



County Hall
Rhadyr
Usk
NP15 1GA

21st August 2014

Notice of meeting:

Standards Committee
Monday 1st September 2014 at 10.00am
Council Chamber, County Hall, Rhadyr, Usk, NP15 1GA

Agenda

Item No	Item
1.	Election of Chairman
2.	Appointment of Vice Chairman
3.	Apologies for absence.
4.	Declarations of Interest
5.	To confirm and sign the minutes of the meeting held on 7 th March 2014 (copy attached).
6.	Reports of the Monitoring Officer (copies attached): <ul style="list-style-type: none">i) Guidance to members serving on other bodiesii) Ombudsman Annual Report and Letter 2013/14iii) Recent Cases and Decisions
7.	To note the date and time of next meeting: Monday 8 th December 2014 – 10.30am

Paul Matthews

Chief Executive

Standards Committee Membership

Independent Representatives: Mrs P Reeves, Mr T.Auld, Mr.G.Powell, Mr. G. Preece, Mr. M. Sutton

Councillors: County Councillor D.J.Evans
County Councillor R. P. Jordan
County Councillor D.L.Edwards

Community Representative: Mrs I. Cameron

Sustainable and Resilient Communities

Outcomes we are working towards

Nobody Is Left Behind

- Older people are able to live their good life
- People have access to appropriate and affordable housing
- People have good access and mobility

People Are Confident, Capable and Involved

- People's lives are not affected by alcohol and drug misuse
- Families are supported
- People feel safe

Our County Thrives

- Business and enterprise
- People have access to practical and flexible learning
- People protect and enhance the environment

Our priorities

- Schools
- Protection of vulnerable people
- Supporting Business and Job Creation

Our Values

- **Openness:** we aspire to be open and honest to develop trusting relationships.
- **Fairness:** we aspire to provide fair choice, opportunities and experiences and become an organisation built on mutual respect.
- **Flexibility:** we aspire to be flexible in our thinking and action to become an effective and efficient organisation.
- **Teamwork:** we aspire to work together to share our successes and failures by building on our strengths and supporting one another to achieve our goals.

MONMOUTHSHIRE COUNTY COUNCIL

**Minutes of a meeting of the Standards Committee held at County Hall, Usk,
on Friday 7th March 2014 at 10.30 a.m.**

PRESENT:

Mrs P Reeves (Chairman)
County Councillors D. Edwards, D. Evans and P. Jordan

INDEPENDENT REPRESENTATIVES:

Mr T. Auld, Mr G. Preece and Mr. M. Sutton

OFFICERS PRESENT:

Mr. S.M.W. Andrews- Monitoring Officer
Mrs. S. King - Democratic Services Officer

1. APOLOGIES FOR ABSENCE

Apologies were received from County Councillor R.P. Jordan and Mr. T. Auld.

2. DECLARATIONS OF INTEREST

County Councillor D. Evans declared a personal and prejudicial interest, pursuant to the members' code of conduct, in relation to item 6 as a member of Caldicot Town Council. Councillor Evans left the meeting whilst the item was considered.

3. MINUTES

We resolved that the minutes of the meeting held on 13th January 2014 be confirmed as a correct record and signed by the Chairman.

4. REPORTS FOR INFORMATION

The Monitoring Officer presented the following reports, for information:

i) IRPW SUPPLEMENTARY REPORT ON CO-OPTEDS

We received a Supplementary Report of the Independent Remuneration Panel for Wales in accordance with Section 147 of the Local Government Measure (Wales) 2011. The report related to payments made to co-opted members of Principal Authorities, National Park Authorities and Fire and Rescue Authorities, who have the right to vote.

The committee were invited to indicate whether a meeting is a full or half day, for payment purposes. Guidance was requested in relation to preparation issues and an indication of time planned for the meeting.

During discussion we noted the following points:

**Minutes of the Standards Committee
Friday 7th March 2014 at 10.30 a.m.**

- The general consensus was that members required 2/3 hours to prepare for a meeting, but, some meetings required additional time or a half day.
- The Monitoring Officer advised that it would be difficult for the length of a meeting (full or half day) to be specified in advance, however, it was recognised that meetings to consider hearings would take more preparation time.
- It was noted that the issue was being discussed across Wales and the Chairman welcomed views from others.

We noted the report.

ii) APW ANNUAL REPORT 2012-13

We received the Adjudication Panel for Wales Annual Report, which reviewed the work of the panel during the financial year 2012-13.

We noted the report.

5. EXCLUSION OF PRESS AND PUBLIC

We resolved to exclude the press and public from the meeting during consideration of the following item of business in accordance with Section 100A of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 12 of Part 4 of Schedule 12A to the Act.

6. SHORTLIST COMMUNITY COMMITTEE MEMBER

We considered applications for the Community Committee member and agreed a shortlist for interview.

7. READMISSION OF PRESS AND PUBLIC

We resolved that the press and public be re-admitted to the meeting for the following item of business as it did not involve the likely disclosure of exempt information in accordance with Section 100A of the Local Government Act 1972.

8. DATE AND TIME OF NEXT MEETING

We agreed that the date and time of the next meeting would be **Monday 9th June 2014 at 10.30am.**

The committee thanked the Monitoring Officer for his support and wished him well for his retirement.

The meeting ended at 12.30pm



SUBJECT: Guidance to members serving on other bodies
MEETING: Standards Committee
DATE: 1 September 2014
DIVISION/WARDS AFFECTED: All

1. PURPOSE:

Members are asked to consider a review of Guidance for Councillors appointed to represent the Council on other bodies

2. RECOMMENDATIONS:

Members consider the attached draft Guidance for issue to all members.

3. KEY ISSUES:

Each year the County Council makes over 100 appointments to so-called “outside bodies”. The Council’s Code of Conduct for members requires that a member must observe the Council’s Code of Conduct whenever they are acting as a representative of the Authority.

The Code of Conduct requires that:

Where you are elected, appointed or nominated by your authority to serve —

(a) on another relevant authority, or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or

(b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

Whilst officers are available to give advice to members as to their responsibilities and ACSeS has produced a “Toolkit”, no formal guidance has been issued to members. The recent review of the County Council’s constitution has led me to consider a number of policies, protocols and guidance. Flintshire County Council has recently adopted a more formal document. Drawing from that and the older toolkit I have attached the draft of advice that the committee is asked to consider and approve for issue to all members of the Council

4. REASONS:

The Standards committee is charged with monitoring the operation of the Council’s Code and assisting members and co-opted members in observing its requirements.

5. RESOURCE IMPLICATIONS:

None

6. SUSTAINABLE DEVELOPMENT AND EQUALITIES IMPLICATIONS:

None.

7. CONSULTEES:

None

8. BACKGROUND PAPERS:

The County Council's Code of Conduct for Members

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Guidance for Members

Serving On

Outside Bodies

Introduction

This guidance draws attention to the main issues which Members should consider when appointed to serve on outside bodies. In the context of this guidance an outside body is a non-statutory organisation which may be a charity, or it may be incorporated as a company (either limited by shares or guarantee), or it may be a friendly society or it may be unincorporated.

Service on outside bodies has always been an established part of a Member's role. An appointed Member on an external body will be able to use their knowledge and skills as a Council Member to assist the organisation to which they are appointed. As the Council increasingly works in partnership with external organisations greater clarity is needed as to the role of Members appointed to these bodies. Funding streams channelled through the Council as the accountable body may benefit outside bodies, giving rise to questions of accountability and governance.

Membership of an outside body brings into play different considerations to those which relate to Council membership. Members will have different duties, obligations and liabilities depending upon the type of organisation involved.

Matters to consider before appointment

Membership on outside bodies can take various forms and before taking up and accepting membership it would be prudent to establish the capacity in which you are appointed. This may be either:-

- As a member of the management committee, board of directors, committee of trustees of the outside body. Here you will not only be representing the interests of the Council but you will also have duties to the outside body and a role in its governance. You will have detailed responsibilities which are outlined further in this guidance (see section on directors duties); or
- As a member of an outside body where you represent the Council's position as a 'member' of the outside body but take no part in its management or governance other than to attend and vote at annual or general meetings. Here you will be mainly concerned with representing the Council and will not have responsibilities for governance of the body.

The main issues:

- The application of the Council's Code of Conduct
- The primary duty to act in the interests of the outside body
- Duties as a charity trustee (if applicable)
- Duties as a company director (if applicable)
- Liabilities in respect of unincorporated organisations
- Conflict with the Member's role as a Councillor

Code of Conduct Register of Interests

The Code of Conduct requires that –

15. (1) *Subject to sub-paragraph (3), you must, within 28 days of—*
- (a) *your authority’s code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or*
 - (b) *your election or appointment to office (if that is later),*
register your financial interests and other interests, where they fall within a category mentioned in paragraph 10(2)(a) in your authority’s register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to your authority’s monitoring officer.
- (2) *You must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under sub-paragraph (1), register that new personal interest or change by providing written notification to your authority’s monitoring officer.*
- (3) *Sub-paragraphs (1) and (2) do not apply to sensitive information determined in accordance with paragraph 16(1).*
- (4) *Sub-paragraph (1) will not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.*

Matters to check – questions to ask

Members are advised that in the event of being appointed to an outside body they should be clear about the answers to the following questions:-

1. What is the nature of the organisation and its main activities? Is it a company, if so what type of company is it (limited by shares or guarantee)? Is it unincorporated? Does it have charitable status?
2. In what capacity do I serve on the outside body? Is the effect of my appointment to make me a member of the company, a director or a charitable trustee?
3. Do I have a copy of the body’s governing instrument (this may be a trust deed, a constitution or memorandum and articles of association)?
4. Have I been supplied with a copy of any code of conduct to which I am subject as a member of the body?
5. Am I aware of the identity of other directors, trustees or committee members?
6. Is there an officer of the body such as a secretary or clerk to whom I can refer?
7. Are written minutes kept of meetings and have I seen these minutes?
8. Are meetings being conducted in accordance with the governing instrument?
9. Am I aware of the financial position of the organisation to which I have been appointed? Have I seen the business plan?

10. Am I aware of any contracts between the body and the Council? Any general declarations of interest should be made at the first meeting.
11. Do the governing body of the organisation receive regular reports on the financial position?
12. Have I seen the last annual report and accounts? Does the board or management committee receive regular financial and other reports which detail the current financial situation of the organisation and any liabilities?
13. Am I aware and have I been advised of the main risks the body faces and what steps are taken to deal with such risks?
14. Have I been informed of the main insurances held by the body? Is there any indemnity in place?

Council's Code of Conduct

The Council's Code of Conduct requires that a Member must observe the Council's Code of Conduct whenever the Member is acting as a representative of the Authority.

The Code of Conduct also states –

3. Where you are elected, appointed or nominated by your authority to serve —

- (a) on another relevant authority, or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or*
- (b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.*

Directors Duties

If the body is a limited company, it is likely that you will be appointed as a company director. You will need to complete a form giving your details for filling in the Register of Companies at Companies House. The secretary of the body should assist you with this.

Duties of the company directors are not the same as your responsibilities as a Councillor. These duties can be summarised as follows:-

1. A fiduciary duty to the company, not to the individual shareholders or members, to act honestly and in good faith and in the best interests of the company as a whole. Directors are, therefore, in a similar position to trustees who must take proper care of the assets of the company.

2. A general duty of care and skill to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
3. Like a councillor in respect of council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him/her to take into account the interests of the third party which he/she represents. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented. The director cannot vote simply in accordance with the Council mandate: to do so would be a breach of duty.
4. There may be actual or potential conflicts between the interests of the Council and the interests of the company. For example, the company might be inflating a bid for a council grant. In such rare circumstances the only proper way for the conflict to be resolved is for the Councillor to resign either from the company or from the Council.
5. Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family have in relation to the company's contracts. Whether they are then allowed to vote will depend upon the company's Articles of Association.
6. Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.
7. They should also ensure compliance with other legislation such as health and safety and equalities legislation if the company employs staff or employs contractors to undertake works.

Charitable Trustees

A number of useful publications are available on the Charity Commission's website at: www.cjarity.commission.gov.uk See Publication CC3 – "Responsibility of Charity Trustees" is a useful reference document. Those who are responsible for the control and administration of a charity are referred to as trustees, even where the organisation is a company limited by guarantee even though they are not strictly trustees.

A charity may also be unincorporated (see below).

The duties of charity trustees can be summarised as follows:-

- (1) Trustees must take care to act in accordance with the charity's trust deed or governing document and to protect the charity's assets. They are also responsible for compliance with the Charities' Acts and the Trustee Act 2000.
- (2) Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals and in relation to investment matters.

- (3) Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- (4) If charitable income exceeds £10,000 the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.
- (5) Trustees are under a duty to ensure compliance with all relevant legislation, for example, in relation to tax and health and safety.

Unincorporated Organisations

Groups which are not limited companies may be “unincorporated associations” which have no separate identity from their members. The rules governing the Members’ duties and liabilities will (or should) be set out in a constitution, which is simply an agreement between Members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management Committee members must act within the constitution and must take reasonable care when exercising their powers.

Members who are involved in the administration of an unincorporated body will need to be aware that as the body has no separate corporate status, any liabilities will fall upon the Members personally. Members need to assess the risk of personal liability and the extent to which this has been covered by insurance agreements.

Conflicts of interest and bias

In general terms the purposes of the body and what it wants to do often coincide with the Council’s interest and so conflicts may be rare. However, under the members’ code of conduct, members appointed to an outside body will have a personal interest in that body and will need to consider their position when they sit on a council committee or decision making body which is considering a matter to which that interest relates.

A personal interest will always need to be declared. Whether the Member is required to leave the meeting and not take any further part in a discussion depends on whether that Member has a “prejudicial interest” under the Code of Conduct.

The Code provides that a Member may regard himself as not having a prejudicial interest in a matter if it relates to a body to which he has been appointed or nominated by the Authority as its representative.

Even though the Code of Conduct may appear to allow participation by a Member with a personal and prejudicial interest as an appointed member of an outside body, some care needs to be taken, as for certain types of decision there is the possibility that participation may amount to a decision being affected by “bias”.

Members should not participate in planning and licensing decisions relating to an outside body to which they have been nominated or elected as they will have a personal and prejudicial interest in respect of their membership. Failure to declare the interest and

withdraw from the meeting could lead to a decision being challenged in the Courts or result in a complaint to the Local Government Ombudsman.

There may however be occasions when it would be right for a Member to take part in a discussion. For example, where there was a general discussion on the role of an outside body, it is clearly in the public interest that the Council's representative should be able to speak and the Code enables that to happen. Where a decision was being taken which might directly affect the well being of the financial position of the outside body it is suggested that further advice is sought from the Monitoring Officer.

Confidential Information

Confidential information must be treated with care and if you have any doubt over the status of any information then you should keep that confidential and check with the relevant officer, whether or not it is something which is already in the public domain or which may be disclosed.

The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will also be a breach of the Members Code of Conduct.

Under the Code you must not:

- disclose information given to you in confidence by anyone, or information acquired which you believe is of a confidential nature, without the consent of a person authorised to give it, or unless you are required by law to do so;
- prevent another person from gaining access to information to which that person is entitled by law.

Disclosing confidential information may also contravene other parts of the Code e.g. it may be regarded as bringing the Member or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage for the Member or any other person; and in some cases knowledge may give someone a personal interest.

Involvement and Reporting

Members appointed to an outside body should ensure that they take a proper role in the management and governance of the body. This will include attending meetings regularly and being familiar with issues relating to the body.

It is recommended that a Member appointed as the Council's representative should consider the need to make reports to the Council on the progress being made by that body and any issues which the Council should consider.

Further Advice

Relationships between the Council and outside bodies and the Council's representative can involve complex issues. In any case of dispute or difficulty advice should be sought from the Monitoring Officer.



SUBJECT: Ombudsman Annual Report and Letter 2013/14
MEETING: Standards Committee
DATE: 1 September 2014
DIVISION/WARDS AFFECTED: All

1. PURPOSE:

The Public Services Ombudsman for Wales publishes an Annual Report covering both maladministration and conduct complaints across Wales and an annual letter to individual authorities on their performance.

2. RECOMMENDATIONS:

Members receive the attached report and annual letter and consider any observations that they may wish to make to the County Council.

3. KEY ISSUES:

The Annual Report (attached) of the Public Services Ombudsman for Wales (PSOW) has recently been published for 2013/14 by Margaret Griffiths, the Acting Ombudsman since December 2013. Nick Bennett, previously the Chief Executive of Community Housing Cymru, took up his post as the new Ombudsman at the beginning of August.

The Annual letter to the County Council (also attached) draws on the Report showing that there has been an overall increase in maladministration complaints across Wales but a decrease of 22% in Code of Conduct complaints, attributable, in part to new resolution procedures. The penultimate paragraph of the letter comments on Monmouthshire's performance including a note of a satisfactory response rate to requests for information and a significant reduction in the number of complaints received in respect of Planning and Building Control, compared to the previous year of report.

4. REASONS:

The Standards committee is charged with ensuring the Council's complaints procedures operate effectively and publishing an annual report on the operation of the system.

5. RESOURCE IMPLICATIONS:

None

6. SUSTAINABLE DEVELOPMENT AND EQUALITIES IMPLICATIONS:

None.

7. CONSULTEES:

None

8. BACKGROUND PAPERS:

None

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MAKING A DIFFERENCE



The Annual Report 2013/14

of

The Public Services Ombudsman for Wales

Laid before the National Assembly for Wales
under paragraph 14 of Schedule 1
of the Public Services Ombudsman (Wales) Act 2005



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1. Introduction by the Acting Ombudsman



Margaret Griffiths
Acting Ombudsman
(from December 2013)

This is the eighth Annual Report of the Public Services Ombudsman for Wales (PSOW) since the inception of the office in April 2006. I am pleased to introduce this report for the year 2013/14 as Acting Ombudsman, having taken on the role in December 2013.

I was appointed as Acting Ombudsman following Peter Tyndall's departure at the end of November 2013, when he left to take up a new role as Irish Ombudsman and Information Commissioner. I will remain as Acting Ombudsman until such time as the new Ombudsman is able to take office.

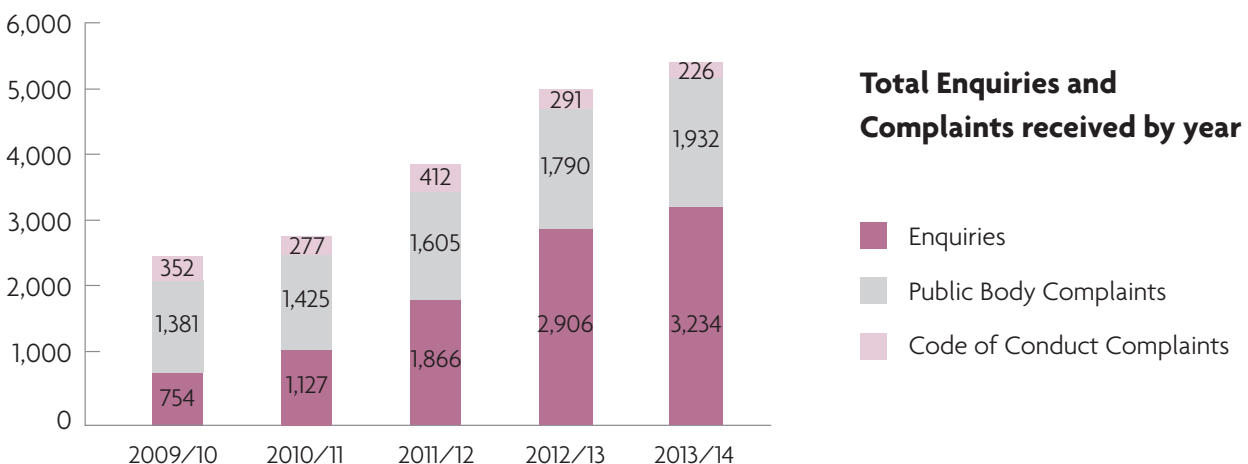


Peter Tyndall
Ombudsman
(to November 2013)

The Public Services Ombudsman for Wales is appointed by the Crown on the recommendation of the National Assembly for Wales. Nick Bennett – currently the Chief Executive of Community Housing Cymru – has been nominated by the National Assembly for Wales as the next Public Services Ombudsman for Wales. At the time of writing, royal approval for Mr Bennett's appointment is being sought.

