

The Code of Conduct Casebook

Issue 12 April 2017

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Introduction

Overall I am pleased that my office received 14% less code complaints this year than in 2015/16. I believe this is due to the introduction of local resolution for county councils (low level councillor against councillor complaints being referred to the Monitoring Officer in the first instance) finally having an impact. There is also some evidence over the last 12 months of this approach being adopted by town and community councils who are attempting some form of informal resolution stage before cases are referred to my office.

Outcome	2016/17	2015/16
Closed after initial consideration	184	213
Complaint withdrawn	20	15
Investigation discontinued	10	10
Investigation completed: No evidence of breach	12	11
Investigation completed: No action necessary	16	10
Investigation completed: Refer to Standards Committee	5	3
Investigation completed: Refer to Adjudication Panel	1	3
Total Outcomes – Code of Conduct complaints	248	265

Out of the cases that I have seen, only six were referred either to the Standards Committee or the Adjudication Panel for Wales. This clearly shows that only the most appropriate cases are being referred, and demonstrates that the consideration of the public interest test continues to be an effective means of using 'common sense for common good'.

Despite a decrease in the overall number of code complaints received by my office, the number taken to full investigation has marginally risen. However this is balanced by the increase in the number of cases that have been discontinued or where no action is necessary - further evidence of the effectiveness of the public interest test at all stages of the investigation process.

Other changes this year include the issuing of updated Code of Conduct guidance for councillors based on changes to the Model Code of Conduct made in April 2016 and the establishing of a Code Advisory Group which has proactive oversight of the management of code of conduct complaints. This has led to a 19% increase in cases taking less than six months for a decision to be taken. I am pleased with this positive step forward which means that both complainants and accused members are receiving a timely outcome, helping to relieve the stress and inconvenience that an investigation can cause.

Overall I am encouraged that we are starting to see movements towards councils taking more ownership of low level complaints and attempting to resolve these on a local level, meaning that my office's time and resources are being used for only the more serious cases. I anticipate that this will continue to be something we will focus on and encourage going forward. However whilst I am fully supportive of this approach, it is still important that the more serious allegations of breach of the Code of Conduct are brought to me for investigation and, where appropriate, referred to the Standards Committee or Adjudication Panel for Wales remembering that the authority to make a determination of breach and/or sanction rests solely with them.

I hope that by continuing to work collaboratively over the coming year we can improve standards in public life, whilst building public confidence and promoting good governance in our democratic institutions.



Nick Bennett
Ombudsman

Case summaries

No evidence of breach

Powys County Council – Disclosure and registration of interests

Case Number 201506050 - Report issued in February 2017

The Ombudsman considered a complaint that a member of Powys County Council (“the Councillor”) breached the Code of Conduct for members when he approached another member in the Council’s Members’ Lounge on 25 January 2016 to discuss matters in which he may have had a personal and prejudicial interest.

Both members recalled a different version of events and, as there were no other witnesses to the conversation, it was impossible to reconcile the different accounts. In view of this, it was not considered in the public interest to pursue the matter further. The Ombudsman was that there was no evidence that the

Councillor failed to comply with the Code of Conduct.

Llangefni Town Council – Promotion of Equality and Respect

Case Number 201603639 - Report issued in March 2017

Councillor A complained that Councillor B of Llangefni Town Council might have breached the Code of Conduct due to her conduct towards the Clerk to the Council.

The Ombudsman investigated whether Councillor B had breached parts of the Code which concern respect and consideration, bullying and harassment, and disrepute.

The Ombudsman found that there was no evidence to suggest that Councillor B had breached the Code in relation to two elements of the complaint. He found that no action needed to be taken in respect of one element of the complaint.

Rhondda Cynon Taf County Borough Council - Promotion of Equality and Respect

Case Number 201604869 - Report issued in March 2017

Mr A alleged that Councillor X of Rhondda Cynon Taf County Borough Council (“the Council”) breached the Code of Conduct for members by improperly using his influence as a Councillor to direct the Council’s Highways and Streetcare Services to clear an overgrown lane to the rear of Mr A’s property. Mr A alleged that Councillor X’s decision to involve Streetcare Services was taken in the pursuit of a personal vendetta against him. As such, Councillor X knowingly misused Council resources for private, vexatious purposes. The Council’s Streetcare Supervisor was interviewed and information was obtained from the Council in regard to a complaint response letter it issued to Mr A about Councillor X’s conduct. The Council’s letter stated that its investigation had established that Councillor X had applied inappropriate pressure on the Streetcare Team to carry out the work.

The Ombudsman found that, contrary to what was stated in the Council’s letter to Mr A, there was no evidence to suggest that Councillor X exerted any undue influence on the Council’s Streetcare team to carry out this work. The Ombudsman also found that the letter’s suggestion that Councillor X had



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acted improperly was not based on any formal investigation or on any evidence of improper conduct provided by the Streetcare Team. The Ombudsman found, therefore, that there was no evidence of a breach of the Code.

