

Pwyllgor Safonau

Man Cyfarfod
**Ystafell Bwyllgor A - Neuadd y Sir,
Llandrindod, Powys**

Dyddiad y Cyfarfod
Dydd Mercher, 27 Mehefin 2018

Amser y Cyfarfod
10.00 am

I gael rhagor o wybodaeth cysylltwch â
Elizabeth Patterson
01597 826980
elizabeth.patterson@powys.gov.uk



Neuadd Y Sir
Llandrindod
Powys
LD1 5LG

Dyddiad Cyhoeddi
21 Mehefin 2018

Mae croeso i'r rhai sy'n cymryd rhan ddefnyddio'r Gymraeg. Os hoffech chi siarad Cymraeg yn y cyfarfod, gofynnwn i chi roi gwybod i ni erbyn hanner dydd ddau ddiwrnod cyn y cyfarfod

AGENDA

1.	YMDDIHEURIADAU
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Derbyn ymddiheuriadau am absenoldeb.

2.	COFNODION
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I awdurdodi'r Cadeirydd i lofnodi cofnodion cyfarfod blaenorol y Pwyllgor a gynhaliwyd ar y dyddiad canlynol fel cofnod cywir:

- 7 Chwefror 2018

(Tudalennau 1 - 4)

3.	DATGANIADAU O FUDD
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I dderbyn datganiadau o fudd gan Aelodau mewn perthynas ag eitemau i'w hystyried ar yr agenda.

4.	ADRODDIAD CYFREITHIWR Y SIR
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I dderbyn adroddiad Cyfreithiwr y Sir.

(Tudalennau 5 - 48)

**MINUTES OF A MEETING OF THE STANDARDS COMMITTEE HELD AT
COMMITTEE ROOM A - COUNTY HALL, LLANDRINDOD WELLS, POWYS ON
WEDNESDAY, 7 FEBRUARY 2018**

PRESENT

Independent Member Mrs H Rhydderch-Roberts (Chair)

Independent Members: Mrs C Jackson, Mrs J Evans, Mr S Hays and Mrs C Mulholland
County Councillors Mrs S McNicholas and Mrs K M Roberts-Jones

Observers: Community Councillors Mr H Patrick and Mrs J Shearer

In attendance: Mr C Pinney (Solicitor to the Council), Mr W Richards (Head of Democratic Services) and Mrs E Patterson (Scrutiny Officer).

1.	APOLOGIES
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Apologies for absence were received from County Councillors Mrs S Lewis and Mrs K Silk and Mrs D Jones (Deputy Monitoring Officer).

2.	MINUTES
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The minutes of the meeting held on the 4th October 2017 were agreed subject to the following amendment:

Item 3, paragraph 3: *'case 6/15/CC as she ~~was~~ had not sat on.....'*

3.	DECLARATIONS OF INTEREST
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No declarations of interest were received.

4.	REPORT OF THE SOLICITOR TO THE COUNCIL
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The Committee received the report of the Solicitor to the Council (copy filed with signed minutes).

A General Standards Issues for County Councillors and Co-opted Members

A1 Code of Conduct Training

All County Councillors and Co-opted Members have now been trained on the Code of Conduct.

A2 Mandatory Training

The County Council agreed mandatory training in July 2015 for the following sessions:

- Code of Conduct
- Data Controller
- Corporate Parenting
- Adult and Child Protection
- Treasury Management

This was not implemented as the term of office neared to a close but it is considered appropriate to implement this now the new term has started. It is intended to take the Mandatory Training Policy back to Council to approve the inclusion of following sessions as mandatory:

- IT and information security
- Equalities and Diversity
- Violence against Women, Domestic Abuse and Sexual Violence Act 2015

In addition Council had agreed a programme of Mandatory Training arising from the outcome of the CIW Review of Children's Services.

RESOLVED THAT:	REASON FOR RESOLUTION:
<p>(i) To note the Council's policy in relation to Mandatory Development Sessions.</p> <p>(ii) That the Committee writes to all Group Leaders and Co-Opted Members:</p> <ul style="list-style-type: none"> • reminding them of the Council's policy, • providing a list of mandatory training dates, and • advising that in future the names of Members not attending Mandatory Development Sessions will be reported to the Standards Committee. 	<p>To implement the Council's policy regarding Mandatory Training as approved on 15th July, 2015.</p>

B. Referral of Councillors to Public Services Ombudsman

B1. County Councillor Referrals

B1.1 The current position regarding matters with the Ombudsman was as follows:

02/CC/2017 Ombudsman investigating.
01/CC/2018 Ombudsman investigating.
02/CC/2018 Ombudsman deciding whether or not to investigate

C1 Applications - County Councillors

No applications for dispensation have been received from County Councillors.

D Ombudsman's Casebook

The Ombudsman had published the Code of Conduct Casebook for the following period:

- July – September 2017

A copy of this Casebook was attached at **Appendix A**.

E Annual Report from Adjudication Panel for Wales

The Adjudication Panel for Wales (APW) had published its Combined Annual Report for 2014/15 and 2015/16 which can be accessed from the Adjudication Panel for Wales website.

F Adjudication Panel for Wales decision report

In October 2017 the Adjudication Panel for Wales published a decision report in respect of Alison Halford former Councillor for Flintshire County Council. The Adjudication Panel for Wales had received the matter as a referral from the Public Services Ombudsman for Wales and, having dealt with the matter at a Case Tribunal on 6th October 2017. The outcome of the Tribunal was to disqualify Ms Halford from being or becoming a Member of a relevant authority for a period of 14 months.

A copy of the report was attached at **Appendix B**.

G Register of Gifts and Hospitality

The Register of Gifts and Hospitality covering the period May 2016 – November 2017 at **Appendix C** was noted.

H. Meeting Dates

Wednesday 27th June 2018 - Attendance statistics to be reported
Friday 14th September 2018 – Standards Conference Aberystwyth University
Wednesday 3rd October 2018

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CYNGOR SIR POWYS COUNTY COUNCIL.**Standards Committee****27th June 2018****REPORT BY: Solicitor to the Council****SUBJECT: Standards Issues****REPORT FOR: Decision, Information and Discussion****A. General Standards Issues for County Councillors and Co-opted Members****A1 Code of Conduct Training**

All Members and Co-Opted Members have undertaken Code of Conduct training.

A2 Mandatory Training

Following the last meeting, Group Leaders and all members have been advised of the Council's policy and that non-attendance at Mandatory Member Development sessions will be reported to the Standards Committee.

