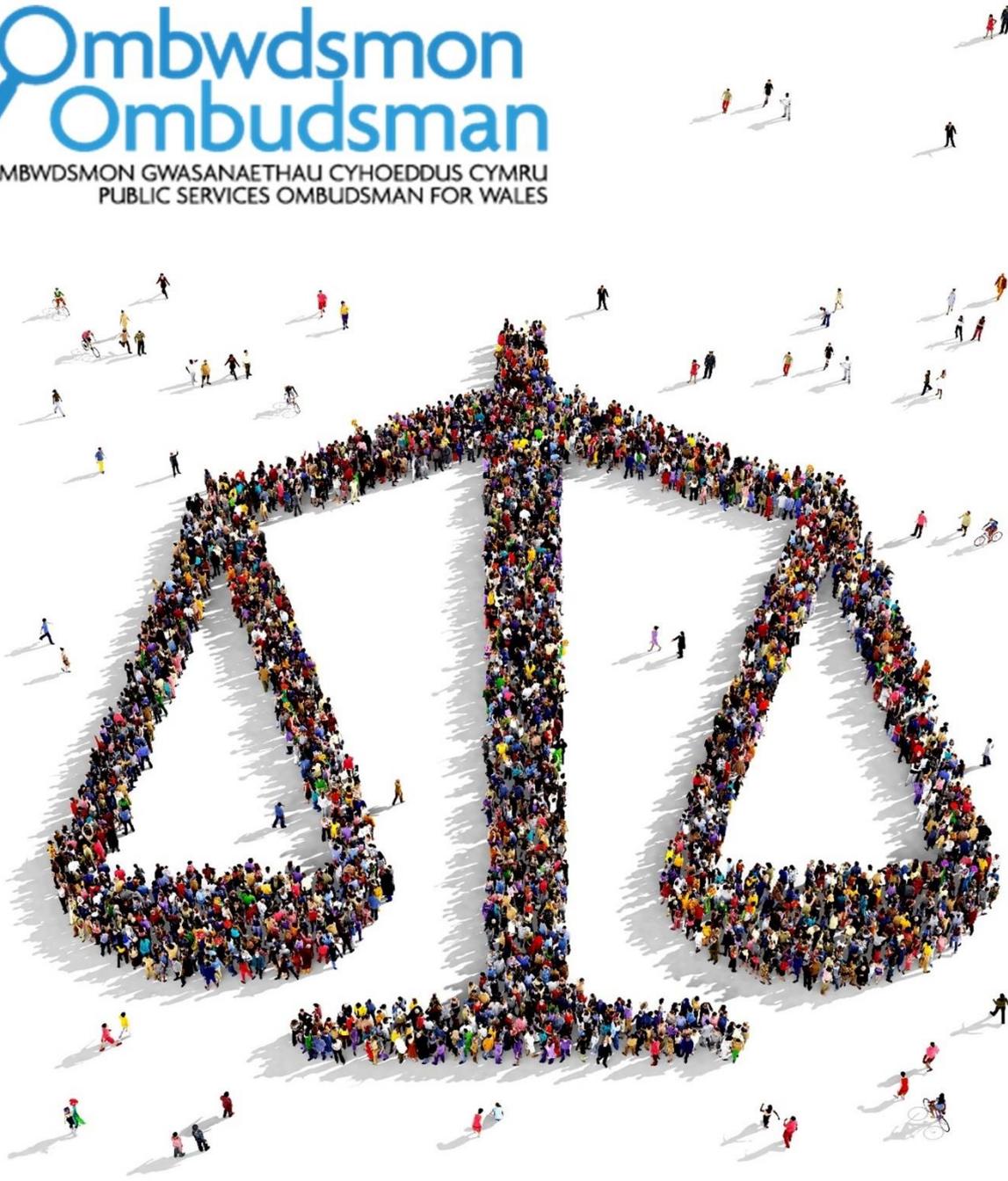
<b>Committee</b>	<b>Standards Committee</b>
<b>Date :</b>	<b>8 November 2021</b>
<b>Title</b>	<b>The Ombudsman's Annual Report 2020/21</b>
<b>Author</b>	<b>The Monitoring Officer</b>
<b>Action :</b>	<b>Note for Information</b>

## **Background**

1. The Public Services Ombudsman for Wales has published his annual report for the year 2020 - 2021.
2. A copy of the report is attached to this report as an **Appendix**. The report can also be found on the Ombudsman's website (<https://www.ombudsman.wales/annual-report-accounts/>)

## **Recommendation**

3. The Committee is asked to note the report.



# Delivering Justice

The Public Services Ombudsman for Wales

## Annual Report and Accounts 2020/21

**Annual Report and Accounts 2020/21**  
**of the Public Services Ombudsman for Wales**  
**for the year ended 31 March 2021**

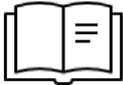
Laid before the Welsh Parliament under paragraphs 15, 17 and 18 of Schedule 1  
of the Public Services Ombudsman (Wales) Act 2019

## Contents

Contents .....	3
Key Messages .....	5
Foreword.....	6
Snapshot of the Year .....	12
Our Key Performance Indicators.....	13
Our work at a glance.....	18
Our caseload volumes and trends .....	19
Timeliness.....	39
Recommendations .....	41
Compliance .....	42
Review and Quality Assurance .....	44
Service user feedback .....	47
Accessibility, awareness and outreach .....	51
Complaints Standards .....	57
Own initiative investigations.....	60
Public Policy .....	64
Sharing our findings .....	66
Training and development .....	73
Health and wellbeing .....	75
Equality, diversity and inclusion .....	76
Sustainability.....	80
Formal accountability.....	82
Benchmarking .....	83
Financial Management .....	84
Corporate Governance Report.....	91
Statement of Accounting Officer's Responsibilities.....	94
Annual Governance Statement 2020/21 .....	95

Remuneration Report .....	107
Welsh Parliament Accountability and Audit Report.....	111
Reconciliation of Net Resource to Net Cash.....	112
Requirements .....	112
The Certificate and Independent Auditor’s Report of the Auditor General for Wales to the Senedd .....	113
Statement of Comprehensive Net Expenditure.....	120
Statement of Financial Position .....	121
Statement of Cash Flows.....	122
Statement of Changes in Taxpayers’ Equity.....	122
Notes to the Financial Statements .....	123
Pension Disclosures .....	136

## Key Messages

	We have continued to deliver for those who have suffered injustice during the pandemic.
	We are proactive, helping the public sector improve during challenging times.
	We embrace learning and welcome feedback.
	We strive to ensure and promote equality and diversity.
	We pull together and support each other.
	We are accountable and transparent about our performance and use of resources.

## Foreword

### Justice Remotely

Like most of you, I have spent an unanticipatedly large amount of this year working from home, remotely. In fact, this foreword is the first annual report to be composed from my living room.



The coronavirus pandemic has presented all public bodies with new challenges, not least the massive challenges to health and care services, which continue as I write this. My thoughts are with all those servants of the public, the key workers who have not had the option of home working through this crisis.

All our staff have been enabled to work remotely successfully, and I am very grateful to our IT team for facilitating that change so effectively. I am also mindful of the need to thank those small numbers of corporate services and casework support colleagues, who have been going into the office to ensure that certain tasks, dealing with the mail and scanning documents, have continued throughout. We have maintained our service throughout, picking up calls and receiving complaints, whilst also making sure that the office followed the highest standard of social hygiene and distancing.

We saw the first ever substantial reduction in complaints and enquiries coming to the office. However, surprisingly, Code of Conduct complaints about local elected members increased by some 47% during the pandemic. There were high-profile cases, including substantial sanctions applied to individual members in Cardiff and Merthyr. In a year where Handforth Parish Council became a social media viral phenomenon, the office was involved in direct training of a couple of town councils to make sure that they were fully aware of the expectations of the Code and the need to maintain high standards in local public life. We also revised our Code of Conduct guidance.

I am also very grateful to all staff for reducing our case load, continuing to assess, investigate and close complaints during pressing times, lowering our caseload in readiness for the post-pandemic increase in complaints that we are

now experiencing. At the year-end, our case load was lower than any time since 2017, approximately 16% lower than this time last year.

We also worked hard to reduce ageing cases, with only 12 cases over 12 months old - a massive achievement given the challenges faced not only by the office but by bodies in our jurisdiction.

We also made great progress with our new proactive powers, with our first own initiative investigation of homelessness services in Wales launched in January. I was delighted to launch the consultation with the support of Michael Sheen at the Chartered Institute of Housing Tai conference in September 2020. We also used extended own initiative powers in a range of cases including the prostate cancer treatment of 16 patients in North Wales.

The journey to achieving new powers was a basic goal of my period of office. Over the summer of 2020 I was able to write the story from 2014 to 2020 and it was published in the Journal of Social Welfare and Family Law. You can read a version of this story on the [International Ombudsman's Institute's website](#).

Local Authority Complaints Standards came into force on 1 April 2021, and Health Board Complaints Standards from 1 June 2021. Complaints standards training has now been made available to all local authorities in Wales and most health boards. Our work in the housing sector is well under way with a very successful webinar facilitated by TPAS Cymru. Training has been provided to organisations that generate approximately 95% of our complaint volumes, a great achievement under the circumstances.

We published 6 public interest reports in the year as well as our second Equality and Human Rights casebook. Two special reports on Cardiff Council and Powys Health Board raised compliance failures. We continued to engage with the Ombudsman Association, the International Ombudsman Institute, and the Public Service Ombudsman Group, in order to gain insight into how our peers were coping with the pandemic. I was also delighted to address the Administrative Justice Council event on a 'Manifesto for Ombudsman Reform' which provided the opportunity to promote Welsh reforms and share good practice with the broader Ombudsman community. This year the office published **At Your Service**, my fifth thematic report, this time focusing on good practice identified from our casework.

Independent research from Beaufort Research demonstrated that public awareness of the office was higher than ever, having increased by 13% since 2012, and it was higher in North Wales than any other part of Wales. Over-all 85% of respondents felt it was easy to contact the office. However, we remain concerned as an organisation that the proportion of complaints from ethnic minorities and disabled people has reduced and this year we plan specific outreach activities to counter this.

Coronavirus has impacted on us all. At one point in December, despite homeworking, we had 1 in 15 staff infected compared to a rate of 1 in 65 of the public. Some of our clinical and professional advisers were also ill and sadly a valued and highly respected social services adviser lost his life to the virus. Our thoughts are with his family and friends.

As a people-based business, we were delighted to see new talent with diverse backgrounds in audit, insurance and the police join our Audit and Risk and Advisory Committees. Our culture continues to develop, we were delighted to receive Silver Fair Play employer status from Chwarae Teg. This year, in the wake of Black Lives Matter we published our first Race and Ethnicity at Work Charter.

We also took the step of recruiting our first HR Business Partner, a move intended to build on the values-based culture that we have striven to build over the years, but which now seems even more essential as remote working becomes an increasingly likely feature of the 'new normal'.

In January I was privileged and very pleased to see the Senedd vote 48-2 in favour of extending my term of office to March 2022.

Despite all the challenges of the past year, I genuinely feel that this annual report reflects well on the office and our people, and I hope that the following year brings greater 'normality' to all our lives, and less (though not no) working from my front room.

**Nick Bennett**

**Public Services Ombudsman for Wales**



## About us

We have three main roles:

1. Investigate complaints about public services.
2. Considering complaints about breaches of the Code of Conduct by elected members.
3. Driving systemic improvement of public services.

We are independent of government and the service we provide is free of charge.

## Complaints about public service providers

Primarily we consider complaints about services provided by devolved public bodies in Wales, including:

- local government (county and community councils)
- National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- Welsh Government, and its sponsored bodies

We can also consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare. We examine complaints about maladministration, service failure, or failure to provide a service. If people have been treated unfairly or inconsiderately or have received a bad service through some fault of the service provider, we can recommend redress, or changes in process to ensure that mistakes are not repeated.

“I am grateful to you...for taking the time to review this case thoroughly...your email does indicate such a thoughtful and impartial consideration...”

## Code of Conduct complaints

Our second role is to consider complaints that elected members of local authorities have breached their authority’s Codes of Conduct, which set out the recognised principles of behaviour that members should follow in public life.

These local authorities include:

- county and county borough councils
- community councils
- fire authorities
- national park authorities
- police & crime commissioners and police & crime panels

We are a “prescribed person” under the Public Interest Disclosure Act for raising whistleblowing concerns about breaches of the Code of Conduct by members of local authorities. Further explanation can be found in the [Whistleblowing section of the Report](#).

## **Systemic improvement of public services**

Our third role is to drive broader improvement of public services. Our office was equipped with new proactive powers to drive systemic improvement under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019).

We can undertake investigations on our own initiative even if we have not received a complaint, if we believe that there is maladministration resulting in personal injustice. More information about our work on our own initiative investigations can be found in the [Own Initiative section of this Report](#).

We can now set complaints standards for public bodies in Wales. We can publish a statement of principles concerning complaints handling procedures for bodies and set model complaints handling procedures for public bodies listed in the Act. We monitor the performance of public bodies in complaint handling, including reviewing their complaint handling data. [The Compliance section of this Report](#) details how we have taken this power forward.

The first UK ombudsman’s office equipped with full and operational powers to drive systemic improvement.

# Snapshot of the Year

## April

'Justice Mislaid' Thematic Report published.



## June

Started our virtual 'walk' from Pencoed to Bangor to promote staff wellbeing during the pandemic.



## August

Race and Ethnicity at Work Charter launched.  
Wellbeing sessions launched for staff.



## October

2 x Public Interest reports published on inadequate health care.



## December

2 x Public Interest reports on failures to implement recommendations from the Ombudsman and missing referral times for treatment.



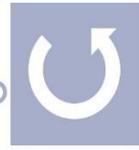
## February

Welsh Language Standards came into operation.



## May

Investigations into GP and Primary Care cases resumed following positive engagement with the BMA.



## July

Certified Investigative training for case work staff completed.



## September

Complaints Standards training begins for local authorities.



## November

Health Board Complaints Standards launched.



## January

Own Initiative investigation into Homelessness started.  
2 x Public Interest Reports on failings to provide suitable end-of-life care and diagnosis.



## March

'Good Practice' Thematic report published and Public Interest reports on failings in clinical clarity and decision-making and application of lawful planning procedures.



## Our Key Performance Indicators

We measure our performance against a challenging set of Key Performance Indicators (KPIs). The table below presents an overview of our KPIs. We discuss these figures in more detail throughout this Report. You can navigate to the relevant sections of the Report by clicking on the KPI title in the table below.

Key Performance Indicators	2020/21 Target	2020/21	2019/20
<b>1. <a href="#">Complaints about public bodies - decision times</a></b>			
Decision that a complaint is not within jurisdiction < 3 weeks	90%	94%	95%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks	90%	85%	92%
Where we seek early resolution, decision within 9 weeks	90%	88%	94%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	65%	67%
Complaints about public bodies which are investigated – cases closed			
Cases closed within 12 months	85%	52%	81%
<b>2. <a href="#">Code of Conduct complaints – decision times</a></b>			
Decision taken not to investigate within 6 weeks	90%	90%	93%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	76%	86%
Code of Conduct complaints which are investigated - cases closed			
Cases closed within 12 months	90%	50%	88%
<b>3. <a href="#">Customer satisfaction</a>*</b>			
Easy to find PSOW	91 / 98%	85 / 97%	85 / 97%
Service received helpful	63 / 83%	62 / 91%	62 / 91%
Clear explanation of process and decision	65 / 89%	63 / 96%	63 / 96%

\*The results are presented for all respondents (the first figure) as well as those satisfied with the outcome (the second figure).

Key Performance Indicator	2020/21 Target	2020/21	2019/20
<b>4. <a href="#">Compliance</a></b>			
% of recommendations made, due and complied with by public service providers in the year	N/A	74%	72%
Number of compliance visits	6	7	4
<b>5. <a href="#">HR</a></b>			
Completion of PRDP (appraisal) reviews	100%	100%	100%
Employee response to staff survey*	N/A	*	92%
<b>6. <a href="#">Staff training</a></b>			
% of staff achieving target number of days of continuing professional development	95%	77%	93%
<b>7. <a href="#">Staff attendance</a></b>			
Average number of days lost through sickness per member of staff	6.5	3.0	9.0
% of working days lost through staff sickness	2.5%	1.14%	3.4%
% of working days lost through short term sickness	1%	0.62%	1.0%
% of working days lost through long term sickness	1.5%	0.52%	2.4%
<b>8. <a href="#">Financial</a></b>			
Cash repaid to Welsh Consolidated Fund	< 3%	0.4%	1.0%
Unit cost per case	£700	£674	£669
Support costs as percentage of budget	< 5%	4.1%	4.3%
External Audit Opinion on Accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts
Internal Audit Opinion on internal controls	Substantial Assurance	Substantial Assurance	Substantial Assurance
<b>9. <a href="#">Complaints about us</a></b>			
Number of complaints received	N/A	26	36
Number of complaints upheld	N/A	5	7
<b>10. <a href="#">Sustainability</a></b>			
Waste (kg)	26,000	3,988	26,996
Electricity (kWh)	104,000	71,668	104,521

\*No staff survey was carried out this year.



# Deliver Justice

## **Strategic Aim 1**

We strive to be a fair, independent, inclusive and responsive complaints service. We continue to deliver justice to the people of Wales by handling complaints about maladministration by public service providers and allegations of breaches of the Code of Conduct by elected members. When we intervene after considering a complaint, we want to ensure that we remedy injustice and drive systemic improvement.

## A short guide to terminology

<b>Caseload:</b> all cases handled by the office.	<b>Case:</b> any engagement with our office by a member of the public.
<b>New Caseload:</b> all new cases we received in the year.	<b>Closed Caseload:</b> all cases we closed in the year. This includes cases we may have received in previous years.
<b>Enquiry:</b> a case where a member of the public contacts us with a general query, does not have the required information to submit a complaint, or the matter in question clearly falls into the remit of another body. In such circumstances we offer advice or signpost people as necessary.	<b>Complaint:</b> a case where the required information has been submitted for us to assess its merits. Following an assessment of the information provided, we determine to either investigate the complaint further, seek an early resolution or reject the complaint.
<b>Intervention:</b> a complaint outcome when we decided that it is appropriate to take an action - uphold a complaint or propose an alternative remedy or voluntary settlement.	<b>Referral:</b> a type of intervention in the Code of Conduct cases where we refer a matter to a Standards Committee or the Adjudication Panel for Wales for consideration. This may be because the matter cannot be concluded in any other way or because it features serious breaches of the Code.
<b>Outcome:</b> our decision after we have considered a complaint.	

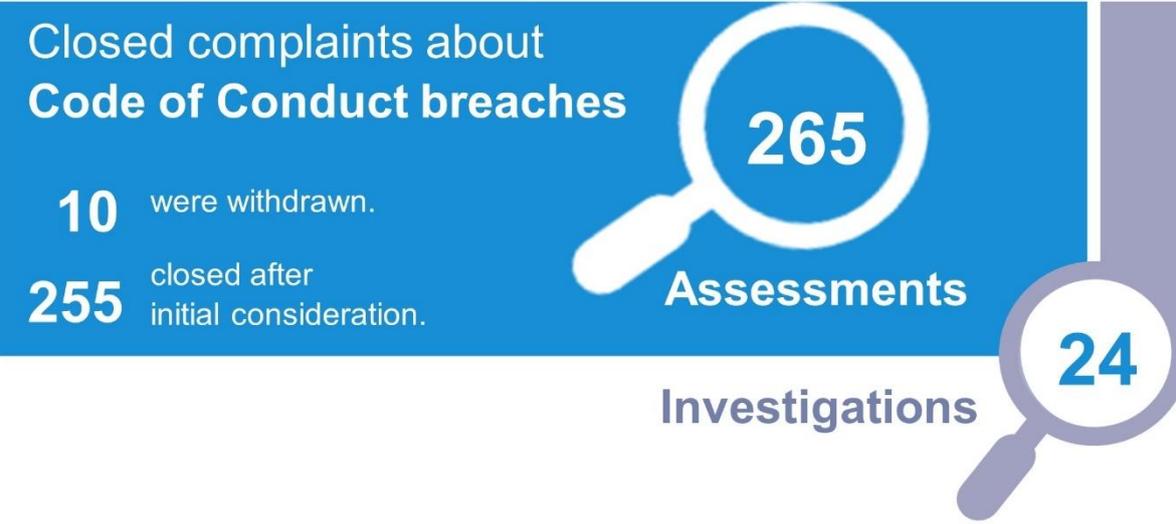
Our casework trends help to highlight some possible changes in performance of public bodies and conduct of elected members. Compared to 2019/20, this year:

<b>16%</b>	We received 16% fewer complaints about public bodies. It is likely that Covid-19 has affected both the number and type of complaints we have received this year.
<b>22%</b>	We saw a 22% fall in new complaints about Health Boards. It is likely that this reduction was as a result of the impact of the pandemic on health services.
<b>20%</b>	We intervened in 20% of the complaints about public bodies, the same as last year. We also referred 3% of complaints about breaches of the Code of Conduct to a Standards Committee or the Adjudication Panel for Wales.
<b>47%</b>	We received 47% more allegations of breaches of the Code of Conduct.