No action necessary

Conwy County Borough Council – Objectivity and propriety Case Number 201602422 - Report issued in February 2017

During the course of another investigation, it came to light that a member of Conwy County Borough Council (“the Councillor”) had disclosed an email, which contained sensitive and personal information about the author, to another Councillor and to a member of the public. The Ombudsman decided to investigate the matter.

During the investigation the author of the email was interviewed and expressed that she had not intended the email to be shared. The member the public with whom the email was disclosed was also interviewed and confirmed he had received the email from the Councillor and, with his permission, passed it to another Councillor. The Councillor confirmed that he had shared the email but said that he did so because he was concerned for the welfare of the author and was not sure how best to approach it. The Councillor apologised for not considering whether the personal data should have been protected but said he was under considerable stress at the time of the events.

The investigation found that the evidence was suggestive of a breach of the Code of Conduct. However, given that, to some extent, the Councillor acted out of concern for the author of the email, the stress that he was under at the time of the events and the apology made for his actions, it would not be in the public interest to take any further action on this occasion.

Aberystwyth Town Council – Promotion of equality and respect Case Number 201504876 - Report issued in February 2017

Mr A complained that Councillor X of Aberystwyth Town Council (“the Council”) had breached the Code of Conduct for members (“the Code”) by telling a member of the public about Mr A’s suspension. The Ombudsman investigated whether Councillor X had breached those parts of the Code which concern respect and consideration, the disclosure of confidential information and disrepute.

Information was obtained from the Council, Ceredigion County Council and another public body. Mr A, four other witnesses and Councillor X were interviewed. Councillor X admitted that he had told a member of the public about Mr A’s suspension.

The Ombudsman found that there was evidence to suggest that Councillor X had breached the Code by not showing respect and consideration for others, disclosing confidential information and bringing his office as a member and the Council into disrepute. However, he determined that it was not in the public interest to pursue this matter and that no further action was required.

Prestatyn Town Council – Disclosure and registration of interests Case Number 201605412 - Report issued in February 2017

The Ombudsman considered a complaint that a member of Prestatyn Town Council (“the Councillor”) breached the Code of Conduct for elected members by failing to disclose a personal and prejudicial interest at two meetings in relation to a planning application.

The Ombudsman found that the Councillor had a personal and prejudicial interest in the application as the

proposed development was likely to impact upon access to his business. There was no evidence that the Councillor declared an interest in any of the meetings. He aired his concerns relating to access/egress to his business during the second meeting.

In deciding on the appropriate finding, the Ombudsman considered the impact of the Councillor's actions. He was not persuaded that the Councillor sought to influence a decision by his actions. He also noted that the Town Council was merely considering whether to submit observations on the application. It was not deciding whether the application should be approved. It was therefore the Ombudsman's view that the Councillor's actions were of limited consequence and it was not in the public interest to pursue the matter further.

Under section 69(4)(b) of the Local Government Act 2000, the Ombudsman's finding was that no action needed to be taken in respect of the matters investigated. However, the Councillor was advised to reflect upon his actions and to attend training on the Code of Conduct.

Mumbles Community Council - Disclosure and registration of interests

Case Numbers 201602616 - Report issued in March 2017

Mr A complained that Councillor X as a member of a charitable organisation breached the Code of Conduct for members ("the Code") by failing to disclose a personal and prejudicial interest when invoices from that organisation relating to storage costs were presented to the Council for payment. The Ombudsman investigated the complaint.

The Ombudsman also considered whether Councillor X may have used or attempted to use their position improperly to confer on or secure for themselves or another person an advantage by failing to declare their interest.

The Ombudsman found no evidence that the member obtained an advantage for themselves or the charitable organisation. The Ombudsman took into consideration that, whilst Councillor X's membership of the charitable organisation gave rise to a personal interest, their membership alone did not give rise to a prejudicial interest.

It was established that Councillor X held no position of authority at the charitable organisation. The Ombudsman therefore did not consider it to be in the public interest to pursue the matter any further, because there was no personal gain for the member in failing to declare their interest. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of the matters investigated.

Mumbles Community Council - Disclosure and registration of interests

Case Numbers 201602617 - Report issued in March 2017

Mr A complained that Councillor H, as a member of a charitable organisation, breached the Code of Conduct for members ("the Code") by failing to disclose a personal and prejudicial interest when invoices from that organisation relating to storage costs were presented to the Council for payment. The Ombudsman investigated the complaint.

The Ombudsman also considered whether Councillor H may have used or attempted to use their position

improperly to confer on or secure for themselves or another person an advantage by failing to declare their interest.

The Ombudsman found no evidence that the member obtained an advantage for themselves or the charitable organisation. The Ombudsman considered that Councillor H's position within the charitable organisation gave rise to both a personal and prejudicial interest.

It was established that Councillor H held an elevated position within the charitable organisation. The Ombudsman did not consider it to be in the public interest to pursue the matter any further, because there was no personal gain for the member in failing to declare their interests, and they have since apologised and retrospectively declared any such interests. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of the matters investigated

Mumbles Community Council - Disclosure of interests

Case Number 201602618 - Report issued in March 2017

Mr A complained that Councillor F, as a member of a charitable organisation, breached the Code of Conduct for members ("the Code") by failing to disclose a personal and prejudicial interest when invoices from that organisation relating to storage costs were presented to the Council for payment. The Ombudsman investigated the complaint.