The Committee is asked to note that a mandatory Treasury Management development session is scheduled to take place on 20 July, 2018. In the Council year 2017-18 two sessions were provided namely on 14 July, 2017 and 31 January 2018. 13 Members did not attend either of these two sessions. As last summer was very busy with Induction and being a new Council, the Head of Democratic Services agreed that Members would be required to attend at least one of the Treasury Management sessions held in a 14 month period. Therefore the 13 Members who must attend the session on 20 July 2018 have received a diary invitation advising them that they must attend this session.

Members have had two opportunities to attend this Development Session and it is suggested that the Committee might wish to take a proactive role to ensure compliance in accordance with the Council's policy as follows:

- (i) Where a Member does not attend/complete a "Mandatory development" session they will receive an email from the Standards Committee advising them that they need to attend the next session. They will be given details of the session or how to access an appropriate session from another source and the required date for completion.

The Committee is therefore requested to note an email will be sent from the Chair of the Committee advising the 13 Members that they must attend this

session, otherwise they will have to provide an explanation to the Committee for their failure to attend.

RECOMMENDATION:	REASON FOR RECOMMENDATION:
That the Committee note the Chair will write to the 13 Members advising that they must attend the Mandatory Treasury Management Development Session on 20th July, 2018.	To ensure compliance with the Council's policy regarding Mandatory Training as approved on 15th July, 2015.

B. Referral of Councillors to Public Services Ombudsman

B1. County Councillor Referrals

B1.1 The current position regarding matters with the Ombudsman is as follows:

02/CC/2017	Ombudsman investigating.
01/CC/2018	Ombudsman investigating
02/CC/2018	Ombudsman investigating
03/CC/2018	Complaint received – not investigating
04/CC/2018	Ombudsman deciding whether or not to investigate
05/CC/2018	Ombudsman investigating
06/CC/2018	Complaint received – not investigating
07/CC/2018	Complaint received – not investigating
08/CC/2018	Ombudsman deciding whether or not to investigate

C Dispensations

C1 Applications - County Councillors

No applications for dispensation have been received from County Councillors.

D Delegation for urgent matters

There are only three meetings a year of the Standards Committee in the diary. Extraordinary meetings of Standards Committee may be called where urgent matters are required to be decided. In certain cases, for example referrals from the Ombudsman this is required. There are however other matters which may not warrant the calling of an extraordinary meeting and in this case Members are asked to consider delegating authority to the Chair and Vice-Chair of Standards Committee together with the Monitoring Officer to take a holding decision pending confirmation of the position at Standards Committee. Decisions such as this will be limited to non-controversial applications for dispensation.

RECOMMENDATION:	REASON FOR RECOMMENDATION:
That the Committee delegate non-controversial applications for dispensation to the Chair and Vice-Chair of the Standards Committee in consultation with the Monitoring Officer to grant a temporary dispensation subject to confirmation at Standards Committee	To allow applications for dispensation to be decided in a timely manner but confirmed at a meeting of the Standards Committee.

E Late Payment of Expenses

One claim for late payment of expenses has been received from County Councillor Karen Laurie-Parry for travel claims. A copy of the claim will be circulated at the meeting.

F Ombudsman's Casebook

The Ombudsman has published Code of Conduct Casebooks for the following period:

- October - December 2017
- January – March 2018

A copy of these Casebooks are attached at **Appendix A**.

Back copies of the casebooks can be accessed from the website of the Public Services Ombudsman for Wales at:

<http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

G Annual Report from Adjudication Panel for Wales

The Adjudication Panel for Wales (APW) has published its Annual Report for 2016/17.

The report can be accessed from the APW website on the following link;

<http://gov.wales/docs/apw/publications/170404-apw-annual-report-2014-2016-en.pdf>

The Adjudication Panel for Wales is an independent tribunal. Their function is to determine alleged breaches by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities, against their authority's statutory code of conduct.

The APW role is to form case and interim case tribunals (“Case Tribunals”) to consider references from the PSOW following the investigation of allegations that a member has failed to comply with their authority’s Code of Conduct; and

The Panel to consider appeals by members against decisions of their own authority’s Standards Committee that they have breach their Authority’s Code of Conduct (“Appeal Tribunals”).

H Adjudication Panel for Wales decision report

In February 2018 the Adjudication Panel for Wales published a decision report in respect of Dr Stuart Anderson former Councillor for Conwy County Borough Council. The Adjudication Panel for Wales had received the matter as a referral from the Public Services Ombudsman for Wales and, having dealt with the matter at a Case Tribunal on 9th and 10th of January 2018. The outcome of the Tribunal was to disqualify Dr Anderson from being or becoming a Member of a relevant authority for a period of 18 months.

A copy of the report is attached at **Appendix B**.

I Sanctions Guidance

The Adjudication Panel for Wales have published Sanctions Guidance setting out the approach to be taken in case, appeal and interim tribunals by the Adjudication Panel of Wales. This Sanctions Guidance is attached at **Appendix C**.

J Standards Conference

To receive a verbal update from the Monitoring Officer

K Meeting Dates

To note dates of future meetings as follows:

Friday 14th September 2018 – Standards Conference Aberystwyth University

Wednesday 3rd October 2018 – Standards Committee

Contact Officer Name:	Tel:	Fax:	Email:
<i>Clive Pinney – Solicitor to the Council</i>	01597 826746	01597 826220	clive.pinney@powys.gov.uk

The Code of Conduct Casebook

Issue 15 January 2018

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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 to December 2017.

Case summaries

No evidence of breach

Cardiff Council – Promotion of equality and respect

Case Number 201606695 – Report issued in October 2017

A complaint was made that a member (“the Councillor”) of Cardiff Council (“the Council”) breached the Authority’s Code of Conduct for elected members when he allegedly made comments to a former Councillor on two occasions about a local religious association.

The complaint was investigated on the basis that the member may have breached paragraphs 4(a), 4(b), 4(d) and 6(1)(a), relating to equality, respect, impartiality and bringing their office or authority into disrepute.

The investigation found that there were no witnesses to either of the conversations the member had with the former Councillor. The member also strongly denied the allegations. Therefore, under section 69(4) (a) of the Local Government Act 2000, the Ombudsman’s finding was that there was no evidence that the member failed to comply with the Code of Conduct.

