

# The Code of Conduct Casebook

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## Contents

Introduction	1
Case summaries	
No evidence of breach	4
No action necessary	5
Referred to standards committee	7
Referred to Adjudication Panel for Wales	8
More information	9

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## Introduction

### Testing Public Interest One Year On

It is now a year ago since I announced a new two stage test for code of conduct complaints. This included a new Public Interest Test which would allow my office to focus on the most serious of code of conduct complaints and breaches during ongoing austerity; an attempt to use “common sense for the common good”.

A year on and I am pleased that despite an increasing number of code complaints (274 - an increase of 19% on 2014/15), 81% of complaints were closed after initial consideration, up from 74% the previous year. The new public interest test played a significant part in closing the complaints at that point and may also have had an impact on the higher levels of discontinuation during the course of the year. Whilst the proportion taken to investigation reduced from 14% to 10% there was an increase in the number of most serious cases which were referred to the adjudication panel for Wales.

Complaint outcome	2015/16	2014/15
Closed after initial consideration	213	178
Complaint withdrawn	15	7
Investigation discontinued	10	20
Investigation completed: No evidence of breach	11	17
Investigation completed: No action necessary	10	8
Investigation completed: Refer to Standards Committee	3	8
Investigation completed: Refer to Adjudication Panel	3	1
<b>Total Outcomes – Code of Conduct complaints</b>	<b>265</b>	<b>239</b>

A key motive for introducing the public interest test was the worrying number of frivolous or vexatious complaints that I was receiving about community or town councillors. Whilst complaints about community or town councillors still account for nearly 60% of code complaints received, I am pleased that since the test was introduced, only 7% of these (11 out of 158) have been taken forward to investigation, which again is indicative of the test's success at filtering out trivial complaints.

Despite the decrease in the number of code complaints taken to full investigation, it is still disappointing to see an overall increase in the number of complaints received, particularly with the introduction of local resolution over the last two years for county councils, where low level councillor against councillor complaints are referred to the authority's Monitoring Officer in the first instance and not to me. In light of recent code changes requiring members to only report potential breaches to the Monitoring Officer and not to me, I am mindful of the possible difficulties when deciding whether to refer a matter for local resolution or to my office. The most serious of breaches can still be referred to me directly as whilst I ultimately want to reduce the number of low level complaints I receive, however I also want to ensure the more serious complaints are given due consideration.

I would also like to see progress being made this year with local resolution being extended out to town/community councils, for example through using the expertise of standards committees to address local issues at a local level. I will continue to monitor the impact of the public interest test on complaints over the coming year, a year in which I hope we will also be able to update PSOW legislation so that through further powers for complaints system design, open data and systemic investigations we can make a greater contribution to the public service improvement agenda whilst continuing our focus for justice for individual complainants.



Nick Bennett  
 Ombudsman

## Case summaries

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

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

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers October to December 2015, but also includes the summaries of older cases for which the standards committee or Adjudication Panel hearings were concluded during this period.

## No evidence of breach

### Manorbier Community Council – Disclosure and registration of interests

#### Case references 201505041/2 – Report issued in February 2016

Mr A complained that three members (“the Councillors”) of Manorbier Community Council (“the Council”) breached the Code of Conduct by failing to declare an interest when commenting on his planning application to the Council. Mr A said that the Councillors had similar businesses to him and therefore his application directly affected their financial wellbeing.

The Ombudsman found that the business interests of both Councillors concerned were significantly different in scale and nature from Mr A’s business and therefore, a member of the public with knowledge of the relevant facts, would not reasonably regard any interest as so significant that it is likely to prejudice their judgement of the public interest. He concluded that there was no evidence that the Councillors had breached the Code of Conduct.

## No action necessary

### Trefeglwys Community Council – Disclosure and registration of interests

#### Case reference 201503879 – report issued in January 2016

The Ombudsman investigated a complaint that a member (“the Councillor”) of Trefeglwys Community Council (“the Community Council”) had breached the Code of Conduct for elected members when he failed to disclose a prejudicial interest in a planning application that was being discussed by the Council. It was alleged that the Councillor should have disclosed an interest and left the room when the matter was being discussed as his land adjoined the proposed development and that he indicated during the meeting that he intended to object to the development.

