The Code of Conduct Casebook

Issue 4 April 2015

Inside this issue

A word from the Ombudsman

This is my second Code of Conduct Casebook as Public Services Ombudsman for Wales.

Of the seventeen cases included in this edition, ten showed no evidence of a breach; four warranted no action and three led to referrals to a Standards Committee. There were no referrals to the Adjudication Panel for Wales.

In the last edition I referred to the dim view I took of vexatious complaints, and of the need to ensure 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. As councils face ever increasing challenges I hope we can ensure common sense for the common good.

It is with this spirit that I am delighted to announce a revised two stage test that I will use when deciding whether to investigate a complaint that the Code has been breached or to continue with an investigation to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales.

From now on there will be a Public Interest Test – with the consideration of any public interest factors that may apply to a case.

(Continued overleaf)

Ombudsman
PUBLIC SERVICES OMBUDSMAN FOR WALES

This is to ensure that I continue to investigate serious complaints to maintain public confidence in standards of public life. Further information about the revised test and the public interest factors that I may apply is included in Section 1 of the revised Guidance. Other changes include further guidance on the use of social media and political expression and two flowcharts which have been designed to provide members with assistance and clarity on the issue of interests.

Copies can be downloaded from my website here.

I hope that the Guidance will continue to be a useful resource to members when considering their obligations under the Code and that it offers a reassurance to all of this office's commitment to the public interest.

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 October 2014 to March 2015, 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

Ceredigion County Council – Disclosure and registration of interests
Case reference 201401053 – Report issued February 2015
The Ombudsman received a complaint that a member of Ceredigion County Council ("the Council") failed to declare an interest in a planning application, despite having a close personal association with the applicant. It was further alleged that the Councillor declared a personal interest in relation to the same application at the Community Council meetings.

The Ombudsman having considered the available information concluded that there was no evidence that the Councillor had breached the Code.

Isle of Anglesey – Disclosure and registration of interests
Case reference 201400183 – Report issued February 2015
The Ombudsman received a complaint that a member of Isle of Anglesey Council had breached the Code of Conduct for members during the Planning and Orders Committee meeting held on 8 January 2014 ("the meeting"). The member was accused of using his position improperly and failing to declare a prejudicial interest in discussions relating to a planning application for the erection of a wind turbine. The complainant said that both the accused member and the applicant are farmers within the same locality and suspected that the accused member had read out a statement prepared by the applicant to circumvent the Council's decision not to allow him to speak at the meeting.

The investigation found no evidence that the accused member had an interest in the matter under consideration. In the absence of any evidence to suggest that the accused member, or someone closely associated to him, had any specific dealings with the applicant and/or link to the application, the Ombudsman was not satisfied that an objective person would reasonably regard factors such as a common interest in farming and the close proximity between the application site and the member's home address as so significant that the member would be considered as having an interest in the matter. Furthermore, there was no evidence that the member had read out the applicant's statement during the meeting. The Ombudsman concluded therefore that there was no evidence that the member had breached the Code.

Isle of Anglesey County Council – Disclosure and registration of interests
Case reference 201400184 – Report issued February 2015
The Ombudsman received a complaint that a member of Isle of Anglesey Council had breached the Code of Conduct for members during the Planning and Orders Committee meeting held on 8 January 2014 ("the meeting"). The member was accused of misusing his position and failing to declare a prejudicial interest in discussions relating to a planning application for the erection of a wind turbine. The complainant said that both the accused member and the applicant are farmers within the same locality who have links to wind farming.

The investigation found no evidence that the accused member had an interest in the matter under consideration. In the absence of any evidence to suggest that the accused member, or someone closely associated to him, had any specific dealings with the applicant and/or link to the application, the Ombudsman was not satisfied that an objective person would reasonably regard factors such as a common interest in wind farming and the close proximity between the application site and the accused member's home address as so significant that the member would be considered as having an interest in the matter. Furthermore, there was no evidence that, around the time of the meeting, the member had any pending wind turbine applications that were being considered by the Council. The Ombudsman concluded therefore that there was no evidence that the accused member had breached the Code.