Merthyr Tydfil County Borough Council - Integrity

Case Number 201700102 – Report issued in October 2017

A complaint was made that a member (“the Councillor”) of Merthyr Tydfil County Borough Council (“the Council”) breached the Authority’s Code of Conduct for elected members when she made comments about a member of the public in a Facebook messenger group chat.

The complaint was investigated on the basis that the Councillor may have breached paragraph 6(1)(a) of the Code, by bringing her office or authority into disrepute.

The Ombudsman considered that the Councillor’s comments were made in extremely bad taste. However, he took into account that the Facebook messenger group in which the Councillor posted her comments only consisted of three members. It was clear that the Councillor deeply regretted her actions and when she realised that the subject of her comments had become aware of what she had posted, she provided a fulsome apology.

The investigation found that, whilst the Councillor’s actions may have brought herself into disrepute, for the reasons outlined above, she had not brought her office or authority into disrepute. Therefore, under section 69(4)(a) of the Local Government Act 2000, the Ombudsman’s finding was that there was no evidence that the Councillor failed to comply with the Code of Conduct. However, the Councillor was advised of her responsibility to take care when expressing her personal opinions.

Tywyn Town Council and Gwynedd Council – Promotion of Equality and Respect

Case Number 201607353 & 201607357 – Report issued in November 2017

Councillor X complained that a member (“Councillor Y”) of Tywyn Town Council and Gwynedd Council breached the Code of Conduct for elected members by making personal allegations about her. Councillor

X provided evidence that Councillor Y made comments about her in various emails, which he had sent to members of Tywyn Town Council and Gwynedd Council.

The complaint was investigated on the basis that Councillor Y may have breached paragraphs 4(b) (failure to show respect and consideration), 4(c) (bullying and harassment), and 6(1)(a) (bringing his office or authority into disrepute).

The Ombudsman did not consider that the comments made by Councillor Y were so offensive as to amount to a breach of paragraph 4(b) of the Code of Conduct. Neither did he consider that his actions were sufficiently serious to amount to a breach of paragraph 4(c) of the Code.

In relation to paragraph 6(1)(a) of the Code, there was no evidence to suggest that Councillor Y had shared emails with members of the public. He had sent one email to a member of the press, and whilst the Ombudsman considered it was unwise for him to do so, it did not appear that the email was acted upon or shared further. That being so, the Ombudsman did not consider that the consequences of his actions were sufficiently serious to have brought his office or authority into disrepute.

Whilst the Ombudsman's finding was that there was no evidence that Councillor Y had failed to comply with the Code of Conduct, he was advised of his responsibility to be mindful of how his comments are perceived by others in future.

Llansannan Community Council – Promotion of Equality and Respect

Case Number 201700953 – Report issued in November 2017

Mr X complained that a member ("the Councillor") of Llansannan Community Council ("the Community Council"), breached the Code of Conduct for members when he asked Mr X to leave a meeting of the Community Council and used the words "for your own safety," which Mr X considered to be a threat.

The complaint was investigated on the basis that there may have been a failure to comply with the following paragraph of the Code of Conduct for elected members:

- 4(b) – you must show respect and consideration for others; and
- 4(c) – you must not use bullying behaviour or harass any person.

There was no evidence to suggest that the Councillor's behaviour towards Mr X was in any way threatening and the Ombudsman was satisfied that his actions were reasonable under the circumstances.

Under Section 69(4)(a) of the Local Government Act 2000, the Ombudsman's finding was that there was no evidence that the Councillor failed to comply with the Code of Conduct.

No action necessary

Conwy County Borough Council - Disclosure and registration of interests

Case Number 201702250 – Report issued in October 2017

The Ombudsman received a complaint that a member of Conwy County Borough Council (“the Councillor”) had breached the Code of Conduct when he submitted a written objection, in an official capacity, to a planning application which the complainants had made to the Council. The Councillor lives near the application site, and could be personally affected by it.

The Ombudsman concluded that it was likely that the Councillor had breached the Code given the proximity of the development site to his home and the fact his objections were sent from his Council email address and signed off “Councillor [Name]”. However, the Ombudsman decided to take no action in this case on the basis that the Councillor had shown remorse and apologised, his explanation that he had accidentally selected his Council email address from a drop down box when writing his email was plausible, he had acted swiftly to withdraw his objection when concerns were raised, and his actions did not adversely affect the planning application, which was granted permission.

Referred to Standards Committee

There are no summaries in relation to this finding

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 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 (general enquiries)

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The Code of Conduct Casebook

Issue 16 May 2018

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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 to December 2017.

Case summaries

No evidence of breach

There are no summaries in relation to this finding

No action necessary

Llanbedrog Community Council – Disclosure and registration of interests

Case Number: 201700942 & 201702074 – Report issued in January 2018

The Ombudsman received a complaint that a member of Llanbedrog Community Council (“the Councillor”) breached the Code of Conduct by failing to declare an interest when his planning application came up for discussion at a meeting of the Community Council (“the meeting”).

The Ombudsman investigated whether the Councillor had breached parts of the Code relating to personal and prejudicial interests. Interviews were conducted with those members of the Council who were present at the meeting. The evidence indicated that the Councillor:

- declared an interest when his planning application came up for discussion
- did not take part in the discussion
- did not leave the room but as the item was so brief, he did not have an opportunity to do so.
- The members present at the meeting did not feel that the Councillor’s presence influenced their decision

The Ombudsman found that the Councillor had acted appropriately and in line with the requirements of the Code of Conduct in declaring a personal interest when his planning application came up for discussion. However, his action in not leaving the meeting room was in breach of the Code of Conduct as he would have had a prejudicial interest in the matter.

The Ombudsman considered the breach was mitigated as the Councillor took no part in the discussion and as the item was so brief, the Councillor did not have an opportunity to leave the room before the item was concluded. The Community Council was also not the final decision-maker on planning matters. He took the view that the Councillor’s actions were of limited consequence.

Under section 69(4)(b) of the Local Government Act 2000, the Ombudsman found that no action needed to be taken in respect of the complaint.

Abertillery & Llanhilleth Community Council – Integrity

Case Number: 201700261 – Report issued in January 2018

The Ombudsman received a complaint that a member (“the member”) of Abertillery & Llanhilleth Community Council (“the Council”) had breached the Code of Conduct for members. It was alleged that the member had arranged for a sum of money, intended for the Council, to be paid to a community project (“the Project”). At the time of the actions complained of the member was Chairman both of the Council and of the Project.