We also work to ensure that we offer the best possible service and that we are accessible to all people who need us. In 2020/21:

<b>51%</b>	51% of respondents to our customer satisfaction survey were satisfied with the service received. This is a reduction on last year's figures.
<b>99%</b>	However, approval rises to 99% amongst those satisfied with the outcome of their complaint.

## Our work at a glance



## Our caseload volumes and trends

### Caseload overview

#### New caseload

Every year, we are contacted by thousands of individuals. In 2020/21 the number of contacts with our office decreased by 14% to 6,183.

We welcome all contacts with our office, and we continue to work to raise awareness of our role and powers to help people understand when and how we can help. Around 61% of new cases were enquiries that we were able to provide with advice or direct to other sources of help rather than complaints.

#### Closed caseload

This year, we closed 12% fewer complaints overall. Whilst the number of closed complaints about public bodies decreased, we saw an increase in the number of closed complaints about breaches of the Code of Conduct.



The start of the 2020/21 financial year coincided with the start of the first wave of the Covid-19 pandemic. We were mindful and considerate of the impact that the pandemic was having on frontline services in Wales and did not want to burden public bodies unnecessarily at the start of the first wave. We developed a constructive

dialogue between the office and the public bodies we investigate, to understand their position and to explain how we would respond. This was to make sure it would work for everyone and to make sure we were maintaining a service for complainants. This dialogue has continued over the year, and we have adapted as public bodies have too.

There was a momentary pause in starting new investigations and in sending out draft reports and final reports that included recommendations. Following engagement with the BMA, there was also a short period of time where we suspended all GP investigations due to the particular impact on GPs. Performance in the first half of the year saw aged cases increase for these reasons.

However, as the landscape in terms of the pandemic improved, public bodies adapted to these new circumstances and so did we, investing in technology and our staff so they could work effectively at home. As a result, our performance improved over the second half of the year, bringing down the number of cases. Despite the disruption, we still managed to reduce the number of cases open at year end, from 489 in 2019/20 to 410 in 2020/21.

The number of complaints that we close differs from the number of complaints received. This is because some of the complaints closed in 2020/21 were received in the previous year, and some complaints received in 2020/21 will be closed in 2021/22.

## Complaints about public bodies

### New complaints about public bodies

↓16%

#### General trends

In 2020/21, we received 1,874 new complaints about public bodies, a 16% reduction on last year.

Covid-19 has affected both the number and the type of complaints we received this year, so comparisons with the previous performance must be made with caution. Covid-19 impacted a wide number of services, including complaint handling services in public bodies in Wales. It is possible that some members of the public were more reticent about making complaints, recognising the exceptional pressure that public services were under.

There was, however, an increase in the number of complaints about complaint handling. On its own, the number of new complaints reaching our office does not tell the whole story about the performance of public services, but our new Complaints Standards powers are starting to build a better picture of the complaints handled by the wider public sector. More details about our Complaints Standards work can be found in the [Complaints Standards section of this Report](#).

### **Deliver Justice: Reference 202002115**

During the Covid-19 pandemic, a complainant was unable to access health services as these were arranged by phone, and her telephone was unable to accept calls from withheld numbers. This was for reasons associated with her health. The Health Board and her GP practice agreed to consider and confirm what adjustments could be made, in accordance with the Equality Act 2010, to ensure she could access its services.

The next sections discuss in more detail the trends in our new complaints about NHS bodies and local authorities.

We categorise our complaints based on their primary subject. The table shows the main subjects of new complaints about public bodies reaching our office and changes compared to 2019/20:

<b>Subject</b>	<b>2020/21</b>	<b>2019/20</b>
Health	39%	41%
Housing	13%	15%
Complaint handling	12%	9%
Social services	9%	8%
Planning and building control	7%	7%
Covid-19	3%	0%
Other	17%	20%

We also record our complaints by the type of public body complained about. Our new complaints related to the following groups of bodies:

Body	2020/21	2019/20	%
NHS Bodies (including Health Boards, NHS Trusts, Dentist, GPs, Opticians and Pharmacists)	802	1020	-22%
Local Authorities (including County/ County Borough Councils and School Appeal Panels)	793	890	-11%
Social Housing sector (housing associations)	170	202	-15%
Welsh Government and its sponsored bodies	56	68	-18%
Community Councils	18	27	-33%
Other	35	35	0%
<b>Total</b>	<b>1,874</b>	<b>2242</b>	<b>-16%</b>

↓21%

#### New complaints: NHS bodies

Of all new complaints about public bodies, 802 related to NHS bodies, a reduction of 21% from last year. NHS bodies make up 43% of all complaints.

As in previous years, Health Boards accounted for the highest number of complaints about NHS bodies. However, with the exception of Cwm Taf Morgannwg University Health Board, there has been a significant reduction in the number of complaints this year. The table below presents a detailed breakdown of new complaints about these bodies compared to 2019/20.

Health Board	2020/21	2019/20	%
Aneurin Bevan University Health Board	96	140	-33%
Betsi Cadwaladr University Health Board	184	227	-19%
Cardiff and Vale University Health Board	62	100	-38%
Cwm Taf Morgannwg University Health Board	86	80	8%
Hywel Dda University Health Board	64	92	-30%
Powys Teaching Health Board	16	23	-30%
Swansea Bay University Health Board	79	91	-13%
<b>Total</b>	<b>587</b>	<b>753</b>	<b>-22%</b>

The table below show shows that most health-related complaints were associated with clinical treatment.

Type of Health related complaint	%
Clinical treatment in hospital	54%
Clinical treatment outside hospital	28%
Ambulance Services	4%
Appointments/admissions/discharge and transfer procedures	2%
Continuing care	2%
Medication > Prescription dispensing	2%
De-Registration	1%
Funding	1%
Medical records/standards of record-keeping	1%
Non-medical services	1%
Patient list issues	1%
Confidentiality	<0%
Other	5%

### **Delivering Justice: Reference 201906799**

The Ombudsman found shortcomings in Betsi Cadwaladr University Health Board's assessment, investigation and diagnosis of Mr D's brainstem stroke, until it was too late for treatment options to be considered. Although the investigation was not able to determine whether treatment would have made a difference to Mr D's outcome, it found that the loss of the opportunity to have potential treatment options discussed was a significant injustice.

The Ombudsman recommended that the Health Board should:

1. Apologise to Mr D and Mrs D.
2. Make a financial redress payment of £1,500.
3. Share the report with the doctors involved in the interests of improving their clinical practice.
4. Develop an action plan to address the failings identified in the report within 3 months.

**791****New complaints: Local Authorities**

Of all new complaints about public bodies, 791 were about Local Authorities (including school appeals) —a decrease of 11%.

The table below shows the number of complaints we received about each council excluding school appeals. The number of complaints is not necessarily an indicator of poor service.

<b>Local Authority</b>	
Blaenau Gwent County Borough Council	15
Bridgend County Borough Council	31
Caerphilly County Borough Council	46
Cardiff Council	96
Carmarthenshire County Council	27
Ceredigion County Council	32
Conwy County Borough Council	32
Denbighshire County Council	32
Flintshire County Council	59
Gwynedd Council	30
Isle of Anglesey County Council	18
Merthyr Tydfil County Borough Council	15
Monmouthshire County Council	20
Neath Port Talbot Council	19
Newport City Council	31
Pembrokeshire County Council	28
Powys County Council	38
Rhondda Cynon Taf County Borough Council	40
Swansea Council	73
Torfaen County Borough Council	12
Vale of Glamorgan Council	39
Wrexham County Borough Council	43

These complaints relate to a variety of subjects. The main subjects in 2020/21 are listed in the table below.

<b>Received complaint subject</b>	
Planning and Building Control	16%
Housing	15%
Children's Social Services	14%
Complaints Handling	14%
Environment and Environmental Health	8%
Adult Social Services	7%
Roads and Transport	7%
Covid-19	5%
Finance and Taxation	3%
Education	2%
Benefits Administration	2%
Community Facilities, Recreation and Leisure	1%
Licensing	1%
Health	1%
NHS Independent Provider	<0%
Various Other	4%

## Delivering Justice: Reference 201906728

Cardiff Council's Social Services failed to fulfil its statutory duties towards Mr A, and he was left without care. They had also failed to consider the impact of these changes on Mr A's dignity, his ability to live independently, and to exercise choice and control, engaging his Human Rights under Article 8 (respect for home, private and family life).

The Council behaved in a way that was procedurally unfair by not providing him with enough information to understand the basis of the changes to his care package, or to be able to challenge them. This was enough to engage Mr A's Human Rights under Article 6 (right to a fair hearing, linked to due process).

The Council delayed responding to some of the preliminary findings of the stage 2 investigation, so opportunities were lost to put matters right as soon as possible. The Council agreed to undertake the following, in settlement of the complaint:

1. Issue a further, meaningful apology.
2. Make redress payments totalling £8000.

## Closed complaints about public bodies

**1,934**

### General trends

In 2020/21, we closed 1,934 complaints about public bodies - 15% lower than the previous year. Our casework has been impacted by the Covid-19 pandemic, and the need for us to take account of the pressures on public services.

When we receive a new complaint, we undertake an initial assessment to determine whether we can and whether we should investigate.

The PSOW Act 2019 set out key criteria that must be considered before we investigate. These include a requirement that the body complained about has had a reasonable opportunity to resolve the complaint and that the complaint is made to us within 12 months of the events complained about. If these criteria are not met, the complaint will generally be closed at assessment stage.

In 2020/21, we closed 87% complaints about public bodies at assessment stage. This is a similar proportion to the figures from last year and reflects the number of complaints we receive relating to matters outside our jurisdiction, and those made to us prematurely, generally, where the service provider had not had the opportunity to resolve the matter.

This suggests that there is more work for us to do to make potential complainants aware of our role and the extent of our powers. More information about our outreach and communication work is presented in our [Accessibility, awareness and outreach section of this Report](#).

The proportion of complaints we closed that related to complaint handling has also nearly doubled. This demonstrates the importance of good complaint handling by public bodies and reinforces the value of our new proactive powers in supporting effective complaint handling. We anticipate that the numbers of complaints about handling of complaints will start to decline as the learning from our complaints standards training that we launched in September 2020, is embedded across public bodies.

Compared to 2019/20, in 2020/21 the proportion of complaints that we investigated following the assessment stage, was similar to last year at 13%. There was a slight increase to 84% in the proportion of complaints that we investigated that related to health.

## Complaints about public bodies closed

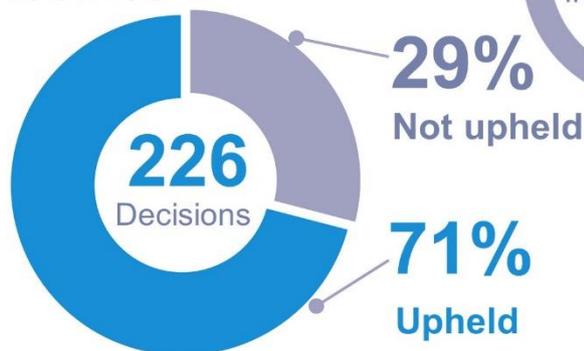


- 212** resolved early with the public body
- 346** out of our jurisdiction
- 658** unable to investigate\*
- 471** were made to us prematurely



## Investigation outcomes

- 11** complaints were settled voluntarily.
- 11** investigations were discontinued.



\*Reasons 'Unable to investigate': more than 12 months since awareness of hardship or injustice; the complainant has access to alternative legal remedy; there is no evidence of maladministration; unable to achieve the outcome sought; not proportionate; no direct hardship or injustice suffered.

### Delivering Justice: Reference 202003637

A woman with a package of mental healthcare provision had moved from England to Wales. The NHS in England had confirmed that it would fund her mental healthcare in Wales. Despite this, and despite many months of waiting, the Welsh Health Board had not made the necessary arrangements with the English body to agree the funding to allow for her care to be transferred. The complainant's mental wellbeing was being affected by the delay. The Health Board agreed to hold the necessary meetings to agree funding within 2 months and to establish a timeframe for the transfer of care.

A key measure of the overall performance of public services is the proportion of complaints in which we intervened – that is, where we decided that there was evidence of maladministration or service failure which required action. In 2020/21, we found grounds to intervene in 383 or 20% of our closed complaints, the same rate of intervention as last year.

We continue to use early resolution interventions during the assessment stage where possible as this provides a timely and positive outcome for all parties. This year, early resolutions accounted for approximately 63% of our interventions overall—an increase on the figures from last year.

Our rate of interventions in health cases increased from 26% to 29%. This means that we found maladministration and service failure in a smaller proportion of health cases that we closed.

When we intervene after considering a complaint, we want to ensure that we remedy injustice and drive systemic improvement. More information on the recommendations we make in cases that we intervene in can be found in the [Recommendations section of this Report](#).

**860****Closed complaints: NHS bodies**

In 2020/21, we closed 860 complaints against NHS bodies. This is a drop of 18% from last year to the previous year.

Of the closed complaints about NHS bodies, 630 related to Health Boards. The table below presents our intervention rate in complaints about individual Health Boards compared to last year.

<b>Health Board Intervention rate</b>	<b>2020/21</b>	<b>2019/20</b>
<b>Current Health Boards</b>		
Aneurin Bevan University Health Board	36%	33%
Betsi Cadwaladr University Health Board	35%	31%
Cardiff and Vale University Health Board	29%	28%
Cwm Taf Morgannwg University Health Board	23%	15%
Hywel Dda University Health Board	45%	32%
Powys Teaching Health Board	29%	54%
Powys Teaching Health Board - All Wales Continuing Health	0%	31%
Swansea Bay University Health Board	31%	11%
<b>Former Health Boards</b>		
Abertawe Bro Morgannwg University Health Board	100%	72%
Cwm Taf University Health Board	100%	43%
All Health Boards	33%	31%

We continue to handle a few complaints about two former Health Boards, Abertawe Bro Morgannwg UHB and Cwm Taf UHB. These Health Boards accounted for the highest intervention rates by us this year.

However, these intervention rates are skewed by the fact that the closed complaints against these Health Boards comprised a very small number of complaints carried over from the previous 2 years that required investigation - with those not requiring investigation generally closed in 2018/19.

# 924

## Closed complaints: Local Authorities

In 2020/21, we closed 924 complaints against Local Authority bodies— a slight increase than the previous year. Of these, 856 related to County Councils and County Borough Councils. Our intervention rate in complaints about the Councils remained at 13%.

The rate of intervention for councils can be viewed in the table below.

Local authority intervention rate	2020/21	2019/20
Blaenau Gwent County Borough Council	6%	29%
Bridgend County Borough Council	7%	17%
Caerphilly County Borough Council	7%	12%
Cardiff Council	26%	17%
Cardiff Council- Rent Smart Wales	0%	33%
Carmarthenshire County Council	21%	8%
Ceredigion County Council	13%	21%
Conwy County Borough Council	16%	13%
Denbighshire County Council	6%	13%
Flintshire County Council	18%	29%
Gwynedd Council	19%	17%
Isle of Anglesey County Council	6%	16%
Merthyr Tydfil County Borough Council	0%	0%
Monmouthshire County Council	5%	0%
Neath Port Talbot Council	6%	10%
Newport City Council	17%	16%
Pembrokeshire County Council	12%	18%
Powys County Council	9%	17%
Rhondda Cynon Taf County Borough Council	5%	12%
Swansea Council	13%	14%
Torfaen County Borough Council	0%	8%
Vale of Glamorgan Council	13%	23%
Wrexham County Borough Council	13%	19%
<b>All local authorities</b>	<b>13%</b>	<b>15%</b>

During the year we have continued to engage intensely with Local Authorities as part of our Complaints Standards role to drive improvement in public services.

### **Delivering Justice: Reference 202003819**

As a result of the pandemic, a Council required a parent to wear a face mask during contact with his children. He said he was exempt from wearing a mask on health grounds. The Council asked him to provide evidence of his medical condition and, if not wearing a mask, required him to remain 3 metres away from his children during contact. The Council's guidance on Face-to-Face Contact appeared to treat all individuals refusing to wear a face covering in the same way and failed to take account of individual circumstances. This resulted in the complainant being treated differently from others as a result of his condition. The Council agreed to review its guidance to consider whether it complied with Welsh Government Regulations and Guidance and equalities and human rights legislation and amendments were made to the policy.

## **Code of Conduct complaints**

### **New Code of Conduct complaints**

This year we received 535 new Code of Conduct complaints (an increase of 47%) and we took forward for investigation 308 complaints.

<b>Body</b>	<b>2020/21</b>	<b>2019/20</b>
Town and Community Councils	167	135
County and County Borough Councils	138	96
National Parks	2	0
Fire Authorities	1	0
<b>Total</b>	<b>308</b>	<b>231</b>

Whilst complaints about members of National Parks and Fire Authorities have remained low, Town and Community Council complaints have increased by 23.7% and County and County Borough Councils complaints by 43.8%. The latter appears to be of particular concern. However, it should be noted that we received 35 complaints about 1 County Council member. Several investigations are ongoing in respect of those complaints.

Within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

Where we receive, ‘tit for tat’ complaints we will engage with the Council and the Monitoring Officer of the principal authority to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We have provided training with Monitoring Officers to town and community council which are responsible for a disproportionately high number of complaints to our office.

We categorise the subject of the Code of Conduct related complaints based on [the Nolan Principles](#), which are designed to promote high standards in public life. The table below shows the proportion of complaints received under each principle when compared to 2019/20:

<b>Subject</b>	<b>2020/21</b>	<b>2019/20</b>
Accountability and openness	4%	11%
Disclosure and registration of interests	14%	17%
Duty to uphold the law	8%	7%
Integrity	12%	10%
Objectivity and propriety	5%	2%
Promotion of equality and respect	55%	49%
Selflessness and stewardship	2%	3%

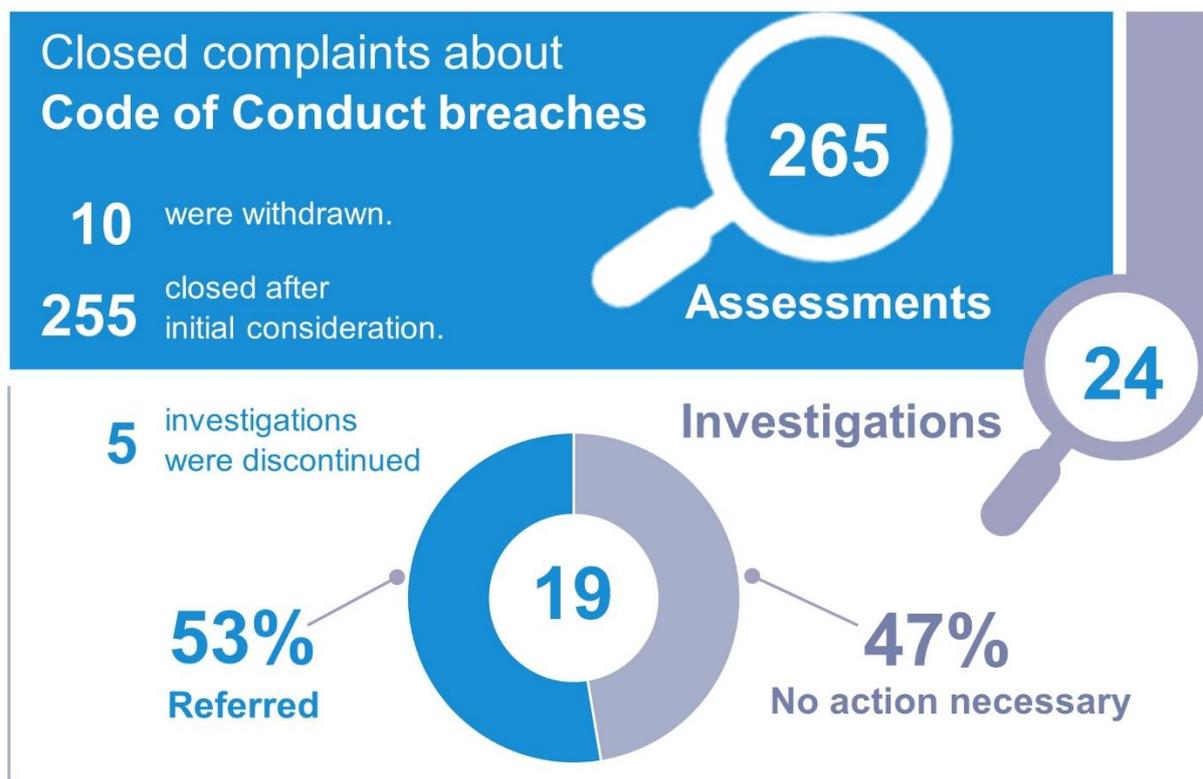
The themes ‘promotion of equality and respect’ (55%) and ‘disclosure and registration of interests’ continue to dominate. There is an annual increase in the number of complaints where bullying behaviour is being alleged.