An ever-increasing caseload

The upward trend in enquiries and complaints to this office has been a recurrent theme in the Annual Reports of previous years; 2013/14 is no different. As the chart (below) demonstrates, the past year saw another notable rise. Looking back over a period of five years the office has seen a 117% increase in all contacts (that is, enquiries, public body complaints, and complaints about the conduct of members of local authorities).



It is a tribute to the staff of this office that they have 'held their own' in dealing with cases in a timely way, not only in the face of the continued increase in caseload but also during what has been an unsettling period for them in the latter part of the year, with the departure of the Ombudsman, the appointment of an Acting Ombudsman, and anticipation of the appointment of the new, permanent Ombudsman. I will take the opportunity here to thank all of the staff of the office for making me feel so welcome, for their professionalism, and for the support that they have provided to me since taking up my role as Acting Ombudsman.

The increase in complaints received is a matter of concern. Health complaints continue to be at the core of that concern, having increased by another 11% on the position at the end of 2012/13, and being a 146% increase over the past five years. The rise can be attributed to a number of factors: a reflection of the increased number of episodes of procedures and treatments available giving rise to a greater scope for things to go wrong; people's increased expectations together with a greater propensity to complain; and local health boards and trusts not responding appropriately to a proportion of those complaints (a matter I address further below). However, there can be no denying that it is also an indication that increasingly health service delivery is not what it should be.

However, another area of concern this year has been the increase in social services complaints. Although starting from a much lower base in terms of number of complaints compared to health, there was a 19% increase in social services complaints against the position in 2013/14. It is timely to reflect on this situation now, before the introduction of the new areas to the Ombudsman's jurisdiction as a result of the Social Services and Well-being (Wales) Bill and the changes to the statutory social services complaints procedure. It will be important when monitoring the level of social services complaints to this office not to automatically assume that any increases are merely due to these jurisdictional changes.

Making a Difference

Statistics by their very nature are somewhat impersonal. It is crucial that we do not lose sight of the human experiences that lie behind them. Every complaint equates to a person who has felt aggrieved in some way about public service delivery. The summaries of our public interest reports (see Annex A) give some perspective on this.

Over and above putting things right for the individual we also seek to make a difference through driving improvement in public service delivery by sharing the lessons from our investigations. Our public interest reports and the Ombudsman's Casebook are key tools in this aim, with the latter being well received by bodies in jurisdiction in particular.

The casework of this office can be a good barometer. It can indicate where the pressures lie in public service delivery, as evidenced in the rise of the health complaints for example. We have a unique overview of public service delivery in Wales derived from the views of members of the public who have been dissatisfied with the service they have received. Whilst we respond to National Assembly

and Welsh Government consultations where that is appropriate, public policy makers are encouraged to proactively engage with this office so that any indicators or lessons from our casework can be taken into consideration at an early stage.

The complaint handling landscape in Wales

The PSOW has over a number of years promoted the concept that all public service providers in Wales should adopt a common approach to dealing with complaints. The NHS's 'Putting Things Right' procedure and the Model Concerns and Complaints policy were developed in tandem and both use a two stage process (one informal stage and one formal investigation stage), with complainants, if remaining unhappy, then being able to complain to the Ombudsman. We welcome the fact that the last jigsaw piece to this common approach landscape will soon be slotted into place. In particular, this will now enable complaints involving more than one public service provider to be dealt with effectively, with complainants receiving one comprehensive response from the service provider which has taken the lead on co-ordinating the multi-faceted complaint investigation.

The way complaints are being handled, particularly health complaints, has featured prominently in public discussion during 2013/14. It is the clear view of this office that it is not with the process itself that the problem lies. Rather, it lays with the culture within health bodies and their attitude towards dealing with complaints. Some health boards are insufficiently resourced and there is often a lack of active backing for those managing complaints from senior managers and boards. This means that complaint handling staff are sometimes unable to secure appropriate and timely responses from those who are parties to the subject of the complaint under investigation. The investigations undertaken by this office have time and time again revealed occasions where complaints have not been dealt with in a sufficiently robust manner; for example, independent clinical expertise has not been sought when cases are sufficiently serious in their nature to warrant it. There is also a need for health board members to provide suitable challenge to management and to hold senior managers to account for not responding promptly and appropriately to any identified failures.

Finally, the oversight of the complaints function across public service providers in Wales is limited. During 2013/14, it was not possible to gather comparable statistics on numbers, types or outcomes of complaints made to county/county borough councils or health boards. Both Putting Things Right and the Model Concerns and Complaints Policy make provision for this. However, such data is not currently being collected or analysed at an all-Wales level. This is a valuable source for greater understanding of how well services are being delivered by various bodies, offering opportunities to learn from each other, and indeed to understand how these bodies are dealing with complaints. This is something that the Welsh Government, and the National Assembly for Wales with its scrutiny role, may wish to reflect upon.

Future considerations

Towards the end of his time in office, Peter Tyndall set out his view that, with the tenth anniversary of the establishment of the Public Services Ombudsman (Wales) Act 2005 on the horizon, it was timely to review the legislation under which the Ombudsman operated. He pointed to a number of areas which warranted consideration - for example 'own initiative' powers, which are now common amongst the remits of ombudsmen in Europe and elsewhere in the world. These views are ones that I share, and I hope that the National Assembly for Wales will give further consideration to the proposal that the Act should be reviewed.

Consideration will also need to be given to the implementation of the European Union Consumer Alternative Dispute Resolution (ADR) Directive (implementation date is July 2015). The Directive imposes a requirement on EU member states to offer effective access to ADR services for resolving contractual disputes between consumers and businesses concerning the sale of products and services. The Ombudsman Association has been giving this issue close attention. Although responsibility for meeting the requirements of the Directive largely falls to the UK Government, it is also something that we need to give attention to in Wales, including in the context of the possibility of greater devolved powers to the National Assembly.

Peter Tyndall

Finally, I wish to end this introduction by paying tribute to my predecessor, Peter Tyndall. He undertook his role with commitment and integrity, and ensured his independence as Ombudsman. He developed an efficient office, which was crucial in the face of the increasing caseload. He also introduced and facilitated a number of innovations in the complaints handling landscape. These gained recognition within the international Ombudsman community, but more importantly they have made the process of complaining to, and about, public services easier for people living in Wales.



Margaret Griffiths
Acting Ombudsman

2. The Role of the Public Services Ombudsman for Wales

The Public Services Ombudsman for Wales has two specific roles. The first is to consider complaints made by members of the public that they have suffered hardship or injustice through maladministration or service failure on the part of a body in jurisdiction. The second role is to consider complaints that members of local authorities have broken the Code of Conduct.

Complaints about public bodies in Wales

The bodies that come within jurisdiction are generally those that provide public services where responsibility for their provision has been devolved to Wales. More specifically, the organisations the Ombudsman can look into include:

- local government (both county and community councils);
- the National Health Service (including GPs and dentists);
- registered social landlords (housing associations);
- and the Welsh Government, together with its sponsored bodies.

When considering complaints about public bodies in Wales, the Ombudsman looks to see whether people have been treated unfairly or inconsiderately, or have received a bad service through some fault on the part of the public body. Attention will also be given as to whether the public body has acted in accordance with the law and its own policies. If a complaint is upheld the Ombudsman will recommend appropriate redress. The main approach taken when recommending redress is, where possible, to put the complainant (or the person who has suffered the injustice) back to the position they would have been in if the maladministration had not occurred. Furthermore, if from the investigation the Ombudsman sees evidence of a systemic weakness, then recommendations will be made with the aim of reducing the likelihood of others being similarly affected in future.

Investigations are undertaken in private and are confidential. When the Ombudsman publishes a report, it is anonymised to protect (as far as possible without compromising the effectiveness of the report) the identity not only of the complainant but also of other individuals involved.

The Public Services Ombudsman (Wales) Act 2005 provides two ways for reporting formally on investigations. Reports under section 16 of the Act are public interest reports and almost all are published. The body concerned is obliged to give publicity to such a report at its own expense. Where the Ombudsman does not consider the public interest requires a section 16 report (and provided the body concerned has agreed to implement any recommendations made) findings can be issued under section 21 of the Act. Depending on the nature and complexity of the investigation this will sometimes be in the format of a report, or it can take the form of a letter. There is no requirement on the body concerned to publicise section 21 reports or letters.

Occasionally, the Ombudsman needs to direct that a report should not be made public due to its sensitive nature and the likelihood that those involved could be identified. For technical reasons, such a report is issued under section 16 of the Act, even though it is not a public interest report, and the Ombudsman makes a direction under section 17 of the Act. There were five such reports issued during 2013/14.

The Public Services Ombudsman (Wales) Act 2005 also gives the Ombudsman the power to do anything which is calculated to facilitate the settlement of a complaint, as well as or instead of investigating it. In the right circumstances, a 'quick fix' without an investigation can be of advantage to both the complainant and the body concerned. We have been keen to see greater use made of this power over recent years and seek to identify as many cases as possible that may lend themselves to this kind of resolution (see page 15 for further details).

Complaints that members of local authorities have broken the Code of Conduct

The Ombudsman's role in considering complaints alleging that members of local authorities have broken the Code of Conduct is slightly different to that in relation to complaints about public bodies. This type of complaint is investigated under the provisions of Part III of the Local Government Act 2000 and also relevant Orders made by the National Assembly for Wales under that Act.

Where it is decided that a complaint should be investigated, the Ombudsman can arrive at one of four findings:

- (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 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) or (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, together with any defence put forward by the member concerned. Further, it is for them to determine whether a breach has occurred and, if so, what penalty, if any, should be imposed.

3. Complaints of maladministration and service failure

Headline figures

- We received 3,234 enquiries, **up 11%** on 2012/13.
- We received 1,932 new complaints, **up 8%** on 2012/13.
- We achieved 214 quick fixes/voluntary settlements, **up 21%** on 2012/13.
- We issued 245 investigation reports, **up 2%** on 2012/13.
- We closed 1,926 cases, **up 12%** on 2012/13.
- We had 393 cases on hand at 31 March 2014, **up 3%** on 2012/13.
- We had 1 investigation more than 12 months old open at 31 March 2014.

Caseload – overall position

The number of complaints about public bodies that we receive continues to increase. As the figures in the table below indicate, the overall level of new complaints has increased by 8% compared to the position for 2012/13.

	Total Number of Complaints
Cases carried over from 2011/12 (includes Code of Conduct complaints)	455
New public body complaint cases 2012/13	1,790
Total complaints 2012/13	2,245
Cases carried over from 2012/13 (includes Code of Conduct complaints)	382
New public body complaint cases 2013/14	1,932
Total complaints 2013/14	2,314
Cases to be carried forward to 2014/15 (includes Code of Conduct Complaints)	393

In addition, the office dealt with 3,234 enquiries during 2013/14, compared with 2,906 the previous year.

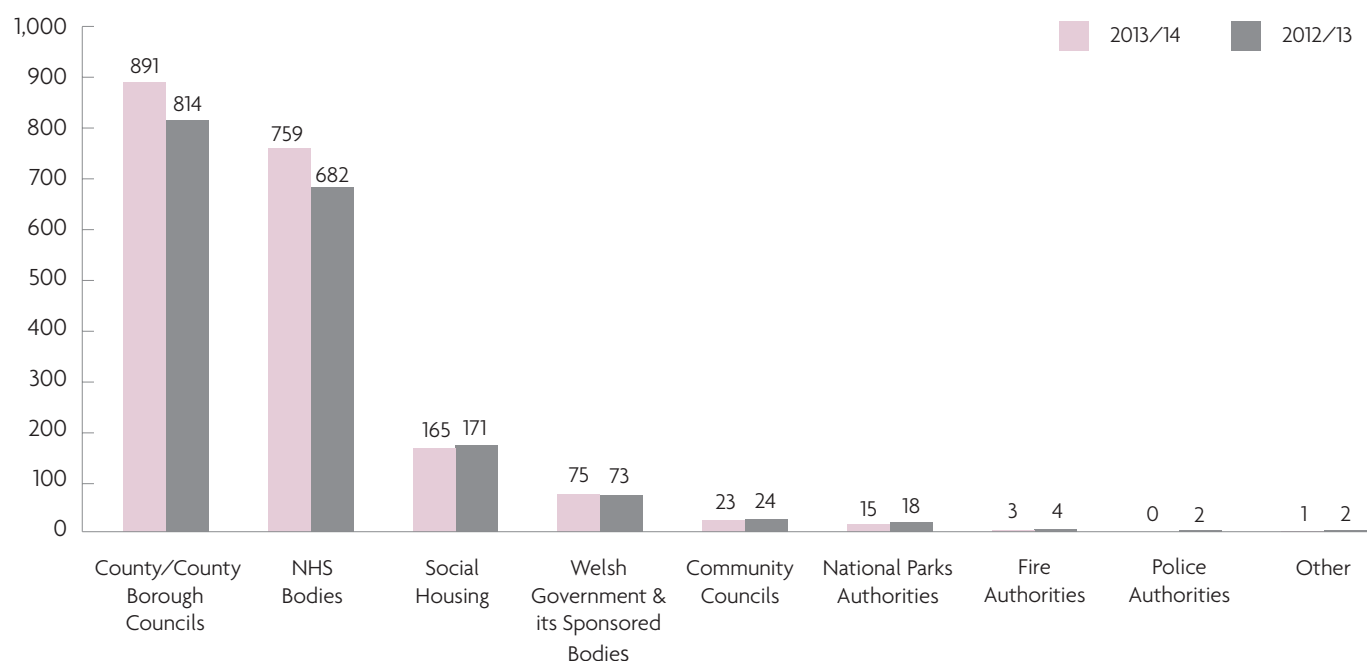
The number of complaint cases on hand at the end of 2013/14 stood at 393 (compared with 382 at the end of 2012/13). As a caseload on hand at any one time, this level is considered to be manageable; that it has been achieved against a background of a continued growth in both complaints and enquiries to the office is a testament to the dedication and commitment of the PSOW's staff.

Sectoral breakdown of complaints

The chart below shows the trends in complaints received per sector. The county council sector has always been the one which has generated the most complaints to this office. As has previously been pointed out, this is not necessarily surprising in view of the wide range of services that these councils provide. However, whilst high in number, complaints received about county councils had held at a fairly constant level over recent years and last year it was good to be able to report that there had been a slight decline. It is disappointing therefore that there has been a notable (9.5%) increase in complaints about this sector over the past year.

Also clear from the chart below is the increase in NHS complaints, which continues the significant upward trend of recent years. There was an 11% increase over the past year (759 complaints compared with 682 in 2012/13). Whilst the continued higher profile of the office, particularly in relation to its role in considering health complaints, can partly attribute for the increase, it must be deduced that the main cause is greater dissatisfaction in health service provision by those in receipt of it, with health boards then failing to deal with the complaints made to them in an effective manner.

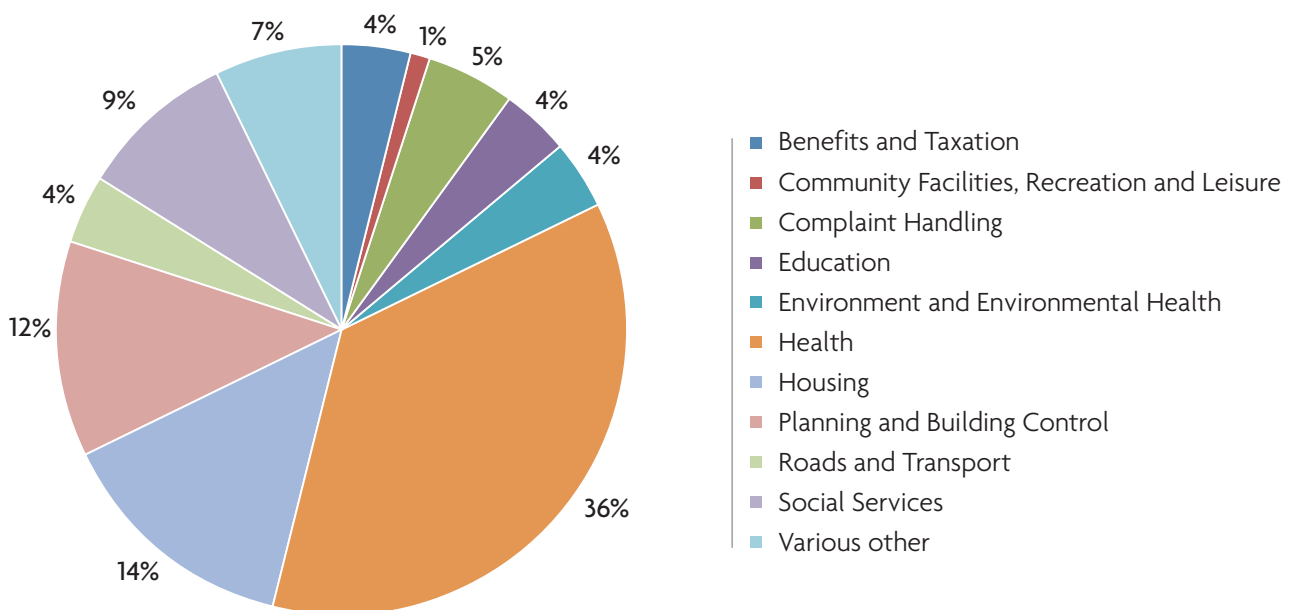
Complaints by public body sector



Complaints about public bodies by subject

As can be seen from the chart below, health complaints account for 36% of the caseload, compared with 37% in 2013/14. This very small decrease in ratio terms is due to an increase in other types of complaints received rather than a fall in the number of health complaints received (as confirmed by the details on the previous page). As has been the case in recent years, housing (14%) and planning (12%) are the service areas which account for the greatest number of complaints received after health complaints. In terms of the areas of growth however, most notable is that of social services, where comparing the number of social services complaints received in 2013/14 with 2012/13, there has been a 19% increase. This clearly is a matter of concern and suggests that service user discontent with social service provision is now beginning to manifest itself in a similar way to service users of health provision.

Complaints by subject 2013/14



[Note: Complaints are categorised by the main subject area of a complaint. However, complaints can also comprise other areas of dissatisfaction - for example, a 'Health' complaint may also contain a grievance about 'Complaint Handling'.]

Outcomes of complaints considered

An overall summary of the outcomes of the cases closed during the past year, and a comparison with the position last year is given in the table below. Complaints included in the category ‘Cases closed after initial consideration’ include those received which:

- were outside of the Ombudsman’s jurisdiction,
- were premature (that is, the complainant had not first complained to the public service provider, giving them an opportunity to put matters right),
- did not provide any evidence of maladministration or service failure,
- did not provide any evidence of hardship or injustice suffered by the complainant,
- showed that little further would be achieved by pursuing the matter (for example, a public body may have already acknowledged providing a poor service and apologised).

(A breakdown by listed authority of the outcome of complaints investigated during 2013/14 is set out at Annex B.)

Complaint about a Public Body	2013/14	2012/13
Closed after initial consideration	1,402	1,260
Complaint withdrawn	47	26
Complaint settled voluntarily (includes “quick fix” of 171 cases)	214	177
Investigation discontinued	18	21
Investigation: complaint not upheld	63	68
Investigation: complaint upheld in whole or in part	173	163
Investigation: complaint upheld in whole or in part – public interest report	9	10
Total Outcomes – Complaints	1,926	1,725

Decision times

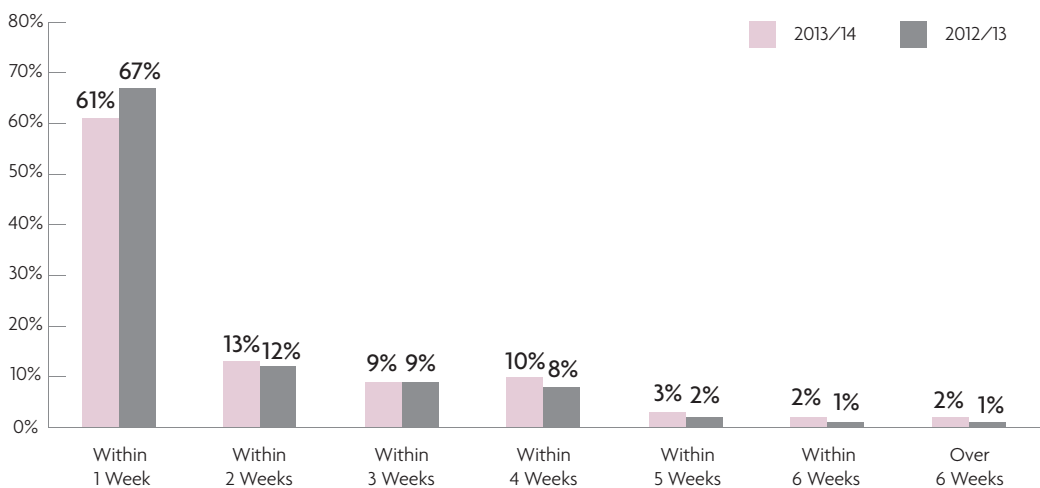
Below are two charts which report on decision times. These show how we have performed against the two key targets we have set ourselves, which are:

- at least 90% of all complainants to be informed within 4 weeks whether the Ombudsman will take up their complaint (from the date that sufficient information is received)
- to conclude all cases within 12 months from the point that a decision is made to take up a complaint (that is, to commence investigation of a complaint).

