

# The Code of Conduct Casebook

Issue 3 October 2014

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## A word from the Ombudsman

This is my first Code of Conduct Casebook as Public Services Ombudsman for Wales. I am grateful to my predecessor Peter Tyndall for creating this Casebook which was perceived to be challenging to produce. Cases where there is evidence of a breach of the code are referred to either a Standards Committee or a Tribunal convened by the Adjudication Panel for Wales. Consequently it is difficult to provide the full story of a case in our summary.

Of the fourteen cases included in this edition, seven showed no evidence of a breach, more than double the number dealt with in previous edition of the Casebook. Of those seven cases four relate to the promotion of equality and respect a further two relate to integrity.

It is of course very important that well founded Code of Conduct complaints should continue to be reported to me but it is concerning that a pattern appears to be emerging of complaints without any merit.

I take a dim view of vexatious complaints which are not founded in fact or are motivated by malice or are entirely frivolous. If I see evidence of any such behaviour I will take a hard line and investigate any member making such a complaint because if it is proven it is a breach of the code.

(Continued overleaf)

I am also concerned that during a period of public sector austerity, our finite resources are devoted to the most serious complaints and that the taxpayer's resources are devoted to areas of greatest need.

This seems to have been an issue within a minority of community councils and has broadly been resolved within county councils via the local resolution processes which county councils have adopted.

Of all of the Community Council complaints which were closed within last year over 20% related to one particular Community Council; all 26 of these cases were closed after initial consideration and were not therefore worthy of investigations and 22 of the 26 complaints closed in 2013/14 were Member v Member complaints (around half about equality and respect; the other half about integrity).

A further Community Council accounted for 7% of cases closed and all except one of those were also not worthy of investigation – that same Council accounted for 32% of Community Council Code of Conduct complaints my office received during 2011/12

As well as a period of public service austerity, we are also likely to be entering a period of public service reform for local authorities, it is vital therefore that all local representatives exercise leadership and ensure that they avoid pursuing trivial matters that may bring not just their council but their sector into disrepute. As councils face ever increasing challenges I hope we can ensure common sense for the common good.



Nick Bennett

Ombudsman

## Introduction

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

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

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

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

The Code of Conduct Casebook contains 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 April to September 2014, but also includes the summaries of older cases for which the standards committee or Adjudication Panel hearings were concluded during this period.

## Case Summaries

### No evidence of breach

#### **Isle of Anglesey County Council – Promotion of equality and respect Case reference 201304372 – Report issued September 2014**

A member of a Community Council (‘the complainant’) complained that a fellow member of the County Council (‘the Councillor’) breached the Code of Conduct when he completed and submitted a member’s observation form to the Isle of Anglesey County Council in response to its proposed sale of land in Cemaes Bay. In particular, the complainant alleged that the Councillor did not formally consult with the Community Council and misrepresented the views of the Council. It was also alleged that the Councillor behaved in a bullying manner towards the complainant and failed to show respect and consideration to her at a meeting of the Community Council in October 2013.

The Ombudsman obtained evidence from the Community Council, as well as witness statements from several members of the Community Council. The Councillor was also interviewed and he advised that he discussed the proposed sale of land with some of the members of the Community Council informally at the end of a meeting in June 2013 and that the views expressed were reflected. The Councillor denied that his behaviour towards the complainant at the meeting in October 2013 was inappropriate in any way.

The Ombudsman found that the Councillor had consulted informally with a number of members of the Community Council before he completed the form. Whilst the views recorded appeared to be consistent with the views expressed, the wording used on the form by the Councillor gave the impression that he had consulted with the Community Council and that it was representative of a formal view on the matter, which was not accurate. The Ombudsman was satisfied that the Councillor did not deliberately misrepresent the views of the Council, but did advise the Councillor to exercise greater care in these circumstances in the future.

The evidence gathered from those present at the meeting in October 2013 did not support the allegations made by the complainant. The Ombudsman concluded that there was no evidence of breach in respect of the matters investigated.

#### **Cardiff Council – Promotion of equality and respect Case reference 201304630 – Report issued September 2014**

A member of the public (‘the complainant’) complained that a member of Cardiff Council (‘the Councillor’) breached the Code of Conduct by failing to show her respect and consideration during a telephone conversation with her. The complainant alleged that the Councillor’s tone had been aggressive and bullying and that he had thereby brought the office of member into disrepute. She also questioned whether the Councillor had misused his position in obtaining her telephone number thereby securing an advantage for himself or his constituent.