The Ombudsman investigated whether the member’s actions amounted to a breach of para-

graphs 6(1)(a), 7(b)(ii) and 7(b)(iv) of the Code of Conduct relating to bringing their office or authority into disrepute, and the use of the authority's resources.

The Ombudsman found that the Council had no legal right to receive the money in question, and that it could not therefore be considered to be the Council's resources. The member had therefore not breached paragraph 7(b)(ii) or paragraph 7(b)(iv). However, the member had acted improperly in the way in which he obtained funding for the Project, representing himself as acting on behalf of the Council, at the possible expense of other groups, and may therefore have been in breach of paragraph 6(1)(a) in that he had brought his office or the authority into disrepute.

The Ombudsman noted the member's inexperience as Chairman, the fact that he believed, albeit mistakenly, that he was acting in the public interest and that he obtained no personal gain from his actions. The Ombudsman concluded that, on balance, the public interest did not require that the case should be referred to a Standards Committee or Adjudication Panel for Wales, and decided that no further action needed to be taken.

Case Number: 201701904 – Disclosure and registration of interests

Llay Community Council – Report issued in January 2018

The Ombudsman received a complaint from a member of the public that the Councillor had breached the Code of Conduct ("the Code") for Llay Community Council ("the Council"). The complainant said the Councillor had, at a meeting of the Council, failed to declare a personal interest in - and participated in a discussion about - a planning application which affected the site of the Llay branch of a charitable organisation. The Councillor is the Secretary of the Social Committee of the Social Club which is licensed to operate from the charitable organisation's site.

The Ombudsman considered whether, in failing to declare a personal interest and remaining in the room, the Councillor had breached the Code. The Ombudsman took witness statements from the other councillor's present at the meeting and interviewed the Councillor. The Council unanimously voted to oppose the planning application and none of the witnesses said they felt influenced by the Councillor's presence. There was some confusion amongst councillors as to whether the Councillor should have declared an interest and withdrawn. At interview, the Councillor remained of the view that he had not been required to declare an interest and withdraw. The Council was not the determining authority and so was simply being consulted on the application.

The Ombudsman concluded that the Councillor's personal interest was prejudicial and that he should have withdrawn from the room while the application was under discussion. However, the Ombudsman found that the Councillor did not stand to personally benefit from the outcome of the planning application. The Councillor's position as Secretary of the Social Committee and the Council's role in the determination of the application were sufficiently distant from application as to mitigate their impact. The Ombudsman considered the general confusion amongst councillors and the fact that the Councillor's presence had no bearing on the Council's unanimous opposition to the application.

The Ombudsman concluded that there was evidence suggestive of a breach of paragraphs 11(1) and 14(1)(a)(ii) of the Code. Whilst the Ombudsman was concerned at the apparent confusion amongst councillors generally in respect of personal interests, he considered that additional train-

ing would address this. On balance, the Ombudsman concluded that although the Councillor may have breached two paragraphs of the Code, there were mitigating circumstances and so no further action was necessary.

Referred to Standards Committee

There are no summaries in relation to this finding

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 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 (general enquiries)

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Further information about the service offered by the Public Services Ombudsman for Wales can also be found at www.ombudsman-wales.org.uk

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

ADJUDICATION PANEL FOR WALES

SANCTIONS GUIDANCE

issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000.

ADJUDICATION PANEL FOR WALES

SANCTIONS GUIDANCE

Foreword by the President

I am pleased to introduce our new *Sanctions Guidance* which sets out the approach to be taken by case, appeal and interim tribunals of the Adjudication Panel for Wales in order to reach fair, proportionate and consistent decisions on the sanctions that should be applied in relation to an individual's breach of the local Code of Conduct.

The Guidance has been developed by members of the Adjudication Panel for Wales in consultation with the Public Services Ombudsman, Monitoring Officers and Welsh Government. I would like to thank everyone for their contributions.

In publishing this Guidance, I hope it will help all those with whom we share an interest in the Code - most importantly, members of county and community councils, fire and rescue authorities, and national park authorities in Wales. I hope it reflects the importance we attach to the role of local member, the value of local democracy and the Adjudication Panel's commitment to promoting the highest standards in public life in Wales.

Claire Sharp

President, Adjudication Panel for Wales

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Standards in Public Life **page 3**

- the Code of Conduct, expectations for local members and the process to be followed when a breach of the Code is alleged.

The Adjudication Panel for Wales **page 4**

- the role of the Adjudication Panel for Wales, the purpose of the sanctions regime and sanction powers available to case, appeal and interim tribunals of the Adjudication Panel for Wales.

The Tribunals' Approach : underlying principles **page 6**

- an overview of the general principles that underpin the broad approach of case, appeal and interim tribunals, specifically fairness, public interest, proportionality, consistency, equality and impartiality, and Article 10 of the Human Rights Act.

Case and Appeal Tribunals : determining sanction **page 7**

- the specific sanctions available to case and appeal tribunals and the five stage process to be used to assess the seriousness of a breach, relevant mitigating and aggravating circumstances and any wider factors, and determine the specific sanction and duration; it also addresses the tribunal's power to make recommendations.

Interim Case Tribunals : determining sanction **page 17**

- the distinct aims of interim case tribunals to facilitate an ongoing investigation and the specific powers available in response to a report, and any recommendation, from the Ombudsman.

Annex: other relevant documents and guidance **page 19**

Introduction

1. This Guidance is issued by the President of the Adjudication Panel for Wales (APW) using powers available to her under the Local Government Act 2000ⁱ. Its primary purpose is to assist the Panel's case, appeal and interim tribunals when considering the appropriate sanction to impose on a member, or former member, who is found to have breached their authority's Code of Conduct.
2. This Guidance describes:
 - i. the role of the ethical framework and Code of Conduct in promoting high public standards amongst members of councils, fire and rescue authorities, and national park authorities in Wales;
 - ii. the role of the Adjudication Panel for Wales (APW) and the purpose of the sanctions regime;
 - iii. the approach to be taken by case, appeal and interim tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of the sanctions regime and this Guidance are built on the values that underpin the Code of Conduct, in particular the fundamental importance of promoting the highest standards in local public life. The Guidance aims to assist case, appeal and interim tribunals in determining sanctions that are, in all cases, fair, proportionate and consistent.
4. The Guidance is not prescriptive and recognises that the sanction decided by an individual tribunal will depend on the particular facts and circumstances of the case. Any examples should be considered by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider other factors that they consider necessary and appropriate. Nor does the Guidance undermine the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of this Guidance and the approach to be taken by the tribunal.
5. In setting out the factors considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparency of approach for the benefit of all parties involved in a tribunal. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal will arrive at its decision on sanction.
6. The Guidance seeks to fulfil a wider role and support all those with an interest in maintaining, promoting and adjudicating on the Code of Conduct. It aims to complement the statutory Guidance published by the Public Services Ombudsman for Walesⁱⁱ, confirming the expectations on local members in terms of their conduct and emphasising the central importance of public confidence in local democracy. It should be of value to individual members, Monitoring Officers and Standards Committees of county and county borough councils, fire and

rescue authorities, and national park authorities in Wales, and the Public Services Ombudsman for Wales.