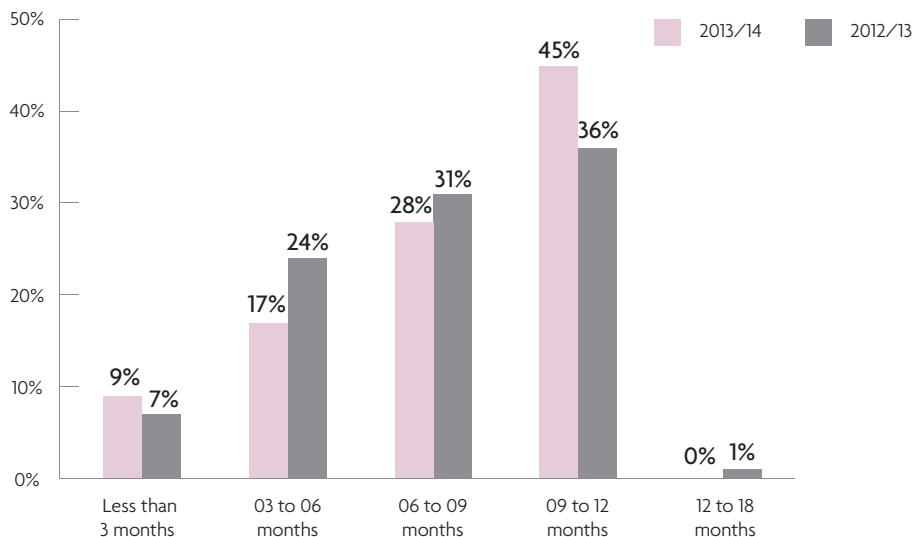
Particularly in view of the increase of enquiries and complaints to the office, it is very pleasing that we surpassed our first target and actually informed 93% of complainants within the 4 week timescale.

Performance with regard to the second target is also very satisfactory. The chart below shows that we achieved a 100% rate in completing investigations within 12 months. Nevertheless, it should be acknowledged that there is a 'rounding issue' at play here and that in fact one case did take longer than this. The relevant case was a complex one concerning continuing health care. The investigation necessitated detailed enquiries of the Welsh Government in relation to the approach taken by health boards when assessing continuing health care eligibility across Wales.

Decision times for informing complainants if complaint will be taken up



Decision times for concluding investigations of public body complaints



Complaints Advice Team

The Complaints Advice Team (CAT) continues to provide our frontline service and responds to enquiries to the office. Enquiries are contacts made by potential complainants asking about the service provided, which do not, in the end, result in a formal complaint being made to the Ombudsman. At this point of first contact, we will act in various ways, such as:

- advise people how to make a complaint to this office
- where people have not already complained to the relevant public body, we will advise them appropriately, sending their complaint directly to that body on their behalf if that is their wish
- where the matter is outside the PSOW's jurisdiction, direct the enquirer to the appropriate organisation able to help them.

It is also important to note that, where appropriate, the CAT also seeks to resolve a problem at enquiry stage without taking the matter forward to the stage of a formal complaint.

We are pleased that despite the continued increase in enquiries to this office we have been able to provide a prompt service at the frontline. We set ourselves the target of answering our main line reception calls within 30 seconds in 95% of cases. There were 7,943 main line calls to the office during 2013/14, and it is an excellent performance that 99.8% of these were answered within this timescale.

Beyond dealing with enquiries, the CAT is also charged with looking for effective, swift and innovative ways to resolve concerns when we do receive formal complaints. The team endeavours to identify ways of addressing complainants' concerns, without the need to progress matters to detailed investigation. We clearly cannot control the number of complaints coming to the office suitable for this type of resolution. However, we are pleased that we were able to achieve 171 'quick' fixes in 2013/14 compared to 150 in 2012/13. Summaries of the complaints that we are able to resolve in this way can be found in the Ombudsman's Casebook available on our website: www.ombudsman-wales.org.uk.

Joint investigations

Under the PSOW Act, the Public Services Ombudsman for Wales is able to co-operate with other Ombudsmen. It is the practice to draw attention in the PSOW's Annual Reports to any such joint investigations. However, no complaints received by the PSOW or colleague Ombudsmen in other parts of the United Kingdom have necessitated such a joint investigation over the past year.

4. Code of Conduct Complaints

Headline figures

- We received 228 new complaints, **down 22%** on 2012/13.
- We referred 6 investigation reports to either a standards committee or the Adjudication Panel for Wales, **down 70%** on 2012/13.
- We closed 229 cases, **down 38%** on 2012/13.
- We had no investigations older than 12 months open at 31 March 2014.

Complaints received

The table below gives a breakdown of the code of conduct complaints received by type of authority.

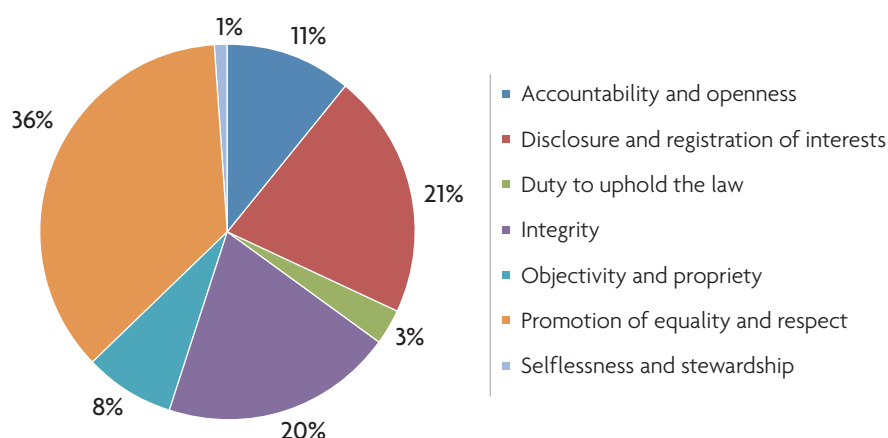
	2013/14	2012/13
Community Council	115	140
County/County Borough Council	111	150
Fire Authority	2	0
National Park	0	0
Police Authority	0	1
Total	228	291

It is particularly pleasing to see that the number of code of conduct complaints have continued to fall. The new local resolution arrangements introduced by local authorities over the past year or so is clearly having the desired effect with the decrease of 22% of complaints to this office compared with the previous year. It is now our practice under these new arrangements to refer 'low level' complaints made by one member against another, such as allegations of failures to show respect and consideration of others under paragraph 4(b) of the code, to authorities' monitoring officers to be dealt with locally.

We have also continued with the approach adopted last year of writing to the local Monitoring Officer when the Ombudsman is minded not to investigate a complaint, or, having commenced an investigation, is minded to close the case. This will arise when it is judged that even if the Standards Committee did find that there had been a breach of the Code, it would be unlikely to apply a sanction. It will then be for the Monitoring Officer to consider the matter. If they take a different view on the likelihood of the Standards Committee applying a sanction should they decide that there has been a breach of the Code, then the investigation is transferred to them for local consideration. During the past year, 16 such complaints were referred to monitoring officers, of which 1 was called in for local investigation.

Nature of Code of Conduct complaints

As in previous years, the majority of complaints received during 2013/14 related to matters of ‘equality and respect’. In 2013/14 this was 36% of the code of conduct complaints received compared to 35% in 2012/13. The next largest areas of complaint related to disclosure and registration of interests (21%), and integrity (20%).



Summary of Code of Conduct complaint outcomes

Of the Code of Conduct cases considered in 2013/14, the majority were closed under the category shown below as ‘Closed after initial consideration’. This includes decisions such as:

- there was no ‘prima facie’ evidence of a breach of the Code
- the alleged breach was insufficiently serious to warrant an investigation (and unlikely to attract a sanction)
- the incident complained about happened before the member was elected (before they were bound by the Code).

Complaint about a public body	2013/14	2012/13
Closed after initial consideration	176	283
Complaint withdrawn	12	12
Investigation discontinued	8	18
Investigation completed: No evidence of breach	10	23
Investigation completed: No action necessary	17	15
Investigation completed: Refer to Standards Committee	5	15
Investigation completed: Refer to Adjudication Panel	1	5
Total Outcomes – Code of Conduct complaints	229	371

(A detailed breakdown of the outcome of Code of Conduct complaints investigated, by local authority, during 2013/14 is set out at Annex C.)

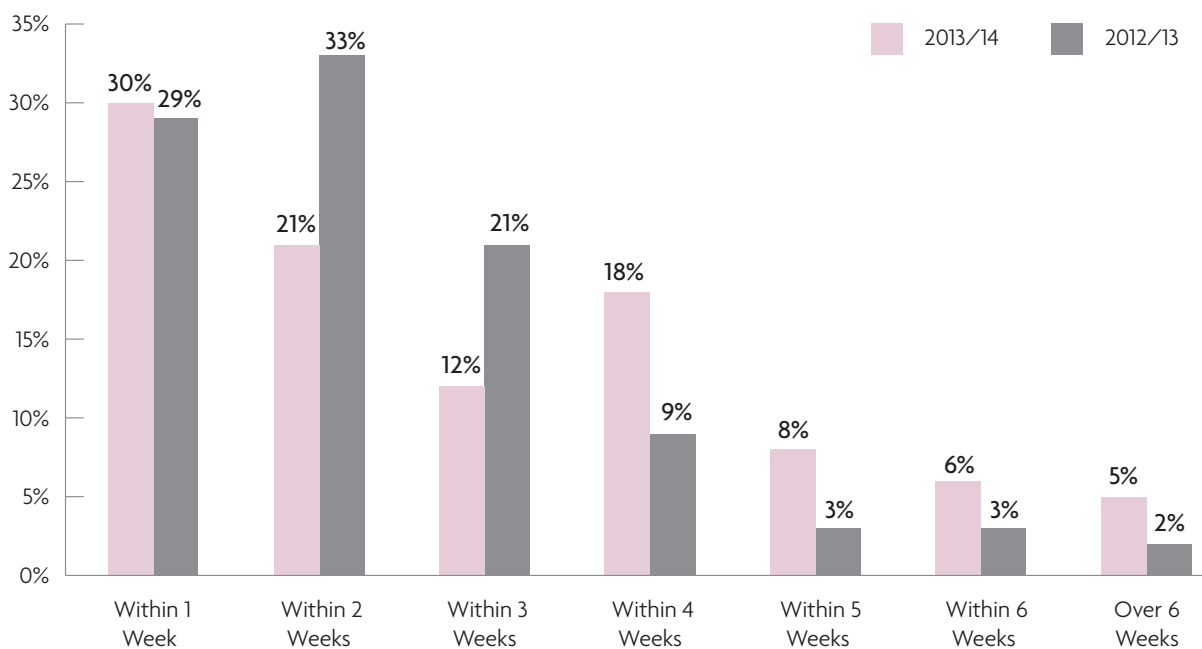
Not only have the number of code of conduct complaints to the office decreased over the past year, notable is the reduction in the number of cases referred to either an authority's standards committee or to the Adjudication Panel for Wales, which fell significantly from 20 in 2012/13 to 6 in 2013/14. This is partly attributable to the effects of the High Court judgement on the Calver case in 2012. The ruling on this case, concerning a member's freedom of expression attracting enhanced protection under the Human Rights legislation when comments made are political in nature, has had an impact on the application of paragraph 4b of the Code of Conduct relating to treating others with respect and consideration. Taking account of the ruling that politicians need to have 'thicker skins, the bar has now been raised on what the Ombudsman refers to a Committee or the Panel.

Decision times

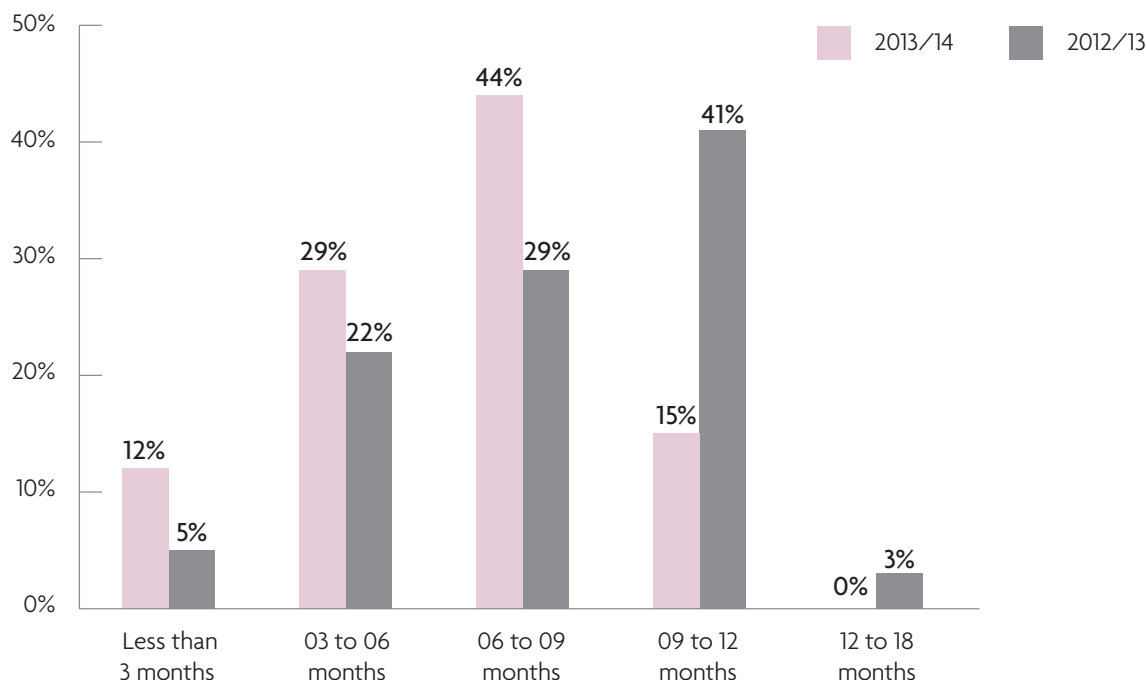
Below are the decision times for code of conduct complaints. The time targets set for code of conduct complaints are similar to those for complaints about public bodies, that is:

- at least 90% of all complainants to be informed within 4 weeks whether Ombudsman will take up their complaint (from the date that sufficient information is received)
- to conclude all cases within 12 months from the point that a decision is made to take up a complaint (that is, to commence investigation of a complaint).

Decision times for informing complainants we will take up their complaint



Decision times for concluding code of conduct investigations



In respect of the first target, we actually achieved this 81% of the time, and it is a little disappointing that we have not been able to achieve the 90% target in respect of code of conduct complaints and that we were unable to sustain our performance in 2012/13. This will be a matter that we will be looking to address in the year to come therefore.

With regard to the second target, and on a much more positive note, we are particularly pleased that we achieved a 100% success rate for completion of code of conduct investigations within 12 months. When looking back on previous Annual Reports it can be seen that our performance on code of conduct cases has been improving year on year. It is especially pleasing when comparing the position to three years ago when only 63% of code investigations were concluded in under 12 months. Against that position, the fact that over the past year 85% of investigations were completed in less than 9 months is even more gratifying.

Standards Committee and Adjudication Panel for Wales's Hearings – Indemnity Cap

The PSOW has previously made clear concerns about the levels of indemnity enjoyed by members who are accused of a breach and the need for this to be addressed. This is particularly of concern when considering the best use of public money, especially when all publicly funded organisations are working within a very difficult financial climate. By having unlimited indemnity, it is possible for cases before tribunals to last for months or even longer, with counsel being engaged at very considerable cost. Following discussions with the WLGA a proposed ceiling of £20,000 was agreed. Good progress

has been made by local authorities in introducing such a cap over the past year or so. However, it is disappointing that a couple of councils who have an insurance arrangement in place for indemnity have stated that they are unable to fall in line due to insurance companies resisting such a ceiling.

Welsh Government Ministers had previously indicated that they may consider addressing this matter through legislation if wholesale voluntary agreement could not be secured. This is a matter which may therefore need to be re-raised in the forthcoming year.

As the third strategic aim of our Three Year Strategic Plan sets out (see Annex D), we place great importance on using the knowledge and learning gained from our work to improve public service delivery in Wales and to inform public policy. We have continued over the past year to do this through a number of key vehicles, some of which are provided for in the PSOW Act.

Public interest reports

During 2013/14 we issued nine public interest reports (summaries of these are at Annex A and their full text is available on the website at www.ombudsman-wales.org.uk). Being able to publish investigation reports (under section 16 of the PSOW Act) means that we are able to draw attention to lessons that can be learnt from our investigations; lessons that may apply to other similar public bodies. When appropriate, we also draw the attention of the Welsh Government to such reports so that it can also give consideration to any implications from a wider public policy perspective.

The Ombudsman's Casebook

We continue to publish the Ombudsman's Casebook, which many of the organisations in jurisdiction now see as a valuable learning tool. The Casebook gathers together summaries of all of our investigation reports regardless of whether they are issued under section 16 or section 21 of the PSOW Act – the latter being reports which are not formally published because the cases are not considered to be of public interest in themselves. Nevertheless, as a body of work, there are often lessons that can be learnt. The Casebook also includes summaries of the quick fixes achieved so that the learning from the cases that we resolve informally can also be shared.

Topics addressed in the four digests published during 2013/14 are set out below. The key issues identified where lessons could be learnt were as follows:

- the need for public service providers to properly take account of a specific need when providing a service (for example if someone has a disability or health condition)
- delays in providing a service, which can in and of themselves be examples of maladministration, and can sometimes compound a particular problem or be the cause of a complaint itself
- poor complaint handling, including shortcomings in the investigations where these had not been sufficiently robust and responses to complainants were found to be not sufficiently accurate, thorough or transparent.

The Code of Conduct Casebook

Due to the success of the Ombudsman's Casebook, we received requests from local authority monitoring officers for a similar publication in relation to the code of conduct investigations that we undertake. In response to this demand, therefore, we issued the first edition of the Code of Conduct Casebook in November 2013. The new Casebook includes summaries for all code of conduct

cases which have been taken into investigation. However, to ensure that information is put into the public domain at appropriate time, we will not be publishing the summaries of any cases awaiting Standards Committee or Panel hearings until the outcomes of the relevant hearings are known; when these are available the Casebook will provide links to the appropriate decisions. Whereas The Ombudsman's Casebook is produced on a quarterly basis, the new Code of Conduct Casebook will be published twice per year.

Annual letters

We have continued with the practice of issuing Annual Letters to county/county borough councils and health boards, which are also published on our website. We do not receive the necessary volume of complaints in respect of other bodies to enable meaningful comparisons on an all Wales basis and to identify any trends. The Annual Letters are also used as the basis of discussions with the Chairs and Chief Executives of individual local health boards. Local authorities are also invited to seek a meeting to discuss their particular Annual Letter if they so wish.

Complaint handling by public service providers

There has also been a continued interest on progress on the adoption of the Model complaints policy and guidance issued to public service providers by Welsh Government. The fact that all but one of the county/county borough councils have now adopted, or are imminently about to adopt, the Model is very welcome. It is believed that the remaining council is also working towards its adoption. With regard to housing associations, although a good number have adopted the Model Policy, take up has been somewhat slower amongst this sector; the issue of how this might be progressed will be a matter for consideration in the forthcoming year.