The Ombudsman determined that it was appropriate to investigate the complaint. The Ombudsman found the evidence from a third party who had directly witnessed the conversation to be compelling. As the Councillor was acting for a constituent, it was appropriate for him to obtain the telephone number to make the call concerned when advocating on his behalf. The Ombudsman concluded that the evidence gathered during the investigation was not suggestive of a breach of the Code of Conduct.

**Aberystwyth Town Council – Promotion of equality and respect**  
**Case reference 201306243 – Report issued August 2014**

Mr T, an employee of the Council, complained about various matters in relation to behaviour by a Member of the Council (‘the Councillor’). The Ombudsman investigated five complaints. Mr T alleged that the Councillor was disrespectful on various occasions, including telling lies about his conduct. He stated that the Councillor breached confidence in relation to an employment problem that the complainant was facing and wrongly told another employee not to forward his correspondence to members of the Council.

The Ombudsman found that there was insufficient evidence that the Councillor had breached the Code regarding four issues. In respect to one of the allegations, there was evidence that Mr T’s accusations were correct concerning what the Councillor had said. However, on balance, the Ombudsman did not consider that a clear breach had occurred.

**Mid and West Wales Fire Service – Integrity**  
**Case reference 201304587 – Report issued July 2014**

Mr S complained about the conduct of a member of the Fire Authority (‘the Member’). He alleged that the Member breached the Code of Conduct by using his position as a member of the Authority improperly to write to the Chair of the Authority about a decision to reject an individual’s application for employment (‘the applicant’). It was also alleged that the Member had a close personal association with the applicant.

The Acting Ombudsman determined that it was appropriate to investigate whether the conduct alleged was suggestive of a breach of the Code of Conduct. Information was obtained from the Fire Authority, the applicant and the Member. The investigation identified that the Member, in his capacity as a member of the Authority, was approached for assistance by the applicant when he had failed to receive a satisfactory response from the Fire Service in respect of his employment concerns. The Member wrote to the Chair on three occasions referring to the individual concerned and the interpretation and application of recruitment policies.

The Acting Ombudsman concluded that the evidence gathered was not suggestive of a breach of the Code. The Member was entitled to raise concerns about the Fire Service or Authority that may have been brought to his attention in his capacity as an elected member, even if the concerns related to employment policies. Furthermore, the Acting Ombudsman was not persuaded by the evidence that the Member had a close personal association with the individual concerned which would have given rise to a declarable personal interest under the provisions of the Code of Conduct.

### **Newport City Council – Disclosure and registration of interests**

#### **Case reference 201302386 – Report issued May 2014**

The Acting Ombudsman received a complaint that a member of Newport City Council ('the Councillor') breached the Code of Conduct for predetermining the way in which he would vote on a decision at the Planning Committee to confirm a Tree Preservation Order ("TPO"); and, that Councillor should have declared an interest when the item came up at the committee on the basis that he was told by a Council officer ("the officer") that the Councillor requested the TPO.

The Acting Ombudsman obtained documents from the Council and spoke with the officer. Having considered the information obtained during the investigation, the Acting Ombudsman concluded that there was no evidence that the Councillor had breached the Code of Conduct.

### **Rhondda Cynon Taf County Borough Council – Promotion of equality and respect**

#### **Case reference 201305349 – Report issued May 2014**

Following a complaint made by a local authority member ('the complainant'), the Acting Ombudsman investigated whether another member ('the Councillor') had breached the Code of Conduct. The complainant alleged that the Councillor had attempted to denigrate him in his local area by "blatantly declaring erroneous accusations" to a member of the public.

The Acting Ombudsman's investigation obtained documents from the Council and statements from the member of the public, as well as two other Councillors. The Councillor also provided a response to the complaint. Having considered the available information, the Acting Ombudsman concluded that there was no evidence that the Councillor had breached the Code of Conduct.

### **Cardiff Council – Integrity**

#### **Case reference 201202666 – Report issued April 2014**

A member of the Council ('the complainant') complained that a fellow member's ('the Councillor') behaviour and conduct towards him, which he considered was capable of amounting to a number of breaches of the Code. He alleged that the cumulative effect of the Councillor's behaviour towards him was harassing in nature and designed to undermine his role as member. The complainant also alleged that the Councillor failed to show respect and consideration to him and several other persons, including members of the public, officers of the Council and fellow Councillors. The complainant considered this to have happened on numerous occasions, both in person and in various written formats and that, in doing so, his conduct was also capable of bringing the role of member and the Council into disrepute. In addition, the complainant alleged that the Councillor had failed to demonstrate the principle of equality for all persons in some of his literature.