7. This Guidance comes into effect on [insert date]. It is a living document that will be updated and revised as the need arises, following consultation.

Standards in Public Life

The Code of Conduct

8. The Local Government Act 2000 introduced an ethical framework to promote high standards of conduct in public life in Wales. The framework's central mechanism is a Code of Conduct. All local authorities, community councils, fire and rescue authorities and national park authorities in Wales must have in place a Code of Conduct. All elected members and co-opted members must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their membership.
9. The Welsh Government has issued a model Code of Conductⁱⁱⁱ in order to ensure broad consistency across Wales and to give certainty to members and the public as to the minimum standards expected. Local Codes must include, as a baseline, the requirements of the national model which builds on the Nolan Committee's Principles for Public Life^{iv} and encompasses ten core principles^v:
 - i. Selflessness
 - ii. Honesty
 - iii. Integrity and Propriety
 - iv. Duty to Uphold the Law
 - v. Stewardship
 - vi. Objectivity in Decision-making
 - vii. Equality and Respect
 - viii. Openness
 - ix. Accountability
 - x. Leadership

Expectations on local members

10. Members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
 - whenever they are acting, claiming to act or giving the impression of acting in an official capacity as a member or representative of their authority;
 - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their public office or authority into disrepute, or if using or attempting to use their position to gain an advantage or avoid a disadvantage for anyone or if they misuse the authority's resources.

11. Members are expected to engage in any training and access ongoing advice, as the need arises, from their local Monitoring Officer and Standards Committee. Members are also expected to be familiar with and have regard to the Public Services Ombudsman's statutory guidance on the Code^{vi}. It addresses each of the Code's requirements in order to help members understand their obligations in practical terms. It offers advice on the fundamental ethical principles that many members need to consider on a regular basis – for example, declarations of interest, confidentiality and use of the authority's resources – in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

Allegations of breach

13. Allegations that a member's conduct is in breach of the Code are made to the Ombudsman who will decide whether to investigate a complaint. If, following an investigation, the Ombudsman finds that there is evidence of a breach of the Code, he can refer his report to the relevant local Standards Committee or to the President of the Adjudication Panel for Wales. The Ombudsman may also refer reports from an ongoing investigation to the President for consideration by an interim tribunal.

The Adjudication Panel for Wales

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales^{vii} as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Code. The Panel's operation is subject to regulation by the Welsh Government.

Case tribunals

15. Case tribunals are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction.

Appeal tribunals

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee on misconduct. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may dismiss the appeal, overturn the Standards Committee decision on breach or refer the matter back to the Committee with a recommendation as to a different sanction.

Interim case tribunals

17. Interim case tribunals are appointed by the President to consider a report, and any recommendation to suspend a member, from the Ombudsman during an ongoing investigation into alleged misconduct. The tribunal is responsible for determining the need to suspend, or partially suspend, the member or co-opted member from the authority or a role within the authority. The maximum duration of the suspension or partial suspension is 6 months. Unlike case and appeal tribunals, suspension by an interim tribunal is not to be regarded as disciplinary as this would be premature given the ongoing nature of the Ombudsman's investigation.

The sanctions regime

18. The Committee on Standards in Public Life^{viii} which originated the ethical framework identified a mechanism for enforcing and punishing public office holders who breached the standards expected of them, if the ethical framework was to command public credibility. The purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

- provide a disciplinary response to an individual member's breach of the Code;
- place the misconduct and appropriate sanction on public record;
- deter future misconduct on the part of the individual and others;
- promote a culture of compliance across the relevant authorities;
- foster public confidence in local democracy.

19. The sanctions available to a tribunal that has found a breach of the Code are^{ix}:

- a. to take no action in respect of the breach;
- b. to suspend or partially suspend the member from the authority concerned for up to 12 months;
- c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

20. The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.

The Tribunal approach – underlying principles

21. Tribunals must always have in mind that every case is different and requires deciding on its own particular facts and circumstances. Following a finding that the Code of Conduct has been breached, tribunals must exercise their own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors. They must also ensure that the sanctions take account of the following underlying principles in order to ensure that their decisions support the overall ambitions of the ethical framework, fulfilling the purpose of the sanctions, and are in line with the tribunal's wider judicial obligations.

Fairness

22. The tribunal should take account and seek to find an appropriate balance between the various interests of the Respondent/Appellant, the Complainant, other interested parties to a case, the Ombudsman, the local authority, the electorate and the wider public.

Public interest

23. Whilst seeking to ensure that the sanction imposed is appropriate, fair and proportionate to the circumstances of the case, the tribunal should value the reputation of and public confidence in local democracy as more important than the interests of any one individual.

Proportionate

24. Tribunals will take account of the good practice identified in the Ombudsman's Guidance and Code of Conduct Casebook^x in order to assist their sense of proportionality when determining the sanction appropriate to the scale and/or nature of the breach.

Consistent

25. Tribunals will aim to achieve consistency in their sanctions in order to maintain the credibility of the ethical framework. They will take account of the good practice identified by the Ombudsman (para.24) in addition to this Guidance and its own previous decisions. Where a tribunal panel has reason to depart from the Guidance, it should clearly explain why it has done.

Equality and impartiality

26. Fair treatment is a fundamental principle of the Adjudication Panel for Wales and is embedded within individual members' judicial oath. Tribunals must ensure that their processes and practices safeguard their capacity for objective, independent and impartial decision-making, free from prejudice and partiality, in order to uphold their judicial responsibilities.

Human Rights (Article 10)

27. Tribunals must ensure that their processes and practices respect human rights legislation. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Article 10 of the European Convention on Human Rights in their deliberations.

28. Article 10 provides that:

10(1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...