The Vale of Glamorgan Council – Objectivity and propriety
Case reference 201305568 – Report issued January 2015
The Ombudsman received a complaint that a member of The Vale of Glamorgan Council was rude and discourteous and used loud and aggressive tones to members of the public at a site visit on 16 January 2014. They also complained that the accused member showed unfair and partial behaviour by walking off site with the applicants to the planning permission and that they had no faith that he would be able to make a decision about the application in an open, fair and impartial way.

The Ombudsman discontinued part of the investigation relating to rude and discourteous behaviour as there was no evidence to support the allegation but investigated the remainder of the complaint.

The Ombudsman decided that there was no evidence to support a breach of the code. There was no evidence that the accused member displayed behaviour that would confirm he was unable to look impartially at the planning application. He noted that the accused member permitted a representative from both groups to address the Planning Committee at the site visit. The Ombudsman was also not persuaded that the accused member walked off site discussing matters with the applicants.

Abertillery & Llanhilleth Community Council – Objectivity and propriety
Case reference 201401414 – Report issued January 2015
It was alleged that the accused member disclosed confidential information concerning employment matters within the Council to persons outside the Council. The Ombudsman commenced an investigation to determine whether there was evidence to suggest that the accused member had breached the Code of Conduct.

The Ombudsman found that the evidence obtained during the course of the investigation was not sufficiently conclusive to support the allegation made and concluded that that there was no evidence of breach in respect of the matter investigated.

Penmaenmawr Town Council – Integrity
Case reference 201306327 – Report issued January 2015
The Ombudsman received a complaint that a member of Penmaenmawr Town Council ("the Council") had breached the Code of Conduct by failing to declare an interest and taking part in discussions about a grant application to Penmaenmawr Tourism Association (PENTA) during the Council meeting held in November 2013.

On the basis that the accused member's husband was the treasurer of PENTA, the Ombudsman concluded that she had an interest in matters relating to it. The evidence confirmed that the accused member had declared an interest in the grant application during the meeting and left the room. The Ombudsman therefore concluded that there was no evidence that the accused member had breached the Code.

Tywyn Town Council – Disclosure and registration of interests
Case reference 201402641 – Report issued November 2014
The Ombudsman received a complaint that a member of Tywyn Town Council ("the Council") had breached the Code of Conduct for members during the Council and Finance Committee meetings held in July 2014, by failing to declare a prejudicial interest and leave the room during discussions of the financial donation to the Tywyn & District Chamber of Tourism and Commerce ("the CTC").

Following an investigation and, on the basis that the accused member advertised in the CTC's tourism brochure, and was therefore a member of the organisation, the Ombudsman concluded that he had an interest in matters relating to it. The evidence confirmed that he had declared this interest during the relevant meetings. The Ombudsman did not consider that the accused member's interest was prejudicial as it would not have affected his ability to make decisions on the matter in the public interest. The Ombudsman concluded therefore that there was no evidence that the accused member had breached the Code.

Twywn Town Council – Disclosure and registration of interests
Case reference 201402642 – Report issued November 2014
The Ombudsman received a complaint that a member of Tywyn Town Council ("the Council") had breached the Code of Conduct for members during the Council and Finance Committee meetings held in July 2014 by failing to declare a prejudicial interest and leave the room during discussions of the financial donation to the Tywyn & District Chamber of Tourism and Commerce ("the CTC").

The evidence suggested that, on the basis that the accused member advertised in the CTC's tourism brochure, and was therefore a member, she had an interest in matters relating to it. The evidence confirmed that she had declared this interest during the relevant meetings. However, the Ombudsman did not consider that the accused member's interest was prejudicial as it would not have affected her ability to make decisions on the matter in the public interest. The Ombudsman concluded therefore that there was no evidence that the accused member had breached the Code.

Monmouthshire County Council – Disclosure and registration of interests
Case reference 201304608 – Report issued October 2014
Mr M complained that, at a Llangattock Vibon Avel Community Council meeting on 5 July 2012, a member of the County Council shouted at him that he put a sign up on a gate about her planning application. Mr M denied he had done this. After the Council meeting, Mr M said that the member had waited outside the meeting place with her husband and she shouted loudly and aggressively towards Mr M. The meeting could hear shouting but not what was said. Enquiries revealed that the member declared a personal and prejudicial interest when her planning application was considered and left the meeting whilst the application was considered.

The Ombudsman determined that there was no evidence of a breach of the Code of Conduct.