The Acting Ombudsman determined that it was appropriate to investigate whether the Councillor had failed to comply with the Code of Conduct and obtained evidence from the Council. The complainant and Councillor were also interviewed.

The report determined that many of the issues raised and views expressed by the Councillor (in various formats) appeared to be politically motivated. Furthermore, whilst the Acting Ombudsman considered that some of the comments made by the Councillor, in the various formats, were capable of stretching the boundaries of acceptable political expression, they were also capable of being considered as part of the cut and thrust of local politics.

Therefore, having reviewed the evidence gathered during the investigation, the Acting Ombudsman was not satisfied that it was sufficiently robust to enable any further action to be taken.

## **No action necessary**

### **Llantsantffraed Community Council – Disclosure and registration of interests Case reference 201303799 – Report issued August 2014**

The Ombudsman received a complaint that a member of Llantsantffraed Community Council (‘the Councillor’) breached the Code of Conduct during the Council meeting held on 6 August 2013, by failing to declare an interest and leave the room during the discussion of a planning application.

The Ombudsman determined that it was appropriate to investigate whether the Councillor had breached the Code of Conduct and obtained evidence from the Council, the County Council’s Planning Department and the persons present at the meeting. The Councillor also submitted comments and supporting documents.

The Ombudsman was satisfied that, on balance, the evidence suggested that the Councillor had a personal and prejudicial interest in Council business relating to the planning application. This is because his farm was located within close proximity of the site and his family member lived opposite it. However, the Ombudsman felt that, on balance, the evidence did not suggest that the Councillor played an active part in discussions about the matter during the meeting. The Ombudsman found that no action needed to be taken in respect of the matters investigated.

### **Llanbadrig Community Council – Accountability and Openness; Promotion of equality and respect**

#### **Case references 201304536 & 201305202 – Report issued August 2014**

The Ombudsman received four complaints made by a member of the Community Council (‘the complainant’) against another member of the same Council (‘the Councillor’). Firstly, the Councillor did not declare interests in a car parking matter which came before the Council. Secondly, the Councillor breached the Code by asking unfair and discriminatory questions of a female candidate at a job interview. Thirdly, the Councillor displayed potentially racist material in a shop and thereby brought the Council into disrepute. Finally, the Councillor was abusive in front of a member of the public when the alleged visited their shop on Council business.

The Ombudsman investigated all four complaints. The Ombudsman gathered substantial written material and interviewed some of the witnesses involved. The evidence was provided to the Councillor, who was also interviewed during the course of the investigation.

The Ombudsman determined an outcome for each of the allegations as follows. With regard to the car parking issue, he found that the Councillor might have breached the Code by not declaring a personal interest. However, this was marginal and he did not conclude that a definite breach had occurred. With respect to the questions at a job interview, the Ombudsman considered that a breach might have occurred and the Councillor was unwise to ask the questions that he did. However, he concluded that, even if there was a breach and the matter was referred to a standards committee, it was unlikely that the committee would impose a sanction. On both these issues, the Ombudsman found that no further action was necessary.



The Ombudsman did not find that the Councillor breached the Code regarding the display of potentially offensive materials in the shop. This was because it was his daughter that displayed the items, which she had a right to do as a business partner. Finally, the Ombudsman concluded that the Councillor breached the Code of Conduct by being very rude to the alleger. However, he did not consider that a standards committee would impose a sanction due to the isolated nature of that action and mitigation. The Ombudsman decided to take no further action but warned the Councillor about future conduct.

## Referred to standards committee

### **Tywyn Town Council – Disclosure and registration of interests**

#### **Case reference 201301629 – Report issued May 2014**

The Acting Ombudsman received a complaint from a member of the Town Council, that another member of the Council ('the Councillor') had breached the Code of Conduct during the Council's Finance Committee and Council meetings held between May and September 2013. It was alleged that the Councillor should have declared an interest and left the room when items relating to Tywyn & District Chamber of Tourism and Commerce ('the CTC') were discussed during the meetings. It was also alleged that the Councillor made unsubstantiated comments about the CTC in an attempt to prevent it from receiving financial assistance from the Council.

The Acting Ombudsman determined that it was appropriate to investigate whether the Councillor had breached the Code of Conduct and obtained evidence from the Town Council, the County Council and persons present at the meetings.