10(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

29. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable. This protection does not extend to gratuitous or offensive personal comment, nor to 'hate speech' directed at denigrating colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

30. In their consideration of Article 10, tribunals should apply the three-stage approach established by Mr Justice Wilkie^{xi} and which applies to both decision about breach and sanction, as follows:

- i. Can the Panel as a matter of fact conclude that the Respondent's conduct amounted to a relevant breach of the Code of Conduct?
- ii. If so, was the finding of a breach and imposition of a sanction *prima facie* a breach of Article 10?
- iii. If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

Case and Appeal Tribunals – determining sanction

31. A tribunal will decide whether or not a sanction is appropriate after considering the facts of a case and finding that an individual has breached the Code of Conduct. In determining an appropriate sanction, the tribunal's approach should be sufficiently broad as to accommodate its consideration of the various interests of those involved in the case, any specific circumstances of the individual respondent/appellant, the intended purpose of the sanctions available (in

particular, the wider public interest) and the tribunal's wider judicial responsibilities.

32. Case tribunals will decide on the appropriate sanction to impose and the duration; appeal tribunals will consider the appropriateness of the sanction imposed by the Standards Committee.

The five-stage process

33. Case and appeal tribunals will follow a five step process in determining sanction:

- 33.1 assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)
- 33.2 identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)
- 33.3 consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)
- 33.4 consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions; (para.43)
- 33.5 confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)

Assessing the seriousness of the breach

34. The relative seriousness of the breach will have a direct bearing on the tribunal's decision as to the need for a sanction and, if so, whether a suspension or partial suspension (of up to 12 months) or disqualification (up to 5 years) is likely to be most appropriate.

35. The tribunal will assess seriousness with particular reference to:

- the nature and extent of the breach, and number of breaches;
- the Respondent/Appellant's culpability, their intentions in breaching the Code, and any previous breaches of the Code;
- the actual and potential consequences of the breach – for any individual(s), the wider public and/or the council as a whole;
- the extent of any publicity surrounding the breach.

36. Examples of the way in which tribunals might weight seriousness include:

- a breach involving deliberate deception for personal gain is likely to be regarded as more serious than that involving the careless use of a council email address on a personal social media profile;

- a breach involving the systematic harassment of a junior officer is likely to be regarded as more serious than instances of disrespectful language in the course of a council debate;
- a breach of confidentiality that results in the disclosure of the address of a looked after child is likely to be regarded as more serious than the disclosure of a planning officer's confidential advice;
- a breach resulting in significant negative coverage of the council in the national media is likely to be regarded as more serious than an inappropriately worded email to a member of the public.

37. Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code, the deliberate abuse of privileged or sensitive information for personal gain, and sexual misconduct, discriminatory, predatory and/or harassing behaviour are all likely to be regarded as very serious breaches.

38. A member who is subject to a term of imprisonment for three months or more without the option of paying a fine in the previous five years before their election or since their election, even if suspended, is automatically subject to disqualification^{xii}.

Choosing the potential sanction

39. Having assessed the relative seriousness of the Respondent/Appellant's breach of the Code, the tribunal will consider which of the three courses of action available to it is most appropriate^{xiii}. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact to that of greatest.

No action

39.1 The tribunal may decide that, despite the Respondent/Appellant having failed to follow the Code of Conduct, there is no need to take any further action in terms of sanction. Circumstances in which a tribunal may decide that no action is required may include:

- an inadvertent failure to follow the Code
- an isolated incident with extremely limited potential for consequential harm
- an acceptance that a further failure to comply with the Code on the part of the Respondent/Appellant is unlikely, nor are there any wider reasons for a deterrent sanction
- specific personal circumstances, including resignation or ill health, which render a sanction unnecessary and disproportionate.

39.2 A tribunal that finds a breach of the Code but decides that no action is necessary in terms of sanction, should consider whether there is a need to warn the Respondent/Appellant as to their conduct and/or seek

assurances as to future behaviour. This provides an effective means of placing the Respondent/Appellant's behaviour on record, reflected in the tribunal's written decision, so that the warning and/or reassurance may be taken into account in the event of the same Respondent/Appellant being found to have breached the Code in the future.

Suspension for up to 12 months

- 39.3 A tribunal may suspend the Respondent/Appellant for up to 12 months from the authority(ies) whose Code has been breached.
- 39.4 Suspension is appropriate where the seriousness of the breach is such that a time-limited form of disciplinary response is appropriate in order to deter future such action, temporarily remove the member from the authority/a role within the authority, safeguard the standards set by the Code and to reassure the public.
- 39.5 A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions. Tribunals are also reminded that the highest sanction available to local Standards Committees is 6 months' suspension. They should bear this in mind when considering an Ombudsman's referral to the Adjudication Panel, in preference to the local Standards Committee, and when considering an appeal against a local Standards Committee sanction.
- 39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:
- the Respondent/Appellant's action has brought the member's office or authority into disrepute but they have not been found in breach of any other paragraph of the Code (or found to have committed a criminal offence punishable by at least three months imprisonment);
 - the breach merits a disciplinary response but, in view of the circumstances of the case, it is highly unlikely that there will be a further breach of the Code;
 - the Respondent/Appellant has recognised their culpability, shown insight into their misconduct, and apologised to those involved.

Partial Suspension for up to 12 months

- 39.7 The tribunal may impose a partial suspension, preventing the Respondent/Appellant from exercising a particular function or role (such as being a member of a particular authority, committee or subcommittee or the holder of a particular office) for up to 12 months.
- 39.8 Partial suspension is appropriate where the seriousness of the breach merits a suspension (see above) but the circumstances of the case are such that the Respondent/Appellant is permitted to continue in public office except for the role/function/activity specifically limited by the suspension.

39.9 In the case of a partial suspension, the tribunal will need to decide from what role/function/activity the Respondent/Appellant is to be suspended and, in the case of membership of more than one authority, the impact of the partial suspension in each relevant authority.

39.10 Circumstances in which a partial suspension may be appropriate include:

- the Respondent/Appellant is capable of complying with the Code in general but has difficulty understanding or accepting the restrictions placed by the Code on their behaviour in a specific area of council/authority activity;
- the misconduct is directly relevant to and inconsistent with a specific function or area of responsibility held;
- the misconduct arises from the membership of a particular authority and has no bearing on the membership of another;
- the Respondent/Appellant should be temporarily removed or prevented from exercising executive functions for the body to which the Code applies.