Informing Public Policy

Another means of achieving our aim of contributing to public policy discussions is through engaging with Welsh Government consultations and Welsh Assembly Committee scrutiny activities. For example, using the evidence from our investigations we responded to consultations on the Continuing NHS Healthcare National Framework and the Government's proposals to reform the planning system in Wales. In addition, we appreciated the opportunity to contribute our views to the review of concerns and complaints handling within NHS Wales being undertaken by Mr Keith Evans at the request of the Welsh Government. We also gave evidence to a number of Assembly Committee meetings on issues such as scrutiny of the Social Care and Wellbeing Bill and the inquiry into the work of Healthcare Inspectorate Wales. The opportunity to discuss the PSOW's Annual Report with the Communities, Equality and Local Government Committee and share the learning for public service providers emerging from our work was welcomed once again.

The Ombudsman

The Public Services Ombudsman (Wales) Act establishes the office of the Ombudsman as a 'corporation sole'. The Ombudsman is accountable to the National Assembly for Wales, both through the mechanism of the annual report, and as Accounting Officer for the public funds with which the National Assembly entrusts the Ombudsman to undertake their functions.

Governance arrangements

Advisory Panel

The Advisory Panel, established during 2011/12, continued to meet on a regular basis over the past year. The Panel was set up with the aim of enhancing openness and transparency of the office, whilst bearing in mind the constitutional position of a corporation sole and the fact that responsibility and accountability for the activities carried out by the office must remain with the Ombudsman.

At the end of 2013/14 a review of the effectiveness of the Panel was undertaken, which took into account the views of Members themselves. This proved to be a positive exercise with all involved satisfied that the Panel added the additional scrutiny and support sought by the Ombudsman.

The Membership during the year was as follows:

- Ceri Stradling (also Chair of the Audit & Risk Committee) – a former Senior Partner with the Wales Audit Office (until beginning March 2014)
- Bill Richardson – former Deputy Chief Executive at the office of the Parliamentary and Health Service Ombudsman
- Jan Williams – former Chief Executive of Cardiff & Vale University Health Board, and currently IPCC Commissioner for Wales
- John Williams – former Director of Social Services for Conwy County Borough Council.

My role on the Panel changed from the beginning of December upon being appointed Acting Ombudsman and, for the time being, I am no longer 'an Independent Member'. However, in view of the fact that my appointment as Acting Ombudsman is an interim measure, it was decided not to fill the temporary vacancy that has arisen.

Due to his appointment to bodies within the Ombudsman's jurisdiction, Ceri Stradling resigned from the Panel towards the end of the year. Consideration will now be given to filling the vacancy that has arisen. However, I wish to take this opportunity to record our thanks Mr Stradling for his considerable contribution as a member of the Advisory Panel, but particularly for his valuable and highly appreciated work as Chair of the Audit & Risk Committee.

Audit & Risk Committee

The use that the Ombudsman makes of the resources available to the office is subject to the scrutiny of the Wales Audit Office, which is responsible for auditing the Ombudsman's accounts. This work was outsourced to Grant Thornton UK LLP by the Wales Audit Office in 2008/09. The Auditor General, however, remains ultimately responsible for the external audit function.

Although a 'corporation sole', the Audit & Risk Committee is charged with advising the Ombudsman in the discharge of the Accounting Officer duties. Again, with the impact of the interim arrangements with the change of Ombudsman, I stood down on a permanent basis as an independent member, but remain on the Committee as the Accounting Officer. John Williams, an existing Advisory Panel Member, kindly agreed to take my place as one of the independent Committee members. Furthermore, following Ceri Stradling's resignation, I was grateful to Bill Richardson, an existing member of the Committee, for agreeing to henceforth take the position of Chair of the Committee.

The Audit & Risk Committee considers matters including budget estimates, annual accounts, external and internal audit reports, and risk management issues. The Committee met four times during 2012/13 and it is pleasing that no substantive matters of concern were raised during the year. Deloitte continue to be the internal auditors and their programme of work is guided and overseen by the Audit & Risk Committee, where the good and constructive relationship developed in previous years continues.

Management Team

Whilst the Ombudsman is solely accountable for the decisions and operation of the office, the Management Team is a formal group that provides advice and support. It takes specific responsibility for advising on the development of the three year Strategic Plan and the annual Business Plan; annual budgetary requirements; ensuring the best use of the public money received; and an appropriate performance monitoring framework.

It is also responsible for the delivery and monitoring of strategic aims; monthly performance monitoring against objectives; ensuring that risks are actively identified and addressed; agreeing corporate policies (e.g. complaint handling procedures, human resources policies) and monitoring their effectiveness; and developing the office's outreach strategy and monitoring its implementation.

Three Year Strategic Plan and Business Plan

The past year was the second in relation to implementation of the Strategic Plan developed for 2012/13 to 2014/15 and many of the activities and achievements have been reflected in this Annual Report. The existing vision, values, purposes and strategic aims for the PSOW service can be found at Appendix D. A 'Year 3 Update' has been produced to take the office forward into the final year of the Strategic Plan as has an annual Business Plan for 2014/15, which flows from the Strategic Plan and sets specific targets and performance indicators for the year ahead.

Strategic Equality Plan

In accordance with the Equality Act 2010 and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 laid down by the National Assembly for Wales, the PSOW published a Strategic Equality Plan at the end of March 2012 (compliant with the requirement to issue the Plan before 2 April 2012). Under the specific duties, the PSOW is required to report annually on relevant equality issues. This is done via Section 8 of this Annual Report.

7. Other Activities

Complaints Wales signposting service

The Complaints Wales service is provided by the Complaints Advice Team. They advise people on which public service provider they should complain to and also capture the crux of the complaint and (with the complainant's consent) send the details on to the relevant public body on their behalf. The service signposts complaints not only in respect of public services devolved to Wales but also in relation to non devolved public services – for example, benefits and pensions. It also assists in relation to organisations such as the utility companies, which many people still consider to be 'public services', despite the fact that utility services have now been provided by private entities for many years. Furthermore, if people have already complained directly to the service provider, then the service will signpost them to the relevant ombudsman or other complaint handling body.

The service is now well developed, but we proceed to build on the information and data we hold on advice and advocacy organisations, including giving summary details on our website of the type of service provided by these bodies.

During the past year, we continued with our promotional activity for the service. The quarterly radio campaign, which began in 2012/13, continued and this was supplemented by an advertisement campaign on buses throughout Wales during December 2013.

Complainant satisfaction research

Research via complainant satisfaction surveys has been an important means of understanding complainants' views of the service we provide. At the beginning of 2013/14 we began undertaking our complainant satisfaction survey and our equality monitoring work as one exercise. We will in 2014/15 begin analyses to see whether there are variations to satisfaction levels between various groups of people. If differences in satisfaction do emerge we will then work to understand why this might be and what we may be able to do to address the position.

However, for the time being, below is the feedback received in relation to customer satisfaction for our first contact service. The overall outcome of responses during 2013/14, where service users were asked whether they agreed or disagreed with the statements below is as follows:

	% of respondents answering either 'strongly agree' or 'agree'
It was easy to find out how to contact the Public Services Ombudsman for Wales	83%
The service I have received has been helpful and sensitive	73%
Staff were able to understand my complaint / The person that dealt with my query knew enough to be able to answer my questions	75%
I was given a clear explanation of what would happen to my query/ complaint	82%
The service has provided what I expected of it	64%

As can be seen, overall there is a very good level of satisfaction. It is notable that with regard to the final question, the way in which service users respond to this question is often affected by a decision by the Ombudsman not to investigate their complaint, for example, because the person concerned has not yet complained to the relevant organisation or that the matter is outside of the Ombudsman's jurisdiction. Sometimes, people decline to answer this question, saying that they are going to wait for the Ombudsman's decision on their complaint.

Information and Communication Technology (ICT)

Ensuring that we have appropriate up to date hardware and software has been key in enabling us to deal with the ever increasing complaints caseload being received. Focus over the past year has been to replace desk top PCs, introduce Wifi installation and to increase bandwidth, all of which are aimed at enabling staff to more work more efficiently.

Communication

Websites: Our work in 2013/14 focussed on developing mobile versions of both the Ombudsman's website and the Complaints Wales websites. This work was consistent with our aim to make our service accessible to everyone. Already aware that online was increasingly becoming the chosen method for people to make their complaint to the Ombudsman, our analysis of website users indicated that more and more were accessing the service via mobile and tablet devices. Apart from wanting a visually pleasing solution, it was important for us that the user experience in making a complaint about a public service via a mobile device should be equally as easy as doing so on a desk top computer. The new mobile versions were launched in January 2014 and to date feedback received has been very positive.

Traditional Media: Good television and radio coverage (both English and Welsh language) continues, with focus again being on the public interest reports issued. A good level of coverage in the press has also continued with 179 articles mentioning the Public Services Ombudsman for Wales during 2013/14, which is a similar level to the previous year.

Outreach: We have also continued with our practice of meeting with and addressing various voluntary organisations. For example, during the past year we spoke at a Swansea Bay BME Forum, Citizens Advice Bureau meetings and an Age Cymru safeguarding conference. We also spoke at a number of events held by the professional and representative bodies of those delivering public services (for example, medical professionals; housing associations). In addition to this we held a seminar for the complaints officers of local health boards and trusts. This enabled us to discuss with those at the coal face of complaint handling the issues they faced in dealing with complaints in their organisations. It was an opportunity to air the problems they encountered and what might be done to improve the way complaints are dealt with and investigated. We also explored how health boards and trusts might themselves be able to learn from the lessons for the complaints they handle internally themselves.

Human resources

The position regarding the change in Ombudsman has already been discussed in this report. However, another key change took place during the year in relation to the senior management of the office. The Director of Investigations and Legal Adviser had at the end of 2012/13 announced her intention to retire in December 2013. As a result, a review of the management structure of the office was undertaken and some minor changes were introduced. A post of Chief Operating Officer & Director of Investigations was introduced, a recruitment exercise was undertaken, and the successful applicant commenced in post in March 2014. The Legal Adviser role has now been taken on by one of the office's existing Investigation Managers. However, in order to facilitate a smooth transition over the period of the Acting Ombudsman's tenure of office, the Director of Investigations and Legal Adviser agreed to continue to work at the office on a part time basis until such time as a permanent new Ombudsman took up post.

We also towards the end of the year recruited to the additional investigator post created as a result of the social services changes to be introduced during 2014/15 and the expected increase in complaints to this office. This has allowed for a suitable period of training prior to the relevant legislative changes being introduced. We also recruited to a number of posts which had been held vacant from 2012/13.

The organisational structure as at 31 March 2014 can be found on page 31.

The PSOW and the Ombudsman World

In many ways the role of the Ombudsman is unique. Although no one Ombudsman scheme is exactly like another, the work of the Ombudsman Association (OA) is considered to be important as a means of sharing best practice and to learn from each other. This is particularly valuable in view of the fact that Ombudsman schemes need to be objective and maintain an appropriate distance from the bodies in jurisdiction. We have continued to participate in OA activities, including participating in a number of the OA Interest Groups.

It was reported last year that Wales had been asked to host the next European Regional Ombudsmen conference. We have during the year been working with the European Ombudsman and her staff in organising the event, which will take place between in June 2014. We are particularly grateful to Mrs Rosemary Butler, the Presiding Officer, for agreeing to host a welcome reception at the Senedd for our European colleagues on the evening of their arrival for the conference.

The PSOW was also very pleased to be able to welcome delegations from other parts of the world to the office. In April 2013, we were delighted to discuss the work of our office with colleagues from Uganda, Gambia and Nigeria. Then, in July we hosted a 26 strong delegation from China. We again had an opportunity to discuss the work of our office, including how we take human rights considerations into account whilst undertaking our investigation work.

Complaints about the PSOW service

The ‘Complaints about us’ procedure can be used if someone is unhappy about our service. For example, a complainant may wish to complain about undue delay in responding to correspondence; or feel that a member of staff has been rude or unhelpful; or that we have not done what we said we would. There is a separate procedure for complainants wishing to appeal against a decision on their complaint. Further details about both these procedures are available on our website: www.ombudsman-wales.org.uk.

The table below reports on the number of complaints received during 2013/14 and their outcomes, together with a comparison of the position in 2012/13.

Details of the ‘complaints about us’ received	2013/14	2012/13
Complaints brought forward from previous year	2	2
Not upheld	13	32
Upheld in whole or in part	7	12
Referred back to Investigation Manager or Review Manager (investigation decision related)	17	10
Complaint withdrawn or insufficient information	7	3
Still open at 31 March	3	2
Total received	45	59
Total closed during year	44	59

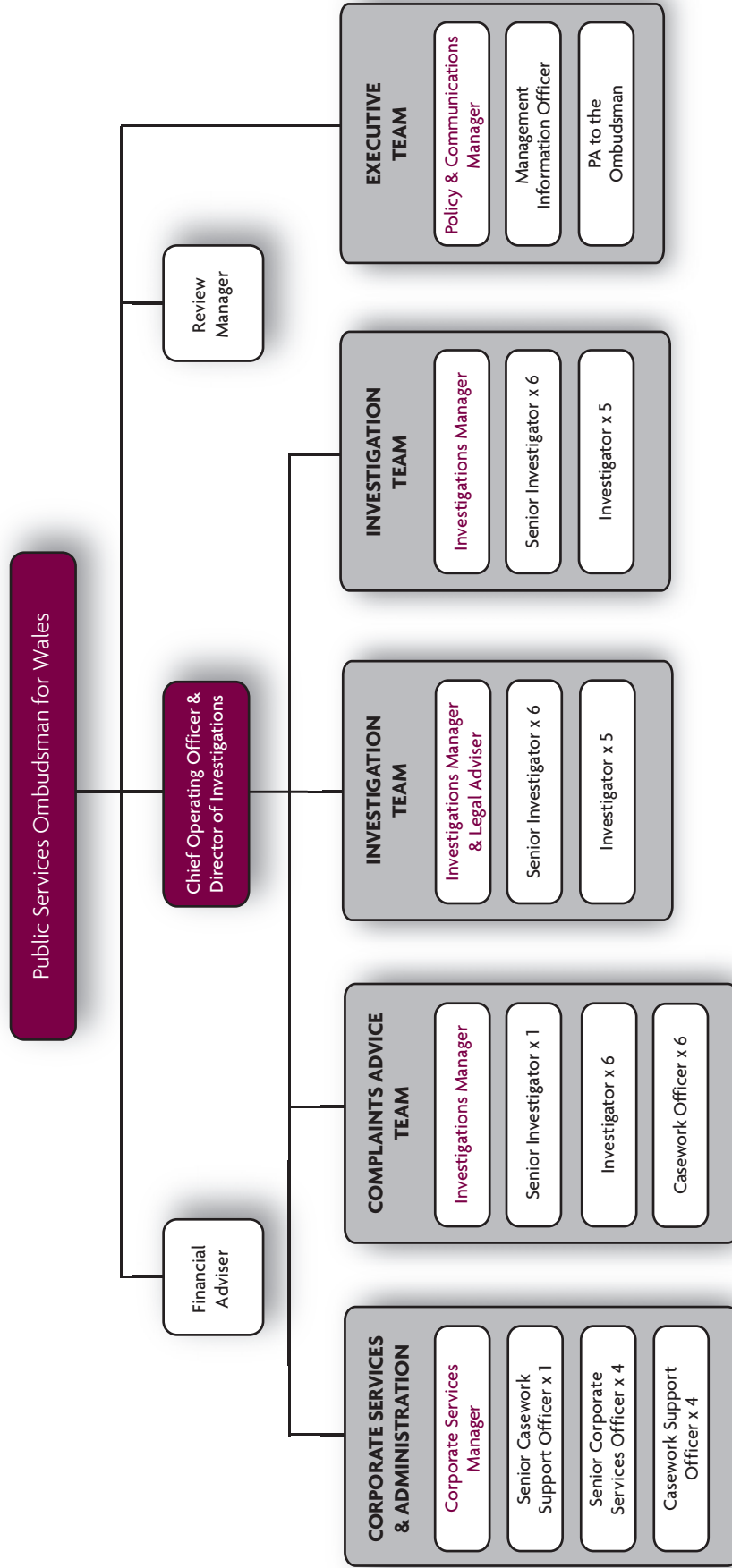
The nature of the complaints that were upheld/partly upheld were:

Incorrect information provided	1
Failure to return call within reasonable timeframe	1
Undue delay in response	2
Failure to act upon request for e-mail contact only	1
Correspondence sent to incorrect address	2
Total	7

As a consequence of the above, the following action was undertaken:

- an apology was issued to the complainant in all 7 cases
- the relevant managers were made aware of the upheld complaints relevant to their team for future training considerations and monitoring
- where appropriate, action in accordance with PSOW HR policies was undertaken
- staff training for all staff was undertaken with regard to postal and electronic correspondence information security
- the case management database was enhanced to reduce the risk of missing requests for email contact only from complainants.

Organisational Chart (position as at 31 March 2014)



8. Equality Issues

A commitment to treating people fairly is central to the role of an ombudsman. The Public Services Ombudsman for Wales is committed to providing equal opportunities for staff and in the service provided to complainants. No job applicant, staff member or person receiving a service from the PSOW will be discriminated against, harassed or victimised due to personal characteristics such as age, disability, ethnicity, sex, gender reassignment, pregnancy or maternity, sexual orientation, religion or belief, whether they are married or in a civil partnership, or on the basis of any other irrelevant consideration. Staff are expected to share the Ombudsman's total opposition to unlawful and unfair discrimination and the commitment to conducting business in a way that is fair to all members of society.

Under the Equality Act 2010 and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 laid down by the National Assembly for Wales, the Ombudsman has a duty to publish a Strategic Equality Plan and equality objectives. The first such Plan, which contains the Ombudsman's equality objectives, was published at the end of March 2012 and complied with the statutory requirement to publish before 2 April 2012. (The Plan is available on the website: see www.ombudsman-wales.org.uk). Also under the specific duties, the Ombudsman is required to produce an annual report in respect of equality matters. As articulated in the Strategic Equality Plan, many of our practices have been part and parcel of our approach since the inception of the office in 2006. Where relevant therefore, these will remain a part of the annual report on equality matters, which is set out below.

Accessibility

As part of our process, we do our very best to identify as early as possible any individual requirements that may need to be met so that a service user can fully access our services and, in particular, we ask people to tell us their preferred method of communication with us. We always try to make reasonable adjustments where these will help people make and present their complaint to us. Examples are: providing correspondence in Easy Read; using Language Line for interpretation, where a complainant is not comfortable with making their complaint in English or Welsh; obtaining expertise to assist us to understand the particular requirements of complainants with certain conditions, such as Asperger's syndrome; and visiting complainants at their homes.

We produce key documents in alternative formats, such as CD/tape and Braille, translate these into the eight key ethnic minority languages used in Wales; and we have upgraded the accessibility of our website from A to AA compliant and introduced BrowseAloud which allows the website to 'talk' to the user.

At the end of 2013/14 mobile websites were introduced and it is the intention to introduce a version of BrowseAloud (or similar application) specifically designed for tablets and smartphones in the forthcoming year.

We also recognise that some service users may need assistance in making their complaint to us and we have also invested a great deal of our energy in gathering information about advocacy and advice organisations to help them in this regard. This is also key source of information in relation to the Complaints Wales signposting service we provide, when members of the public may also want help during the process of complaining to a public body or another complaint handler.

Equality Data Gathering/Monitoring – Service Users

We have always undertaken equality monitoring in respect of service users, which has informed our annual outreach strategy. Results of equality monitoring undertaken since 2005/06 in respect of service users was published in the Strategic Equality Plan.

However, as described in previous sections of this Annual Report, we have during 2013/14 revised our equality monitoring process and methods. The outcome of the monitoring in respect of the protected characteristic groups (as defined in the Equality Act) is set out below.

In view of the nature of the work of this office, we would expect the composition of people who complain to this office to, at the very least, mirror the national demographic position; in fact, we would expect the proportion of complainants from groups who could be considered to be at disadvantage or vulnerable to exceed the national picture. In respect of each of the questions we asked, those who completed the form were given the opportunity to respond 'Prefer not to say'. Nevertheless, from the results below, the PSOW is relatively satisfied that in making comparisons with official data available (e.g. the Census 2011) the composition of our service users meets or exceeds national demographics in the way we would expect. The slight exception relates to people from minority ethnic backgrounds, who comprise 3% of those who responded to our monitoring survey, whilst, according to the Census 2011, 4% of people in Wales identify themselves as having a minority ethnic background.

We take the results from our equality monitoring into account when developing our outreach programmes. We began work in raising awareness of the PSOW service among people from minority ethnic groups during 2013/14; this will be continued into 2014/15.