Code of Conduct training is essential to becoming a ‘good councillor’. Our impression from investigations is that many members of Town and Community Councils often do not take up training opportunities offered on the Code of Conduct. Whilst there is no statutory obligation for members to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

## Closed Code of Conduct complaints

This year we closed 289 Code of Conduct complaints. This represented a 23% increase compared to the previous year. Despite the significant increase in the number of complaints received, closures have almost matched that number.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2020/21.



All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- A complaint is supported by direct evidence that is suggestive that a breach has taken place.
- It is in the public interest to investigate that matter.

Public interest can be described as “something which is of serious concern and benefit to the public”.

In 2020/21, we closed 92% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is higher than the previous year (86%).

The remaining 8% (24) complaints taken forward to investigation represented the most serious of the complaints received. Of these, 10 complaints were referred to the local standards committee or the Adjudication Panel for Wales, a 100% increase on the previous year.

When an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This can be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made such determinations in 58% (14) of the Code of Conduct investigations this year, a significant decrease on the previous year (85%). This reflects that although fewer cases are being referred for investigation, of those that are, we are finding evidence suggestive of a breach of the Code of Conduct in more cases. This suggests that we are using our two-stage test to good effect and identifying more of the most serious cases at the assessment stage.

Cases which feature serious breaches of the Code, are referred to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2020/21 we made 10 referrals (3%) of all the Code complaints that we closed. This is an increase from 2% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'.

## Referrals

In 2020/21 we made:

- 6 referrals to Standards Committees.
- 4 referrals to the Adjudication Panel for Wales.

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

There were 6 referrals to the Standards Committees this year. At the time of writing 5 are yet to be concluded. The matter which has already been considered related to a former member of Laleston Community Council who used Council funds for personal items. The Standards Committee issued a censure, the only sanction available to it as the member had resigned. A Standards Committee also considered 2 cases which were referred to it in the previous year, relating to 2 members of Conwy Town Council who had failed to disclose an interest in business relating to a member of staff who had made a bullying complaint against them which had not been resolved at the time of the events. Both members were suspended for 1 month.

There were 4 referrals to the Adjudication Panel for Wales. 2 have already been considered. The first concerned the conduct and behaviour of a member in relation to their failure to disclose their personal and prejudicial interests and their actions towards a member of staff. In this case the member of Merthyr Tydfil County Borough Council was suspended for 7 months. The second related to Facebook posts made by a member of Sully and Lavernock Community Council, which contained extreme and gratuitous violent references about female politicians. The member was disqualified for 15 months. Two other referrals have been made and are yet to have been considered by the Adjudication Panel.

In 20/21 the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 100% of our referrals.

## Lessons

Despite the increase, we make referrals only in a very small number of complaints. The increase in the number of complaints referred for further consideration in respect of potentially serious breaches of the code last year, is of concern and suggests there has been some decline in member conduct. Of the complaints referred for hearing which are yet to be determined, it is concerning that the complaints suggest disreputable conduct and that some members may have misused their positions as members.

Nevertheless, our investigations and the outcomes of these case referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

We are currently trialling a change in process which we anticipate will reduce the time taken to decide whether a complaint should be investigated and improve overall investigation times. Where appropriate, we also want to give members the opportunity to account for their own actions, even when we do not refer a case for hearing because it does not meet our public interest test.

We use our investigation as an opportunity to promote good practice and training opportunities for members. We have revised and consulted upon our Code of Conduct Guidance for members of local authorities in Wales. [The revised Guidance can be found here.](#)

The new duties in the Local Government & Elections Act 2021 bring welcome additions to the ethical framework, which should help encourage greater local ownership and accountability for conduct matters, when these provisions come into force in May 2022.

We look forward to contributing to the Welsh Government's review of the ethical framework, which in Wales has been in operation for approaching 20 years.

## Whistleblowing disclosure report

Since 1 April 2017, the Ombudsman is a 'prescribed person' under the Public Interest Disclosure Act 1998. The Act provides protection for employees who pass on information concerning wrongdoing in certain circumstances.

The protection only applies where the person who makes the disclosure reasonably believes that:

1. They are acting in the public interest, which means that protection is not normally given for personal grievances.
2. The disclosure is about one of the following:
  - Criminal offences (this includes financial improprieties, such as fraud).
  - Failure to comply with duties set out in law.
  - Miscarriages of justice.
  - Endangering someone's health and safety.
  - Damage to the environment.
  - Covering up wrongdoing in any of the above categories.

As a 'prescribed person' we are required to report annually on whistleblowing disclosures made in the context of Code of Conduct complaints only.

In 2020/21 we received 36 Code of Conduct complaints that would potentially meet the statutory definition of disclosure from employees or former employees of a council. The disclosures mostly related to allegations that the members concerned had 'failed to promote equality and respect'. Eleven complaints were investigated. Investigation is continuing into 10 complaints and 1 was discontinued as the investigation was no longer in the public interest.

The 2 complaints ongoing from 2019/20 were concluded. One was referred to the Standards Committee. The former Member received a censure for misusing funds. The second was referred to the Adjudication Panel for Wales. The Member was suspended for failing to declare an interest and poor behaviour towards a member of staff.

## Timeliness

We are conscious of the need to deliver a timely service. We need to investigate thoroughly, consider the views and comments of complainants and public bodies and draw on professional advice when needed.

2020/21 proved to be a hugely challenging year. The pandemic affected the ability of public bodies to engage with us on complaints. The switch to our staff working at home was achieved smoothly, but this, coupled with disruption to normal schooling and childcare arrangements of staff, has also affected our ability to progress our casework. We temporarily suspended ongoing health and GP investigations during the early weeks of the pandemic and, mindful of the pressures on public services in the early stages of the pandemic, did not commence new investigations between April and June. This has significantly affected our performance, particularly on the time to start an investigation and to complete our work. The table below shows performance during the year 2020/21.

Key Performance Indicators	2020/21 Target	2020/21	2019/20
Complaints about public bodies - decision times			
Decision that a complaint is not within jurisdiction < 3 weeks.	90%	94%	95%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks.	90%	85%	92%
Where we seek early resolution, decision within 9 weeks.	90%	88%	94%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received.	80%	65%	67%
Complaints about public bodies which are investigated - cases closed.			
Cases closed within 12 months.	85%	52%	81%
Code of Conduct complaints - decision times.			
Decision taken not to investigate within 6 weeks.	90%	92%	91%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received.	90%	76%	86%
Code of Conduct complaints which are investigated - cases closed.			
Cases closed within 12 months.	90%	50%	88%

We measure timeliness from the time we receive sufficient information from the complainant. This is so that our reported performance reflects the experience of complainants. However, it also means that our performance is affected by any delays on the part of public bodies, or our clinical advisers to respond to us, as well as the timeliness of our own work. In 2020/21, these factors have had more than impact usual.

We reported last year on the increased complexity of health complaints and on ongoing older cases that would affect our ability in 2020/21 to meet our target of 85% of maladministration or service failure cases closed within 12 months. In 2020/21 we closed only 52% of investigated maladministration/service failure complaints within 12 months. For Code of Conduct cases this was 50%. We have, however, worked hard during 2020/21 to complete investigations, particularly for older cases. Our year-end complaints caseload was 403, compared with 439 at the end of 2019/20, and our open caseload included only 12 cases over 12 months at the year-end. We recognise the importance of timeliness to complainants, Councillors and public bodies, and we will have a continued focus on this in the year ahead.

## Recommendations

When we find fault, we make recommendations to put any injustice right.

In 2020/21:

<b>1,045</b>	We issued 1,045 recommendations to public bodies.
<b>£62k</b>	We recommended over £62,000 of financial redress.

In 2020/21, we intervened in 383 cases. Across these cases, we made 1,045 recommendations - an average of 2.7 recommendations per case.

The most common recommendation that we make is that a body should issue an apology to the person or persons who suffered injustice (23%). This reflects the importance to complainants of receiving an acknowledgement that things have gone wrong and an apology for the failings identified.

We also commonly recommend that a body fully explains its actions to the complainant (6%) or simply responds to their initial complaint (9%).

This highlights the importance of good complaint handling by public bodies.

The next most common group of recommendations concerns procedure change or process review (18%) as well as feedback to staff (14%). These recommendations are particularly important: we aim not only to put right any injustice but also to help public bodies to learn from what went wrong and improve for the future.

Our key contribution is securing justice for individuals and broader improvement of public services. However, where appropriate we can recommend financial redress. In 2020/21, we recommended this in 9% of the cases in which we intervened.

The total amount of financial redress we recommended was £62,350.

## Compliance

Our recommendations aim to put things right, secure justice and improve services for the benefit of the public - not just for those who complain. In 2020/21:

<b>2</b>	We issued 2 special interest reports.
<b>85%</b>	We received evidence of compliance with 85% of recommendations due during the year.

This year, we are also highlighting the impact our recommendations have made on public services.

Although we are aware of how important it is that an individual failing or injustice is put right, we are conscious that the greatest impact we can have is through ensuring that there is systemic learning to generate wider public service improvements as a result of our recommendations.

We always seek the agreement of public bodies to our recommendations. Where public bodies do not agree with our recommendations or settlements, or do not implement the recommendations or settlements agreed, we are able to publish special reports. This year we issued 2 such reports on Cardiff Council and Powys Health Board raised compliance failures. Mr A complained to the Ombudsman in March 2020, via his MP, that, having agreed to complete an independent assessment of his needs in early 2019, a Local Authority had failed to do so. In accordance with his powers, the Ombudsman resolved the complaint (as an alternative to investigation) on the basis of the Council's agreement to conduct an independent assessment of Mr A's needs. When this was not completed, the Ombudsman issued a special report placing a duty on the Authority involved to update the Ombudsman on a weekly basis of progress.

20% of our recommendations highlighted retraining or process reviews. This can lead to significant improvement in public services.



This year, we received evidence of compliance with 85% of the recommendations due to be implemented during 2020/21. For the remaining 15%, evidence of compliance is outstanding, and we will be pursuing this, subject to Covid-19 limitations, in the coming months.

We will continue working with public bodies and reviewing the impact which our recommendations have on services, procedures and outcomes.

## Review and Quality Assurance

We have in place fair and transparent processes for handling review requests on casework-related decisions and for regularly assessing the quality of our casework to ensure it meets our service standards. We share any learning points from these reviews with our staff to support organisational learning. In 2020/21:

<b>216</b>	We had 216 review cases.
<b>205</b>	We completed 205 reviews.
<b>98%</b>	We closed 98% reviews within 20 days.
<b>9%</b>	We identified that we could do more in 9% of the cases reviewed, often where additional evidence was provided by the complainant.

### Case review requests

We have confidence in our investigation process, however, we recognise that complainants may be unhappy with the outcome to their complaint. Our case review process provides an opportunity for our decisions to be reviewed internally.

Case reviews are undertaken by staff who have not been previously involved in the case.

As with most areas of our work, this year saw a slight downturn in our incoming review caseload. The table below presents our review caseload in comparison with 2019/20:

Review cases	2020/21	2019/20
Cases carried over from previous year	5	16
New cases	211	216
Total	216	232
Completed	205	227
Carried over to next year	11	5

We appreciate the need to consider reviews in a timely manner. We aim to complete all requested reviews of casework decisions and respond within 20 working days. We are pleased that we have significantly increased the number of cases meeting this target.

<b>Response time</b>	<b>2020/21</b>	<b>2019/20</b>
Response within 20 days.	98%	83%
Average number of days taken to respond.	12.1	15.5

We may decide to uphold or partially uphold a review for a range of reasons – for example, if the complainant provided additional evidence, information or clarification, or when we considered that we could have done more.

We decided that 19 cases reviewed in 2020/21 should be either re-opened or that some further action should be taken. This represents 9% of the cases reviewed – a slight reduction on last year. To put these 19 cases in further context, they represent 0.8% of all case decisions issued this year.

In 2020/21, although we completed 11% less reviews than in the previous year, we are confident that our review process is operating efficiently and meeting our targets.

## **Quality Assurance**

During 2020/21 we have redesigned our Quality Assurance (QA) process. These changes were implemented from 1 June 2021 and mean that our QA audit will examine, on a monthly basis, a randomly selected sample of our casework dealt with at enquiry, assessment and investigation to ensure that we are operating in line with our service standards. Results from the audit will be fed back to staff and managers each month so that we can quickly identify issues of good or poor practice and ensure learning is identified and cascaded throughout PSOW.

We also undertake Quality Assurance reviews, involving health professionals, of a sample of the clinical advice we receive to help us in our casework.

During 2021/22 we will monitor and review the effectiveness of the QA process to make sure it is operating as planned and delivers the information we require to assure us that our work is meeting our Service Standards.

## Learning lessons

Whether based on reviews or our QA process, we aim to ensure that we consider any lessons we can learn and identify areas for improvement.



Any learning points identified are then cascaded to our staff through team meetings and a designated learning area on our Intranet which publicises learning points as and when they are identified, ensuring we respond quickly. We also consider whether any individual or organisational training needs have been highlighted, and whether any

changes to our policies and procedures are necessary.

An example of learning identified in 2020/21 related to our gaps in our processes for handling case reviews on Code of Conduct cases and informing accused members that a review request has been received and of the outcome. We have now revised our procedures to ensure that this is done in an efficient and timely way, with clear responsibilities designated to specific officers.

During 2021/22 we intend to develop arrangements for how learning identified from across a number of different sources, not just our Review and QA processes, can be drawn together to provide a comprehensive, organisation-wide approach to service improvement.

## Service user feedback

We are dedicated to delivering excellent service. We seek and welcome feedback from our service users and strive to learn from our mistakes.

In 2020/21:

<b>51%</b>	51% of all complainants questioned were satisfied with our customer service...
<b>99%</b>	... rising to 99% amongst those satisfied with the outcome of their complaint.
<b>26</b>	We received new complaints about us.
<b>100%</b>	We responded to 100% complaints about us in 20 days.
<b>22%</b>	We upheld or partially upheld 22% complaints about us.

## Customer satisfaction research

In March we repeated an independent telephone survey of a representative sample of our complainants whose cases were closed during the year. This gives more robust feedback about our service. We continue to collect online satisfaction data, which is open to complainants at any stage of the process. This provides us with some additional insight into what people felt was of value. There is a very strong correlation between the positive perception of our service and complaint outcome.

<b>85%</b>	Agreed we were easy to get in touch with.
<b>77%</b>	Said we treated them with courtesy and respect.

The findings were similar to last year. Those who were satisfied with the outcome remain consistently satisfied with our service. Unfortunately, we cannot help everyone, and those who were not happy with the outcome were less happy with our handling of their complaints. This is perhaps inevitable, given that many of our service users feel very strongly about their cases.

When analysing the findings, we saw a significant increase in satisfaction rates for our Code cases, but regrettably, a reduction in satisfaction with our handling of complaints about public bodies. As last year, positive scores remained higher for cases that we closed at the investigation stage, rather than those we closed after assessment.

“Thanks for a good service, I feel that my complaint has been taken seriously”

We continue to be perceived as being helpful and we kept more complainants updated as agreed. Despite being asked about reasonable adjustments in our hard copy and online complaint forms and in letters acknowledging the receipt of new complaints, there was only a slight increase in the number of people who recalled this offer.

Complainants were less satisfied with our handling of their complaints and their perceptions of the fairness of our decisions, although this perception varied significantly depending on how satisfied the complainant was about the outcome. The scores from the survey that relate to our Service Standards tell us that whilst there has been a small drop in overall satisfaction, complainants who were pleased by the outcome of their case, improved their perception of our service. You can read about our [Service Standards available on our website](#).

“It was a very emotional and lengthy process, but the communication from the admin was superb and professional!”

Our Service Standards	All respondents		Respondents satisfied with the outcome	
	2020/21	2019/20	2020/21	2019/20
1. We will ensure that our service is accessible to all.	63%	65%	81%	77%
2. We will communicate effectively with you.	63%	64%	86%	82%
3. We will ensure that you receive a professional service from us.	52%	57%	91%	89%
4. We will be fair in our dealings with you.	48%	49%	90%	86%

To improve the satisfaction rates for all our complainants, we will be reviewing the ways we communicate, especially during the assessment stage. We will ensure the needs of complainants are reviewed regularly throughout the complaint-handling process and any reasonable adjustments updated to reflect their needs.

### Complaints about us

In 2020/21, we received 26 complaints about our service, and reviewed and closed 25 of these over the year. These complaints provide us with useful feedback about our service and we take them seriously.

We upheld 5 or 22% of the complaints against us, the third year in a row where we have seen a reduction in the number of complaints we have upheld. As a result of these complaints, we have changed some of our communication and review processes, the way we manage our code cases and appointed an autism champion to help improve our understanding of the needs of autistic complainants. The remaining complaints were not upheld or were withdrawn where the complainants had a change of heart.

We responded to all complaints against us within the 20-day timescale we set.

Response Time	2020/21	2019/21	2018/19
Within 20 days	24 (100%)	29 (91%)	29 (94%)
Outside 20 days	0	3 (9%)	2 (6%)

## Independent Review Service

To ensure that we are open and accountable, if a service user is unhappy about how we responded to their complaint about our service, they may ask for their case to be considered by an external independent review service, provided by ch&i. ch&i do not review our case decisions, only the complaints about the quality of service that we provided.

During 2020/21, 7 people referred their complaints to ch&i. All concerned, to some extent, our decision-making, over which ch&i has no jurisdiction. One of the complaints that was externally reviewed was upheld in part, regarding our investigation and compliance processes. ch&i did commend our approach and that of the staff involved to address the issues. We have apologised for escalating the complaint and have established a new Compliance & Improvement Officer role. A compliance factsheet will be completed by the end of June 2021.

## Accessibility, awareness and outreach

We strive to provide an inclusive and responsive complaints service. We want to make sure that people are aware of and trust our service and that we are accessible to all who need us. In 2020/21:

<b>85%</b>	85% of our customers questioned found it easy to contact us.
	We now comply with most of the Welsh Language Standards.
<b>3</b>	We ran 3 sounding boards to understand the needs of our stakeholders.

### Equality Diversity and Inclusion

We are committed to making sure we offer a fair and equal service to all and publish an annual Equality Report with actions to help us improve. [You can read the Annual Equality Report 2020/21 on our website.](#)

Our regular data collection tells us that barriers to our service exist for some people and we are determined to do all we can to make our services as accessible as possible. We have actively engaged with a range of ethnic minority and disability groups to deepen our understanding about why people find it difficult to come to us.

### Accessibility

We strive to be accessible to all those who contact us, and we offer a range of services to support accessibility. We ask complainants to let us know if they need help and support, and we consider and respond to all requests to adjustments.

We can produce the information we provide in a number of formats, such as CD and Braille. We use a number of on-line and face to face services to improve our accessibility. Our website features a 'BrowseAloud' service, which assists the user by providing text-to-speech functionality on our website.

A British Sign Language (BSL) video and a link to the 'SignVideo' (interpreting service for BSL users) are also available on the website. We subscribe to 'Language Line' so we can access translators for those who would prefer to speak in their first language, and our website can be readily translated into a variety of languages.

85% of respondents to our telephone survey stated that they found it easy or very easy to contact us.

## Welsh language

We are committed to ensuring that the Welsh language is welcomed and treated no less favourably than English in all aspects of our work and that we meet the needs of Welsh speakers. We already have arrangements in place to ensure that we can offer a comprehensive bilingual service to people who come into contact with the office.

From January 2021, we now comply with most of the Welsh Language Standards and adopted a revised [Welsh Language Policy which you can read here](#).

## Awareness and outreach

This year's outreach campaign focused on promoting our new powers and engaging with representatives of underrepresented communities including TGP Cymru, Ethnic Minorities & Youth Support Team Wales (EYST), The Wales Strategic Migration Partnership's Resettlement Forum, Learning Disability Wales, Tai Pawb, Autistic UK and the Chinese in Wales Association. These activities helped to increase awareness of PSOW among disability, ethnic minority and migrant communities and we were able to gather feedback on accessibility of our service.

## Oral complaints

We took 63 oral complaints this year against a target of 120. That is a disappointing figure, and we will be specifically looking to improve in this area in 2021/22. A significant factor was that, for almost half of the year, the requirement for staff to work at home prevented us from taking and recording oral complaints in the normal way. We were able to take only a small number of oral complaints, by staff attending the office to do so, in the summer. However, during that time we

procured, installed and configured new telephony software and hardware to enable staff to take oral complaints from their homes and the rates of oral complaints being taken are increasing.

As part of our Outreach Campaign, we spoke to a range of representative groups over the year, including Community Health Councils, support and advocacy groups as well as our sounding boards, about our new oral complaints service. This development was welcomed.