Disqualification for a maximum of 5 years

39.11 A tribunal may disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

39.12 Disqualification is the most severe of the sanctions available to a tribunal. It is likely to be appropriate where the seriousness of the breach is such that a significant disciplinary response is appropriate in order to deter repetition, make clear the unacceptable nature of such conduct in public office, underscore the importance of the Code and to safeguard the public's confidence in local democracy. A disqualification of less than 12 months is unlikely to be meaningful (except in circumstances when the Respondent/Appellant might be regarded as unfit for public office or is no longer a member).

39.13 Circumstances in which a tribunal may decide that a disqualification is appropriate may include:

- deliberately seeking personal gain (for her/himself, a family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking to disadvantage another by exploiting membership of the authority and/or the authority's resources;
- deliberately failing to comply with the provisions of the Code and continuing to assert the right so to do;
- repeatedly failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour;

- seeking personal gain (for herself/himself or family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a subsequent breach, despite a warning and/or having given an assurance as to future conduct in a previous case before an Adjudication Panel for Wales tribunal;
- conduct that calls into question the Respondent/Appellant's fitness for public office;
- bringing the relevant authority into serious disrepute.

Mitigating and aggravating circumstances

40. The tribunal will go on to consider how any particular circumstances of the Respondent/Appellant may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the Respondent/Appellant's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. The process is likely to have significant bearing on the duration of the sanction, varying the term down or up in line with the mitigating or aggravating factors. Such factors may at times be sufficient to persuade a tribunal that a suspension may be more appropriate than a disqualification, and vice versa.
41. Tribunals are encouraged to work through the examples set out below but reminded that these are not exhaustive. Where any mitigating/aggravating factor relates directly to the nature or seriousness of the breach and the tribunal has already considered that factor in its choice of appropriate sanction, care should be taken as to the extent to which that factor is included in mitigation/aggravation. For example:
- if the sanction under consideration is a suspension because the conduct is regarded as a 'one off', this factor should not also be regarded as mitigating unless the 'one off' nature of the breach is so exceptional that it should have a direct bearing on the length of the suspension;
 - if the breach is regarded as serious because it includes 'bringing the authority into disrepute', this factor should not also be regarded as aggravating unless the disrepute is so exceptional as to have a direct bearing on the length of the disqualification.
42. Tribunals should also take care to respect a Respondent/Appellant's legitimate right to appeal and to distinguish protestations or assertions made in the course of exercising that right from those actions that might be regarded as aggravating factors designed to obstruct the processes of the Ombudsman or Adjudication Panel.

Mitigating circumstances

- i. substantiated evidence that the misconduct was affected by personal circumstances, including health and stress;
- ii. a short length of service or inexperience in a particular role;
- iii. a previous record of good service (especially if over a long period of time);
- iv. the misconduct was a one-off or isolated incident;
- v. the misconduct arose from provocation or manipulation on the part of others;
- vi. the breach arose from an honestly held, albeit mistaken, view that the conduct involved did not constitute a failure to follow the Code, especially having taken appropriate advice;
- vii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- viii. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see Aggravating factor xii below);
- ix. self-reporting the breach;
- x. recognition and regret as to the misconduct and any consequences;
- xi. an apology, especially an early apology, to any affected persons;
- xii. co-operation in efforts to rectify the impact of the failure;
- xiii. co-operation with the investigation officer and the standards committee/APW;
- xiv. acceptance of the need to modify behaviour in the future;
- xv. preparedness to attend further training;
- xvi. commitment to seeking appropriate advice on the Code in the future;
- xvii. compliance with the Code since the events giving rise to the adjudication.

Aggravating factors

- i. length of experience, seniority and/or position of responsibility;
- ii. unfairly blaming others for the Respondent/Appellant's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or personal associate) benefit or disadvantage for another;
- iv. deliberate exploitation of public office and/or resources for personal (for her/himself, a family member or personal associate) or political gain;
- v. abuse or exploitation of a position of trust;

- vi. repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
- vii. dishonesty and/or deception, especially in the course of the Ombudsman's investigation;
- viii. lack of understanding or acceptance of the misconduct and any consequences;
- ix. refusal and/or failure to attend available training on the Code;
- x. deliberate or reckless conduct with no concern for the Code;
- xi. deliberately or recklessly ignoring advice, training and/or warnings as to conduct;
- xii. the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others;
- xiii. obstructing and/or failing to co-operate with the Ombudsman's investigation and/or the Adjudication Panel for Wales's processes;
- xiv. refusal to accept the facts despite clear evidence to the contrary;
- xv. action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xvi. failure to heed previous warnings or assurances given as to conduct relevant to the Code.

Fulfilling the purpose of the sanctions regime

43. The tribunal may need to consider further adjustments to the chosen sanction or length of sanction in order to achieve an appropriate deterrent effect, for the individual and/or the wider council membership, or to maintain public confidence. Tribunals will also need to have regard to external factors that may exacerbate or diminish the impact of the chosen sanction.

Public interest

44. The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen standard against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the Respondent/Appellant entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.

Eligibility for public office in other relevant authorities

45. Disqualification will automatically apply to a Respondent's current membership of all authorities to which the Local Government Act 2000 applies, irrespective of whether the other authorities' Codes have been breached. Disqualification will also prevent the Respondent from taking up public office, through election or co-option, on any other authorities to which the Act applies until the expiration of the disqualification period.
46. A suspension will preclude the Respondent/Appellant from participating as a member of the authority whose Code s/he has been found to have breached but not necessarily any other authorities of which the Respondent/Appellant is a member. Where the facts of a case call into question the Respondent/Appellant's overall suitability to public office, a disqualification may be more suitable than a suspension.

Former members

47. In circumstances where the tribunal would normally apply a suspension but the Respondent/Appellant is no longer a member, a short period of disqualification may be appropriate. This will ensure that the Respondent/Appellant is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected.

Financial impact

48. Tribunals should take into account the financial impact on members of a sanction: during suspension, a member will be denied payment of their basic salary or allowances; following disqualification, the member will lose any entitlement to allowances. The financial impact varies from an annual expenses reimbursement for community councillors to a basic salary plus expenses for county councillors to the higher salaried paid to leaders of larger councils^{xiv}.

Impact on the electorate

49. The High Court has recognised that Parliament has expressly provided case tribunals with a power to interfere with the will of the electorate and that such 'interference' may be necessary to maintain public trust and confidence in the local democratic process. Tribunals should be confident in their right to disqualify members whose conduct has shown them to be unequal to fulfilling the responsibilities vested in them by the electorate.
50. Suspension has the effect of temporarily depriving the electorate of local representation whereas disqualification triggers a process, either by-election or co-option, to replace the disqualified member. Tribunals should consider the validity of imposing a disqualification as an alternative to suspension in order to avoid the electorate being left without adequate representation or an authority being inquorate.