Llangattock Vibon Avel Community Council – Disclosure of registration and interests
Case reference 201304707 – Report issued October 2014
Mr M complained that, as he left a Llangattock Vibon Avel Community Council meeting on 5 July 2012, a member of the Community Councillor made remarks in a threatening and aggressive manner, including references to a sign that appeared on the member's farm gate opposing his planning application.

Having considered all evidence, the Ombudsman decided that there was no evidence of a breach of the Code of Conduct.

No action necessary

Templeton Community Council – Objectivity and propriety
Case reference 201405156 – Report issued February 2015
The Ombudsman received a complaint that a member of Templeton Community Council had both misused his position and also brought the office of member and the Community Council into disrepute.

Specifically, Mr A complained that the member had vandalised the riverbank outside his property; had unlawfully erected a gate across a shared access lane; and had erected signs prohibiting dogs from the lane which purported to be by order of the Community Council.

The Ombudsman considered various documents, including meeting minutes, photographs of the areas subject of dispute, the accused member's comments on the complaint, and copies of correspondence exchanged between the two party's solicitors.

The Ombudsman found no evidence suggestive of a breach in respect of the first two elements of the complaint, but found evidence clearly suggestive of a breach in respect of the third element. The Ombudsman took into consideration the seriousness of the potential breach, along with mitigating circumstances and concluded that a sanction was unlikely were the matter to be referred to the relevant standards committee. Accordingly, the Ombudsman's finding was that no further action needed to be taken in respect of this matter.

Tywyn Town Council – Accountability and openness
Case reference 201403463 – Report issued February 2015
The Ombudsman received a complaint that a member of Tywyn Town Council ("the Council") had breached the Code of Conduct for members during the Council and Finance Committee meetings held in July 2014 by failing to declare a prejudicial interest and leave the room during discussions of the 2014 financial donation to the Tywyn & District Chamber of Tourism and Commerce ("the CTC").

In July 2014, a Standards Committee found that the accused member had a prejudicial interest in matters relating to the CTC, due to the acrimonious history and ongoing dispute that existed between the parties. The Ombudsman therefore concluded that she had an interest in matters relating to it during the meetings held in July 2014. The evidence confirmed that the accused member did not declare an interest and/or leave the room during these meetings when the 2014 financial donation to the CTC was discussed.

The Ombudsman concluded therefore that there was evidence that the member had breached the Code on these further occasions. However, as the meetings had taken place before the Standards Committee's decision, the Ombudsman was not persuaded that if these matters were referred to the Standards Committee and it found the member to have breached the Code on these occasions, it would impose a further sanction. Accordingly, the Ombudsman found that no action needed to be taken in respect of the matters investigated.

Fishguard and Goodwick Town Council – Accountability and openness
Case reference 201306890 - Report issued December 2014
The Ombudsman received a complaint that a former member misled the Council at a number of Council meetings , by giving the impression that he had submitted an application with the Heritage Lottery Fund (HLF) to finance upcoming World War One Commemorations. The former Councillor said that his application with the HLF had progressed past the "first stage" to "stage two" of the process.

Enquiries with the HLF found that the former Councillor had only submitted an expression of interest and he had not applied for funding. The complainant said that the former Councillor's inaction had left it too late for an application to be made and many local organisations had been let down. The former Councillor was invited to interview, but resigned as a Town Councillor.

The Ombudsman found that the former Councillor may have breached Code of Conduct, but, as he resigned, no further action was required.

Blaenau Gwent County Borough Council – Disclosure and registration of interests
Case reference 201303994 – Report issued December 2014
The Chief Executive of Blaenau Gwent County Borough Council complained that a member had breached the Code of Conduct for members by failing to fully declare a personal and prejudicial interest, and by attempting to use his position improperly for his own advantage and for that of his family by putting pressure on Council officers to expedite the purchase of a property owned by his son and over which he himself had a legal charge. For part of the time concerned, the member was the Council's Executive member for Economic Strategy and Development.

The Ombudsman found that the member had both a personal and prejudicial interest in any Council business relating to his son's property. He had seen no evidence of any meeting at which the member was present and where he did not declare an interest. However, he considered that one email, sent on behalf of the member, was suggestive of a breach of the Code of Conduct. He found that the accused member had sought to obtain advice on his position and on any declaration of interest he should make. When interviewed, the member accepted that he had a personal and prejudicial interest in the matter, and that he should have declared the interest.