During the next year we will finalise and launch a targeted social campaign to promote our power to receive oral complaints.



# Promote Learning

## **Strategic Aim 2**

We aim to promote learning from complaints and stimulate improvements on a wider scale. This year, we are breaking new ground in this work. We are the first ombudsman in the UK to be equipped with full and operational powers to establish a Complaints Standards role and to undertake investigations on our own initiative.

In 2020/21, we made large strides in launching our new powers to drive systemic improvement:

- We issued our Model Complaints Handling Policy and accompanying guidance to Local Authorities and Health Boards.
- We provided 90 virtual training sessions to public bodies across Wales.
- We continued the development of standardised data reporting for Public Bodies in Wales.
- We launched our first own initiative investigation at the Chartered Institute of Housing TAI Cymru conference, which was endorsed by Hollywood actor and homelessness activist Michael Sheen.

We continued to inform the policy process in Wales by sharing insights from our work, responding to public consultations and participating in evidence sessions with the Senedd.

We also continued to use a variety of traditional and new formats to communicate lessons from our casework. In 2020/21:

8	We issued 8 public interest reports.		We published our second Equality and Human Rights Casebook.
1	We issued 1 thematic report, 'At Your Service: A Good Practice Guide'.		We issued annual letters to bodies in our jurisdiction.
	We continued to engage directly with the bodies in our jurisdiction and to share intelligence with other scrutiny and regulatory bodies.		

In 2020/21 we once again budgeted funding to be used specifically on the implementation of the new PSOW Act. Spending in the year was as follows:

<b>PSOW Act 2019: Expenditure in 2020/21</b>	<b>£000s</b>
Staff costs	305
Premises	13
Computer Services	7
Communications	2
Office Costs	2
Training	1
<b>Total spent on New Powers</b>	<b>330</b>
Budget	359
<b>Variance</b>	<b>29</b>

We have achieved 91% (2019/20: 92%) of our budgeted funding for the year. This expenditure includes direct costs relating to Own Initiative Investigations and Complaints Standards work, and indirect costs including apportionments of premises costs and software renewals.

## Complaints Standards

The PSOW Act 2019 equipped our office with new powers to drive systemic improvement of public services. The first of these powers is our new Complaints Standards role. It allows us to set model complaint handling procedures for bodies in our jurisdiction. It also allows us to monitor complaint handling by these bodies. In 2020/21:

	We issued our Model Complaints Handling Policy and accompanying guidance to Local Authorities and Health Boards.
	We provided 90 virtual training sessions to public bodies across Wales.
	We continued the development of standardised data reporting for Public Bodies in Wales.

### Model Policies

We originally planned to launch our Model Complaints Handling Policy for Local Authorities on 16 March 2020. Due to the emerging pandemic, we chose not to proceed – but we informed all 22 Local Authorities of our plans. We maintained close working relationships with the Authorities, and following a considered and collaborative approach, decided we would proceed with the policy launch as of 30 September 2020.

Similarly, we engaged widely with teams from Health Boards in the second half of 2020 to discuss our plans and consider opinions on moving forward with our work in the midst of Covid-19. The Health Boards were unanimous in their support for us moving forward – so we issued a model complaints handling policy to Welsh Health Boards and Trusts on 30 November 2020.

Under the PSOW Act 2019, the model policies will come into force 6 months following their introduction – and we have worked extensively with the bodies involved to ensure they are supported in their reviews of current policy.

## Training

For the first time in Wales, the Complaints Standards Authority facilitated training sessions on good complaint handling practice. Whilst we had originally planned face to face sessions with Local Authorities across Wales, the continuing Covid-19 pandemic meant that we needed to change our plans.

Once it became clear that restrictions would remain in place for some time, we moved our training to a virtual platform. Demand from Local Authorities was still strong, so we rebooked the face to face sessions starting in September 2020. At the time of writing, we have now provided 90 training sessions via MS Teams to Local Authorities and Health Boards. The feedback and level of engagement we have received has been incredible, with 97% of respondents to our survey saying that they enjoyed the training, and 100% of respondents commenting that we enrich the training with our experience.

“Probably one of the best training events I have attended and even though it was my first remote session everyone still managed to participate fully.”

“It was the first training I've had in a long time where I come from it thinking it was really worthwhile and beneficial to my role. It was so interactive, I really enjoyed it.”

“delivered excellent training - it was so very relaxed that everyone felt extremely comfortable expressing their thoughts, feelings, concerns and ideas. Thank you both for a really positive experience.”

We will look to build on this excellent start in 2021/22 and consider our training offering so that it evolves to meet varying needs and responds to a post-Covid world.

## Complaints data

We've continued to collect complaints data from Local Authorities and began collecting data from Health Boards in line with our powers under section 40 of the PSOW Act 2019. [More information on this data can be found in our special report on our new powers on our website.](#)

## Looking forward

In 2021/22 we will aim to secure more consistent complaint handling and drive service improvements for the benefit of the Welsh public.

Whilst uncertainty about the duration and extent of Covid-19 restrictions makes planning difficult, we intend to:

- Formally issue the Complaints Standards documents to more parts of the Welsh Public Service – including Housing Associations.
- Publish information on complaint handling performance of public bodies via a new webpage, increasing transparency and allowing comparisons between different public bodies.
- Deliver at least 50 days of training (with a notional value of approximately £150,000) free of charge to public bodies.
- Achieve a high level of satisfaction with this training.

## Own initiative investigations

The power to undertake an own initiative investigation was introduced in the PSOW Act 2019. There are 2 different types of own initiative investigations:

- Extended Investigation – The extension of a matter already under investigation.
- Wider Investigation – A stand-alone investigation which does not relate to a complaint made by an individual.

### Extended Own Initiative Investigation

The Ombudsman has started 4 extended own initiative investigations over the past year, 1 of which has been concluded. These are extensions to an existing investigation where there is a substantial connection. It may be that there is a complaint about 1 element of a service, and/or service provider is closely linked to another possible incidence of service failure, and/or another related service provider. The Ombudsman may only begin such investigations where he has reasonable suspicion that there is systemic maladministration, and it must be in the public interest to begin an investigation.

The extended own initiative investigations that are currently being investigated relate to matters where the service elements are connected, and in others there are connected service providers, all with possible service failure. A case which we concluded in the last year was a complaint about Swansea Council from Ms A. She complained that Swansea Council failed to safeguard her children following a safeguard referral in 2016 from a local authority in England where their father lived. During the investigation, the Local Government and Social Care Ombudsman in England provided the Ombudsman with further information that the Council had received similar information previously from the local authority in 2015. The Ombudsman used his powers to extend his original investigation and was able to investigate Ms A's complaint fully. Some maladministration was found during the investigation and a recommendation for an apology, financial redress and a review of practice and procedures was made.

## The First Wider Own Initiative Investigation

The power to undertake an own initiative investigation was introduced in the PSOW Act 2019. Because these investigations do not require a complaint to be made, they can be reactive to matters as they occur, in this case, the noticeable increase of homeless people, particularly street homeless people, in Wales. On 13 March 2020 in accordance with Section 4 the PSOW Act 2019, the consultation was launched for the first wider own initiative investigation, to notify relevant bodies and stakeholders of our intention to undertake an own initiative investigation. The investigation proposed to consider the homelessness assessment and review process.



In response to Covid-19 and the enormous pressure placed on public services to respond to the pandemic, the consultation was placed on hold. During that time consideration was given to the scope of the investigation. It was important to recognise that many of the changes made, as a result of the pandemic were likely to be temporary, the full extent of the legislative framework and its associated obligations remained in place and would need to be reintroduced when the state of emergency ended. It was agreed taking the opportunity to broaden the scope of the investigation to include the local authorities' response to the pandemic, was an opportunity to identify and share good practice as well as new and innovative ways of working.

The consultation for the first own initiative investigation was relaunched on 23 September 2020 at the Chartered Institute of Housing TAI Cymru conference and was endorsed by Hollywood actor and homelessness activist Michael Sheen. The consultation was generally well received, although concerns were raised about the timing of the investigation.

Whilst reassurances were given that any investigation would be undertaken in a sympathetic manner, it was imperative that it was started, particularly as those most affected by the investigation were some of the most vulnerable people in society, many of whom lived on the fringes and had difficulty engaging with

services. Those people who did not have access to the necessary sanitation or the protection of a front door against the virus.

The Proposal document was issued on 20 November 2020. This document outlined the scope of the investigation and named the 3 local authorities selected for investigation, Cardiff Council, Carmarthenshire County Council and Wrexham County Borough Council. Using data from Welsh Government and the Office of National Statistics, the authorities were selected based on the following criteria:

- The volume and prevalence of homelessness assessments completed by the local authorities.
- The number and prevalence of review requests received and overturned by the local authorities.
- The need to include a broadly representative sample, reflecting different areas and demographics in Wales, including both urban and more rural areas.

“Local Authorities have worked incredibly hard in partnership with health, third sector, RSLs and voluntary organisations to bring people in from the streets into temporary and emergency accommodation. I am really proud of how we have responded to the coronavirus crisis however it is important that we reflect and see whether there are any lessons that we can learn from our experiences over these past months. I therefore agree with your proposal to extend the remit of the consultation to include the impact of Covid-19.”

Julie James MS Cabinet Member for Housing and Local Government, Welsh Government (2018-2021)

The first own initiative investigation was started on 4 January 2021. It was envisioned that an own initiative investigation would follow the same process as any other Ombudsman investigation. However, the current pandemic has called for greater flexibility in the process and consideration on new and innovative ways of working, including the use of media platforms like SurveyMonkey and Microsoft Teams to undertake interviews and the offer of resource to assist the authorities to meet the requests for information.

To ensure openness and transparency throughout the process, the Own Initiative Investigation Officer has been available to the local authorities for discussion. Information about the investigation has been shared via the Ombudsman Sounding Boards and, when appropriate, updates have been provided to relevant bodies, including Welsh Government.

### **The importance of own initiative investigation powers**

The power to undertake an own initiative investigation allows us to focus on matters that benefit those most vulnerable in our society, those who do not, or are unable to complain, the seldom heard voices. The Covid-19 pandemic has emphasised how important these powers are to any Ombudsman service if it is to take a proactive approach to improvement, and by using our own initiative investigation power we have the opportunity to make that 'real time' difference and proactively work with local authorities towards the goal of ending homelessness in Wales.

## Public Policy

We continue to inform the public policy process by sharing insights from our work. This year:

**14**

we responded to 14 public inquiries and consultations.

### Focus of our policy work

We use our expertise and the evidence from our casework to contribute to the development of public policy in areas such as health, social care, and local government. We also comment on issues that relate to ombudsman services such as this year's Law Commission review of devolved tribunals in Wales ahead of a new Tribunals Bill for Wales.

We welcomed the opportunity to share evidence from our casework about the impact of the pandemic on complaint handling by NHS bodies and local government, and the types of complaints we received with the Covid-19 inquiries undertaken by the Senedd's Health, Social Care and Sport Committee and the Equality, Local Government and Communities Committee.

The Local Government and Elections (Wales) Act 2021 was passed this year, heralding several significant reforms in local government so many of our contributions in 2020/21 related to local government.

One of these reforms was the establishment of Corporate Joint Committees (CJCs), the new statutory mechanism for regional collaboration, covering 4 areas in Wales. We welcomed Welsh Government's response to concerns we raised in the consultation on the CJCs Establishment Regulations and have designated them as 'listed authorities' in changes to the PSOW Act 2019. As a result, CJCs and their members now fall under our powers to investigate complaints and are subject to complaints handling standards.

The Local Government and Elections (Wales) Act 2021 also brought in a new performance and governance regime for local authorities, now called principal councils. We were pleased to see that following our response to the consultation, the statutory guidance on the performance and governance of principal councils was changed. Our published casebooks, public interest and thematic reports as

well as the evidence from our new powers is included as evidence that principal councils will have to consider when they carry out a self-assessment or a panel assessment on their performance.

Finally, it is always pleasing when your work is used to help others, so we were happy to share a copy of the recent review of our Code of Conduct for members of local authorities in Wales with the Senedd as an example of good practice for the development of the guidance for the new Code of Conduct for Members of the Senedd.



## Sharing our findings

We use a variety of formats to communicate lessons from our casework and are constantly looking for new ways to share information more widely and make it more accessible. In 2020/21:

<p><b>6</b></p>	<p>We issued 6 public interest reports.</p>	<p><b>1</b></p>	<p>We published 1 thematic report, 'At Your Service: A Good Practice Guide'.</p>
	<p>We published our second Equality and Human Rights Casebook.</p>		
	<p>We continued to engage directly with the bodies in our jurisdiction, especially Health Boards.</p>		

### Public interest reports

Issuing a public interest report remains one of our key tools to highlight systemic problems, promote learning from complaints and ensure that listed authorities are accountable for their services.

This year, we issued 6 public interest reports and 2 special reports on significant issues that other public bodies can learn from. These reports highlight systemic problems, previous failures where lessons have not been learnt from or where a public body refuses to agree to our recommendations.



Six of our reports this year related to healthcare. The first report concerned inadequate eye care by Swansea Bay Health Board. Mrs X was concerned that her daughter's eye injury was not diagnosed sooner. Her daughter, Y, a vulnerable young adult, was living in a specialist residential learning disability unit run by the Health Board and had

known self-injurious behaviour. Her eye injury was not monitored as it should have been, and Y was subsequently diagnosed with total retinal detachment and traumatic cataract of the right eye.

By not receiving appropriate level of eye care in line with the requirement to provide Fundamentals of Care, this caused Y an injustice as she was denied the opportunity of a timely referral and clinical review. Poor communication also caused shock, alarm and distress to Mrs X. [You may read the report on this case here.](#)

We published a Special Report regarding the care and treatment of Mrs A's mother by Powys Teaching Health Board after they failed to comply with 2 recommendations from the original complaint and made further recommendations to improve its complaints handling. [You may read the report on this case here.](#)



Betsi Cadwaladr University Health Board failed in providing the referral-to-treatment for Mr Y's prostate cancer within a reasonable timescale, forcing Mr Y to seek private treatment and causing significant distress and anxiety. [You may read the report on this case here.](#)

Our fourth public interest report on health care failings concerned Abertawe Bro Morgannwg University Health Board, prior to the recent re-structure, so was issued to both Swansea Bay and Cwm Taf Morgannwg Health Boards. We were concerned about the lack of care and support received by Mr W before, during and after his oesophageal (relating to the food pipe between the throat and stomach) cancer surgery in February 2018. The Health Board failed to keep Mr W and his wife, Mrs W fully informed about his condition, his prognosis and what to expect. Sadly, Mr W died in September 2018. [You may read the report on this case here.](#)

The investigation into Aneurin Bevan University Health Board's diagnosis and treatment of Mr X's prostate cancer identified numerous failings in his care. There was no clear evidence that Mr X was informed about possible alternative treatments and he therefore consented to an unnecessary procedure to remove his prostate, resulting in significant injustice to him. [You may read the report on this case here.](#)

The final health public interest report also concerned Betsi Cadwaladr University Health Board and its care of the late Mrs B's severe rectal prolapse. Our investigation found evidence that from 2011 clinical decision-making and rationale shown by the Colorectal Surgeons was not in keeping with accepted clinical practice, in favour of high risk and unconventional clinical options. Mrs B was effectively housebound for the last 8 years of her life and suffered years of indignity as she dealt with her severely symptomatic prolapse and the accompanying bowel and urinary incontinence, unable to take up social opportunities, including those recommended for her dementia, which she had been living with since 2014. [You may read the report on this case here.](#)

Two further reports issued by our office this year related to council services.

In December 2020, we issued a special report regarding Cardiff Council's failure to comply, without a reasonable excuse, with an earlier recommendation, regarding an independent assessment of Mr A's needs in early 2019. [You may read the report on this case here.](#)



Our final public interest report concerned maladministration by Flintshire County Council when they granted a Certificate of Lawfulness of Proposed Use or Development (s192 certificate) and retrospective planning consent to Ms N's next-door neighbour, suffering a loss of privacy which had affected her enjoyment of her home and garden, and diminished the value of her property. [The case report can be read here.](#)

Whilst in all these cases we recommended an apology and, in 3 cases, also financial redress, 7 of these cases led us to issue detailed recommendations for wider action, including reviews of existing policies and procedures and improved training arrangements. We will be monitoring compliance with these recommendations and the impact of the changes instituted in the coming months.

## **Thematic reports**

Alongside our new powers to drive systemic improvement, we publish thematic reports based on the analysis of the cases investigated by our office. They are a useful way of highlighting and emphasising the key issues being identified by us on a daily basis.

This year, we published our 5<sup>th</sup> thematic report, At Your Service: A Good Practice Guide. In light of the pandemic and the need for public services to “think outside of the box”, we published this report to share good practice we have identified in our casework. [You can read a copy of the At Your Service Report here](#)

## **Casebooks**

We publish information about our casework in the Ombudsman’s Casebook and the Code of Conduct Casebook, published on a quarterly basis, containing summaries of all reports issued. The Ombudsman’s Casebook also contains a selection of summaries relating to “quick fixes” and voluntary settlements relating to public service provider cases. We now publish summaries of our cases when they close. These will appear in date order for those who wish to look at our case summaries regularly. Cases will be categorised to enable topics to be searched.

This year we also published our second Equality and Human Rights Casebook. [You can read the Casebook here](#). We do not make definitive findings about whether a public body has breached an individual’s human rights. However, where we identify evidence of maladministration which has caused injustice, we consider whether a person’s human rights may have been engaged and comment on a public body’s regard for these rights. The Equality and Human Rights Casebook assembles a selection of cases where human rights matters have either been expressly raised as part of the complaint or have been pivotal to our findings.

## **Annual letters**

We continue to send letters on an annual basis to Health Boards and Local Authorities concerning the complaints we have received and considered during the year. The annual letters aim to provide these bodies with information to help them improve both their complaint handling and the services that they provide. All annual letters are published [on our website](#).

## Engagement

An important aspect of our improvement work is direct engagement with the bodies in our jurisdiction and liaison with other stakeholders operating in the sectors which account for most of our complaints.

We continue to focus our main improvement efforts on Health Boards.

We have a small number of investigation officers who also have an improvement officer role. These staff spend a proportion of their time working to challenge and support Betsi Cadwaladr, Aneurin Bevan, Swansea Bay and Hywel Dda University Health Boards. As part of this work, during 2020/21, we:

- Met quarterly with Aneurin Bevan UHB and with health board lead officials from the Healthcare Inspectorate Wales and Audit Wales.
- Held quarterly meetings with the director of nursing and the head of the complaints service at Hywel Dda UHB.
- Met with Lay Chairs who chair Independent Review Panels to consider claims for NHS continuing healthcare funding.
- Delivered training to newly qualified consultants at Swansea Bay UHB.
- Held regular quarterly meetings with Betsi Cadwalader UHB.

We also endeavour to share information and insights with other key stakeholders responsible for the scrutiny of the health sector such as Healthcare Inspectorate Wales, Care and Social Services Inspectorate Wales, General Medical Council, Community Health Councils and Audit Wales, as well as the Welsh Commissioners.



# Use Resources Wisely

## **Strategic Aim 3**

We value and support our staff and are committed to creating an equal, diverse and inclusive workplace. We strive to ensure good governance which supports and challenges us, and we benchmark our work against best practice in the UK and internationally. We also secure value for money and ensure that our services are fit for the future.

<p><b>100%</b></p>	<p>All staff completed their annual Performance Review and Development Process.</p>	<p><b>77%</b></p>	<p>77% of staff completed 28 or more hours of continuing professional development.</p>
<p><b>1.1%</b></p>	<p>We saw the average percentage of working days lost through staff sickness decrease significantly to 1.1% from 3.4% the previous year.</p>		<p>We provided a range of wellbeing activities and coaching sessions to help maintain staff morale during the pandemic.</p>
<p><b>£</b></p>	<p>We reduced our median Gender Pay Gap from 21% in 2019 to 5%, which is below the Welsh average for the public sector (7.3%).</p>		<p>We maintained close links with colleagues in the UK, Europe and around the world.</p>

## Training and development

We support our staff to develop the knowledge and skills essential for their work. In 2020/21:

<b>100%</b>	all staff completed their annual Performance Review and Development Process.
<b>77%</b>	77% of all staff completed 28 hours or more of continuing professional development.

Our staff are key to our service provision and, therefore, ensuring that all staff have the skills, knowledge and attitudes to deliver excellent services is vital. We actively facilitate training and development to ensure we continue to support and develop all staff. In addition, our Performance Review and Development Process enables staff to be clear about their objectives and priorities for the year ahead.

Our emphasis on staff training and development is reflected in an annual assessment of training and development needs for each member of staff, a comprehensive induction programme for new staff, online training for key topics such as equality and in-house training and Good Practice Seminars on specific public services and legislative changes. We also provide skills training appropriate to staff roles.