Protected characteristic group	Percentage Outcome
Age:	
Under 25	4%
25-34	14%
35-44	14%
45-54	21%
55-64	19%
65-74	15%
75 or over	6%
Prefer not to say/No response	7%

Protected characteristic group	Percentage Outcome
Disability	
Yes	26%
No	60%
Prefer not to say/No response	14%
Health problem or disability limiting day-to-day activities?	
Yes, limited a lot	26%
Yes, limited a little	17%
No	43%
Prefer not to say/No response	14%
Gender reassignment	
Yes	0.5%
No	46.0%
Prefer not to say/No response	53.5%
Religion or belief	
No religion	34%
Christian (all denominations)	50%
Other religions	6%
Prefer not to say/No response	10%
Married or same-sex civil partnership	
Yes	46%
No	41%
Prefer not to say/No response	13%
Race/Ethnicity	
White	89%
Other ethnic background	3%
Prefer not to say/No response	8%
Sex	
Male	46%
Female	46%
Prefer not to say/ No response	8%
Sexual orientation	
Heterosexual or straight	83%
Gay or Lesbian	2%
Bisexual	1%
Other	0%
Prefer not to say/No response	14%

Our Casework

Our commitment and contribution to equality matters also manifests itself in our complaint handling work. Indeed, the edition of the Ombudsman's Casebook published in October 2013 gave particular attention to the issue of failures by public bodies to take account of the specific needs of service users when providing a service and gave specific examples of these. It was emphasised that public service providers should be mindful of their obligations under Equality legislation. As pointed out in the Casebook, whilst it is not for the Ombudsman to decide whether a public service provider is in breach of such legislation, it is possible that the failure to take account of any such legal obligations, or to follow policies and procedures designed to implement these obligations, will be maladministration.

Training

PSOW staff have over the years received equality and diversity training. We continue to provide relevant training in this regard. This is important to us for two reasons. Firstly, so that in the service we provide we can be responsive to the changing needs and requirements of people with whom we communicate and interact. For example, in the past year, two members of staff commenced training on how to communicate via British Sign Language. Secondly, so that we have the knowledge to be able to identify during our investigations any failings by public service providers in respect of their equality duties.

Outreach

We meet regularly with third sector organisations, holding formal seminars at least biennially, giving talks and addresses at their conferences and we also have an ongoing proactive programme of meeting with individual organisations. This year's activity has been reported on at Section 7 of this Annual Report. This enables two way discussions about the work of the office, so that we can obtain views on the service we provide from their perspective and it enables us to explain how they can help those individuals who require assistance in making a complaint to us to do so.

We have also developed a Memorandum of Understanding with the Older People's, Children's, and Welsh Language Commissioners in relation to co-operation, joint working and the exchange of information.

Equality Impact Assessments

As part of the work in developing the Strategic Equality Plan, we developed an equality impact assessment toolkit. Equality Impact Assessments are now embedded in our practices when reviewing existing, or developing new, policies and procedures.

Staff Equality Data Gathering/Monitoring

Our staff have been asked to complete and return a monitoring form seeking information in respect of each of the protected characteristics. We also now gather such information during our recruitment exercises. That disclosure is, of course, on a voluntary basis. The data held at 31 March 2014 is set out below.

Age	The composition of staff ages is as follows: 21 to 30: 17% 31 to 40: 29% 41 to 50: 31% 51 to 65: 23%
Disability	84% of staff said there were not disabled, no member of staff said that they were a disabled person (16% preferred not to say) However, when asked if their day-to-day activities were limited because of a health problem or disability which had lasted, or was expected to last, at least 12 months, 2% said that they were limited a lot, 2% said they were limited a little, 81% said their day to day activities were not limited (16% preferred not to say)
Nationality	In describing their nationality, 50% said they were Welsh; 26% said British, 10% said they were English, 2% said 'Other' (12% preferred not to say)
Ethnic group	The ethnicity of staff is: 79% White (Welsh, English, Scottish, Northern Irish, British); 2% White/Irish 3% Black (African, Caribbean, or Black British/Caribbean 2% Asian or Arian British/Bangladeshi (14% preferred not to say)
Language	When asked about the main language of their household, 76% of staff said this was English; 10% said Welsh, and 2% said 'Other'
Religion or Belief	Responses to the question asking staff about their religion were as follows: No religion: 38%; Christian 38%; Muslim 2%; Other:1% (21% preferred not to say)
Marriage/ Civil Partnership	When asked if they were married or in a same sex civil partnership, 49% of staff replied 'Yes'; whilst 33% said 'No' (18% preferred not to say)
Sexual Orientation	Responding on this, 77% said that they were Heterosexual or Straight, 2% said Gay or Lesbian (21% preferred not to say)

Under the specific duties we are required to set an equality objective for gender and pay; if we do not do so, we must explain why. The Strategic Equality Plan does not currently contain any specific objective in this regard because at the time of its development females were very well represented at the higher pay scales within my office. The position is kept under continual review and the equality objectives will be revised if necessary. However, as can be seen from the table below, the position currently remains satisfactory.

Pay and Gender – data as of 31/03/2014

Pay (FTE)	Male	Female
Up to £20,000	3	14
£20,001 to £30,000	1	2
£30,001 to £40,000	5	11
£40,001 to £50,000	6	10
£50,001 to £60,000	1	2
£60,001 +	1	2
Subtotal	17	41
Total	58	

In relation to the working patterns of the above, all staff work on a full time basis with permanent contracts, with the exception of the following:

- eight members of staff work part time (seven female, one male).
- four members of staff are employed on a fixed term contract (two female, two male).

Recruitment

During the year we have had one member of staff leave. Six new employees were recruited, five of these were to fill vacant posts, the other to appoint to the newly created investigation officer post (previously discussed in this Annual Report). Due to the low numbers involved, the equality data for the individuals concerned has been reported as part of the all staff information above; it is not considered appropriate to report separate equality information relating to these individuals due to the risk of identification.

Equality data gathered from the three recruitment exercises relating to the above new six employees results in the following:

		COO/ DOI	IO	CAT CO/ CWSO	Total
Number of applications		74	19	34	127
Age	Did not say	4%	11%	9%	6%
	under 25	0%	0%	32%	9%
	25-34	3%	26%	35%	15%
	35-44	18%	32%	15%	19%
	45-54	59%	32%	10%	42%
	55-64	16%	11%	0%	11%
Gender	Did not say	3%	5%	3%	3%
	Male	47%	42%	47%	46%
	Female	50%	53%	50%	50%
Nationality	Did not say	3%	5%	3%	3%
	Welsh	50%	95%	65%	61%
	English	8%	0%	12%	8%
	Scottish	3%	0%	3%	2%
	Northern Irish	3%	0%	0%	2%
	British	31%	0%	15%	22%
	Irish	1%	0%	3%	2%
	Welsh/German	1%	0%	0%	1%
Ethnic Group	Did not Say	3%	5%	9%	5%
	White (Welsh/Scottish/ English/NI/British)	91%	95%	79%	88%
	White (Irish)	5%	0%	3%	4%
	White (Gypsy/Irish traveller)	0%	0%	0%	0%
	White (Other)	1%	0%	0%	1%
	Asian/Asian British	0%	0%	6%	2%
	Black, African, Caribbean or Black British	0%	0%	3%	1%
	Mixed or multiple ethnic group	0%	0%	0%	0%
	Other ethnic Group	0%	0%	0%	0%
	Language	Did not say	5%	16%	3%
English		85%	16%	97%	78%
Welsh		5%	63%	0%	13%
Bilingual (Welsh/English)		4%	5%	0%	3%
Other		0%	0%	0%	0%

		COO/ DOI	IO	CAT CO/ CWSO	Total
Number of applications		74	19	34	127
Disability	Did not say	4%	5%	6%	5%
	Yes	0%	5%	0%	1%
	No	96%	89%	94%	94%
Limited Activities	Did not say	8%	5%	6%	7%
	Yes, limited a little	0%	0%	0%	0%
	Yes, limited a lot	0%	5%	0%	1%
	No	92%	89%	94%	92%
Religion	Did not say	7%	21%	15%	11%
	None	28%	32%	59%	37%
	Christian	65%	47%	25%	52%
	Buddhist	0%	0%	0%	0%
	Hindu	0%	0%	0%	0%
	Jewish	0%	0%	0%	0%
	Muslim	0%	0%	0%	0%
	Sikh	0%	0%	0%	0%
Married or civil partnership	Did not say	5%	5%	9%	6%
	Yes	70%	26%	15%	49%
	No	24%	68%	76%	45%
Sexuality	Did not say	7%	16%	21%	12%
	Heterosexual	88%	84%	74%	83%
	Gay or Lesbian	5%	0%	6%	5%
	Bisexual	0%	0%	0%	0%
	Other	0%	0%	0%	0%

Key to abbreviations:

- **COO/DOI** – Chief Operating Officer/Director of Investigation
- **IO** – Investigation Officer (it should be noted that fluency in the Welsh language was an essential criterion for this post; this therefore has an impact on the language category data for this post)
- **CAT CO/CWSO** – Complaints Advice Team Casework Officer or Casework Support Officer.

Staff Training

The majority of staff training is based upon job roles or applicable for all staff to attend. All individual staff requests for training over the past year were approved, and as such there are no equality data differences between approved and non-approved training requests.

Disciplinary/Grievance

Due to the small numbers of staff working in the office, and the small number of instances of disciplinary/grievance matters, it is not considered appropriate to report on equality data for this category due to the risk of identification of staff involved. However, we are able to state that we are satisfied that there are no identifiable issues of concern in this area.

Procurement

Our procurement policy now refers to the relevant equality requirements that we expect our suppliers to have in place.

Annex A

Public Body Complaints

Public Interest Reports: Case Summaries

HEALTH

Cardiff and Vale UHB – Clinical treatment in hospital Case reference 201204130 – Report issued February 2014

Mrs T complained about the treatment her husband, Mr T, received in hospital. She complained that he received excess intravenous fluids and that this fluid overload caused subsequent health problems, including multiple strokes, from which he sadly died in May 2011. Mrs T also complained that errors were made in her husband's medication when admitted to hospital, that the diagnosis of his stroke was delayed and that had he received appropriate and timelier treatment, he may have survived.

The Ombudsman found that the instance of fluid overload was not clinically significant in terms of the sad outcome. However, the Ombudsman upheld Mrs T's complaint, finding that the Health Board had failed to act in accordance with national guidelines for the treatment of stroke. The Ombudsman concluded that errors were made with Mr T's regular medication and that opportunities to diagnose Mr T's stroke and to implement treatment which may have increased his chances of survival were missed.

The Ombudsman recommended that the Health Board should:

1. issue to Mrs T and her family a comprehensive apology for the failings identified in this report;
2. review its arrangements in respect of post-admission medication reconciliation and ensure that a systematic medicine reconciliation programme is in place;
3. ensure that staff training in respect of recognising acute stroke is up to date, with particular reference to the 2012 Stroke Guidelines issued by the Royal College of Physicians;
4. ensure that use of the Rosier score system (or a similarly recognised tool), in order to identify patients who are likely to have had an acute stroke, is implemented;
5. with particular reference to the current Stroke Guidelines and NICE guidance, review its arrangements for the identification and treatment of acute stroke and consider including the following measures:
 - (a) all patients who may have had an acute stroke (i.e. have been assessed as having a positive Rosier score) should be immediately assessed by a physician trained in stroke medicine to determine whether thrombolysis is suitable
 - (b) suitable patients should have immediate CT scanning and, in all cases, within one hour
 - (c) all patients who may have had an acute stroke should be admitted immediately to a specialist acute stroke unit
 - (d) all patients who may have had an acute stroke should have a swallowing screening test, using a validated tool, by a trained professional within four hours;

6. review the findings set out in its various complaint responses to Mrs T and to this office and take action to ensure that its own complaints investigations are in accordance with the Putting Things Right scheme, are sufficiently robust, demonstrably independent and, where appropriate, critical of identifiably poor care, which should include the introduction of a quality assurance audit of a sample of its completed complaint investigations;
7. issue to Mrs T a cheque in the sum of £5000 in respect of the time and trouble to which she has been put in pursuing this complaint and in recognition of the additional distress caused to her and her family as a result of the uncertainty with which they now live over whether Mr T might have survived the initial stroke.

Aneurin Bevan Health Board – Clinical treatment in hospital Case reference 201204681 – Report issued December 2013

Mrs W complained about the care provided by Aneurin Bevan Health Board to her late husband (Mr W) when he was a patient at Nevill Hall Hospital in September and October 2011. Mr W was 80 years old when he died in hospital on 7 October 2011. Mrs W said that Mr W was deaf, but despite advising staff of this, it was not noted on his records. Mrs W said she believed that her husband was not treated in his best interests and that his care was compromised because staff did not consider his deafness. Mrs W said that she and her husband were not told about a cancer diagnosis by the Hospital. She also said that she was dissatisfied with the way that the Health Board communicated with her and her family both during the time Mr W was a patient and when the Health Board was considering the complaint she made about his care.

The investigation found that, as required by the Equality Act 2010, the Health Board failed to make reasonable adjustments to accommodate Mr W's deafness. The investigation also found that the Health Board failed to:

- record a significant clinical discussion with Mr W about scan results
- complete and record appropriate assessments relating to the risk of falling and the use of bed rails
- consult Mr W and record his consent for the insertion of a catheter
- follow national and local guidance on effective discharge planning
- keep appropriate records related to the discharge process
- follow relevant guidance on record-keeping.

The Ombudsman upheld the complaint and the Health Board agreed to:

- a) give Mrs W an unequivocal written apology for failures identified by this report and make a payment of £500 to reflect the time and trouble taken in pursuing her complaint with the Health Board and this office;

- b) formally instruct the nursing and clinical staff involved in Mr W's case that they must assess patients properly on admission and ensure that all relevant records of such assessments (for example, the Patient Care Record) are completed fully;
- c) formally instruct the nursing and clinical staff involved in Mr W's case to follow the relevant record keeping guidance;
- d) formally instruct the clinical staff involved in Mr W's case to ensure that significant clinical discussions with patients (such as the results of a scan) are recorded properly;
- e) formally instruct the nursing staff involved in Mr W's case to ensure that all appropriate risk assessments are completed and properly recorded;
- f) formally instruct the nursing and clinical staff involved in Mr W's case to follow the relevant discharge planning guidance;
- g) share this report with all staff involved in Mr W's care so that the lessons that should be learned from the report can be understood;
- h) ensure that this report is discussed at a meeting of each Directorate that cared for Mr W so that the lessons of the report are disseminated;
- i) ensure that this report is discussed at a meeting of the working group responsible for the Health Board's "Dignified Care?" action plan.

Cardiff and Vale University Health Board – Clinical treatment in hospital Case reference 201202432 – Report issued October 2013

Ms D complained that midwives at the University Hospital of Wales (UHW) wrongly informed her that her pregnancy dating scan revealed that she had suffered a 'silent' miscarriage. This error was detected only because Ms D elected to undergo uterine evacuation at a different hospital. There, a more thorough type of scan (a trans-vaginal [tv] scan) was performed which detected a healthy, viable foetus.

The Ombudsman upheld Ms D's complaint and found that the Health Board had failed to implement guidelines issued by the Royal College of Obstetricians & Gynaecologists (RCOG) that were designed to prevent the misdiagnosis of early pregnancy loss. These guidelines require midwives to conduct a TV scan in all such cases. The Ombudsman also found that the initial dating scan had been incompetently conducted and that midwives failed to take account of Ms D's relevant medical history. The Ombudsman recommended that:

- a) the Health Board provides Ms D with a written apology and, in recognition of the inconvenience and expense incurred in obtaining alternative antenatal care, makes a payment to Ms D in the sum of £1,500;

- b) further to the Health Board agreeing to take immediate steps to implement RCOG guidance in respect of the diagnosis of early pregnancy loss and to promptly notify all relevant clinicians within the Directorate that it has done so, it provides documentary evidence of how this process was accomplished;
- c) the Health Board provides evidence that it has reviewed / assessed the competence of its midwife sonographers in respect of the diagnosis of silent miscarriage;
- d) the Health Board shares with the Ombudsman the outcome of its complaint investigation review of this case (its Root Cause Analysis).

Betsi Cadwaladr University Health Board – Clinical treatment in hospital Case reference 201201954 – Report issued October 2013

This complaint is about the shortcomings in the care and treatment provided to Mr X at Glan Clwyd Hospital. In November 2000 Mr X had his first episode of bleeding from enlarged blood vessels in the gullet. This is a life-threatening complication of cirrhosis, a condition in which healthy liver tissue is gradually replaced with non-functioning scar tissue. The vessels were tied to prevent further bleeding. Several tests were carried out over the next few months. They showed clearly that Mr X had cirrhosis. Despite this, he was not informed of the diagnosis. Nor was he given necessary lifestyle advice. In September 2001 the hospital apparently made him an outpatient follow-up appointment, but Mr X was not told about this. This meant that Mr X was without any medical supervision for several years, with no information about his condition. As it happens, that probably made little difference to how his condition developed.

Mr X had further bleeding in August 2008. Again this was treated successfully, although for a while he was very unwell. This time Mr X received medication and some, but not all, of the necessary lifestyle advice. The Health Board also began investigating the cause of Mr X's cirrhosis, but stopped before finding it. Not until he requested, and received, a second opinion was Mr X told that he had been born with cirrhosis.

In 2010 Mr X returned to hospital several times in quick succession. He looked very unwell. Blood tests showed that his liver was failing. Despite this, the hospital sent him away, only finally admitting him three days after his appearance. By then Mr X was in liver failure and had a serious infection. Mr X rapidly deteriorated and he sadly died, aged 30, seven weeks later.

Had he been treated three days earlier, Mr X should have recovered from the infection and had a chance of receiving a liver transplant. This opportunity to survive and flourish was denied to him. The Ombudsman upheld the complaints that were made. The Health Board subsequently agreed to the Ombudsman's recommendations that it write to the family to acknowledge the failings and provide financial redress to Mr X's family; £5,000 in respect of the failings identified in Mr X's care and treatment

plus a further £500 for the poor complaint handling. The Health Board also agreed to review the care pathway and its appointments system. The Consultant in charge of Mr X's care also agreed to consider the issues raised in the investigation and learn from these.

Hywel Dda Health Board – Clinical treatment outside hospital Case reference 201202535 – Report issued August 2013

Mr R complained about the treatment of his late wife (Mrs R) by a GP she saw as part of the Out of Hours GP service (under the governance of the Health Board). After telephoning the service Mrs R was directed to see the GP at the designated Out of Hours centre (based at a major hospital). She suffered from lymphoedema to her left arm following cancer treatment and complained about feeling unwell with a developing blister rash on her left arm. The GP diagnosed shingles, giving her a prescription of a common antiviral drug. The following morning Mrs R collapsed at home and was admitted to A&E at the same hospital; she died later that day from complete organ failure as a result of sepsis. Mr R complained that the GP had failed to examine his wife properly, or to diagnose her correctly. He also complained about how the Health Board had handled his complaint.

The investigation found that there was no record of the GP performing a number of basic assessments including temperature, pulse, and blood pressure. The Ombudsman's clinical advisers also found that the GP had failed to have proper regard to Mrs R's pre existing lymphoedema.

Whilst Mrs R's presentation might have suggested shingles, the GP ought to have also ruled out the blisters as a symptom of sepsis given it was well known that lymphoedema had a propensity to develop infection, which could lead to sepsis. An evident failure to consider this was unreasonable.

Had it been considered, Mrs R could have been given antibiotics, or admitted to hospital that day – the GP ought to have adopted a risk-averse approach. This might have affected the outcome given that prompt intervention in suspected sepsis is critical to survival prospects.

The Ombudsman also found maladministration in the Health Board's complaint handling: ranging from delays, fundamental errors in letters and no acknowledgement or response to a relevant third party. In recognition of the seriousness of the issues, the following recommendations were made, all of which the Health Board accepted:

- written apologies to Mr R and to a relevant third party;
- redress of £4,000 to Mr R for the failures identified in the care of Mrs R and £500 for the complaint handling failures;
- the Lead Clinical Director should undertake a sample review of the GP's Out of Hours clinical consultation records (minimum 6 sessions) and that all GPs delivering Out of Hours services should be reminded of the importance of performing full assessments/ examinations of patients and of recording those; and that

- the Health Board should ensure it had robust measures in place to secure timely and good quality responses to complaints.