The Ombudsman took account of the member's attempts to declare his interest, the admission of his error, and the fact that he had stepped down from his position as Executive member, and determined that no action needed to be taken in respect of the matters investigated.

Referred to standards committee

Rhondda Cynon Taf County Borough Council – Disclosure and registration of interests
Case reference 201304901 – Report issued November 2014
The Ombudsman received a complaint that a member of the Council, whilst Chairman of the Council's Development Control Committee, failed to declare a personal interest at meetings and failed to leave the room when planning applications submitted by a company, whose Director is a friend of member, were considered.

The Ombudsman found that the evidence was suggestive that the member had failed to observe a number of provisions of the Code of Conduct, including that he brought his office into disrepute through his actions; contributed to discussions at the Committee meeting which led to the meeting being deferred with a subsequent further application for increased housing; and, failed to declare a personal interest at the Committee meetings on 12 May 2011, 18 October 2012 and 21 March 2013. The Ombudsman also found that the member failed to withdraw from meetings when having a prejudicial interest on 25 November 2010, 14 April 2011, 12 May 2011, 18 October 2012 and 21 March 2013; sought to influence decisions when having a prejudicial interest on 21 March 2013; and, made oral representations when having a prejudicial interest on 21 March 2013.

On 20 January 2015, the Council's Standards Committee found that the accused member had breached a number of parts of the Code of Conduct and the member was suspended for six months. The decision of the Standards Committee can be found here.

Isle of Anglesey County Council – Disclosure and registration of interests
Case reference 201304118 – Report issued July 2014
The Acting Ombudsman received a complaint that a member of the County Council had breached the Code of Conduct when communicating with officers of the Council about the sale of a piece of land. In particular, it was alleged that the accused member had failed to declare that he had a close personal association with the prospective purchaser of the land. In addition, it was alleged that the accused member had misused his position to gain an advantage for the prospective purchaser.

Having considered the allegations made, the Acting Ombudsman determined that it was appropriate to investigate whether the accused member had breached the Code of Conduct.

The Acting Ombudsman was satisfied that the accused member did have a close personal association with the prospective purchaser of the land by reason of a longstanding friendship and familial relationship. It was concluded that the accused member should have considered and declared a personal interest whenever he spoke with or wrote to Officers of the Council concerning the sale and problems associated with it. Furthermore, the Acting Ombudsman was satisfied that the accused member's personal interest in this matter became prejudicial in nature when he "involved" himself in discussions and written communication concerning the terms and conditions of the sale of the land.

In addition, the Acting Ombudsman concluded on balance that the evidence was suggestive that the accused member had also used his position to gain an advantage for his close personal associate. While the accused member's actions and involvement in the matter may have led to a financial advantage to the Council, there would have been a clear and undisputed advantage (as a consequence of the terms proposed) to the accused member's close personal associate.

The Acting Ombudsman determined that the matter should be referred to the Monitoring Officer of the Council for consideration by the Council's Standards Committee. The decision of the Standards Committee can be found here. The member has submitted an appeal to the Adjudication Panel for Wales.

Llanddulas and Rhyd y Foel Community Council – Promotion of equality and respect
Case reference 201301821 – Report issued July 2014

The Acting Ombudsman received a complaint made by a member of the Community Council that another member had acted in a disrespectful and bullying manner during meetings of the Council and during a visit to the wife of the late Clerk to the Council.

During the course of the investigation, the members of the Council and the accused member were interviewed about the matter. The investigation found that the accused member used his position to access information for personal reasons, contrary to the Code of Conduct. This included making an unannounced visit to the widow of the late Clerk. The investigation also found that, in undertaking such action, the accused member may have brought the office of member into disrepute.

With respect to the accused member's behaviour during meetings, it was noted that his behaviour had occurred during Council business and could be considered political in nature. As such, since Article 10 of the Human Rights Act 1998 applied, the accused member's behaviour was subject to enhanced protection; as a result, his behaviour could not be considered to be a breach of the Code of Conduct.

The Acting Ombudsman determined that the matter should be referred to the Monitoring Officer of the Council, for consideration by the Council's Standards Committee. 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.

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 or sent to the following address:

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