The Ombudsman also considered whether Councillor F may have used or attempted to use their position improperly to confer on or secure for themselves or another person an advantage by failing to declare their interest.

The Ombudsman found no evidence that the member obtained an advantage for themselves or the charitable organisation. The Ombudsman considered that, Councillor F's position within the charitable organisation, gave rise to both a personal and prejudicial interest.

It was established that Councillor F held an elevated position within the charitable organisation. The Ombudsman did not consider it to be in the public interest to pursue the matter any further, because there was no personal gain for the member in failing to declare their interests and they have since accepted that they do have an interest. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of the matters investigated.

Mumbles Community Council - Disclosure of interests

Case Number 201602619 – Report issued in March 2017

Mr A complained that Councillor Z, as a member of a charitable organisation, breached the Code of Conduct for members ("the Code") by failing to disclose a personal and prejudicial interest when invoices from that organisation relating to storage costs were presented to the Council for payment. The Ombudsman investigated the complaint.

The Ombudsman also considered whether Councillor Z may have used or attempted to use their position improperly to confer on or secure for themselves or another person an advantage, by failing to declare their interest.

The Ombudsman found no evidence that the member obtained an advantage for themselves or the charitable organisation. The Ombudsman took into consideration that, whilst Councillor Z's membership of the charitable organisation gave rise to a personal interest, their membership alone did not give rise to a prejudicial interest.

It was established that Councillor Z held no position of authority at the charitable organisation. The Ombudsman therefore did not consider it to be in the public interest to pursue the matter any further, because there was no personal gain for the member in failing to declare their interest. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of the matters investigated.

Mumbles Community Council - Disclosure of interests
Case Number 201602620 – Report issued in March 2017

Mr A complained that Councillor M, as a member of a charitable organisation, breached the Code of Conduct for members ("the Code") by failing to disclose a personal and prejudicial interest when invoices from that organisation relating to storage costs were presented to the Council for payment. The Ombudsman investigated the complaint.

The Ombudsman also considered whether Councillor M may have used or attempted to use their position improperly to confer on or secure for themselves or another person an advantage, by failing to declare their interest.

The Ombudsman found no evidence that the member obtained an advantage for themselves or the charitable organisation. The Ombudsman took into consideration that, whilst Councillor M's membership of the charitable organisation gave rise to a personal interest, their membership alone did not give rise to a prejudicial interest.

It was established that Councillor M held no position of authority at the charitable organisation. The Ombudsman therefore did not consider it to be in the public interest to pursue the matter any further, because there was no personal gain for the member in failing to declare their interest. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of the matters investigated.

Mumbles Community Council – Disclosure of interests
Case Number 201602621 - Report issued in March 2017

Mr A complained that Councillor G, as a member of a charitable organisation, breached the Code of Conduct for members ("the Code") by failing to disclose a personal and prejudicial interest when invoices from that organisation relating to storage costs were presented to the Council for payment. The Ombudsman investigated the complaint.

The Ombudsman also considered whether Councillor G may have used or attempted to use their position improperly to confer on or secure for themselves or another person an advantage by failing to declare their interest.

The Ombudsman found no evidence that the member obtained an advantage for themselves or the charitable organisation. The Ombudsman took into consideration that, whilst Councillor G's membership of

the charitable organisation gave rise to a personal interest, their membership alone did not give rise to a prejudicial interest.

It was established that Councillor G held no position of authority at the charitable organisation. The Ombudsman therefore did not consider it to be in the public interest to pursue the matter any further, because there was no personal gain for the member in failing to declare their interest. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of the matters investigated.

Referred to Standards Committee

Powys County Council – Objectivity and propriety

Case Number 201501199 – Report issued in June 2016

The Ombudsman investigated a complaint that a member (“the Councillor”) of Powys Council (“the Council”) may have breached his authority’s Code of Conduct. The complaint arose in relation to correspondence he had sent which incorrectly and unfairly portrayed the content of a Grievance Appeal Hearing.

The Ombudsman found that as the Councillor had sent the correspondence in his private capacity there was no evidence he had breached the section of the Code relating to showing respect and consideration for others. However the Ombudsman found evidence that the Councillor may have broken the code by bringing his office into disrepute and he referred the matter for consideration by the Council’s Standards Committee.

On 2 November 2016, the Council’s Standards Committee found that the Councillor had breached the Code. He was suspended from being a Councillor for five months.

The Councillor appealed this decision to the Adjudication Panel for Wales (“the Panel”). On 17 March 2017, the Panel found that the Councillor had breached the Code. The Panel referred the Councillor to the Council’s Standards Committee with a recommendation that the Councillor should be suspended for a period of three months.

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

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 or Lucy.John@ombudsman-wales.org.uk or sent to the following address:

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