Abertawe Bro Morgannwg University Health Board – Clinical treatment in hospital Case reference 201200939 – Report issued July 2013

Mrs D complained about the care and treatment her mother, the late Mrs M, received when she was admitted to the Accident and Emergency Department at the Princess of Wales Hospital on July 2010. Mrs D said that the triage nurse had not administered the treatment that her mother's condition required. There were also concerns about her subsequent treatment and in particular how discussions about the requirement to resuscitate, should that prove necessary, were managed. Mrs D held the view that her mother was initially being allowed to die without appropriate medical intervention and that the lack of intervention had led to her death some days later.

The Ombudsman's clinical advisers were highly critical of the failure of staff to deal with Mrs M's condition on arrival appropriately. They could not find any evidence of appropriate intervention as required by procedures such as nursing staff calling a doctor. There were also delays in cannulating Mrs M and in administering medication appropriate to her health needs. They could not however point to evidence that the failures in early intervention had contributed to Mrs M's death.

The Ombudsman recommended that the Board should apologise to the family for the failings in the report, make a payment of £1,000 and review its procedures and the professional competence and training of the nursing staff involved in the admission of Mrs M. The Board accepted the recommendations.

Betsi Cadwaladr University Health Board – Clinical treatment in hospital Case reference 201201275 – Report issued July 2013

Mr and Mrs Q complained about the care and treatment Mr Q had received as a patient at Glan Clwyd Hospital and Wrexham Maelor Hospital.

Having reviewed the evidence, the Ombudsman found that during Mr Q's admission to Glan Clwyd Hospital on 17 and 18 May 2011 the "In-Patient Medication Administration Record" had not been appropriately completed. As a result, it was unclear whether Mr Q had received any of his Parkinson's disease medication.

With respect to Mr Q's discharge from Wrexham Maelor Hospital on 22 May 2011, the Ombudsman found that the medical records for this period failed to fully reflect Mr Q's anxious and difficult behaviour, the actions taken by staff to reassure him, any medical reviews undertaken by doctors or need to call a security officer. As a result Mr Q was discharged from hospital without assessment, placing Mr and Mrs Q in a vulnerable position.

The Ombudsman recommended that the UHB apologise to Mr and Mrs Q for the failings identified in the report and pay them £750 in recognition of the service failure and the time and trouble in bringing their complaint to this office. The Ombudsman also recommended that the UHB:

- review Mr Q's "In-patients Medication Administration Record" for the period 17-18 May 2011, and where appropriate instigate the UHB's "Medicines Management Assessment Workbook and Competencies" document, in accordance with the UHB's procedure;
- review Mr Q's medical records for the period 19-22 May 2011 and where appropriate take action in accordance with the UHB's procedures;
- remind the relevant staff that in the event that a security officer is called an "Incident Recording Form" should be completed;
- bring the updated discharge protocol to the attention of the relevant staff and introduce discharge drop in sessions at the Second Hospital;
- produce a training plan ensuring that within 12 months all relevant staff at the Hospital receives training on record keeping.

Cardiff and Vale University Health Board – Continuing care Case reference 201101810 – Report issued April 2013

Solicitors complained on Mrs S's behalf that the Cardiff and Vale University Health Board had failed to administer matters in relation to her mother Mrs W's claim for continuing health care correctly.

Mrs W had been in a nursing home since 2002 and was receiving funding for the nursing element of her costs. Her home had been sold to pay for the remaining element of her care home fees. The Solicitors submitted evidence which they said showed that there had been delay and error in dealing with Mrs W's assessments for continuing health care and that the Independent Review Panel had also not dealt with matters properly. They alleged that this situation had led to injustice to Mrs W through delay and financial loss.

The Ombudsman found that there had been significant maladministration in two assessments carried out by the Board and that there were failings on the part of the Independent Review Panel, although the second assessment had in fact found Mrs W to be eligible for continuing health care.

The Ombudsman recommended that his report should be brought to the attention of the Independent Review Panel, to consider what further training it needed and that a retrospective assessment of Mrs W's needs should be carried out under the supervision of an independent person nominated by the Welsh Government. He also recommended that the Board should revise its procedures and conduct a retrospective review of all cases that had been handled in the same way as Mrs W's in terms of the start date for funding. Mrs S was to receive a payment of £750 and an apology for the failings.

The Ombudsman highlighted to the Welsh Government that there was a lack of appropriate guidance on these matters and it was agreed that such guidance would be introduced. The Ombudsman decided that the case raised matters of public interest.

HOUSING

Tai Ceredigion Cyf – Applications, allocations, transfer and exchanges Case reference 201204677 – Report issued December 2013

Mrs C (through her Advocate) complained about the management of her social housing application and that the Association had overlooked her for properties when she had been top of the list on points. She was at the time in temporary accommodation having been accepted as unintentionally homeless and owed a duty by the local Council. The Council had previously transferred all its housing stock to the Association. Mrs C had held a tenancy with the Association before but there was a dispute as to the circumstances of its termination and sums owed. Mrs C also complained about how her formal complaint to the Association had been dealt with.

The Ombudsman's investigation found that Mrs C had been top of the list for three available lettings but had been overlooked for each one because of the previous tenancy. Whilst the Association could have overlooked Mrs C, the written agreement and process as entered into with other social landlords and the Council, when it took over the housing stock, required that it notify the Council promptly if it were to overlook a top applicant giving its reasons. It did not do so and effectively treated Mrs C as if she was suspended from consideration. Neither had Mrs C been informed so she was denied any opportunity of challenging the decisions and potentially missed out on three allocations. It transpired that all social landlords who were signatories to the agreement also did not in practice follow this process. All were currently reviewing the procedural documentation. Mrs C was subsequently offered, and accepted, a tenancy from another social landlord. The Ombudsman found that the failure to follow due process was maladministration. There was also a failure to have regard to good practice guidance issued by the Welsh Government including in relation to complaints handling. Mrs C's complaint had not been recognised or considered as a complaint quickly enough. This had resulted in a lost opportunity to Mrs C and so injustice to her in remaining in temporary accommodation for longer.

The Ombudsman recommended that the Association should:

- (a) apologise to Mrs C;
- (b) offer her redress of £1,000;
- (c) provide a copy of the new allocations process and any agreement when finalised, and confirm that appropriate staff will be trained in its application;
- (d) review its Complaints Policy with a view to adopting the Model Complaints Policy.

Annex B

Public Body Complaints

Statistical Breakdown of Outcomes by Public Body Complaints Investigated

COUNTY/COUNTY BOROUGH COUNCILS

County/County Borough Council	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report - Upheld - in whole or in part	Other Report Upheld - in whole or in part	Other Report - Not Upheld	Withdrawn	Total Cases Closed
Blaenau Gwent	4	2	3		3		1		1	14
Bridgend	3	18	13		2			1		37
Caerphilly	9	14	10		1		1			35
Cardiff	20	28	38		11		1		2	100
Carmarthenshire	9	25	19		3		3	2	2	63
Ceredigion	7	11	15		4		3		1	41
Conwy	8	15	7		2			1		33
Denbighshire	5	14	15		1		1		1	37
Flintshire	9	12	9	1	4		3		1	39
Gwynedd	5	21	5		4		1		1	37
Isle of Anglesey	5	4	17				1	1	2	30
Merthyr Tydfil	4	7	8		1			1		21
Monmouthshire	1	2	4		3		2	1	1	14
Neath Port Talbot	11	22	10		1				2	46
Newport	3	6	11	1	2					23
Pembrokeshire	5	7	19	1	2		1			35
Powys	8	17	21		2				3	51
Rhondda Cynon Taf	10	20	17		7		3	1	1	59
The City and County of Swansea	5	24	26		5		3		1	64
The Vale of Glamorgan Council	3	7	10		2		1			23
Torfaen	12	6	9							29
Wrexham	3	20	13		6			2		44
TOTAL	149	302	299	3	66		27	10	19	875

OTHER LOCAL AUTHORITY

Other Local Authority	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Fire and Rescue Service										
Mid and West Wales Fire Service	1	1					1		1	4
Total	1	1					1		1	4
National Park Authorities										
Brecon Beacons	2	2	6		1		1			12
Pembrokeshire Coast	1	1								2
Snowdonia			1				1			2
Total	3	3	7		2		1			16

OTHER LOCAL AUTHORITY (CONTINUED)

Other Local Authority	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report – Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Schools Admissions/ Exclusion Appeal Panels										
Admission Appeals Panel – Rhiwsyrdafydd Primary School			1							1
Admissions Appeal Panel – Cardiff High School			1		2					3
Admissions Appeal Panel – Bedwas Infants School			1							1
Admissions Appeal Panel – Castell Alun High School			1							1
Admissions Appeal Panel – Cwrt Rawlin Primary School			1							1
Admissions Appeal Panel – Hendredenny Park Primary School					1					1
Admissions Appeals Panel – Y Pant School			1							1
Admissions Appeals Panel – Marlborough Primary School			1							1
Total			7		3					10

COMMUNITY/TOWN COUNCILS

Community/Town Council	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Aberystwyth Town	2									2
Amlwch Town			1							1
Caldicot Town					1					1
Gresford Community			1							1
Holyhead Town			1							1
Kidwelly Town	1									1
Llangelynnin Community			1							1
Llannon Community					2					2
Llantrisant Community							1			1
Mumbles Community	1									1
Pembrey & Burry Port Town			1							1
Pontypridd Town	1									1
Prestatyn Town	1	1	1							3
Quarter Bach Community		1								1
Rogiet Community							2			2
St Arvans Community			1							1
Sully Community		1	1							2
Total	6	3	8		3		3			23

REGISTERED SOCIAL LANDLORDS

Registered Social Landlord (Housing Association)	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – in whole or in part	Other Report Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Baneswell Housing Association Ltd					1					1
Bro Myrddin Housing Association Ltd		2	1							3
Bron Afon Community Housing Ltd		4	2							6
Cadwyn Housing Association Ltd	1		1							2
Cardiff Community Housing Association Ltd		2	1							3
Cartrefi Conwy		5	1					1		7
Cartrefi Cymunedol Gwynedd	2	5	7		6					20
Charter Housing Association		1			1					2
Clwyd Alyn Housing Association Ltd	1	2	5							8
Coastal Housing Group Ltd		4	2		2					8
Cymdeithas Tai Cantref		1							1	2
Cymdeithas Tai Clwyd Cyf		1	1							2
Cymdeithas Tai Eryri		1	1							2
Cynon Taf Community Housing		1								1
Family Housing Association (Wales) Ltd		2	1							3
Grŵp Gwalia Cyf Ltd	1	3	4		3					11
Gwalia Rest Bay (Co-ownership Equity Sharing) Housing Association Ltd			1							1
Hafod Housing Association	1	1	1							3
Linc-Cymru Housing Association		1	2							3
Melin Homes Ltd					1					1

REGISTERED SOCIAL LANDLORDS (CONTINUED)

Registered Social Landlord (Housing Association)	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report – Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Merthyr Tydfil Housing Association Ltd			1							1
Merthyr Valleys Homes		3	1						1	5
Mid Wales Housing Association Ltd		2	2							4
Monmouthshire Housing Association	1	2	3							6
Newport City Homes	2	2	3							7
Newydd Housing Association		1	1							2
North Wales Housing		4								4
NPT Homes		6	3		2					11
Pembrokeshire Care & Repair	1									1
Pembrokeshire Housing Association Ltd					2					2
Pennaf Ltd			1							1
RCT Homes		2	2							4
Rhondda Housing Association Ltd			2							2
Seren Group		1								1
Taff Housing Association		1								1
Tai Calon		3	1			1				5
Tai Ceredigion Cyf	1	1	1			4	1			8
United Welsh Housing Association		1				2				3
Valleys To Coast		3	1			1				5
Wales and West Housing Association	1		2			1				4
Total	12	68	55		27	1	1	1	2	166

LOCAL HEALTH BOARDS AND NHS TRUSTS

LHB/Trust	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	SI6 Report – Upheld – in whole or in part	Other Report Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Abertawe Bro Morgannwg	5	22	25		20	1	24	5	3	105
Aneurin Bevan	4	17	27	3	7	1	19	6	5	89
Betsi Cadwaladr	2	30	27		12	2	19	4	2	98
Cardiff and Vale	2	27	21		18	3	20	6	1	98
Cwm Taf	3	17	9	1	9		14	1	2	56
Hywel Dda	9	29	17	1	21	1	17	3	3	101
Powys Teaching	1	4	13	3	5		1		1	28
Public Health Wales	1		1							2
Velindre		1	2				1		1	5
Welsh Ambulance Services	1	6	6		2		1	2		18
Total	28	153	148	8	94	8	116	27	18	600

OTHER HEALTH BODIES

Health Body	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report – Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Board of Community Health Councils			1							1
Dentist	2	4	2	1	3		4	3		19
GP	5	34	33	5	12		19	16	2	126
Opticians					1			2		3
Pharmacist			1				1			2
Independent Health Provider – Spire Cardiff Hospital								1		1
Total	7	38	37	6	16		24	22	2	152

WELSH GOVERNMENT AND WELSH GOVERNMENT SPONSORED BODIES

Welsh Government and Welsh Government Sponsored Bodies	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report – Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
Welsh Government										
CAFCASS Cymru	3	1	3						2	9
CSSIW	3		2			1	1	2	1	9
Healthcare Inspectorate Wales							1			1
Independent Complaints Secretariat			3							3
Planning Inspectorate		1	3		1					5
Valuation Tribunal for Wales West Wales Region			1							1
Visit Wales		1								1
Welsh Government	2	6	17	1	1				1	28
Total	8	9	29	1	2	2	2	2	4	57
Welsh Government Sponsored Bodies										
Cadw			1							1
Care Council for Wales	1									1
Environment Agency	1	1								2
Natural Resources Wales	2	6	3		1					12
Welsh Language Commissioner			1							1
Total	4	7	5		1					17
OVERALL TOTAL WELSH GOVERNMENT AND ITS SPONSORED BODIES	12	16	34	1	3		2	2	4	74

OTHER

Other	Out of Jurisdiction	Premature	'Other' cases closed after initial consideration	Discontinued	Quick Fix/ Voluntary Settlement	S16 Report – Upheld – in whole or in part	Other Report Upheld – in whole or in part	Other Report – Not Upheld	Withdrawn	Total Cases Closed
ESTYN	3		1						1	5
Body out of jurisdiction	1									1
Total	4		1						1	6

Annex C

Code of Conduct Complaints:

Statistical Breakdown of Outcomes by Local Authority

COUNTY/COUNTY BOROUGH COUNCILS

County/County Borough Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Blaenau Gwent	2		1					3
Bridgend	4							4
Caerphilly	4			2			1	7
Cardiff	5		1				1	7
Carmarthenshire	1						3	4
Ceredigion	2							2
Conwy	1							1
Denbighshire	2						2	4
Flintshire	2	2						4
Gwynedd	4							4
Isle of Anglesey	1			1				2
Monmouthshire	1	2						3
Newport	8							8
Pembrokeshire	3			1		1		5
Powys	1		2					3
Rhondda Cynon Taf	14						1	15
Swansea	22	2	5	1				30
The Vale of Glamorgan							1	1
Torfaen	5			1				6
Wrexham	1							1
Total	83	6	9	6	1	1	9	114

COMMUNITY/ TOWN COUNCILS

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Aberffraw Community	1							1
Ammanford Town	1							1
Bangor City	1							1
Bargoed Town	1							1
Blaengwrach Community		1		1				2
Blaenrhedol Community	1							1
Bridgend Town	1							1
Brymbo Community	1							1
Caldicot Town	1							1
Cefn Community			1	2				3
Coity Higher	1							1
Colwinston Community					2			2
Connah's Quay Town	1							1
Cowbridge with Llanblethian Town	3							3
Cwmbrian Community	1							1
Forden Community		1						1
Glynneath Town	1							1
Goldcliff Community	1							1
Gorseinon Town					1			1

COMMUNITY/ TOWN COUNCILS (CONTINUED)

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Gresford Community	2							2
Hay-on Wye Town	1							1
Hirwaun & Penderyn Community	2							2
Holyhead Town	1							1
Kidwelly Town	1							1
Killay Community	1							1
Knighton Town	2							2
Laleston Community	1							1
Langstone Community	2							2
Llanbadrig Community	1							1
Llandrindod Wells Town	2			1		1		4
Llandudno Town	3							3
Llanelli Rural							2	2
Llanfaelog Community				5				5
Llanfynydd Community [Carmarthenshire]	3							3
Llangennith, Llanmadoc & Cheriton Community	2							2
Llangwm Community [Pembrokeshire]	1							1

COMMUNITY/ TOWN COUNCILS (CONTINUED)

Community/ Town Councils	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Llantrisant Community	1							1
Llanwrtyd Wells Town	1							1
Mathry Community	1							1
Montgomery Town	1							1
Mumbles Community	26							26
Nelson Community	2							2
Old Radnor Community	1							1
Old St. Mellons Community Council	1							1
Pembrey & Burry Port Town	1							1
Penmaenmawr Town	1			1				2
Pennard Community	2							2
Porthcawl Town	1							1
Prestatyn Town	8						1	9
Rogiet Community	1			1				2
St Florence Community	2							2
Sully Community					1			1
Talgarth Town	1							1
Trellech United Community	1							1
Total	93	2	1	11	4	1	3	115

Annex D

Extract From Strategic Plan 2012/13 to 2014/15

Vision, Values, Purposes and Strategic Aims

Our Vision

To put things right for users of public services and to drive improvement in those services and in standards in public life using the learning from the complaints we consider.

Our Values

Accessibility – we will be open to everyone and work to ensure that people who face challenges in access are not excluded. We will be considerate, courteous, respectful and approachable, and do our best communicate with complainants in the way they tell us they prefer.

Fairness – we will safeguard our independence and reach decisions objectively having carefully considered the evidence

Learning – we will improve through learning from our own experiences and encourage all public service providers to learn from their own experiences and those of others.

Effectiveness – we will make sure that we work in ways that make the best use of the public money we receive.

Being a good employer – we are committed to providing a positive environment in which to work and to continue to develop and support our staff, to ensure that we continue to remain professional and authoritative in all that we do.

Our Purposes

- To consider complaints about public bodies.
- To put things right. When we can, we will try to put people back in the position they would have been in if they had not suffered an injustice, and work to secure the best possible outcome where injustice has occurred.
- To recognise and share good practice so that public bodies can learn the lessons from our investigations and put right any systemic weaknesses identified, leading to continued improvement in the standards of public services in Wales.
- To help people send their complaint to the right public service provider or complaint handler.
- To consider complaints that members of local authorities have broken the code of conduct.
- To build confidence in local government in Wales by promoting high standards in public life.

Strategic Aims

Strategic Aim 1: To offer a service where excellent customer care is at the forefront of all we do, where we work to raise awareness of our service and do our best to make it is accessible to all and easy to use.

Strategic Aim 2: To deliver a high quality complaints handling service, which considers and determines complaints thoroughly but proportionately, and conveys decisions clearly.

Strategic Aim 3: To use the knowledge gained from our investigations to contribute to improved public service delivery and to inform public policy.

Strategic Aim 4: To continue to analyse and improve the efficiency and effectiveness of our governance, business processes and support functions, to further demonstrate transparency and ensure the best use of the public money entrusted to us.

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Ask for: James Merrifield

Your ref:



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Date: 15 July 2014



James.Merrifield@ombudsman-wales.org.uk

Mr Paul Matthews
Chief Executive
Monmouthshire County Council
County Hall
Cwmbran
NP44 2XH

Dear Mr Matthews

Annual Letter 2013/14

Following the recent publication of my Annual Report, I am pleased to provide you with the Annual Letter (2013/14) for Monmouthshire County Council.

Whilst health complaints have continued to rise, and remain the most numerous type of complaint, there has also been a noticeable increase in social services complaints. This suggests that service user discontent with social service provision is now beginning to manifest itself in a similar way to service users of health provision. My office will continue to monitor this area of growth, particularly in view of the changes to the Ombudsman's jurisdiction as a result of the Social Services and Well-being (Wales) Bill and the changes to the statutory social services complaints procedure. This growth is clearly a matter of concern, and I would urge local authorities to monitor trends in the complaints made to them in this area of service delivery.