Timing of local elections

51. In general, the length of a disqualification should be determined in relation to the nature of the breach and circumstances of the case, and be applied irrespective of the imminence or otherwise of local elections. There may be exceptional times when the duration of a disqualification might have a particularly disproportionate effect on the Respondent/Appellant. For example: a disqualification of 18 months, imposed in December 2020, would prevent a Respondent/Appellant from standing for local government election until May 2027, as the period of disqualification would overlap the May 2022 elections by one month. Tribunals should be willing to hear submissions as to why the length of disqualification should be varied, whilst bearing in mind the overriding public interest principle.

Automatic disqualifications

52. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more (whether suspended or not). That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the case tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification. Nor, if the matter does come before a case tribunal, should the view be taken that because a Court has imposed a sentence of 3 months imprisonment or longer that the maximum disqualification should automatically be imposed. The same facts as might give rise to such an outcome from criminal proceedings might not usually attract a five-year disqualification by a case tribunal.

Confirming the sanction

53. Tribunals should confirm their final determination on sanction, notifying the hearing and recording it in the decision notice. Tribunals will make sure that the reasons for their determination, including any significant mitigating and aggravating factors, are included in the full written record of proceedings in order to ensure that the parties and the public are able to understand its conclusions on sanction.

Recommendations

54. Case tribunals also have the power to make recommendations^{xv} to the relevant authority whose Code it has considered about any matters relating to:
- the exercise of the authority's functions
 - the authority's Code of conduct;
 - the authority's standards committee.
55. The authority to whom the recommendations are made is under a duty to consider them within three months and then prepare a report for the Ombudsman outlining what the action it, or its Standards Committee, has taken or proposes to

take. If the Ombudsman is not satisfied with the action taken or proposed, it has the power to require the authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them. As such, tribunals are advised to consider their use of this power with care.

Interim Tribunals – determining sanction

56. Interim case tribunals will decide, after considering a report (including any recommendation) from the Ombudsman on an ongoing investigation into alleged misconduct, whether to suspend or partially suspend, the member or co-opted member from the authority or a role within the authority.

57. Unlike case and appeal tribunals, interim tribunals are not disciplinary. Interim tribunals aim to:

- facilitate the Ombudsman's effective and expeditious investigation of the respondent's conduct;
- minimise any disruption to the business of the authority concerned during the investigation;
- maintain the reputation of the authority concerned;
- protect the authority concerned from legal challenge.

58. The powers available to an interim case tribunal^{xvi} are to suspend the Respondent, wholly or partially from being a member or co-opted member of the authority concerned, for not more than six months (or, if shorter, the remainder of the member's term of office). In the case of a partial suspension, the interim case tribunal will need to decide from what activity the respondent is to be suspended.

Purpose and process

59. Interim case tribunals recognise that no definitive finding has yet been made on the validity of the allegations about the Respondent and that any form of suspension can have a significant impact on a member's role, credibility and finances.

60. Interim case tribunals will therefore seek to take the minimum action necessary to ensuring the effective completion of the investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The tribunal will only decide on full suspension if its aims cannot be met otherwise.

The nature of the allegation(s)

61. Interim case tribunals will start by considering the nature of the allegations against the Respondent in order to decide whether, if the allegation were substantiated, a suspension or partial suspension would be an appropriate sanction.

No action

62. If the tribunal concludes that neither suspension nor partial suspension would follow a finding of breach, it is highly unlikely to make such an order without compelling reasons as to why the Ombudsman's investigation cannot effectively proceed without such action.
63. If the tribunal concludes that a finding on breach would result in a suspension or partial suspension, it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the Ombudsman completing his investigation and referring a final report to the Adjudication Panel for Wales.

Partial Suspension

64. Partial suspension offers the possibility of safeguarding public confidence in an authority and enabling it to function effectively without depriving the member's constituents of ward representation. Interim case tribunals may wish to draw on the principles that apply to case and appeal tribunals' approach to partial suspension.
65. Partial suspension may be appropriate in circumstances where:
- 65.1 the Respondent is a member of two (or more) relevant authorities but the allegations are specific to one authority only - the Respondent may be suspended from that authority without impacting on the others;
 - 65.2 the allegations are directly relevant to and inconsistent with a specific function or area of responsibility held or the Respondent exercises executive functions for the authority whose Code s/he is alleged to have breached or— the Respondent may be precluded from their specific or executive responsibilities in order to reassure public confidence whilst not undermining the authority's ability to function effectively or depriving the electorate of their representation.

Suspension

66. Suspension is likely to be appropriate if there is a legitimate concern as to any of the following:
- the Respondent may interfere with evidence or with witnesses relevant to the matter under investigation;
 - the business of the authority concerned cannot carry on effectively if the Respondent were to continue in office whilst the allegation against him or her remained unresolved – the tribunal will have particular regard to any breakdown or potential breakdown in relations between the Respondent, other members and/or key staff of the authority;
 - the allegations raise issues of such gravity that they jeopardise public confidence in the authority concerned if the Respondent were to continue in office whilst the allegations remained unresolved.

Annex: other documents and guidance relevant to tribunals

Adjudication Panel for Wales : Members Handbook (2017)

Public Services Ombudsman for Wales –The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016)

Equal Treatment Bench Book, Judicial College (as amended)

The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)

ⁱ Section 75(10) of the Local Government Act 2000 (“the 2000 Act”) provides a power for the President of the Adjudication Panel for Wales to issue guidance on how its tribunals are to reach decisions

ⁱⁱ The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

ⁱⁱⁱ The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf and

www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf

^{iv} Nolan Report “Standards of Conduct in Local Government in England, Scotland and Wales

^v The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf

^{vi} The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

^{vii} Part III, Local Government Act 2000

^{viii} Reference to the report on enforcement

^{ix} Section 79, Local Government Act 2000

^x <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

^{xi} Wilkie J in the case of Sanders v Kingston No (1) [2005] EWHC 1145

^{xii} Section 80(1)(d), Local Government Act 1972

^{xiii} Section 79, Local Government Act 2000

^{xiv} <http://gov.wales/irpwsb/home/?lang=en>

^{xv} Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

^{xvi} Section 78(1), Local Government Act 2000