The Ombudsman’s view was that the Councillor was likely to have had a prejudicial interest in the matter and that he may have breached the Code by failing to disclose that interest and leaving the room. However, the Ombudsman considered that the matter was not in the public interest to pursue as it did not appear that the Councillor’s failure to disclose an interest had an effect on the Community Council’s decision as it decided not to object to the planning application. Consequently, no detriment was caused to the applicant.

The Ombudsman’s finding was that no action needed to be taken in respect of the matters investigated.

### Connah’s Quay Town Council – Objectivity and propriety

#### Case reference 201504305 – report issued in February 2016

The Ombudsman investigated a complaint that a member (the Councillor) of Connah’s Quay Town Council (“the Town Council”) had breached the Code of Conduct for members when he sent a tweet which disclosed the way another Councillor voted during a confidential meeting of the Town Council, held on 20 October 2015.

The Ombudsman found that the Councillor disclosed confidential information; however, the breach was not sufficiently serious to be in the public interest to pursue as the information was political in nature and not considered to be sensitive. Given that the resolution was due to be published by the Council the next day and that the information posted by the Councillor was accurate, the Ombudsman did not consider that the Councillor had brought his Council into disrepute. In addition, as the comments made were not grossly offensive, the Ombudsman was not persuaded that the Councillor’s actions were sufficiently serious to amount to a breach.

The Ombudsman decided that no action needed to be taken in respect of the matters investigated.

**Monmouthshire County Council – Objectivity and propriety**  
**Case reference 201503259 – Report issued in March 2016**

The Ombudsman investigated a complaint that a member (“the Councillor”) of Monmouthshire County Council (“the Council”) had breached their Code of Conduct. Mr X had asked the Councillor to support his opposition to a planning application and she attended a meeting with him. At the later Planning Committee, the Councillor declared a personal interest in the application and left the meeting. Mr X complained that the Councillor had not explained her personal interest to him and he had been left unrepresented.

Evidence was obtained from the Council and the Councillor was interviewed. The Councillor accepted she should not have attended the meeting with Mr X, because of her personal and prejudicial interest; but stated that she had followed advice from the Monitoring Officer.

The Ombudsman found that the Councillor had not foreseen she would be later required to represent Mr X and she acted upon advice to attend the meeting. She had not misused her position to deprive Mr X of representation. The Ombudsman concluded that the Councillor’s personal interest arose before her meeting with Mr X, and she should not have attended.

The Ombudsman found that the Councillor may have been in breach of the Code but determined it was not in the public interest to take further action against her.

## Referred to standards committee

### Dinas Powys Community Council – Disclosure and registration of interests

#### Case reference 201403562 – Report issued in May 2015

A complaint was received that a member (“the Councillor”) of Dinas Powys Community Council (“the Community Council”) had “unlawfully and illegally” operated a Dog Boarding Kennels (“the Kennels”) at his home.

It was also alleged that the Councillor failed to declare an interest during a meeting of a Community Council sub-committee. In a separate complaint, it was alleged that the Councillor had lobbied members of the Community Council’s planning sub-committee before they were due to discuss his planning application for the Kennels.

The Ombudsman obtained evidence from the Community Council and from the Vale of Glamorgan Council. The Councillor gave written statements and was also formally interviewed. The Ombudsman considered that the evidence was suggestive of a breach of the Code and referred the matter to the Vale of Glamorgan Council’s Standards Committee.

The Standards Committee concluded that the Councillor had breached the Code of Conduct and determined that he should be suspended for a period of one month.

The decision of the Standards Committee can be found [here](#).

## Referred to Adjudication Panel for Wales

### Magor and Undy Community Council – Disclosure and registration of interests Case reference 201403838 – report issued in October 2015

A complaint was made that on 7 April 2014 at a Magor with Undy Community Council meeting, that a member (“the Councillor”) did not declare an interest or leave the meeting whilst the Clerk’s remuneration package was considered. The Councillor and the Clerk were in a relationship and later married on 4 October 2014.

The Ombudsman considered that the evidence was suggestive of a breach of the code and referred the investigation to the Adjudication Panel for Wales for adjudication by a tribunal. The tribunal concluded that the Councillor had breached the Code of Conduct and he was suspended for three months. The decision of the Adjudication Panel can be found [here](#).



## More information

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

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

Tel: 0300 790 0203  
Fax: 01656 641199

e-mail: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk) (general enquiries)

Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

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