In reference to the overall performance of county and county borough councils in Wales, my office has issued fewer reports, compared with 2012/13. There has also been a slight drop in the number of cases closed by way of 'quick fix' or 'voluntary settlement'- In view of the benefits to all parties in resolving certain types of complaints quickly and without the need for full investigation, I would encourage all Councils to be receptive to redress proposals from my office which would enable cases to be resolved in this way. Finally, the figures show that the largest number of complaints relate to 'Planning and Building Control' and 'Housing', followed by complaints about 'Children's Social Services' and 'Roads and Transport'.

I have issued nine Public Interest Reports during 2013/14, the majority of which related to health complaints. Some of these reports have identified serious failings in respect of clinical care provided to patients, and the lessons to be learnt from such reports are most relevant to health bodies. However, other public interest reports have identified failings in respect of making reasonable adjustments to accommodate a patient's deafness; acting in accordance with, or implementing guidelines; and, incomplete record-keeping. These are serious failings which could potentially occur within any public body or service provider, and I would therefore encourage you to review all public interest reports to identify any lessons which may apply to your Council.

In reference to the amount of time taken by public bodies in Wales in responding to requests for information from my office during 2013/14, whilst there has been an increase in the percentage of responses received within four weeks, 36% of responses from public bodies have taken more than 6 weeks. I have outlined my concerns in the Annual Report over the way in which complaints are handled, and have also previously referred to 'delay', and the consequences of it, in The Ombudsman's Casebook. Clearly, there remains work to do to ensure that public bodies are providing information promptly and I would encourage all bodies to consider whether their performance in this area warrants further examination.

In reference to your Council, there has been a decrease in the number of complaints received, but an increase in the number of complaints investigated, compared with 2012/13. The largest single area of complaint remains 'Planning and building Control', although the number of complaints received in this area has halved compared with 2012/13. My office has issued two 'upheld' reports and one 'not upheld' report against your Council during the past year. I am pleased to note an above-average number of quick fixes and voluntary settlements. In reference to your Council's response times, I am pleased to see that the majority of responses were received within three weeks of the date they were requested.

The new Ombudsman will be taking up his post in August and I am sure he will be in touch at an appropriate time to introduce himself and possibly to discuss some of the above matters. Finally, following the practice of previous years, a copy of the annual letters issued to county and county borough councils will be published on the PSOW's website.

Yours sincerely

Professor Margaret Griffiths
Acting Ombudsman

Appendix

Explanatory Notes

Section A compares the number of complaints against the Council which were received by my office during 2013/14, with the local authority average (adjusted for population distribution) during the same period.

Section B provides a breakdown of the number of complaints about the Council which were received by my office during 2013/14. Section C compares the number of complaints against the Council which were received by my office during 2013/14, with the local authority average for the same period. The figures are broken down into subject categories.

Section D provides the number of complaints against the Council which were taken into investigation by my office during 2013/14. Section E compares the number of complaints taken into investigation with the local authority average (adjusted for population distribution) during the same period.

Section F compares the complaint outcomes for the Council during 2013/14, with the average outcome (adjusted for population distribution) during the same period. Public Interest reports issued under section 16 of the Public Services Ombudsman (Wales) Act 2005 are recorded as 'Section 16'.

Section G compares the Council's response times during 2013/14 with the average response times for all local authorities, and all public bodies in Wales during the same period. This graph measures the time between the date my office issued an 'investigation commencement' letter, and the date my office receives a full response to that letter from the public body.

Section H provides a breakdown of all Code of Conduct complaints received against Councillors during 2013/14. Finally, Section 'I' contains the summaries of all reports issued in relation to the Council during 2013/14.

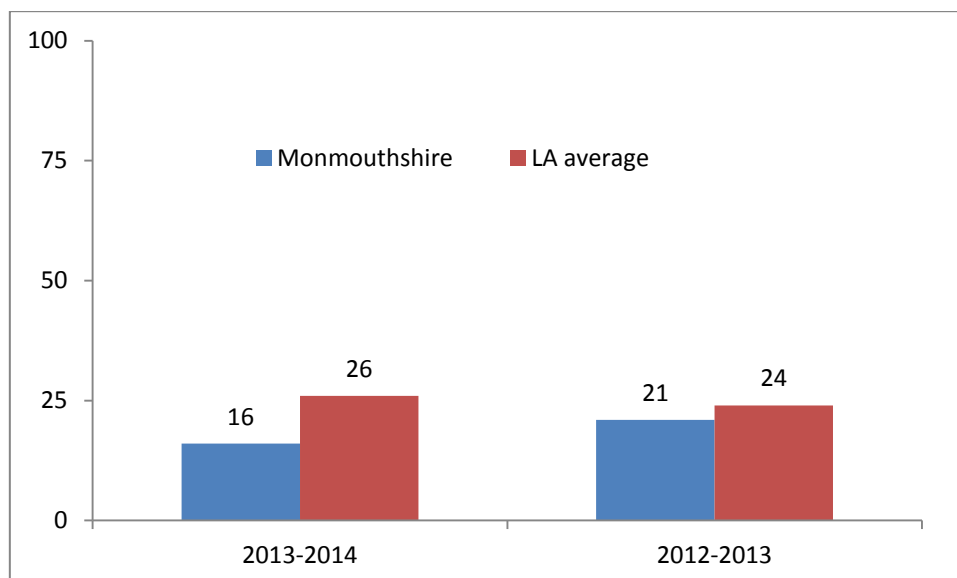
Housing Stock

As with previous exercises, the figures for 2013/14 have not been adjusted to take account of the transfer of housing stock. However, it is noted that there is likely to be a higher proportion of Housing complaints where local authorities have retained their housing stock.

Feedback

We welcome your feedback on the enclosed information, including suggestions for any information to be enclosed in future annual summaries. Any feedback or queries should be sent to james.merrifield@ombudsman-wales.org.uk.

A: Comparison of complaints received by my office with average, adjusted for population distribution

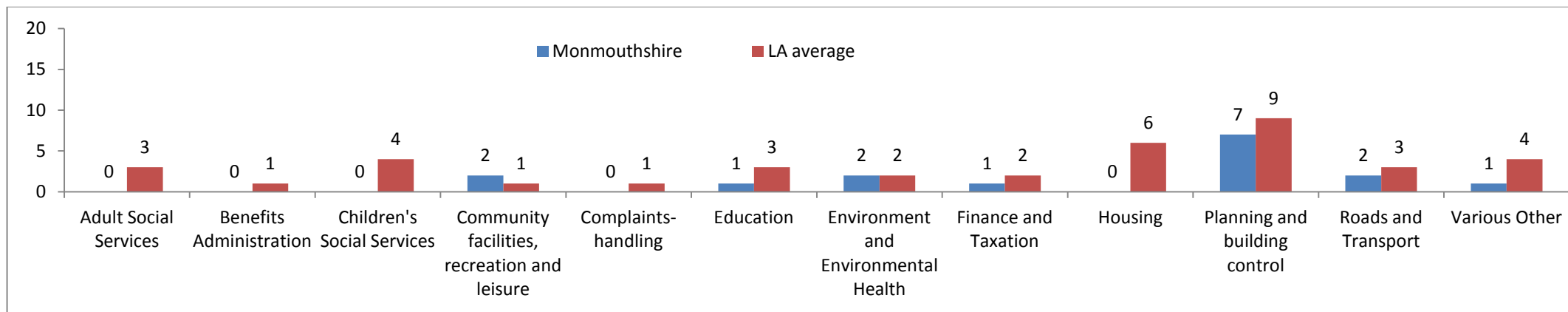


B: Complaints received by my office

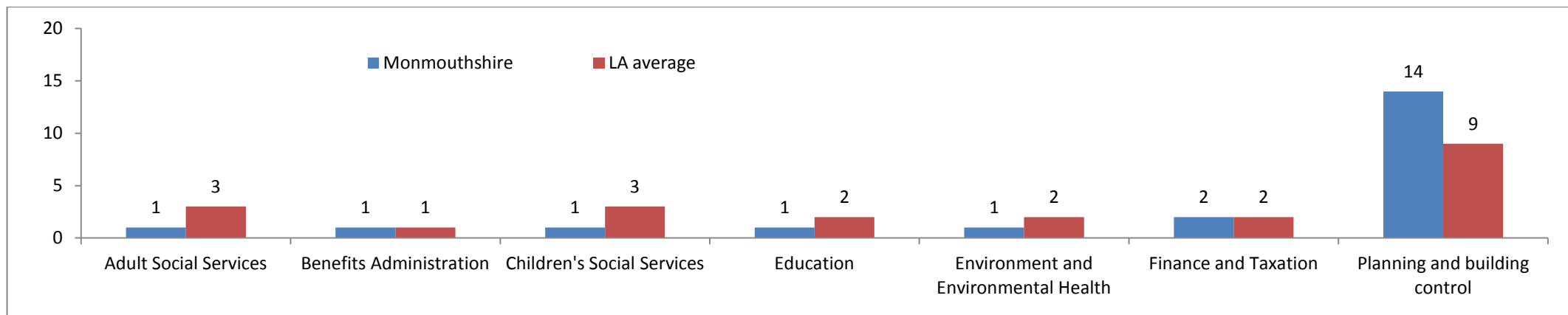
Subject	2013/14	2012/13
Adult Social Services	0	1
Benefits Administration	0	1
Children's Social Services	0	1
Community facilities, recreation and leisure	2	0
Education	1	1
Environment and Environmental Health	2	1
Finance and Taxation	1	2
Health	0	0
Housing	0	0
Planning and building control	7	14
Roads and Transport	2	0
Various Other	1	0
Total	16	21

C: Comparison of complaints by subject category with LA average

2013/14



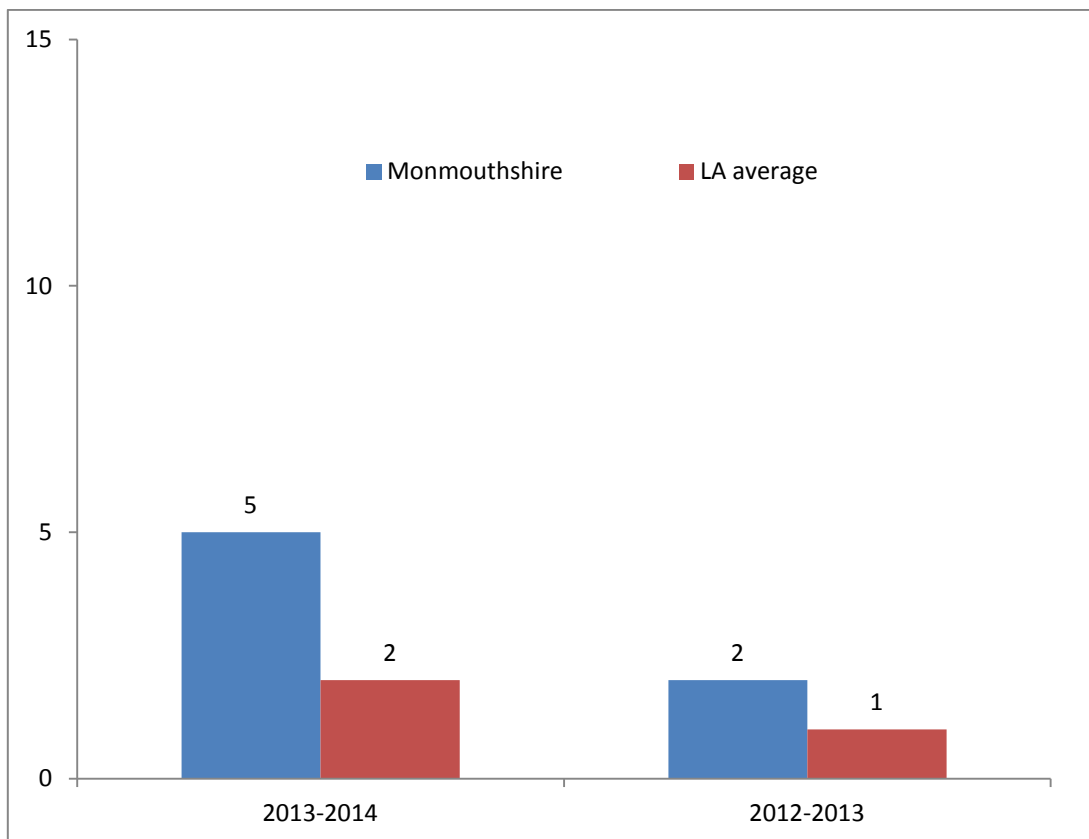
2012/13



D: Complaints taken into investigation by my office

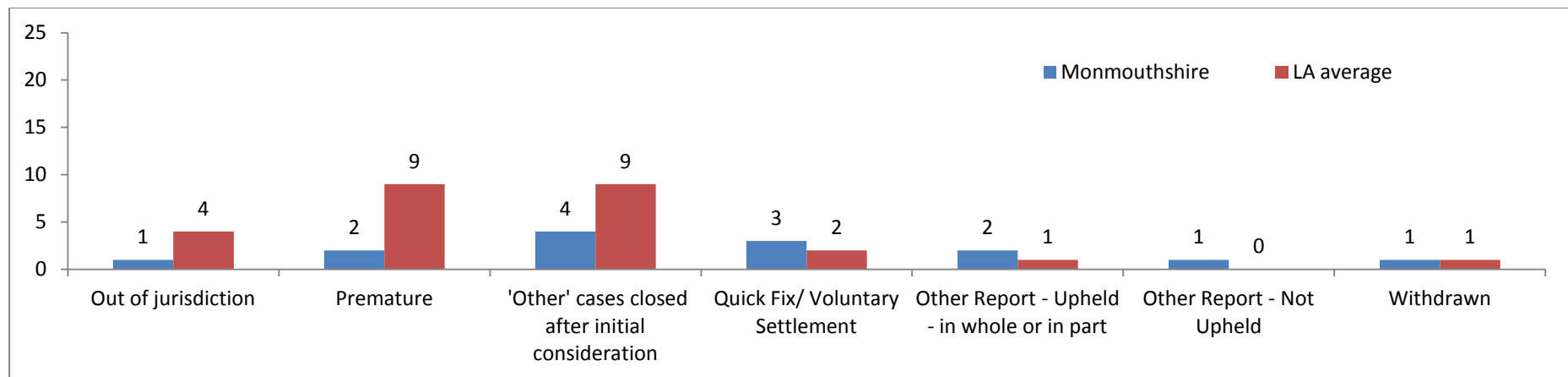
	2013/14	2012/13
Number of complaints taken into investigation	5	2

E: Comparison of complaints taken into investigation by my office with average, adjusted for population distribution

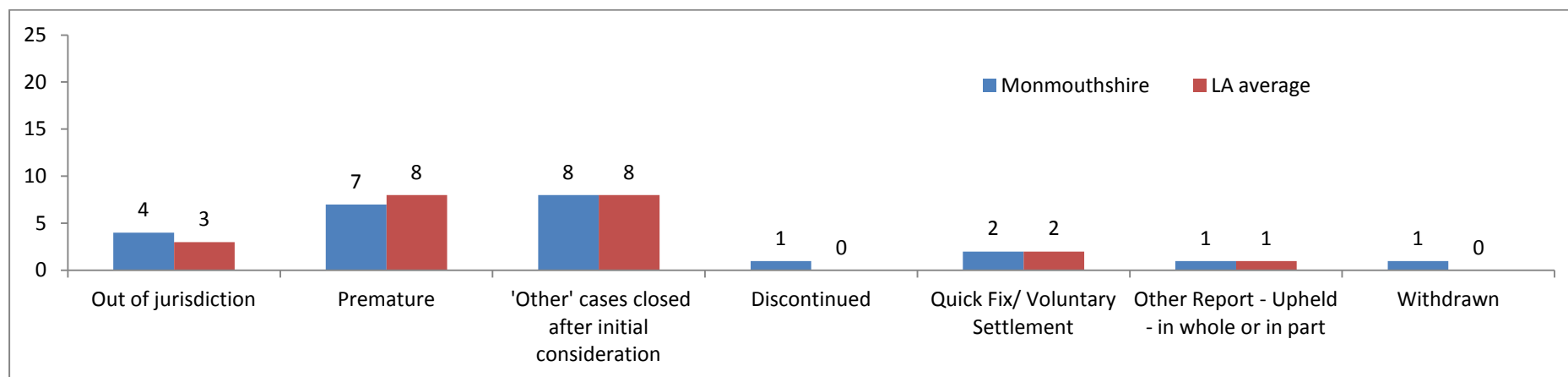


F: Comparison of complaint outcomes with average outcomes, adjusted for population distribution

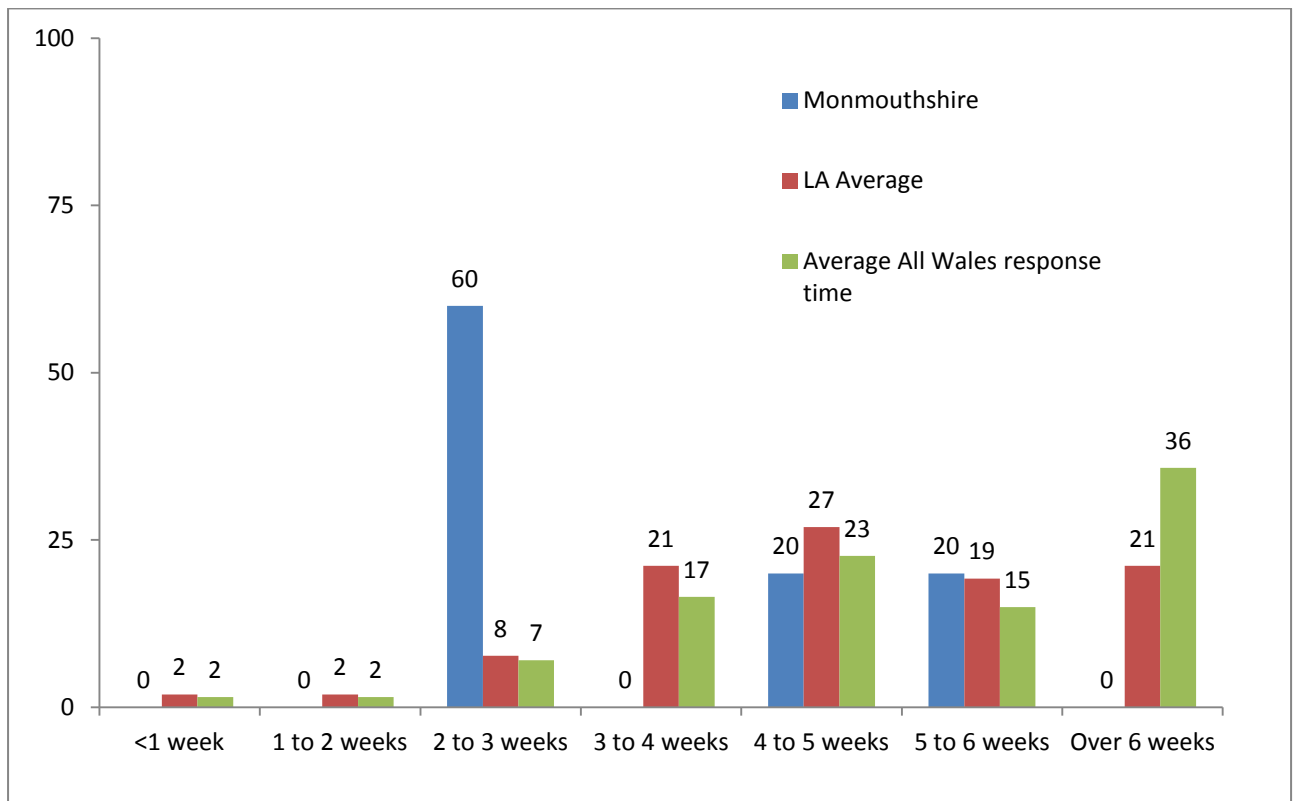
2013/14



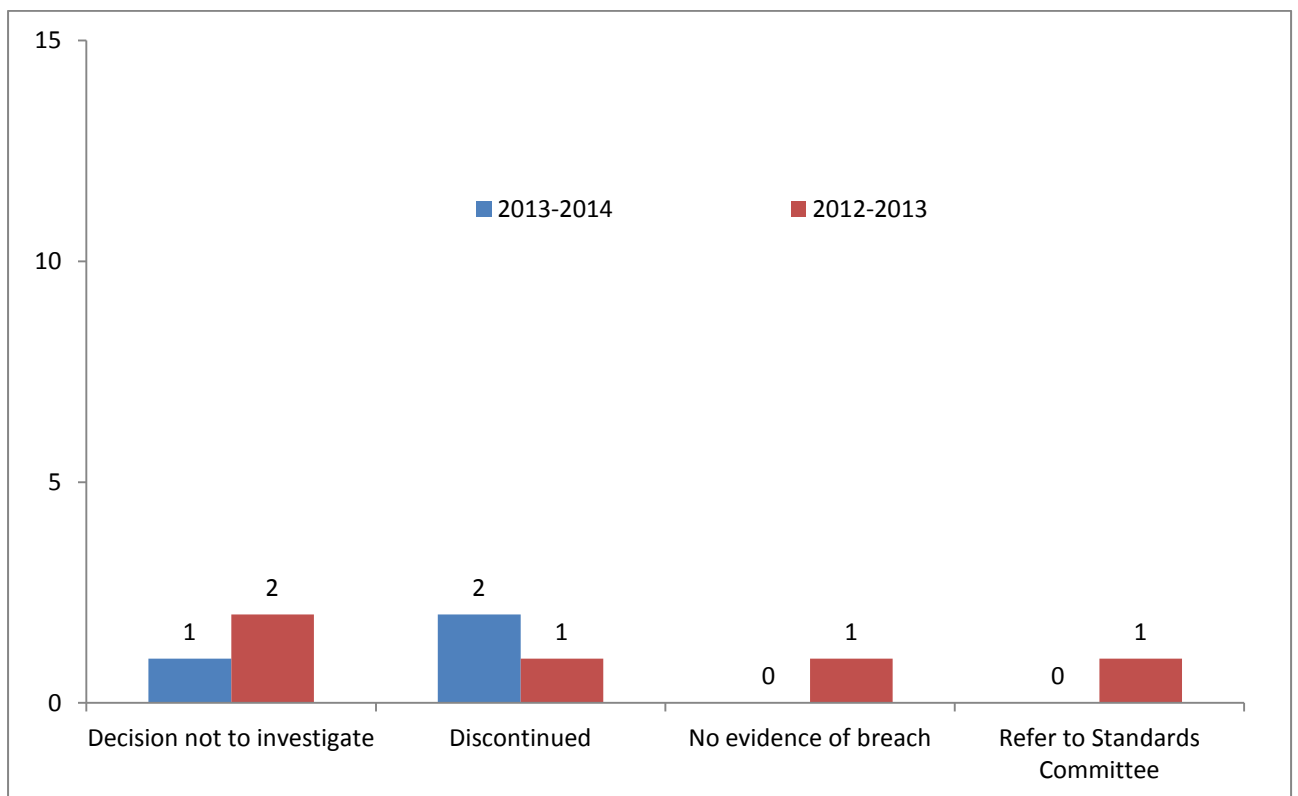
2012/13



G: Comparison of Council times for responding to requests for information with average LA and average All Wales response times, 2013/14 (%)