As a result of the Covid-19 pandemic, face to face training was not possible during the year and much of the external training that staff were due to attend was cancelled, particularly in the early part of the year. This has meant that some staff (23%) have not reached the target number of hours of continuing professional development during the year. We will be supporting and encouraging staff to take up opportunities for online training as this has developed, together with in-person training as this becomes possible again.

Our Performance Review and Development Process involves, for each member of staff:

- A review of the previous year's achievements and the setting of objectives at the start of the year.
- A mid-year review of progress.

New staff, during their induction and probation periods, follow a separate process, with more immediate objectives and priorities set. Staff returning from maternity/adoption leave or long-term sickness have objectives agreed at a point on their return. For all other staff, it is pleasing to note that both formal reviews were completed as planned.



Our focus on the importance of training and development of staff means that we have set a target that all staff achieve at least 28 hours of training and development each year. This year (excluding staff on maternity/adoption leave or long-term sickness) 77% of staff achieved this. We will continue to focus on this in 2021/22, assisted by the appointment of an in-house HR professional for the first time.

As part of our annual Performance Review and Development Process, we consider the effectiveness of the training and development activity completed and we are working to improve the ongoing assessment of training.

## Health and wellbeing

We care for our staff and are proactive in promoting wellbeing in the workplace. In 2020/21:

<b>1.1%</b>	We saw the average percentage of working days lost through staff sickness reduce to 1.1%.
	We continued our focus on staff wellbeing and worked to support staff during a difficult year.
	We maintained and improved Mental Health First Aider support to staff.

Our focus on supporting staff has helped us continue to provide a service throughout the pandemic. It is important that we make sure we support their health and wellbeing. Covid-19 has, of course, had a substantial impact on wellbeing. Our annual health checks for staff were postponed and other wellbeing activities, such as yoga and lunch-time walks, have also been affected but switched to on-line alternatives where possible.

Our sickness absence figures for 2020/21 are improved compared with the previous year, with staff absence averaging 1.1%, compared with 3.4% in 2019/20. 37% of days lost were the result of Covid / long-Covid.

Anxiety and stress accounted for 4% of days lost to sickness, compared with 43% in 2019/20. Whilst these figures can be substantially affected by 1 or 2 cases, it suggests that our support to staff has delivered benefits in a difficult year.

There was no full staff survey in 2020/21, but it was pleasing that a survey of staff on attitudes to returning to the office prompted many positive responses on our handling of the impact of the pandemic.

“The concern and care about staff wellbeing has been exemplary and really appreciated”

“Thank you for being so flexible and supporting our needs”

“Thank you for the excellent support and communication provided to staff through this difficult period”

## Equality, diversity and inclusion

This year, we continued in our effort to ensure that as an employer we promote equality and diversity, and tackle any barriers to inclusion:

	<p>Reviewed our flexible working policy.</p>		<p>We adopted a Race and Ethnicity at Work Charter.</p>
	<p>Appointed a Human Resources Business Partner.</p>		<p>We reduced our median Gender Pay Gap from 21% in 2019 to 5% in 2021.</p>
	<p>Evaluated uptake of equality objectives in the Performance Review &amp; Development Process.</p>		<p>Developed the use of our new Equality Impact Assessment procedure.</p>

### Managing Equality

We have a [Strategic Equality Plan which you can read here](#). We have a staff Equality Group that is responsible for developing and monitoring the equality actions we set ourselves each year. We report on these annually in our [Equality Report which can be read here](#).

### Diversity of our workforce

We continue to monitor the diversity of our workforce and job applicants. We have taken an active approach to improve interest in our organisation by under-represented groups through outreach and recruitment activities.



We are a Disability Confident Committed employer to address the under-representation of disabled people within our workforce and amongst our job applicants.

We are also committed to strengthening our contribution to race equality, justice and inclusion in Wales and published our Race and Ethnicity at Work Charter against the backdrop of the Black Lives Matter protests last summer. [You can read the Charter here](#).

In 2020 we actively promoted any vacancies via support groups of disabled and ethnic minority people, and social media, and took out an advertisement in The Voice, a national Afro-Caribbean weekly newspaper to ensure that our job offers reach under-represented candidates.

Disabled people persistently remain significantly under-represented with only 4% of job applicants and 3% of our workforce stating they were disabled. Whilst ethnic minority staff are proportionately represented in our workforce, they continue to be under-represented in job applicants.

In 2021 we welcomed our new Human Resources Business Partner who sits on our Equality Group and will play a crucial role in listening and actioning concerns from staff and exploring more ways we can positively promote future job opportunities to our priority groups.

### **Our work on gender equality**

Our work as a FairPlay Employer, supported by Chwarae Teg, is showing positive dividends as our median Gender Pay Gap decreased from 21% at March 2019 to 5% at March 2020.

	2020/21	2019/20
% of staff female	76%	75%
Median Pay Gap	5%	11%
Mean Pay Gap	17%	19%

We are aware that, in a relatively small organisation, individual recruitment outcomes can make apparently large differences. Women among our job applicants consistently outnumber men by a significant margin. We also have in place a range of policies and training opportunities to remove barriers to employment or career progression by female staff.



The FairPlay Employer scheme benchmarks organisations in terms of gender equality across 4 levels: bronze, silver, gold and platinum. We were delighted to achieve the FairPlay Employer Award at silver level in

April 2020, having scored above the Welsh public sector average across all the categories assessed.

In 2020/21 we have been acting on the recommendations from Chwarae Teg, with an aim to improve our scores when we are reassessed later this year.

These actions include:

- Targeting diverse populations in our recruitment and selection of new staff.
- Reviewing our flexible working arrangements and evaluating outcomes-based working during Covid-19 lockdowns.
- Scoping new ideas for reward and recognition.

We are delighted to have maintained our Silver Award, with improvements in a number of areas, in our 2021 assessment.

## **Welsh Language**

As we are now subject to the Welsh Language Standards and we continue to measure in more detail the Welsh language skills of our workforce.

Whilst 12% of people stated that Welsh was their main language, and the proportion of people with fairly good or fluent skills was higher:

- Speaking: 21%
- Reading: 24%
- Writing: 21%
- Understanding: 25%

These figures are a reduction on last year's and may have been impacted by Welsh speaking staff being absent due to maternity leave, and people who have left the organisation during the year.

## **Setting personal equality objectives**

As an organisation we are constantly developing our inclusivity and diversity knowledge and skills. Nearly 50% of our staff set diverse equality objectives in their annual reviews of performance in 2020 on topics relating to:

- Access to training.
- Supporting implementation of our Equality Plan and the work of our Equality Group.

- Developing Welsh language skills.
- Supporting equality in recruitment.
- Improving accessibility of our publications.
- Supporting consideration of equality and human rights in our casework.

### **Our Autism Champion:**

With a rise in the number of autistic people that use our service it is important for us to not only be more aware of autism but to be more accepting of this and other neurodiverse conditions.

We are lucky to have a member of staff who has personal experience of autism to assist in raising understanding and acceptance throughout the service who we have appointed to be our Autism Champion.

She is constantly gaining knowledge from various training courses and meetings with autism organisations which is disseminated that information through regular updates and training documents to all our staff.

## Sustainability

We understand that we need to play our part in protecting the environment and continue to develop sustainable working practices. In 2020/21 working arrangements were significantly affected by the pandemic and enforced homeworking for most staff. There have been reductions in waste, energy usage and commuting mileage as a result. Whilst there are likely to be long-term changes to working patterns and arrangements, clearly energy use, waste and commuting will increase when more normal working arrangements are possible:

	We reduced our waste by 85%.		We reduced our energy usage by 31%.
<b>0%</b>	0% of our general waste was sent to landfill.		Commuting mileage during the year was minimal.

### Waste management

In 2020/21, we reduced our waste by 85% compared to the previous year, largely as a result of homeworking. We continued our paper-light working, with more of our reports and correspondence sent by email or electronic file transmission, rather than by post.

	2020/21	2019/20
Confidential waste (kg)	1,480	8,650
Mixed recycling (kg)	1,266	2,346
General waste (kg)	1,242	16,000
<b>Total waste (kg)</b>	<b>3,988</b>	<b>26,996</b>

### Lighting and energy

Total electricity usage has fallen by 31% from the previous year as a result of homeworking. IT servers within our offices, and associated cooling equipment, have, however, run throughout the year.

	2020/21	2019/20
Energy usage (KwH)	71,668	104,521

## Emissions

As a result of the pandemic, most staff are working at home, reducing commuting and associated CO<sub>2</sub> emissions. We estimate that 182,000kg of emissions have been avoided during the year (9,000kg in 2019/20).



**182k**

182k kgs of CO<sub>2</sub> emissions avoided.

Whilst some of this will be reversed once staff can work in the office, we intend to change our normal working arrangements so that most staff are able to work partly from home.

### **Biodiversity and Resilience of Ecosystems Duty (section 6 duty) report**

We are publishing a separate report in accordance with this duty.

## Formal accountability

We are accountable to the Senedd for the work done and the office's use of resources.

### **The Senedd**

The Finance Committee has established a set of principles to guide the preparation of budget submissions and each year we make a formal submission, taking account of these principles, seeking funding for the following year. The submission is scrutinised by the Finance Committee, which makes a recommendation on the funding to be provided. The Committee also makes comments and recommendations on the submission. These are taken into account in subsequent years.

The Annual Report and Accounts document reports on the use of resources and on the work done during the year. It is laid before the Senedd and published on our website. The report has been scrutinised by the Equality, Local Government and Communities Committee each year. In addition, the Public Accounts Committee periodically scrutinises our use of resources and makes observations and recommendations. We work to implement recommendations made by these Committees in our Estimates submission and our Annual Report and Accounts.

### **Judicial review**

As a Corporation Sole, and to reflect the principles of ombudsman schemes internationally, the Ombudsman and his staff are fully responsible for casework decisions. Complainants can request an internal review of a casework decision that they are unhappy with, which is undertaken by a senior member of staff who has not previously been involved in the case. However, the appropriate route to challenge our decision is through judicial review.

It is rare for our decisions to be challenged legally and no cases were subject to judicial review proceedings in 2020/21. However, a councillor who was being investigated for an alleged breach of the Code of Conduct applied for an Injunction in the High Court to prevent us from investigating the complaint. The Application was refused, and we have concluded our investigation and referred the case to the Adjudication Panel for Wales.

## Benchmarking

We develop our work by benchmarking against best practice across the ombudsman sector. In 2020/21:



We maintained close links with colleagues in the UK, Europe and around the world.

### The Ombudsman Community

Despite the restrictions due to Covid-19, we continued to be closely involved in the work of the Ombudsman Association (OA), Public Service Ombudsman Group and International Ombudsman Institute (IOI). In 2020/21, we attended (and in some cases chaired) a number of the OA interest groups, considering legal matters, human resources, first contact, casework, communications and policy.

2020/21 was also the final year for Nick Bennett to represent the UK on the IOI's world and European Boards. We also participated in conferences and good practice seminars, and provided feedback on good practice publications, such as "Giving voice to mental health patients" best practice paper. [You can read this paper here.](#)

### The Welsh Commissioners and the Auditor General for Wales

Nick Bennett continued to meet the Welsh Commissioners and the Auditor General for Wales on a quarterly basis to discuss issues of mutual interest.

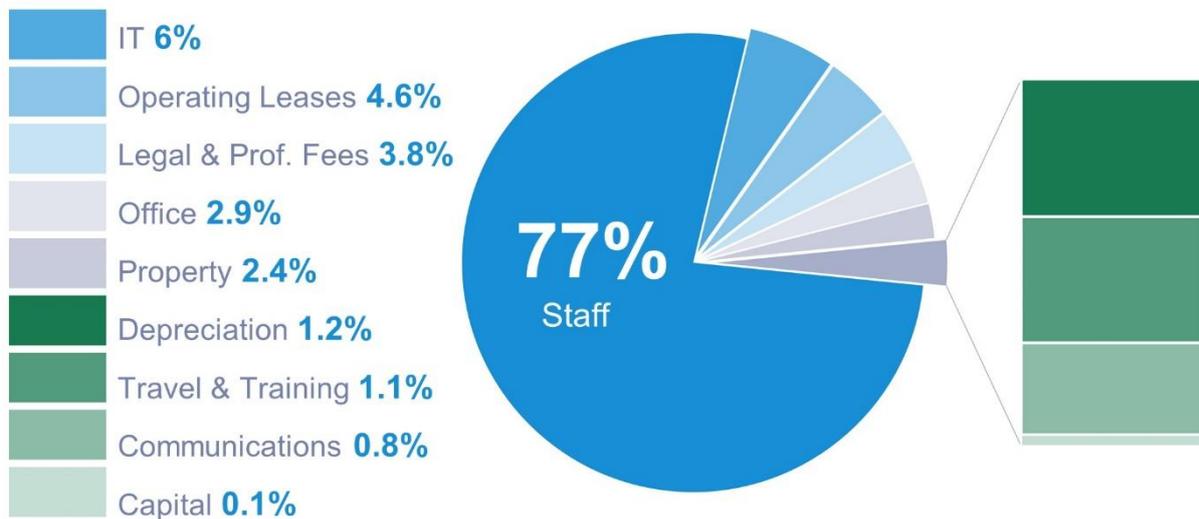
Our staff also met separately on several occasions, representatives of these offices, as well as the Equality and Human Rights Commission, to discuss issues such as our approaches to casework, policy work and IT systems. We value these opportunities for sharing experiences, good practice and challenges with our colleagues. They are more important than ever in the context of the challenges that the Covid-19 outbreak is setting for public services in Wales.

## Financial Management

Overall resource has increased compared to the same period last year, whilst our overall cash requirement has been reduced by the repayment of the £974,000 pension fund surplus.

	2020/21	2019/20	Change
Resource Out-turn	£000s	£000s	£000s
Total Resource	5,143	4,871	+272
Cash Requirement	4,096	4,836	-740

### Gross Resource Expenditure 2020/21



### Analysis of Spending by Strategic Aims



## Unit Costs

In previous years we have reported unit costs as the total net expenditure of the organisation divided by workload (enquiries and complaints received in the year). Whilst consistency in presentation of information from year to year is helpful, this approach to unit costs has become increasingly obsolete. For consistency we are including, for the last time, the unit cost calculated in this way, but we are also showing the approach we will use for the future.

Whilst the approach used in the past has the attraction of simplicity, there are a number of factors making it no longer fit for purpose:

- The work we do each year is not limited to the complaints we receive in that year. For example, during 2020/21 we worked extensively on complaints received during 2019/20. This means that fluctuations in new enquiries and complaints distort unit costs without reflecting the work done in the year.
- We have received a pension refund of £974k during 2020/21 which reduces our unit costs. This income is one-off income, unrelated to complaints caseload, so artificially distorts this year's unit costs and makes meaningful comparisons with previous years impossible.
- We have been working to have greater impact in improving public services and public body complaints handling. The proactive powers under the Public Services Ombudsman (Wales) Act 2019 allow complaints standards and own initiative investigation work, the costs of which are unrelated to enquiries and complaints received in the year. The more work we do on these, and the more success we have in reducing complaints, the higher unit costs will be.

## Workload compared to Unit Cost



Note: All unit costs are adjusted to 2020/21 prices to allow meaningful comparisons.

For the future, we propose to present unit costs calculated for our main activity – receiving, considering, investigating and responding to enquiries and complaints. This is our activity under Strategic Aim 1 and we will use the analysis figures for Operating Costs by Strategic Aims, presented within these audited accounts. These are calculated from the Net Revenue Resources Out-turn, so are not distorted by the one-off pension surplus. Whilst there is no perfect approach to unit costs (because of carry-over of cases from year to year) we consider that numbers of complaints and enquiries closed in the year to be more appropriate units for the calculation of unit costs.

The graphs below show firstly unit cost for the full enquiry and complaints work completed in the year and secondly for complaints cases completed in the year.

### Unit Cost for Total Office Case Closure



### Unit Cost for Total Office Complaints Closure



Note: These graphs are based on expenditure on this Strategic Objective and adjusted to 2020/21 prices.

The unit costs reflect changes to costs and to the number of complaints and enquiries completed during the year. For example, 2019/20 costs include substantial increases in employer's national insurance and pension contributions. In addition, increases in unit costs reflect the complexity of cases considered, including the continuing increase in health complaints, generally requiring external clinical advice, in our caseload.

Most of our operating costs are relatively fixed, so unit costs will vary significantly as volumes of cases closed change. In 2020/21, case closures were lower than in recent years, particularly in the first quarter. In addition, there were delays, again particularly in the early months of the year, as public bodies were unable to respond to us normally in the early stages of the pandemic. We will be closely managing case progression, case closures and unit costs in 2021/22.

## Expenditure to 31 March 2021 compared to previous year

	2020/21	2019/20	Reasons for significant changes
	£000	£000	
Salaries	2,905	2,582	2.75% pay award, full year of New Powers staff, FTE increase of 3 including recruitment of Associate Investigation Officers and maternity cover.
Social Security costs	283	252	
Pension costs	758	685	
Pension fund charges	20	33	
<b>Total Pay</b>	<b>3,966</b>	<b>3,552</b>	
Rentals under operating leases	238	237	
External Audit fee	17	15	
Legal and professional fees	193	230	Continued management of professional advice and reduced legal fees.
Other property costs	123	135	Savings through office closure due to Covid-19.
Computer services	309	209	All staff fully equipped for home working.
Office costs	151	169	Purchase of photocopiers in 2019/20.
Travel and Subsistence	1	45	Minimal travel due to Covid-19 pandemic.
Training and Recruitment	55	93	Recruitment of Improvement Team in 2019/20.
Communications	41	87	CSA training sessions held virtually.
Depreciation	61	60	
<b>Total other Administration Costs</b>	<b>1,189</b>	<b>1,280</b>	
<b>Gross Costs</b>	<b>5,155</b>	<b>4,832</b>	
Income	(991)	(14)	Repayment of Pension Fund Surplus.
<b>Net Expenditure</b>	<b>4,164</b>	<b>4,818</b>	
Capital	5	53	Lower capital investment in 2020/21.
<b>Net Resource</b>	<b>4,169</b>	<b>4,871</b>	

More detailed financial information can be found in the financial statements and notes that support the accounts.

**Nick Bennett**

**Accounting Officer**

Public Services Ombudsman for Wales

*Signature* N Bennett

7 July 2021



# Accountability Report

2020/21

# Corporate Governance Report

## Ombudsman's Report

Under the Government of Wales Act 2006, the office is financed through the Welsh Consolidated Fund (WCF) with any unspent cash balances repaid into the WCF after a certified copy of the accounts has been laid before the Welsh Parliament. This creates a further control in that there is a need to effectively manage the budget on both a cash and a resource basis. The salary of the office holder of the Public Services Ombudsman for Wales and the related costs are a direct charge on the WCF and are administered through the Welsh Parliament.

As at 31 March 2021, the office comprised 75 permanent full and part-time staff based in Pencoed, Bridgend including the Ombudsman, Chief Operating Officer & Director of Improvement, Chief Legal Adviser & Director of Investigations, as well as investigation and support staff.

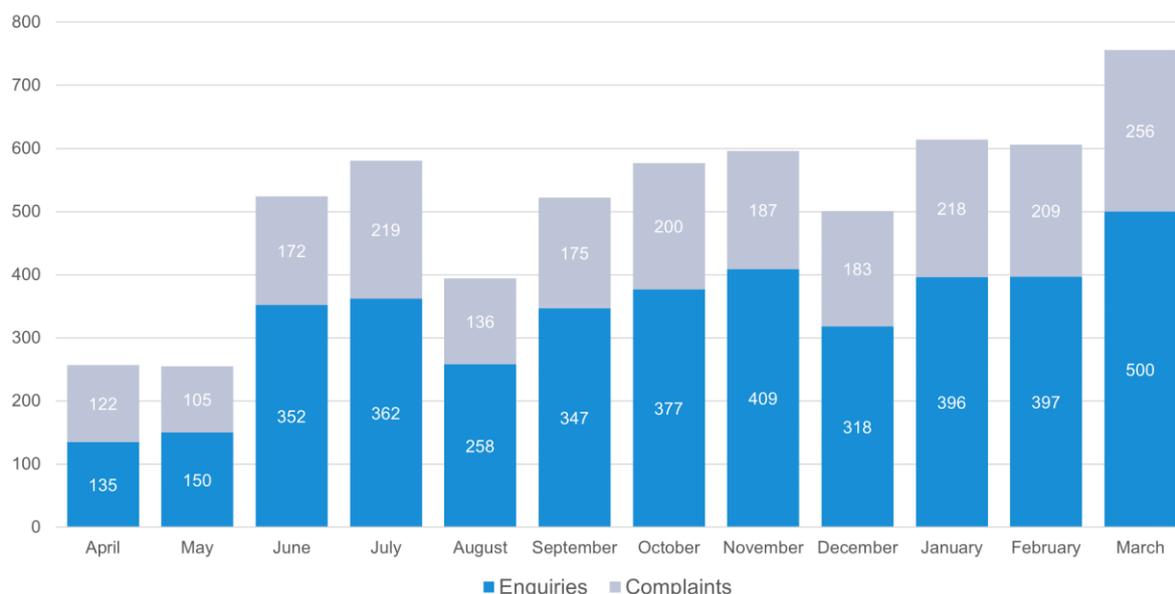
The Welsh Parliament provided cash of £4.1 million for the funding of the office, whilst we received £974k in December 2020 relating to the repayment of the Cardiff and Vale Pension Fund surplus. £20k of this overall funding is due to be returned to the WCF being the unused cash balance at the year end. The expenditure of the office was kept within the Estimate agreed in November 2019 and amended by Supplementary Budgets during 2020/21.