The Acting Ombudsman was satisfied that, on balance, the evidence suggested that the Councillor had a personal and prejudicial interest in Council business relating to the CTC, because of the recent acrimonious history and her ongoing dispute with the CTC. The Acting Ombudsman felt that there was evidence that the Councillor may have sought to use her position improperly, had failed to reach decisions objectively and that her conduct could be capable of bringing her role as member, or the Council, into disrepute.

The Acting Ombudsman referred the matter to the County Council for determination by its Standards Committee. The Standards Committee found that the Councillor had breached specified paragraphs of the Code of Conduct and determined that she should be suspended for a period of three months.

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

### **Gwynedd Council – Accountability and Openness; Promotion of equality and respect**

#### **Case references 201300346 & 201301307 – Report issued May 2014**

The Acting Ombudsman received two complaints about the conduct of a member of Gwynedd County Council ('the Councillor'). The complainant alleged that the Councillor secretly filmed and recorded a conversation with her whilst she was performing her duties as a Civil Parking Enforcement Officer on 8 February 2013 and later posted a video of this conversation on his Facebook page. Another complainant alleged that the Councillor had behaved in a threatening manner towards him on 17 May 2013, whilst he was performing his duties as Civil Enforcement Officer. Both complainants alleged that the Councillor had failed to observe the requirements of the Code of Conduct.

The Acting Ombudsman determined that it was appropriate to investigate whether the Councillor had breached the Code of Conduct and obtained evidence from the Council as well as persons present at each incident.

The Acting Ombudsman was not persuaded that the Councillor's conduct in posting the footage of his conversation with the complainant on Facebook was capable of bringing either the role of member or the Council into disrepute. However, the Acting Ombudsman felt that it was for the Council's Standards Committee to decide whether his actions, which would amount to a departure from the Officer/Member protocol, were capable of doing so.

The Acting Ombudsman was satisfied that, on balance, the evidence obtained during the investigation of the second complaint suggested that the Councillor's conduct breached the Code of Conduct. The Acting Ombudsman referred both matters to the Council for determination by its Standards Committee.

In respect of the first complaint, the Standards Committee determined that the Councillor had failed to comply with specified paragraphs of the Code of Conduct as he had not followed the Council's internal procedures with regard to concerns about council employees and instead had raised his concerns in the public domain, causing distress to an officer of the Council. The Standards Committee believed also that, in not revealing that he was a Member of the Authority, the Councillor had showed a lack of respect and consideration to the officers of the Council by posting the footage on Facebook and naming a Council officer. The Standards Committee decided that the Councillor should be censured in respect of the breach of the Code of Conduct. The Standards Committee also resolved also that the Councillor should remove the footage and post from his Facebook page immediately and receive training on the Code of Conduct and all Council protocols relevant to the conduct of councillors.

In respect of the second complaint, the Standards Committee determined that the Councillor had failed to comply with specified paragraphs of the Code of Conduct. Taking all the circumstances of the case into consideration, the Committee concluded that his behaviour in making a threat of physical violence was neither appropriate nor proportionate. It was not the type of behaviour expected from an elected member and, as such, brought both his office and the Council into disrepute. The Standards Committee decided that the Councillor should be suspended from his role as member for a period of two months.

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

### **Cardiff Council – Integrity**

#### **Case reference 201202666 – Report issued April 2014**

A member of the Council ('the complainant') complained about the conduct of a fellow ward member ('the Councillor'). In particular, the complainant alleged that the Councillor had used the Council's mailing system to distribute a political campaign leaflet in October 2012 and that, in doing so, his conduct was also capable of bringing the role of member and the Council into disrepute.

The Acting Ombudsman determined that it was appropriate to investigate whether the Councillor had failed to comply with the Code of Conduct in respect of this allegation and obtained evidence from the Council. The Acting Ombudsman also interviewed the complainant and the Councillor.

The Acting Ombudsman determined that, on balance, the inclusion of the request for support for a campaign (both physical and financial support) was highly suggestive that the leaflet drafted and distributed by the Councillor was “political” in nature. The Acting Ombudsman concluded that the evidence gathered during the investigation in respect of this issue was suggestive that the Councillor had used the Council’s mailing resources improperly for political purposes, contrary to the requirements of the Code of Conduct.