The table below shows that, for the first time since 2013/14, the office has seen a reduction in overall workload, attributable to the Covid-19 pandemic, and a subsequent small increase in unit cost.

<b>Workload</b>	<b>Enquiries</b>	<b>Code</b>	<b>Public Body</b>	<b>Total Workload</b>	<b>Unit cost</b>
<b>2013/14</b>	3,234	226	1,932	5,392	£783
<b>2014/15</b>	3,470	231	2,065	5,766	£753
<b>2015/16</b>	3,731	276	1,992	5,999	£747
<b>2016/17</b>	4,512	236	2,056	6,804	£639
<b>2017/18</b>	4,861	270	1,983	7,114	£614
<b>2018/19</b>	4,627	282	2,207	7,116	£602
<b>2019/20</b>	4,726	365	2,109	7,200	£673
<b>2020/21</b>	3,774	535	1,874	6,183	£674

An analysis of new caseload to the office in 2020/21 broken down monthly shows how the first half of the year was severely impacted by the pandemic and lockdown, before complaints and enquiries rose to the highest level ever seen by the office in March 2021.

### Caseload - April 2020 to March 2021



### Remuneration and Pension Liabilities

Details of the pay and related costs of the Ombudsman and the office are shown in the Remuneration Report.

Pension obligations to present and past employees are discharged through the Principal Civil Service Pension Scheme (PCSPS) and the pensions paid directly to former Commissioners or their dependants. The obligation to the Local Government Pension Scheme ceased in April 2020 following the retirement of the last contributing member.

Further details are given in the Pensions Disclosures.

### Corporate Governance

The office holder of the Public Services Ombudsman for Wales is a Corporation Sole. In addition, upon taking up my role as Ombudsman, I was appointed as the Accounting Officer for the public funds with which the Welsh Parliament entrusts me to undertake my functions.

The Audit & Risk Assurance Committee supports the Ombudsman by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and on the integrity of financial statements and the annual report. Further details are set out in the Annual Governance Statement.

## Register of Interests

A register of interests is maintained for the Ombudsman, Directors and members of the Advisory Panel and Audit & Risk Assurance Committee.

## Accounts Direction

Under the Accounts Direction issued by HM Treasury dated 21 December 2006, I was required to prepare accounts for the financial year ended 31 March 2021 in compliance with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (the FReM) issued by HM Treasury which was in force for 2020/21.

The accounts have been prepared to:

- Give a true and fair view of the state of affairs at 31 March 2021 and of the net resource out-turn, resources applied to objectives, recognised gains and losses and cash flows for the financial year then ended.
- Provide disclosure of any material expenditure or income that has not been applied for the purposes intended by the Welsh Parliament or material transactions that have not conformed to the authorities that govern them.

## Auditors

The Auditor General for Wales is the External Auditor of the accounts of the PSOW as laid down in paragraph 18 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019.

The cost of the audit for 2020/21 was £17k (2019/20: £15k).

As far as I am aware, I have taken all the steps necessary to make the auditors aware of any relevant audit information.

**Nick Bennett**

**Accounting Officer**

Public Services Ombudsman for Wales

*Signature* N Bennett

7 July 2021

## Statement of Accounting Officer's Responsibilities

Under the Public Services Ombudsman (Wales) Act 2019, as Public Services Ombudsman for Wales I am required to prepare, for each financial year, resource accounts detailing the resources acquired, held or disposed of during the year and the use of resources by the PSOW during the year.

The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of the PSOW and its net resource out-turn, Statement of Financial Position and cash flows for the financial year.

In preparing the accounts, as the Accounting Officer, I am required to comply with the requirements of the 'Government Financial Reporting Manual' and in particular to:

- Observe the Accounts Direction issued by the Treasury including the relevant accounting and disclosure requirements and apply suitable accounting policies on a consistent basis.
- Make judgements and estimates on a reasonable basis.
- State whether applicable accounting standards as set out in the government financial reporting manual have been followed and disclose and explain any material departures in the accounts.
- Prepare the accounts on a going concern basis.
- Confirm that the annual report and accounts as a whole is fair, balanced and understandable.
- Take personal responsibility for the annual report and accounts and the judgements required for determining that it is fair, balanced and understandable.

My relevant responsibilities as Accounting Officer include the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding the PSOW's assets, as set out in Managing Welsh Public Money and the Public Services Ombudsman (Wales) Act 2019.

As the Accounting Officer, I have taken all the steps that I ought to have taken to make myself aware of any relevant audit information and to establish that PSOW's auditors are aware of that information. So far as I am aware, there is no relevant audit information of which the auditors are unaware.

# Annual Governance Statement 2020/21

## Status of the Public Services Ombudsman for Wales

As laid down in Schedule 1 paragraph 2 of the Public Services Ombudsman (Wales) Act 2019, the Ombudsman is a Corporation Sole holding office under Her Majesty and he discharges his function on behalf of the Crown. Schedule 1 paragraph 19 states that the Ombudsman is the Accounting Officer for the office of the Ombudsman.

## Scope of Responsibility

In undertaking the role of Accounting Officer, I ensure that the office operates effectively and to a high standard of probity. In addition, I have responsibility for maintaining a sound system of internal control that supports the achievement of PSOW's policies, aims and objectives, whilst safeguarding the public funds and assets for which I am personally responsible, in accordance with the responsibilities assigned to me in 'Managing Welsh Public Money'.

I am independent of the Senedd Cymru Welsh Parliament but am accountable to its Public Accounts Committee for the use of resources made available to support my statutory functions. In determining the level of resources available to the office, the PSOW's budget proposals are considered by the Finance Committee of the Senedd Cymru Welsh Parliament in accordance with the process laid down in the Act. I produce a combined Annual Report and Accounts for consideration by the Equality, Local Government and Communities Committee and the Finance Committee.

I am required to include this Governance Statement with my annual report and accounts to explain how the governance of my office works and to ensure it meets the requirements of the Corporate Governance Code and The Orange Book: Management of Risk. To enable me to satisfy these requirements, I have established appropriate structures, systems and procedures that are comprehensive and provide me with evidence that the governance arrangements are working as intended across the whole organisation and its activities. Such arrangements include my Governance Framework, a comprehensive internal control environment, effective internal and external audit arrangements and robust financial management, risk planning and monitoring procedures.

## **Strategic Planning and Performance Monitoring**

In my [Strategic Plan](#) for the 3 years 2019/20 to 2021/22, I set the following for the office:

### **Our Vision for public services in Wales:**

Services that actively listen and learn from complaints.

### **Our Mission:**

To uphold justice and improve public services.

### **Our Strategic Aims:**

- **Strategic Aim 1: Deliver Justice**  
A fair, independent, inclusive and responsive complaints service.
- **Strategic Aim 2: Promote Learning, Work to Improve Public Services**  
Promote learning from complaints and stimulate improvements on a wider scale.
- **Strategic Aim 3: Use Resources Wisely and Future-proof the Organisation**  
Identify and adopt best practice. Secure value for money and services that are fit for the future. Support staff and ensure good governance which supports and challenges us.

Whilst individual teams within the office are charged with implementing the actions identified, the Management Team monitors progress made against targets and the outcomes achieved via monthly reports.

### **System of Internal Control**

The system of internal control is designed to manage risk to a reasonable level rather than eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable, and not absolute, assurance of effectiveness. It is based on an ongoing process designed to identify and prioritise the risks to the achievement of my policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

The system has been in place in the office of the PSOW for the year ended 31 March 2021 and up to the date of approval of these accounts and accords with HM Treasury guidance. Internal controls were unaffected by changes resulting from the Covid-19 pandemic. No significant areas of internal control weaknesses have been identified from audit work and steps to improve controls further are implemented promptly and monitored by the Audit & Risk Assurance Committee.

## **Corporate Governance arrangements: Audit & Risk Assurance Committee**

Governance arrangements include an Audit & Risk Assurance Committee (ARAC). The Committee's responsibilities are:

### **(a) Terms of Reference**

The Committee supports me by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the annual report.

### **(b) Membership**

Membership comprises a minimum of 4, and a maximum of 8, independent external members. Following a recruitment exercise undertaken in June 2020 to take account of some members' terms of office coming to an end in 2021, 2 additional members were appointed to the ARAC from September 2020.

The membership of the Committee during 2020-21 was Mr Jim Martin, former Scottish Public Services Ombudsman, Dr Tom Frawley CBE, former Assembly Ombudsman and Northern Ireland Commissioner for Complaints, Mr Jonathan Morgan, former Assembly Member and previously Chair of the National Assembly's Public Accounts Committee, Mrs Anne Jones, former Assistant Information Commissioner, Mr Trevor Coxon, former Monitoring Officer of Wrexham County Borough Council, Mr Ian Williams, former Group Chief Executive of Hendre Limited, Mr Mike Usher, a former Director of Audit Wales and Mr John McSherry, former Senior Manager at Admiral Group Limited.

Mr Morgan resigned as Independent Member and Chair of the ARAC in July 2020 and, on the recommendation of the Independent Members, I appointed Mr Williams to take up the position of Chair with effect from September 2020.

### (c) Training

Members of the Committee are invited to assess their training needs annually. An induction programme is provided for all new members of the ARAC. During 2020 members undertook training on Cyber Security awareness and Unconscious Bias.

The Cyber Protect Team from Tarian provided Cyber Security Awareness Training for members of the ARAC as well as the office's Management Team. Tarian is the Regional Organised Crime Unit, part funded by the Home Office and the 3 Southern Wales Police Forces who work collaboratively with Welsh Government.

The Unconscious Bias training was provided by Carolyn Hirst, former Deputy Scottish Public Services Ombudsman and Interim Principal Ombudsman at Ombudsman Services.

### (d) Meetings

The Committee sets itself an annual work programme. There are generally 4 meetings of the Committee during the year. However due to a change in the meeting schedule, only 3 meetings were held in 2020/21. Due to the ongoing Covid-19 pandemic they have all been held remotely using Zoom.

Management Team amended the schedule of meetings during the year to be January, April, July and October, with effect from January 2021, with the traditional March meeting moved to April to better reflect the timing of the Annual Accounts.

I attend ARAC Meetings and the Chief Operating Officer acts as Secretary to the Committee. The meetings were also regularly attended by internal and external auditors and appropriate members of the PSOW's Management Team.

At each meeting, the Committee received a number of standing agenda items. These include declarations of any identified fraud or losses, including any data losses. At each meeting, the Committee received a copy of the latest Budget Monitoring report considered by the Management Team. This is intended to provide the Committee with an assurance that there is regular scrutiny of the financial position within the office.

During the year, the Committee also received reports on a number of other appropriate matters within its Terms of Reference. They included the 9 and 12-month accounts, internal audit plans, a review of the Whistleblowing Policy, a

review of governance arrangements, updates on major IT developments, progress on the implementation of the Strategic ITC Plan and relevant financial and corporate governance matters issued by HM Treasury. The Committee reviewed the office’s counter-fraud arrangements, in the context of the Cabinet Office Counter-Fraud Framework, to satisfy itself that appropriate arrangements are in place.

The Committee provided advice to me to ensure that the 2020/21 Annual Governance Statement included appropriate information and complied with best practice.

A standing item is risk management. At each meeting the Committee considered a report on the greatest identified risks. The Committee explored and challenged the reported risks to satisfy itself that all key risks have been identified. Risk management and risk mitigation measures were also considered.

During the year, 1 member’s term of office ended, and 2 new members joined the Committee. The number of meetings attended, along with the number of meetings each member was eligible to attend, was as follows:

<b>Membership:</b>	
Jonathan Morgan (Chair in July)	1
Ian Williams (Chair from September)	3
Jim Martin	3
Anne Jones	3
Trevor Coxon	3
Tom Frawley	3
Mike Usher (from September 2020)	2
John McSherry (from September 2020)	2

All members attended 100% of the meetings they were eligible to attend.

## (e) Internal and External Audit

The Committee received regular reports from both the internal and external auditors. The work of Deloitte as Internal Auditors during the year was planned based on their overall needs assessment and carried out through their fourth annual programme. Their reports highlighted the satisfactory internal control framework within the organisation and made recommendations for improvement where necessary.

In all but one audit, the level of assurance was considered 'Substantial', the highest assurance level. A number of low priority recommendations were made, and these have either been completed or will be completed in accordance with agreed timescales. In addition, an advisory audit of New Powers under the PSOW Act 2019 arrangements was carried out in October 2020.

The internal audits undertaken in 2020/21 and overall assessments were as follows:

	Assurance level
Staff Wellbeing	<b>SUBSTANTIAL</b>
Corporate Governance and Risk Management	<b>SUBSTANTIAL</b>
Records Management	<b>MODERATE</b>
<b>Financial Systems:</b>	
Banking and Cash Management	<b>SUBSTANTIAL</b>
Budgetary Control	<b>SUBSTANTIAL</b>
Payroll	<b>SUBSTANTIAL</b>

The internal auditors' Annual Report for 2020/21 stated: 'Based on the conclusions of our work, we can provide the Ombudsman with **substantial assurance** in relation to the organisation's arrangements for risk management, governance and internal control.' These findings also provide assurance that the arrangements in place are reducing the office's exposure to risk. The Committee noted the thoroughness of the audit work, practicality of recommendations and the open and positive response of management to the recommendations made.

The Committee considered the 2019/20 Annual Report and Accounts that included the Governance Statement of the office for 2019/20, together with the External Audit of Financial Statements Report and Management Letter. An unqualified opinion was given, following external audit work undertaken by Audit Wales, on the 2019/20 Accounts. There were no recommendations arising from the Audit. The external audit conclusions for the 2019/20 financial year were reviewed at the September 2020 meeting of the Committee.

Both Internal and External Auditors have the right to raise any matter through an open access policy to the Chair and, through that right, to bring any matter to the attention of the Committee. The Committee, by reviewing the programmes of both the External and the Internal Auditors, ensured that they were co-operating effectively with each other. The quality of the audit work has been evaluated during the year through consideration of the audit reports and recommendations and dialogue at meetings between Committee Members and the Auditors.

To ensure that appropriate matters can be raised in confidence, the Chair of the Committee generally holds an annual meeting with representatives of the External and Internal Auditors. Such a meeting was held on 30 March 2021.

#### (f) Monitoring processes

At each meeting during 2020/21, the Committee received a report on progress made on the implementation of External and Internal Audit recommendations. Committee members were satisfied that all the recommendations made, had been implemented or will be implemented in accordance with agreed timescales.

#### (g) Annual Review and Assessment

This annual review is undertaken to evaluate the work of the Committee and to ensure that the work of the Audit & Risk Assurance Committee continues to comply with the Good Practice Principles set out in the HM Treasury Audit Committee Handbook. To assist the Committee in determining that it was complying with good practice, each member was invited to complete the National Audit Office's 'The Audit Committee self-assessment checklist'. Comments received from Committee members were considered in preparing the Annual Review for 2020/21.

The ARAC Annual Review concluded that it had received comprehensive assurances and information that was reliable and sufficient to enable it to carry out its responsibilities. Those assurances demonstrated a satisfactory overall internal control environment, financial reporting and the management of risk and of the quality of both the Internal and External Audit work undertaken.

The Committee was therefore able to provide assurances to support me effectively, as Public Services Ombudsman for Wales, to comply with my Accounting Officer responsibilities. The Committee provided evidence to assist in the preparation of this Annual Governance Statement.

### **Advisory Panel**

The Advisory Panel is a non-statutory forum whose main role is to provide support and advice to me in providing leadership and setting the strategic objectives of the office of the Public Services Ombudsman for Wales. The Panel also brings an external perspective to assist in the development of policy and practice.

A recruitment exercise was undertaken in June 2020 to appoint 2 additional members to the Panel to take account of some members' terms of office concluding in 2021. Two new members joined the Panel; Mr Mike Usher and Ms Rhiannon Ivens, former Police Chief Inspector at Dyfed-Powys Police. Ms Ivens resigned from the Panel in March 2021.

The Advisory Panel is an advisory-only body and does not make decisions in its own right.

### **Reporting of Personal Data Related Incidents**

All incidents involving personal data are reported to the Audit & Risk Assurance Committee, regardless of whether PSOW is at fault. Where PSOW is at fault, guidance issued by the Information Commissioner's Office (ICO) is considered to establish whether it is necessary to report the incident to that office. During 2020/21, there were no incidents that required reporting to the ICO.

## **The Risk and Control Framework**

As required by 'Managing Welsh Public Money', I am supported by a professionally qualified Financial Accountant who carries out the responsibilities of a Finance Director as set out in that document.

Risk management and the risk register are standing agenda items for the Audit & Risk Assurance Committee, and the approach to risk management, together with risk appetite, is reviewed periodically.

I am continuing to enhance the robust internal control arrangements to ensure that the office has the capacity to identify, assess and manage risk effectively.

In undertaking this responsibility during the year ended 31 March 2021, I have been supported by a Chief Operating Officer to whom some of my responsibilities have been delegated.

I am satisfied that the systems in place identify potential risks at an early stage and enable, through active management, the appropriate action to be taken to minimise any adverse impact on the office.

The Audit & Risk Assurance Committee receives regular reports on the risks relating to this office, explores the office's approach to those risks and provides comments and suggestions on current and emerging risks.

Risks are considered across a number of key areas or risk horizons. These are:

- risks that could affect my ability to fulfil my core functions
- risks affecting data security
- financial risks
- governance risks
- risks affecting facilities & support arrangements (such as premises & IT services).

Key risks at the financial year-end were identified as follows:

Risk horizon	Risk affects:	Risk management and mitigation:	Residual risk:
<p><b>Core function – Case volumes and meeting KPIs</b></p>	<p>Likely impact of Covid-19 on case volumes and ability to meet Key Performance Indicators (KPIs). The pandemic may continue to affect the ability of public bodies to engage my office, causing delays.</p> <p>Furthermore, complaints numbers in March 2021 were exceptionally high. If this continues, pressure of case volumes and timeliness will be substantial.</p>	<p>Monitor and manage complaints volumes and, as far as possible, staff resources. Work closely and supportively with public bodies.</p>	<p>The recent increases in number of new complaints, coupled with possible delays in securing responses from public bodies, means that the residual risk is considered <b>RED</b>.</p>
	<p><b>Information and system security physical &amp; cyber</b></p>	<p>Owing to the increasing number of malware / phishing attacks on comparable organisations, this risk is considered high.</p>	<p>Make full use of IT support and advice as well as antivirus and other security software. Increase staff awareness and vigilance through training.</p>

## Risk Assurance Framework Arrangements

<b>PSOW Framework</b>			
<ul style="list-style-type: none"> <li>• Strategic objectives from Corporate Plan</li> <li>• Work programme</li> <li>• Risk management</li> <li>• Anti-fraud policy</li> <li>• Governance framework</li> <li>• Policies, procedures and code of conduct</li> </ul>			
<b>Advisory Panel</b>	<b>Accounting Officer</b>	<b>Audit &amp; Risk Assurance Committee</b>	<b>Management Team</b>
Provides support and advice on vision, values and purposes as well as strategic direction and planning.	Governance. Decision making. Financial management. Risk management.	Reviews and monitors governance, risks and internal controls. Agrees annual governance statement.	3-year Corporate Plan. Operational Plan. Performance monitoring. Corporate policies. Risk management. Value for money.
<b>Central Guidance</b>		<b>PSOW policies, plans and risk register</b>	<b>Annual Governance Statement</b>
HM Treasury. FReM. Managing Welsh Public Money. Public Sector Internal Audit.			
<b>Assurance Map Components</b>			
<b>1st line of defence</b> Strategic and operational delivery reporting. KPI reporting. Financial controls / Budget monitoring.	<b>2nd line of defence</b> Risk register reviews. Quality assurance. Information security assurance.	<b>3rd line of defence</b> Internal audit reports. Financial accountant spot checks.	
<b>Other assurances</b> External audit. Scrutiny by Finance Committee and PAC.			

I and my Management Team will continue to work to manage and minimise the risks in these key areas in the year ahead and the risks will be considered at each meeting of the Audit & Risk Assurance Committee.

## **Budgeting Process**

As Accounting Officer, I ensure that I have in place arrangements for tight control of the public money entrusted to me. The Management Team receives a monthly budget monitoring report setting out details of actual, against budgeted expenditure. Any unexpected expenditure issues that may arise during the year are considered and any actions required to ensure that the office remains within its budgeted expenditure are agreed. No major issues arose in respect of the PSOW's budget for 2020/21.

As far as the process of producing the PSOW's financial estimate for 2021/22 is concerned, a paper setting out initial budget criteria was considered by the Advisory Panel in June 2020. Overall, the resource and cash budgets were flat and maintained at 2020/21 levels. The Finance Committee scrutinised the paper in October 2020 and the full amount sought was included in the Annual Budget Motion March 2021.

## **Conclusion**

The office's system of internal controls was unaffected by the pandemic and by homeworking. I can report that there were no significant weaknesses in the office's system of internal controls in 2020/21 which would affect the achievement of the office's policies, aims and objectives and that robust Corporate Governance is in operation with no breaches of the Corporate Governance Code.

<i>Signature</i> N Bennett
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**Nick Bennett**

**Accounting Officer**

Public Services Ombudsman for Wales

7 July 2021

# Remuneration Report

## Public Services Ombudsman for Wales

The Government of Wales Act 2006 provides for my remuneration and associated national insurance and pension costs to be met from the Welsh Consolidated Fund, rather than being paid directly. These costs are included, for transparency, in the remuneration report.

### Remuneration

The following sections provide details of the remuneration and pension interest of the most senior management of the Office: Nick Bennett - Ombudsman, Chris Vinestock - Chief Operating Officer & Director of Improvement and Katrin Shaw - Chief Legal Adviser & Director of Investigations.

<b>Single Total Figure of Remuneration</b>					
<b>2020/21</b>					
<b>Officials</b>	<b>Salary (£'000)</b>	<b>Bonus payments (£'000)</b>	<b>Benefits in Kind (to nearest £100)</b>	<b>Pension benefits (to nearest £1,000)</b>	<b>Total (£'000)</b>
Nick Bennett	150-155	-	-	59,000	210-215
Chris Vinestock	105-110	-	-	75,000	180-185
Katrin Shaw	90-95	-	-	61,000	150-155

<b>Single Total Figure of Remuneration</b>					
<b>2019/20</b>					
<b>Officials</b>	<b>Salary (£'000)</b>	<b>Bonus payments (£'000)</b>	<b>Benefits in Kind (to nearest £100)</b>	<b>Pension benefits (to nearest £1,000)</b>	<b>Total (£'000)</b>
Nick Bennett	150-155	-	-	58,000	205-210
Chris Vinestock	100-105	-	-	75,000	175-180
Katrin Shaw	85-90	-	-	75,000	160-165

The Scheme Actuary has advised of a change in the way pension benefits are calculated. From 17 January 2020 GMP adjustment factors will no longer apply in calculations for members who reach State Pension age on or after 6 April 2016, and this has impacted on the Pension Benefit disclosure above for 2020/21.

## **Salary**

Salary includes gross salary, overtime and any other allowances to the extent that they are subject to UK taxation.

## **Benefits in kind**

The monetary value of benefits in kind, covers any expenditure paid by the PSOW and treated by HM Revenue and Customs as a taxable emolument. There was no such expenditure.

## **Bonuses**

No bonus was paid during the year to me or to any staff within my office, as no bonus scheme is in operation.

## **Pay multiples**

The banded remuneration of the highest-paid director in the financial year 2020/21 was £150-£155,000 (2019/20 = £150-£155,000). This was 3.5 times (2019/20 = 3.6) the median remuneration of the workforce, which was £43,857 (2019/20 = £42,684). In 2020/21, no employee received remuneration in excess of the highest-paid director (2019/20 = none).

Remuneration ranged from £20,000 to £155,000 (2019/20, £20,000-£155,000). Total remuneration includes salary, non-consolidated performance-related pay and benefits-in-kind. It does not include severance payments, temporary payments, employer pension contributions and the cash equivalent transfer value of pensions.

## **Pay awards**

Staff pay is linked to the pay awards made to employees within Local Government in England and Wales. In line with that procedure, a 2.75% pay increase was awarded to staff in April 2020.

## Pensions

Pension entitlements for the persons shown above are detailed below:

### Pension Liabilities

The pension obligations to present and past employees are discharged through the Principal Civil Service Pension Scheme (PCSPS) and the pensions paid directly to former Commissioners or their dependants.

Name	As at 31/03/21					As at 31/03/20
	Accrued pension at pension age and related lump sum	Real increase in pension and related lump sum at pension age	CETV	Real Increase in CETV	Employer contribution to partnership pension accounts	CETV
	£000	£000	£000	£000	Nearest £100	£000
Nick Bennett	50-55	2.5-5	623	31	-	559
Chris Vinestock	65-70	2.5-5	997	50	-	912
Katrin Shaw	35-40	2.5-5	617	40	-	553

CETV refers to the Cash Equivalent Transfer Value, and further information can be found in the Pensions Disclosures.

### Sickness

During the year, an average of 3.0 days per employee were lost through sickness, compared with 9.0 days in 2019/20. This is the equivalent of 1.1% (3.4% in 2019/20) of total possible workdays. This reflects normal short-term absences and long-term sickness.

### Reporting of Civil Service and other compensation schemes

No exit packages were paid in 2020/21 (2019/20 Nil).

## Advisory Panel and Audit & Risk Assurance Committee

The following non-pensionable payments, based on a daily rate, were made to members of the Advisory Panel and Audit & Risk Assurance Committee:

	2020/21	2019/20
Anne Jones	2,221	1,263
Ian Williams	2,011	933
Trevor Coxon	1,711	933
Jim Martin	1,711	933
Tom Frawley	1,711	622
Jane Martin	1,482	564
Jonathan Morgan	1,082	1,263
Mike Usher	1,050	-
John McSherry	900	-
Rhiannon Ivens	900	-

Due to the late timing of the March 2020 meeting, payment was made in April 2020, meaning that the 2020/21 figures include 4 payments. The 2019/20 figures include only 3 payments for this reason.

These figures also include payments made to members for attendance at half-day Cyber Security and Unconscious Bias training sessions during 2020/21.

For staff reporting issues see the Annual Equality Report.

*Signature* N Bennett

**Nick Bennett**

**Accounting Officer**

Public Services Ombudsman for Wales

7 July 2021

## Welsh Parliament Accountability and Audit Report

In addition to the primary statements prepared under **International Financial Reporting Standards (IFRS)**, the Government Financial Reporting Manual (FReM) requires the Ombudsman to prepare a statement and supporting notes to show resource out-turn against the Supply Estimate presented to the Senedd, in respect of each request for resource.

### Summary of Net Resource Out-turn for year ending 31 March 2021

	Revised Estimate			Out-turn				2019/20
	Gross Expenditure	Income	Net Total	Gross Expenditure	Income	Net Total	Net total compared to estimate	Net Total
	£000	£000	£000	£000	£000	£000	£000	£000
Revenue	5,262	(991)	4,271	5,155	(991)	4,164	107	4,818
Capital	25	-	25	5	-	5	20	53
<b>Resource DEL</b>	<b>5,287</b>	<b>(991)</b>	<b>4,296</b>	<b>5,160</b>	<b>(991)</b>	<b>4,169</b>	<b>127</b>	<b>4,871</b>
Resource AME	974	-	974	974	-	974	-	-
<b>Total Resources</b>	<b>6,261</b>	<b>(991)</b>	<b>5,270</b>	<b>6,134</b>	<b>(991)</b>	<b>5,143</b>	<b>127</b>	<b>4,871</b>
<b>Net Cash Requirement</b>	<b>4,096</b>	<b>-</b>	<b>4,096</b>	<b>5,067</b>	<b>(991)</b>	<b>4,076</b>	<b>20</b>	<b>4,836</b>

The pension surplus adjustment recognises the charge to Resource AME to offset the income received. Under IAS19, this adjustment is shown in the Statement of Taxpayers Equity in the accounts.

Reconciliation of Net Resource Out-turn and SoCNE	£000
Total Resources Out-turn	5,143
Capital	(5)
Pension Surplus Adjustment	(974)
<b>Statement of Comprehensive Net Expenditure</b>	<b>4,164</b>

## Reconciliation of Net Resource to Net Cash Requirements

for the year ended 31 March 2021

	Note	2020/21			2019/20
		Revised Estimate	Net Total Out-turn	Net total out-turn compared to revised estimate	Out-turn
		£000	£000	£000	£000
Net Revenue	2-4	4,271	4,164	107	4,818
Net Capital	6	25	5	20	53
Resource AME		974	974	-	-
<b>Total Resources</b>		<b>5,270</b>	<b>5,143</b>	<b>127</b>	<b>4,871</b>
Movement in provisions	10	20	10	10	(1)
Capital charges	6	(60)	(61)	1	(60)
Movements in working capital	7-9	(160)	(42)	(118)	26
Adjustments		(974)	(974)	-	-
<b>Net cash requirement</b>		<b>4,096</b>	<b>4,076</b>	<b>20</b>	<b>4,836</b>

*Signature* N Bennett

**Nick Bennett**

**Accounting Officer**

Public Services Ombudsman for Wales

7 July 2021

# The Certificate and Independent Auditor's Report of the Auditor General for Wales to the Senedd

## Report on the audit of the financial statements

### Opinion

I certify that I have audited the financial statements of the Public Services Ombudsman for Wales for the year ended 31 March 2021 under paragraph 18 (2) of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019. These comprise the Summary of Net Resource Out-turn, Statement of Comprehensive Net Expenditure, Statement of Financial Position, Consolidated Statement of Cash Flows, Statement of Changes in Taxpayers Equity and related notes, including a summary of significant accounting policies. These financial statements have been prepared under the accounting policies set out within them. The financial reporting framework that has been applied in their preparation is applicable law and HM Treasury's Financial Reporting Manual based on International Financial Reporting Standards (IFRSs) as adopted by the European Union.

In my opinion the financial statements:

- Give a true and fair view of the state of the Public Services Ombudsman for Wales' affairs as at 31 March 2021 and of its net cash requirement, net resource out-turn and net operating cost, for the year then ended.
- Have been properly prepared in accordance with international accounting standards as interpreted and adapted by HM Treasury's Financial Reporting Manual.
- Have been properly prepared in accordance with HM Treasury directions issued under the Public Services Ombudsman (Wales) Act 2019.

### Opinion on regularity

In my opinion, in all material respects, the expenditure and income in the financial statements have been applied to the purposes intended by the Senedd and the financial transactions recorded in the financial statements conform to the authorities which govern them.

## Basis of opinions

I conducted my audit in accordance with applicable law and International Standards on Auditing in the UK (ISAs (UK)) and Practice Note 10 “Audit of Financial Statements of Public Sector Entities in the United Kingdom”. My responsibilities under those standards are further described in the auditor’s responsibilities for the audit of the financial statements section of my report. I am independent of the body in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK including the Financial Reporting Council’s Ethical Standard, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

## Conclusions relating to going concern

In auditing the financial statements, I have concluded that the use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the body’s ability to continue to adopt the going concern basis of accounting for a period of at least 12 months from when the financial statements are authorised for issue.

My responsibilities and the responsibilities of the Accounting Officer with respect to going concern are described in the relevant sections of this report.

## Other information

The other information comprises the information included in the annual report other than the financial statements and my auditor’s report thereon. Legislation and directions issued to the Public Services Ombudsman for Wales do not specify the content and form of the other information to be presented with the financial statements. The Accounting Officer is responsible for the other information in the annual report. My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my report, I do not express any form of assurance conclusion thereon. My responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or knowledge obtained in the course of the audit, or otherwise appears to be

materially misstated. If I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact.

I have nothing to report in this regard.

## **Report on other requirements**

### **Opinion on other matters**

As legislation and directions issued to the Public Services Ombudsman for Wales do not specify the content and form of the other information to be presented with the financial statements, I am not able to confirm that the Annual Report has been prepared in accordance with guidance.

In my opinion, based on the work undertaken in the course of my audit, the information given in the Annual Report is consistent with the financial statements.

Although there are no legislative requirements for a Remuneration Report, the Public Services Ombudsman for Wales has prepared such a report, and in my opinion that part ordinarily required to be audited has been prepared in accordance with HM Treasury guidance.

Although there are no legislative requirements for an Annual Governance Statement, based on the work undertaken in the course of my audit, the information given in the Annual Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and the Annual Governance Statement has been prepared in accordance with HM Treasury guidance.

### **Matters on which I report by exception**

In the light of the knowledge and understanding of the body and its environment obtained in the course of the audit, I have not identified material misstatements in the Annual Report.

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- proper accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my team
- the financial statements are not in agreement with the accounting records and returns
- information specified by HM Treasury regarding the remuneration and other transactions is not disclosed
- I have not received all of the information and explanations I require for my audit.

## **Responsibilities**

### **Responsibilities of the Accounting Officer for the financial statements**

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for preparing the financial statements in accordance with the Public Ombudsman (Wales) Act 2019 and HM Treasury directions made there under, for being satisfied that they give a true and fair view and for such internal control as the Accounting Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Accounting Officer is responsible for assessing the body's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting unless deemed inappropriate.

### **Auditor's responsibilities for the audit of the financial statements**

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

Irregularities, including fraud, are instances of non-compliance with laws and regulations. I design procedures in line with my responsibilities, outlined above, to detect material misstatements in respect of irregularities, including fraud.

My procedures included the following:

- Enquiring of management and those charged with governance, including obtaining and reviewing supporting documentation relating to the Public Services Ombudsman for Wales' policies and procedures concerned with:
  - identifying, evaluating and complying with laws and regulations and whether they were aware of any instances of non-compliance
  - detecting and responding to the risks of fraud and whether they have knowledge of any actual, suspected or alleged fraud
  - the internal controls established to mitigate risks related to fraud or non-compliance with laws and regulations.
- Considering as an audit team how and where fraud might occur in the financial statements and any potential indicators of fraud. As part of this discussion, I identified potential for fraud in the following areas: expenditure recognition and posting of unusual journals.
- Obtaining an understanding of the Public Services Ombudsman for Wales' framework of authority, as well as other legal and regulatory frameworks that the Public Services Ombudsman for Wales operates in, focusing on those laws and regulations that had a direct effect on the financial statements or that had a fundamental effect on the operations of the Public Services Ombudsman for Wales.

In addition to the above, my procedures to respond to identified risks included the following:

- reviewing the financial statement disclosures and testing to supporting documentation to assess compliance with relevant laws and regulations discussed above
- enquiring of management, the Audit and Risk Assurance Committee and legal advisors about actual and potential litigation and claims
- reading minutes of meetings of those charged with governance and the Advisory Board

- in addressing the risk of fraud through management override of controls, testing the appropriateness of journal entries and other adjustments; assessing whether the judgements made in making accounting estimates are indicative of a potential bias; and evaluating the business rationale of any significant transactions that are unusual or outside the normal course of business.

I also communicated relevant identified laws and regulations and potential fraud risks to all audit team and remained alert to any indications of fraud or non-compliance with laws and regulations throughout the audit.

The extent to which my procedures are capable of detecting irregularities, including fraud, is affected by the inherent difficulty in detecting irregularities, the effectiveness of the Public Services Ombudsman for Wales' controls, and the nature, timing and extent of the audit procedures performed.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of my auditor's report.

### Responsibilities for regularity

The Accounting Officer is responsible for ensuring the regularity of financial transactions.

I am required to obtain sufficient evidence to give reasonable assurance that the expenditure and income have been applied to the purposes intended by the Senedd and the financial transactions conform to the authorities which govern them.

### Report

I have no observations to make on these financial statements.

*Signature*

**Adrian Crompton**  
**Auditor General for Wales**  
**14 July 2021**

**24 Cathedral Road**  
**Cardiff**  
**CF11 9LJ**



# Annual Accounts

2020/21

## Statement of Comprehensive Net Expenditure

for the year ended 31 March 2021

Administration costs	Note	2020/21	2019/20
		£000	£000
Staff costs	2	3,966	3,552
Other non-staff administration costs	3	1,189	1,280
<b>Gross Administration Costs</b>		<b>5,155</b>	<b>4,832</b>
Operating Income	4	(991)	(14)
<b>Net Administration Costs</b>		<b>4,164</b>	<b>4,818</b>
<b>Net Revenue Out-turn</b>		<b>4,164</b>	<b>4,818</b>

Notes 1 to 18 form part of these statements.

All activities commenced in the period are continuing.

# Statement of Financial Position

for the year ended 31 March 2021

	Note	2020/21	2019/20
		£000	£000
<b>Non-current assets</b>			
Property, Plant and Equipment	6a	170	202
Intangible assets	6b	124	148
Receivables due after more than 1 year	7	1	1
Pension fund surplus	Pension Disclosures	-	1,080
		<b>295</b>	<b>1,431</b>
<b>Current Assets</b>			
Trade and other receivables	7	228	207
Cash and cash equivalents	8	20	48
		<b>248</b>	<b>255</b>
<b>Total assets</b>		<b>543</b>	<b>1,686</b>
<b>Current liabilities</b>			
Trade and other payables	9	(250)	(210)
Provisions less than 1 year	10	(45)	(45)
		<b>(295)</b>	<b>(255)</b>
<b>Total assets less current liabilities</b>		<b>248</b>	<b>1,431</b>
<b>Non-current liabilities</b>			
Trade and other payables due after 1 year	9	(15)	(20)
Provisions greater than 1 year	10	(471)	(481)
		<b>(486)</b>	<b>(501)</b>
<b>Total assets less liabilities</b>		<b>(238)</b>	<b>930</b>
<b>General Fund</b>		<b>(238)</b>	<b>930</b>

Notes 1 to 18 and the Pension Disclosures form part of these statements.

The financial statements were approved by the Accounting Officer and authorised for issue on 7th July 2021 by:

**Nick Bennett**

**Accounting Officer**

Public Services Ombudsman for Wales

*Signature* N Bennett

7 July 2021

## Statement of Cash Flows

for the year ended 31 March 2021

	Note	2020/21	2019/20
		£000	£000
Net cash outflow from operating activities	11	(4,071)	(4,783)
Net cash outflow from investing activities	12	(5)	(53)
Financing from Welsh Parliament	13	4,096	4,884
Prior year cash balance repaid		(48)	(20)
<b>Net increase (decrease) in cash equivalents after adjustments for payments to Welsh Consolidated Fund</b>		<b>(28)</b>	<b>28</b>
<b>Cash and cash equivalents at beginning of period</b>		<b>48</b>	<b>20</b>
<b>Cash and cash equivalents at end of period</b>		<b>20</b>	<b>48</b>

Notes 1 to 18 form part of these statements.

## Statement of Changes in Taxpayers' Equity

for the year ended 31 March 2021

General Fund	2020/21	2019/20
	£000	£000
<b>Balance as at 1 April</b>	<b>930</b>	<b>642</b>
Net operating costs	(4,164)	(4,818)
Funding by Welsh Parliament	4,096	4,884
Due back to Welsh Consolidated Fund:		
Cash	(20)	(48)
Non-operating income	-	-
Actuarial re-measurement of LGPS pension fund	(106)	270
Pension Fund Surplus	(974)	-
<b>Total recognised income and expense for year</b>	<b>(1,168)</b>	<b>288</b>
<b>Balance as at 31 March</b>	<b>(238)</b>	<b>930</b>

Notes 1 to 18 and the Pension Disclosures form part of these statements.

# Notes to the Financial Statements

## 1. Statement of Accounting Policies

These financial statements have been prepared in accordance with the Government Financial Reporting Manual (the FReM) issued by HM Treasury which is in force for 2020/21. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adopted or interpreted for the public sector. Where the FReM permits a choice of accounting policy, the accounting policy which has been judged to be most appropriate to the particular circumstances of the PSOW for the purpose of giving a true and fair view has been selected. The particular accounting policies adopted by the PSOW are described below. They have been applied consistently in dealing with items considered material in relation to the accounts.

### 1.1 Accounting Convention

These accounts have been prepared under the historical cost convention modified to account for any revaluation of fixed assets, where material to their value to the business, by reference to their current costs.

### 1.2 Property, Plant and Equipment

Expenditure on property, plant and equipment is capitalised where the purchases are expected to have a useful life extending over more than 1 year and the cost exceeds £5k. Assets costing less than £5k may be capitalised providing they are capital in nature and are part of a larger scheme that is, in total, more than £5k. Assets are shown at cost less an allowance for depreciation. On initial recognition, fixed assets are measured at cost, including such costs as installation, which are directly attributable to bringing them into working condition for their intended use. In reviewing the costs of fixed assets previously acquired and the prices paid for new acquisitions during the year there is no material difference between the historic net book value of the assets and their replacement cost less depreciation.

### 1.3 Depreciation

Assets are depreciated at rates calculated to write them down to zero or, if applicable, estimated residual value on a straight-line basis over their estimated useful life following an initial charge of a full month's depreciation in the month of purchase. Assets in the course of construction are depreciated from the month in which the asset is brought into use.