The Acting Ombudsman determined that her report on this investigation should be referred to the Monitoring Officer of Cardiff County Council, for consideration by the Council’s Standards Committee. The Standards Committee determined that the Councillor had failed to comply with the Code of Conduct. However, given the circumstances and, in particular, the full apology given by the Councillor following the issue of the report, as well as his repayment of the postage costs incurred, no further action should be taken in respect of this failure.

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

### **Colwinston Community Council – Disclosure and registration of interests** **Case reference 201301409 – February 2014**

A member of the public (‘the complainant’) complained that a member of Colwinston Community Council (‘the Councillor’) breached the Code of Conduct. Specifically, the complainant said that the Councillor failed to declare a personal and prejudicial interest at a Community Council meeting in August 2012 concerning a planning application, the site of which was near his home and would have affected him detrimentally if the County Council had approved it. In addition, the Councillor took part in discussions leading to plans that might make the site less easy to develop in future.

The Acting Ombudsman considered that the Councillor might have breached the Code of Conduct for failing to declare the interest and contributing to Community Council decisions, the outcome of which might have put him at an advantage. During the investigation, the Councillor was interviewed and written evidence relating to the complaint was considered. The Acting Ombudsman also considered the fact that the Community Council Chairman had indicated to the Councillor that he did not need to declare an interest.

The Acting Ombudsman decided that the Councillor’s actions were indicative of four breaches of the Code. These concerned using his position to gain an advantage, failure to declare a personal interest, not withdrawing from the meeting despite having a prejudicial interest and seeking to influence a decision whilst having a prejudicial interest. The Acting Ombudsman referred the matter to the Standards Committee of the Vale of Glamorgan Council.

The Standards Committee found that the Councillor had breached the Code of Conduct. It issued him with a censure and asked him to attend training. The decision of the Standards Committee can be found [here](#).

## **Colwinston Community Council – Disclosure and registration of interests**

### **Case reference 201301594 – February 2014**

A member of the public ('the complainant') complained that a member of Colwinston Community Council ('the Councillor') breached the Code of Conduct. Specifically, the complainant said that the Councillor failed to declare a personal and prejudicial interest at a Community Council meeting in August 2012 concerning a planning application, the site of which was near his home and would have affected him detrimentally if the County Council had approved it. In addition, the Councillor took part in discussions leading to plans that might make the site less easy to develop in future.

The Acting Ombudsman considered that the Councillor might have breached the Code of Conduct by failing to declare the interest and contributing to Community Council decisions, the outcome of which might have put him at an advantage. The Councillor was interviewed and written evidence relating to the complaint was considered. The Acting Ombudsman also considered the fact that the Community Council Chairman had indicated to the Councillor that he did not need to declare an interest.

The Acting Ombudsman decided that the Councillor's actions were indicative of four breaches of the code. These concerned using his position to gain an advantage, failure to declare a personal interest, not withdrawing from the meeting despite having a prejudicial interest and seeking to influence a decision whilst having a prejudicial interest.

The Acting Ombudsman referred the matter to the Standards Committee of the Vale of Glamorgan Council. The Standards Committee found that the Councillor had breached the Code. It issued him with a censure and asked him to attend training.

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

## **Sully Community Council – Integrity**

### **Case reference 201204263 – February 2014**

A member of the Community Council complained that the Chairman of the Council had banned him from e-mailing the Clerk of the Council, and had subsequently failed to be open with the Council about his action. The complainant believed that he had been placed in a position where he was unable to conduct Council business effectively and that this situation had arisen from questions he had posed about the Council's handling of maintenance issues. He said that this had brought him into conflict with the Chairman and that other members had been made aware of the difficulties between the two.

The complainant believed that he was not being allowed to fully participate in Council meetings and said that he had received e-mails from the Chairman which he found offensive and personal. He said that these e-mails had been copied to other members and that, on occasions, members of the public had been made aware of the difficulties between them.

The Acting Ombudsman decided to investigate the complaint as there appeared to be evidence of potential breaches of the Code of Conduct in relation showing respect to others and not to bring their office or authority into disrepute. The Acting Ombudsman decided that the matter would be referred to the Monitoring Officer of the Vale of Glamorgan County Council for determination by its Standards Committee.

The Standards Committee found multiple breaches of specified paragraphs of the Code of Conduct. The Committee decided that the Chairman should be suspended from office for 6 months and should attend training on the Code of Conduct.

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

## **Referred to Adjudication Panel for Wales**

There are no summaries in relation to this finding. The Ombudsman has referred one report to the Adjudication Panel for Wales; the summary for this report will be available following the publication of the Panel's Decision Notice.

## More Information

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

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