Except where otherwise noted asset lives are assumed to be the following:

Plant	10 years or the lease term if shorter
Furniture and other fittings	10 years or in the case of fittings, the lease term
Computers and other equipment	3 to 10 years

### 1.4 Intangible assets

Purchased computer software licences and developed software are capitalised where expenditure of £5k or more is incurred, and the useful life is more than 1 year. Intangible assets costing less than £5k may be capitalised providing they are capital in nature and are part of a larger scheme that is, in total, more than £5k. Intangible assets are reviewed annually for impairment and are stated at amortised historic cost. Software licences are amortised over the shorter of the term of the licence and the useful economic life of the computer equipment on which they are installed. This would usually be from 3 to 5 years. Developed software is amortised over the estimated useful life. In the year of acquisition, amortisation charges commence when the asset is brought into use.

### 1.5 Value Added Tax

The PSOW is not registered for VAT. Expenditure is therefore disclosed gross of VAT.

### 1.6 Pensions

The pension obligations to present and past employees are covered by the provisions of the Principal Civil Service Pension Scheme (PCSPS), the Local Government Pension Scheme administered through the Cardiff and Vale of Glamorgan Pension Scheme (the Fund) and by direct payment to previous Commissioners for Local Administration in Wales or any surviving beneficiaries. Full details are disclosed in the Pension Disclosures at the end of the

Financial Statements. The costs of providing these pensions are charged through the Statement of Comprehensive Net Expenditure, with actuarial gains and losses relating to the Cardiff and Vale of Glamorgan Pension Scheme being recognised in the year in which they occur.

### 1.7 Early departure costs

Where the PSOW is required to meet the additional cost of benefits beyond the normal benefits payable by the appropriate pension scheme in respect of employees who retire early, these costs are charged to the Statement of Comprehensive Net Expenditure in full when the liability arises.

### 1.8 Leases

Expenditure on leased property and equipment is charged in the period to which it relates.

### 1.9 Staff Costs

In line with IAS 19, short-term employee benefits, such as wages, salaries and social security contributions, paid annual leave and paid sick leave, as well as non-monetary benefits for current employees, are recognised when an employee has rendered services in exchange for those benefits.

### 1.10 Provisions

These are sums which are of uncertain timing or amount at the balance sheet date and represent the best estimate of the expenditure required to settle the obligations. Where the effect of the time value of money is significant, the estimated risk-adjusted cash flows are discounted using the recommended HM Treasury discount rate.

### 1.11 Income

All income is recognised in the Statement of Comprehensive Net Expenditure in accordance with IAS 18 and IFRS 15.

## 1.12 Impact of Standards Not Yet Effective

Standard	Effective date	Further details
IFRS 16 Leases	2022-23  Implementation delayed from 2020-21 due to Covid-19	IFRS 16 will replace the current leases standard IAS 17 and requires a lessee to recognise assets and liabilities for leases with a term of more than 12 months, unless the underlying asset is of low value. A lessee is required to recognise a right-of-use asset representing its right to use the underlying leased asset and a lease liability representing its obligation to make lease payments. As a consequence, a lessee also recognises depreciation of the right-of-use asset and interest on the lease liability and classifies cash repayments of the lease liability into a principal and interest portion. This is a significant change in lease accounting.
IFRS 17 Insurance Contracts	2023-24 at earliest	IFRS 17 replaces IFRS 4 Insurance Contracts, and requires a current measurement model, using updated information on obligations and risks, and requiring service results to be presented separately from finance income or expense. It applies to all insurance contracts issued, irrespective of the type of entity issuing the contracts, so is not relevant only for insurance companies.

## 2. Staff Costs and Numbers

The aggregate employment costs were as follows:

	2020/21	2019/20
	£000	£000
Permanent staff:		
Salaries	2,856	2,582
Social Security costs	280	252
Pension costs	751	685
Pension fund charges	20	33
<b>Total</b>	<b>3,907</b>	<b>3,552</b>
Temporary staff:		
Salaries	49	-
Social Security costs	3	-
Pension costs	7	-
<b>Total</b>	<b>59</b>	<b>-</b>
<b>Total Staff Costs</b>	<b>3,966</b>	<b>3,552</b>

The average number of whole-time equivalent persons employed (including senior management and fixed term appointments) during the year was as follows:

	2020/21	2019/20
	No.	No.
Directors	2	2
Communications and PA	3	3
Complaints and Investigations	51	50
Improvement Team	5	3
Corporate Services and ITC	7	7
<b>Total</b>	<b>68</b>	<b>65</b>

### 3. Non-Staff Administration Costs

	2020/21	2019/20
	£000	£000
Rentals under operating leases	238	237
External Audit fee	17	15
Legal and professional fees	193	230
Other property costs	123	135
Computer services	309	209
Office costs	151	169
Travel and subsistence	1	45
Training and Recruitment	55	93
Communications	41	87
<b>Sub-total</b>	<b>1,128</b>	<b>1,220</b>
Depreciation	37	36
Amortisation charge	24	24
Loss on disposal	-	-
<b>Sub-total</b>	<b>61</b>	<b>60</b>
<b>Total Other Administration Costs</b>	<b>1,189</b>	<b>1,280</b>

### 4. Operating Income

	2020/21	2019/20
	£000	£000
Seconded staff	(16)	(13)
Pension Fund Surplus Repayment	(974)	-
Other – Future Generations Commissioner	(1)	(1)
<b>Total</b>	<b>(991)</b>	<b>(14)</b>

Further information on the Pension Fund Surplus Repayment can be found in the Pensions Disclosures.

## 5. Operating Costs by Strategic Aims

The costs of providing a first-class Ombudsman service to Wales are set out below. We have 3 strategic aims for delivering our mission and the allocation of costs to each of the aims has been based on the following:

- (a) an estimate of the staff time spent on the objective
- (b) direct allocation of expenditure where applicable
- (c) apportionment of other costs pro rata to the estimate of staff time

	2020/21		2019/20	
	£000	%	£000	%
<b>Strategic Aim 1:</b> A fair, independent, inclusive and responsive complaints service.	3,965	77.2	3,764	78.1
<b>Strategic Aim 2:</b> Promote learning from complaints and stimulate improvements on a wider scale.	959	18.7	849	17.6
<b>Strategic Aim 3:</b> Identify and adopt best practice. Secure value for money and services that are fit for the future. Support staff and ensure good governance which supports and challenges us.	214	4.1	205	4.3
<b>Net Resources Out-turn</b>	<b>5,138</b>	<b>100.0</b>	<b>4,818</b>	<b>100.0</b>

The Aims analysis excludes capital expenditure.

## 6a. Property, Plant and Equipment

2020/21	Plant	Computers and other equipment	Furniture and other fittings	Total
	£000	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>156</b>	<b>223</b>	<b>438</b>	<b>817</b>
Additions	-	1	4	5
Disposals	-	-	-	-
<b>At 31 March</b>	<b>156</b>	<b>224</b>	<b>442</b>	<b>822</b>
<b>Depreciation as at 1 April</b>	<b>(156)</b>	<b>(136)</b>	<b>(323)</b>	<b>(615)</b>
Charged in the year	-	(18)	(19)	(37)
Disposals	-	-	-	-
<b>At 31 March</b>	<b>(156)</b>	<b>(154)</b>	<b>(342)</b>	<b>(652)</b>
<b>Carrying amount as at 31 March 2021</b>	<b>-</b>	<b>70</b>	<b>100</b>	<b>170</b>
Carrying amount as at 31 March 2020	-	87	115	202

2019/20	Plant	Computers and other equipment	Furniture and other fittings	Total
	£000	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>156</b>	<b>216</b>	<b>428</b>	<b>800</b>
Additions	-	29	24	53
Disposals	-	(22)	(14)	(36)
<b>At 31 March</b>	<b>156</b>	<b>223</b>	<b>438</b>	<b>817</b>
<b>Depreciation as at 1 April</b>	<b>(156)</b>	<b>(139)</b>	<b>(320)</b>	<b>(615)</b>
Charged in the year	-	(19)	(17)	(36)
Disposals	-	22	14	36
<b>At 31 March</b>	<b>(156)</b>	<b>(136)</b>	<b>(323)</b>	<b>(615)</b>
<b>Carrying amount as at 31 March 2020</b>	<b>-</b>	<b>87</b>	<b>115</b>	<b>202</b>
Carrying amount as at 31 March 2019	-	77	108	185

## 6b. Intangible Assets

2020/21	Information Technology	Software Licences	Total
	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>497</b>	<b>52</b>	<b>549</b>
Additions	-	-	-
Disposals	-	-	-
<b>At 31 March</b>	<b>497</b>	<b>52</b>	<b>549</b>
<b>Amortisation as at 1 April</b>	<b>(349)</b>	<b>(52)</b>	<b>(401)</b>
Amortisation charged in the year	(24)	-	(24)
Disposals	-	-	-
<b>At 31 March</b>	<b>(373)</b>	<b>(52)</b>	<b>(425)</b>
<b>Carrying Value as at 31 March 2021</b>	<b>124</b>	<b>-</b>	<b>124</b>
Carrying Value as at 31 March 2020	148	-	148

2019/20	Information Technology	Software Licences	Total
	£000	£000	£000
<b>Cost or valuation at 1 April</b>	<b>500</b>	<b>52</b>	<b>552</b>
Additions	-	-	-
Disposals	(3)	-	(3)
<b>At 31 March</b>	<b>497</b>	<b>52</b>	<b>549</b>
<b>Amortisation as at 1 April</b>	<b>(328)</b>	<b>(52)</b>	<b>(380)</b>
Amortisation charged in the year	(24)	-	(24)
Disposals	3	-	3
<b>At 31 March</b>	<b>(349)</b>	<b>(52)</b>	<b>(401)</b>
<b>Carrying Value as at 31 March 2020</b>	<b>148</b>	<b>-</b>	<b>148</b>
Carrying Value as at 31 March 2019	172	-	172

In the opinion of the Public Services Ombudsman for Wales there is no material difference between the net book value of assets at current values and at their historic cost.

## 7. Trade and other Receivables

	2020/21	2019/20
	£000	£000
<b>Amounts falling due within 1 year</b>		
Prepayments	228	207
Trade debtors	-	-
<b>Amounts falling due after more than 1 year</b>		
Prepayments	1	1
<b>Total</b>	<b>229</b>	<b>208</b>

## 8. Cash and Cash Equivalents

Any bank balance held at the year-end must be returned to the Welsh Consolidated Fund. A figure of £20k (£48k in 2019/20) has been included within the accounts, being the net balance at the year-end on all the bank accounts operated by the Public Services Ombudsman for Wales, irrespective of whether the individual account is in debit or credit. The year-end balance will be repaid to the Welsh Consolidated Fund in 2021/22 under the Government of Wales Act 2006.

## 9. Trade Payables and other Current Liabilities

	2020/21	2019/20
	£000	£000
<b>Amounts falling due in 1 year</b>		
Untaken annual leave	175	93
Deferred rent reduction	5	5
Welsh Consolidated Fund - unspent balances	20	48
Trade payables	5	6
Accruals	45	58
	<b>250</b>	<b>210</b>
<b>Amounts falling due in more than 1 year</b>		
Deferred rent reduction	15	20
<b>Total</b>	<b>265</b>	<b>230</b>

## 10. Provisions for Liabilities and Charges

	2020/21				2019/20
	Pensions for Former Commissioners	Dilapidation Costs	Other Costs	Total	Total
	£000	£000	£000	£000	£000
Balance at 1 April	234	292	-	526	525
Additional provision required	17	14	-	31	39
Discount rate movement	3	-	-	3	6
Provisions utilised in the year	(44)	-	-	(44)	(44)
<b>Balance at 31 March</b>	<b>210</b>	<b>306</b>	<b>-</b>	<b>516</b>	<b>526</b>

Analysis of expected timings of payment of provisions:

	2020/21	2019/20
	£000	£000
Payable within 1 year	45	45
Payable within 2 to 5 years	455	157
Payable in more than 5 years	16	324
<b>Balance at 31 March 2021</b>	<b>516</b>	<b>526</b>

Pension provisions are calculated based on the National Life Tables for England and Wales issued by the Office of National Statistics. Later year pension increases are in line with GDP deflator information issued by HM Treasury. The discount factor has been amended to -0.95% for the financial year (-0.50% in 2019/20) in line with the guidance issued by the Treasury. Two surviving spouses of former Commissioners remain as a pension liability.

## 11. Reconciliation of Operating Cost to Operating Cash Flows

	Notes	2020/21	2019/20
		£000	£000
<b>Net operating cost</b>		<b>(4,164)</b>	<b>(4,818)</b>
Adjust for non-cash items	3	61	60
Decrease/(Increase) in trade and other receivables	7	(21)	(32)
Increase/(Decrease) in trade and other payables	9	35	34
Movement in provisions	10	(10)	1
Movement in cash repaid to Welsh Consolidated Fund	8	28	(28)
<b>Net cash outflow from operating activities</b>		<b>(4,071)</b>	<b>(4,783)</b>

## 12. Non-Current Asset Expenditure and Financial Investment

	2020/21	2019/20
	£000	£000
Purchases of property, plant and equipment	(5)	(53)
Proceeds of disposals of property, plant and equipment	-	-
Purchases of intangible assets	-	-
<b>Net cash outflow from investing activities</b>	<b>(5)</b>	<b>(53)</b>

## 13. Reconciliation of Net Cash Requirement to Increase/(Decrease) in Cash

	2020/21	2019/20
	£000	£000
Net Cash Requirement:		
Operating activities	(4,071)	(4,783)
Capital Expenditure	(5)	(53)
	<b>(4,076)</b>	<b>(4,836)</b>
Financing from Welsh Parliament	4,096	4,884
Repayment to Welsh Consolidated Fund	(48)	(20)
<b>Increase/(Decrease) in cash and cash equivalents</b>	<b>(28)</b>	<b>28</b>

## 14. Commitments under Operating Leases

	2020/21	2019/20
	£000	£000
Total future minimum operating lease payments on building:		
Payable within 1 year	198	198
Within 2 and 5 years	699	792
More than 5 years	-	72
	<b>897</b>	<b>1,062</b>
Other		
Payable within 1 year	-	-
Within 2 and 5 years	-	-
More than 5 years	-	-
	-	-
<b>Total of all operating leases</b>	<b>897</b>	<b>1,062</b>

## 15. Contingent Liabilities

None.

## 16. Capital Commitments

There were no capital commitments at 31 March 2021 (2019/20 Nil).

## 17. Related Party Transactions

The PSOW is headed by the Public Services Ombudsman for Wales. The office was established under the Public Services Ombudsman (Wales) Act 2005 and is now governed by the Public Services Ombudsman (Wales) Act 2019. The Ombudsman is independent of Government and the funding arrangements of the office are set up to ensure that the independence of the office is secured. The PSOW has had a number of material transactions with the Welsh Parliament, HM Revenue and Customs (Tax and National Insurance) and the Cabinet Office (payments in respect of the Principal Civil Service Pension Scheme). During the year, no directors, key members of staff or their close relatives have undertaken any material transactions.

## 18. Events after the Reporting Period

None.

## Pension Disclosures

Two pension schemes were operated on behalf of current staff during 2020/21 – The Principal Civil Service Pension Scheme (PCSPS) and the Cardiff and Vale of Glamorgan Pension Fund (the Fund). There also remains an ongoing liability to meet the unfunded pensions of 2 dependant relatives of former Local Government Commissioners.

### Civil Service Pensions

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015, a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or **alpha**, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date, all newly appointed civil servants and the majority of those already in service joined **alpha**. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS). The PCSPS has 4 sections: 3 providing benefits on a final salary basis (**classic**, **premium** or **classic plus**) with a normal pension age of 60 and 1 providing benefits on a whole career basis (**nuvos**) with a normal pension age of 65.

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under **classic**, **premium**, **classic plus**, **nuvos** and **alpha** are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012 remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 will switch into **alpha** sometime between 1 June 2015 and 1 February 2022. All members who switch to **alpha** have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or **alpha** – as appropriate. Where the official has benefits in both the PCSPS and **alpha** the figure quoted is the combined value of their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a 'money purchase' stakeholder pension with an employer contribution (**partnership** pension account).

Employee contributions are salary-related and range between 4.6% and 8.05% for members of **classic**, **premium**, **classic plus**, **nuvos** and **alpha**. Benefits in **classic** accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to 3 years initial pension is payable on retirement. For **premium**, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike **classic**, there is no automatic lump sum. **Classic plus** is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per **classic** and benefits for service from October 2002 worked out as in **premium**. In **nuvos**, a member builds up a pension based on their pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. Benefits in **alpha** build up in a similar way to **nuvos**, except that the accrual rate is 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The **partnership** pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 8% and 14.75% (depending on the age of the member) into a stakeholder pension product chosen by the employee from a panel of providers. The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.5% of pensionable salary to cover the cost of centrally provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme, if they are already at or over pension age. Pension age is 60 for members of **classic**, **premium** and **classic plus**, 65 for members of **nuvos**, and the higher of 65 or State Pension Age for members of **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha the figure quoted is the combined value of their benefits in the 2 schemes but note that part of that pension may be payable from different ages.)

Further details about the Civil Service pension arrangements can be found at the website [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

## **Cash Equivalent Transfer Values**

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity, to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

## **Real Increase in CETV**

This reflects the increase in CETV that is funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

## **Compensation for loss of office**

No staff left under Voluntary Exit or Voluntary Redundancy terms during the financial year.

## Cardiff and Vale Pension Fund - Local Government Pension Scheme

The last remaining employee of the Cardiff and Vale of Glamorgan Pension Fund retired in 2020/21 meaning that PSOW, as the employer, exited the Fund.

Local Government Pension Scheme Regulations require that:

- An actuarial valuation at the exit date is obtained.
- A certificate showing the exit payment due or excess of assets over liabilities is completed.

The surplus in the Fund at the exit date was £974,000 and this was repaid by the Cardiff and Vale of Glamorgan Pension Fund in December 2020. The value at 31 March 2021 was nil.

### Reconciliation of funded status to Statement of Financial Position

	Value at	
	31 December 2020	31 March 2020
	£M	£M
Fair value of assets	7.062	7.080
Present value of funded defined benefit obligation	6.088	5.040
<b>Funded status</b>	<b>0.974</b>	<b>2.040</b>
Unrecognised asset	N/A	(0.960)
<b>Asset/(Liability) recognised on balance sheet</b>	<b>0.974</b>	<b>1.080</b>

The Actuary has set out below a brief explanation of the key reasons for the reduction in surplus between the 31 March 2020 position (surplus of £1.080M) and the exit position (surplus of £0.974M):

1. Change in financial assumptions - the investment return assumption at the exit date was 1.0% and the pension increase assumption was 2.2%. These were based on market conditions at the exit date, and in particular the investment return assumption is based on the underlying yield on government bonds which is currently very low. The equivalent figures at the 2019 valuation were 1.3% and 2.1% respectively. A lower investment return assumption places a higher value on the liabilities, as does a higher pension increase assumption.

PSOW has a low risk notional investment strategy. Under this strategy it is generally expected that any increase in liabilities would be broadly offset by an increase in the assets (and vice versa). However, over the period since the 2019 valuation due to the volatile market movements the increase in assets did not offset the increase in liabilities.

2. Allowance for the McCloud judgement, Cost Management and GMP indexation. This resulted in a reduction in the surplus of approximately £0.06M.
3. Other changes - the remainder of the difference was due to other changes, including membership movements over the period (i.e. the impact of members moving from active to pensioner status).

## **Pensions for former Ombudsmen**

With the agreement of the Secretary of State for Wales in 1991 and subsequent confirmation by Statutory Instrument 1993 No. 1367, Local Government Commissioners became eligible to join the Local Government Pension Scheme. However, the pensions of the 3 previous Local Government Commissioners remained the responsibility of the Public Services Ombudsman for Wales and are met through the Statement of Comprehensive Net Expenditure. At 31 March 2021 two surviving spouses of former Commissioners continued to receive a pension.

Pensions are increased annually in line with other pension schemes within the Public Sector. The basis of calculations of the Annual Pensions Increase has been changed from using the annual movement based on the Retail Price Index (RPI) to the Consumer Price Index (CPI). The amount of the uplift applied is normally set out in the Statutory Instrument Pensions Increase (Review) Order. This uplift for 2020/21 was 1.7%.

The total payments during 2020/21 were £44k (£44k in 2019/20). The liabilities arising out of the obligation to finance these pensions together with any dependant pensions has been calculated to be £209k (£234k in 2019/20). The calculation to determine the overall liability has been carried out internally using life expectancy tables for males and females in Wales obtained from the website of the Government Actuary's Department. A discount rate, from PES (2020), of -0.95% (-0.50% in 2019/20) has been applied in accordance with the Treasury guidance that all pension liabilities should be discounted.

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