H: Code of Conduct complaints



I: Summaries

Community Facilities, Recreation and Leisure

Quick fixes & voluntary settlements

July 2013 – Other – Monmouthshire County Council

During the investigation of a complaint about a Community Council's eviction of Mr A & Mr B from allotments, it became clear that the Community Council managed the allotment site ("the site") on behalf of Monmouthshire County Council ("the County Council"). Therefore, ultimately, the County Council was the public body responsible for the site and this office considered that it was appropriate to look into the County Council's involvement in the matter.

On 18 July, the County Council informed the Ombudsman's office that it had taken over management of the site from the Community Council and had also reinstated Mr A and Mr B's allotment tenancies. It was concluded that the action taken by the County Council was reasonable and that it was therefore appropriate to discontinue the investigation into the County Council's involvement in the matter.

Case reference 201301944 & 201301945

Finance and Taxation

Quick fixes & voluntary settlements

Monmouthshire County Council – Finance and Taxation

Case reference 201301861 – October 2013

Ms E complained about an order to pay Council Tax on a property she previously rented. Her landlord had informed Ms E that as new conversion it had not been registered for Council Tax and she subsequently moved out. The Council issued proceedings without first trying to trace her to present the due account. Ms E was unhappy with its actions, the resulting court costs, as well as the way in which the Council handled her complaint.

The Ombudsman found that the Council had properly determined Ms E was liable for her period of occupation and so could not investigate this issue. However, the Council acknowledged that it was precipitate in issuing proceedings without first seeking to locate Ms E, according to good administrative practice. It therefore agreed to a resolution of that issue by a redress payment of £75 and also a renegotiation of her instalments for repayment.

Planning and Building Control

Upheld

Monmouthshire County Council – Handling of planning application

Case reference 201303444 – Report issued March 2014

Ms B and Mr S complained about the actions of Monmouthshire County Council in relation to a boundary wall that their neighbour had erected between their two properties. They were concerned about the original planning permission and the Council's approach to planning enforcement once the neighbour failed to face both sides of the wall in stone. They were also dissatisfied with how the Council dealt with their complaints.

The Ombudsman found that while the time it had taken for the wall to be completed was very unfortunate, the actions of the Council were largely appropriate. The Council had served an enforcement notice once it became apparent that the neighbour had failed to complete the wall, and that enforcement notice was upheld at appeal. Unfortunately matters were delayed due to the need for Ms B and Mr S and the neighbour to agree terms for him to access their land to complete the work. The Ombudsman did not uphold the complaint about the planning matters.

The Ombudsman found that there were some failings in the way Ms B and Mr S's complaint was dealt with by the Council. In particular, it took too long and the response did not address their proposal to resolve the matter. The Ombudsman upheld the complaint about the way the Council dealt with Ms B and Mr S's complaint to the extent of the failings identified. She recommended that the Council provide them with a formal written apology.

May 2013 – Handling of planning application – Monmouthshire County Council

Mr I and Mr C complained to the Ombudsman about the manner in which the Council arrived at a decision to permit a planning application to allow an industrial manufacturing unit to be constructed to the rear of their properties which had a detrimental effect on their amenities. They complained that the development was over-bearing and overshadowed their properties excessively. They also complained that as a following the Council's decision to give planning consent, they had suffered from noise nuisance caused by the industrial processes being carried out within the unit. They also complained that the developer in constructing the unit had failed to comply with the planning consent approved and that the Council had failed to take action to ensure that the development was in accordance with consent.

The Ombudsman considered that in determining the application the Council failed to take reasonable steps to consider the impact the proposed development would have on neighbours' amenity. It was also considered that these flaws called into question the decision to approve the application in the form it was made. The Ombudsman agreed that the unit had not been constructed in accordance with the consent that was granted and that the development was still unauthorised some 20 months later. The Ombudsman considered that the Council had been extremely tardy in pursuing this matter. He upheld the complaint and made the following recommendations:

- a) the Council should apologise to Mr I and Mr C;

- b) the Council should engage the District Valuer to assess the impact the development would have had on the value of the properties of Mr I and Mr C and that the Council should pay redress equivalent to the amount of any devaluation;
- c) the Council provides additional redress of £1500 each for Mr I and Mr C for the failure to deal with the unauthorised development and that the Council should continue to pay them £100 per month until a formal decision is made about how the unauthorised aspects of the development should be regularised;
- d) the Council should amend its procedures and issues reminders to its staff in relation to how they consider certain aspects of planning applications.

Case reference 201200334

Not Upheld

June 2013 – Handling of planning application – Monmouthshire County Council

Mr W complained about the action taken by Monmouthshire County Council in respect of his son's use of his residence. The investigation focused on whether the Council collected sufficient evidence to cause it to intervene and ultimately, to bring enforcement action against his son and to explore why the Council appeared to act contrary to the advice provided to his son and promptly instigated enforcement action.

The Ombudsman did not uphold the complaint. The information contained within the Council's files confirmed that it had acted in response to local complaints and had gathered sufficient information from a number of sources in order to justify the action taken. There was evidence to suggest that the Council had given incorrect advice to Mr W's son. The Council had accepted this failing. However, the evidence confirmed that it had taken steps to clarify its advice to Mr W's son and also attempted to resolve the matter prior to bringing enforcement action.

Case reference 201200482



SUBJECT: Recent Cases and Decisions
MEETING: Standards Committee
DATE: 1 September 2014
DIVISION/WARDS AFFECTED: All

1. PURPOSE:

The Public Services Ombudsman for Wales has now issued two Code of Conduct casebooks reporting on the investigation of complaints against councillors. Details are also provided of a recent judgment in the High Court in respect of an appeal against an Adjudication Panel disqualification

2. RECOMMENDATIONS:

Members note the findings of some recent cases.

3. KEY ISSUES:

The Ombudsman's casebooks are a useful resource for committee members and councillors demonstrating how the Code and its enforcement operate across Wales both at a local (standards committee and national (adjudication panel) level. They are available on-line at the Ombudsman's website. The recent High Court decision in the case of a Flintshire Councillor Patrick Heesom highlights a number of issues of relevance to all Standards Committees in Wales. The full judgement can be found here <http://www.landmarkchambers.co.uk/userfiles/Heesom.pdf> Councillor Heesom challenged a decision of a tribunal of the Adjudication Panel to disqualify him for 2½ years on three grounds:

1. That the tribunal should have used the criminal not civil standard of proof
2. That they made the wrong findings as to breach of the Code and
3. That the sanction was unjustified.

Some extracts of the judgement (attached) give the background and grounds for appeal.

Paras 1-10 Introduction

Para 42 criticism of civic servants and enhanced protection given to freedom of expression

Paras 218-227 Was the sanction 'wrong'?

Mr Justice Hickinbottom considered the appropriate standard of proof is civil. The sanction of the tribunal was quashed and one of disqualification for 18 months was imposed.

4. REASONS:

To keep members advised of recent decisions relating to code of Conduct Complaints

5. RESOURCE IMPLICATIONS:

None

6. SUSTAINABLE DEVELOPMENT AND EQUALITIES IMPLICATIONS:

None.

7. CONSULTEES:

None

8. BACKGROUND PAPERS:

None

9, AUTHOR: S.M.W. Andrews, Monitoring Officer.

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Extracts from Heesom Judgement

Introduction

1. The Appellant is 76 years of age, and is a long-standing local councillor.
2. He was first elected as a member of Clwyd County Council in 1990, and, on the introduction of unitary authorities in Wales, he was elected to Flintshire County Council as Independent member for the Mostyn ward in 1996, being re-elected in 2000, 2004, 2008 and 2012. After the 2004 elections, he became leader of the Independents, the main opposition group on the Council. In the 2008 elections, the Independents became the largest group on the Council, and the Appellant became the leader of the Council in waiting. However, he was put under investigation for election irregularities – during which he was in due course cleared of any impropriety – and it was decided that another Independent member (Councillor Arnold Woolley) should take on the leadership of the Council, which he did. The Appellant remained leader of the Independents, and was appointed Executive Member for Housing Strategy. The Independent group lost control of the Council in the 2012 elections.
3. On 12 March 2009, a complaint about the Appellant's conduct was submitted to the Public Services Ombudsman for Wales ("the Ombudsman") by all of the Council's Corporate Management Team, which was made up of the Council's Senior Officers. As a result of the complaint, he stood down from the Executive, but continued serving as a councillor.
4. The Ombudsman published his final report on the complaint on 22 July 2010. The report ran to 232 pages and appendices. In it, the Ombudsman found that there was evidence of breach of the Council's Codes of Conduct serious enough to warrant reference to the President of the Adjudication Panel for Wales for adjudication by a case tribunal, and the matter was referred.
5. The proceedings before the case tribunal were lengthy, partly as a result of the Appellant's ill health – he was diagnosed by a psychiatrist appointed by the tribunal to be suffering from clinical depression, and thus unfit to give evidence – which caused a 12 month adjournment from September 2011. The tribunal published their decision in 2013, after hearing 48 witnesses over 58 days of hearings and consideration of 7000 pages of evidence. Their decision was made in three parts. On 25 June 2013, they published their Findings of Fact, a document of over 400 pages. On 19 July they made, and on 6 August 2013 published, their Breach Decision and Sanction Decision in separate documents. In these, the tribunal found that the Appellant had committed 14 breaches of the Council's Codes of Conduct by failing to show respect and consideration for Council officers, using bullying behaviour, attempting to compromise the impartiality of officers and conducting himself in a manner likely to bring his office or the Council into disrepute. In terms of sanction, the tribunal disqualified the Appellant from being a member of the Council or of any other local authority for 2 years 6 months.
6. In this statutory appeal, the Appellant challenges the tribunal's decision on three grounds, namely:
 - i) The case tribunal erred in adopting the wrong standard of proof, i.e. the civil as opposed to the criminal standard.
 - ii) The case tribunal erred in its findings as to breaches of the Codes of Conduct.

Extracts from Heesom Judgement

- iii) Insofar as its findings of breach were properly made, the case tribunal erred in finding that they were such as to justify the sanction imposed.
7. The appeal thus gives rise to the following important issues:
- i) The appropriate standard of proof in an adjudication by a case tribunal of the Adjudication Panel for Wales.
 - ii) The scope of and legitimate restrictions to a politician's right of freedom of expression under article 10 of the European Convention for on Human Rights ("the ECHR") and at common law, particularly in relation to civil servants' rights and interests which might be adversely affected by the purported exercise of those rights.
8. Supperstone J granted permission to appeal on 15 November 2013. On 19 December 2013, I ordered expedition because, as a result of the case tribunal decision and this appeal, not only can the Appellant not act as a councillor, but the Mostyn ward is currently without representation since no by-election can be held until this appeal is determined.
9. On 6 February 2014, on their application, I granted the Welsh Ministers permission to intervene in writing, because of the potential systemic impact of some of the issues on the adjudication scheme in Wales as a whole.
10. At the hearing, Mark Henderson and David Lemer appeared for the Appellant, and James Maurici QC and Gwydion Hughes for the Ombudsman. The Welsh Ministers did not appear at the hearing, but the written submissions of Gwion Lewis of Counsel on their behalf were of considerable assistance, particularly in respect of the statutory scheme in Wales (to which the section below on the legal framework owes much). At the outset, I thank them all for their industry and assistance.

Criticism of Civic Servants and Freedom of Expression

42. Therefore:
- i) Civil servants are, of course, open to criticism, including public criticism; but they are involved in assisting with and implementing policies, not (like politicians) making them. As well as in their own private interests in terms of honour, dignity and reputation (see Mamère at [27]), it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration.
 - ii) Nevertheless, the acceptable limits of criticism are wider for non-elected public servants acting in an official capacity than for private individuals, because, as a result of their being in public service, it is appropriate that their actions and behaviour are subject to more thorough scrutiny. However, the limits are not as wide as for elected politicians, who come to the arena voluntarily and have the ability to respond in kind which civil servants do not. This proposition has recently been emphasised and applied in Mamère (Director of the Central Service for Protection of Ionising Radiation criticised and called a "sinister character" by the leader of the Green Party in France, for his response to the Chernobyl disaster), Buğan v Romania (2013)

Extracts from Heesom Judgement

Application No 13284/06 (management of public hospital criticised by a journalist) and July v France (2013) 57 EHRR 28 (judges investigating the death of another judge criticised by his widow in the press as being biased, slow and conducting a farcical investigation).

iii) Where critical comment is made of a civil servant, such that the public interest in protecting him as well as his private interests are in play, the requirement to protect that civil servant must be weighed against the interest of open discussion of matters of public concern and, if the relevant comment was made by a politician in political expression, the enhanced protection given to his right of freedom of expression (see also Mamère at [27]).

Sanction

217. Was the Sanction "Wrong"?

218. However, more generally, Mr Henderson submitted that the penalty imposed was simply too great in all of the circumstances, particularly in the light of the fact that the Appellant had been a councillor for nearly 20 years before the incidents in respect of which breaches of the Codes of Conduct have been found, and (more importantly, he submitted) four years after those incidents, without any conduct issues arising. As I have found that the case tribunal did not err in approach, I should only find the sanction they imposed to be wrong if clearly so or (in the words of Sullivan J in Sanders (No 2) at [15] and [42]) if it was "manifestly excessive".

219. In my view, there is far more force in this ground.

220. In making their assessment, as I have indicated, the case tribunal identified the main aggravating and mitigating factors in this case. Briefly, they were as follows.

221. With regard to factors upon which the Appellant can rely in his favour:

i) A number of common aggravating factors were absent. The Appellant has not been convicted or even charged with any criminal offence; and there is no suggestion that any of the relevant conduct is criminal, or corrupt, or sleaze, or motivated by or resulting in any personal financial gain by the Appellant. Mr Henderson submitted that this is of particular importance, in the light of the fact that, in England, disqualification and suspension of a councillor are not available unless he has committed a crime; and there does not appear to be any reported case in which a councillor has been disqualified (as opposed to suspended) in the absence of criminal conduct.

ii) Most of the breaches were for a failure to show respect and consideration to others, not (submitted Mr Henderson) the most serious of charges. All of the incidents took place over a period of two years – and all but two, over about eight months – in a career in local politics of over 20 years.

iii) The Appellant can of course rely upon his right to freedom of speech, and the fact that most of the utterances that form the basis of the misconduct were made as political expression. I say "most" because, although the tribunal found that all of the remaining charges resulted from circumstances of political expression (and they found that "dishonesty" was not an aggravating factor in this case: paragraph 20 of the Sanctions Decision), they also found that some (notably in connection with the Mills/Dodd exchange, and the Visioning Day letter and note: Incidents 2 and 4 above)

Extracts from Heesom Judgement

were deliberately false or misleading; and article 10 does not protect such speech (see paragraph 38(v) above). But in any event, generally, this weighs greatly in the Appellant's favour. The minimum sanction should be imposed, consistent with the requirements of the legitimate aim of the measure.

iv) If the Appellant is suspended or disqualified, that will rob the electorate of his ward of the councillor of their choice. Here, his re-election in 2012 is of some relevance. Although the extent to which the nature and extent of the allegations against the Appellant were known to the public prior to that election is unclear, it seems that the public were aware that there were allegations and that the adjudication before the case tribunal was proceeding. If he is disqualified, in addition to preventing him from standing for any relevant authority (not just the Council), that will trigger a by-election in the Mostyn ward in which he could not stand. This court can look at the practical implications of any sanction; and, in practice, any disqualification may mean that the Appellant will not be able to be a member of the Council until the elections that are due in 2016 at the earliest. The tribunal noted the fact that the next elections would be in 2016; and appear to have used that fact to reduce the period of disqualification they might otherwise have imposed as being disproportionate (paragraph 22 of the Sanctions Decision).

v) In addition, disqualification would rob the Appellant of his living as a councillor.

vi) Mr Henderson, understandably, relied heavily upon the Appellant's record as a councillor. Prior to 2007, he had nearly 20 years good service as a councillor, without any misconduct in terms of breaches of the Code of Conduct; and similar good service since the last incident referred to above (February 2009) until his disqualification in July 2013, i.e. about 4½ years. In addition, there were testimonials from a number of councillors and officers, that marked his experience, knowledge and worth as a councillor. One described him as one of the most intelligent and experienced members of the Council (paragraph 1.42 of the Findings of Fact). The tribunal found that the Appellant worked hard for his constituents, and saw no evidence to controvert the positive view of the Appellant put forward by those witnesses who commended him (*ibid*). In addition to the commendation of his character, Mr Henderson submitted that, given that he did not commit any breaches of the Code for over four years after the most incident, there can be some confidence in him not misconducting himself as a councillor in the future.

222. However, in terms of aggravating factors:

i) Although none of the conduct was criminal, all of the breaches of the Code were intentional; and some of the misconduct was undoubtedly serious. Some involved deliberately dishonest and misleading conduct towards officers, other Members and members of the public. In respect of officers, much of the conduct was intended to undermine – not their views – but the officers personally. Most of this conduct towards officers was performed when those officers were merely trying to do their job, which the Appellant was intent on frustrating. On occasions, officers were personally undermined as part of a campaign by the Appellant to undermine Council policies which the Executive had approved and were therefore not in play: the officers were only trying to do their job, and implement those policies. In respect of housing allocation, the Appellant well knew that his involvement in operations was both against the relevant regulations and Council policy, which were (again as he well knew) to prevent members being involved in such allocation when members of their constituency were involved. He encouraged officers to act contrary to Council policy. As the tribunal put it, he attempted "to drive a coach and horses through the

Extracts from Heesom Judgement

housing allocation policy" (paragraph 10 of the Sanctions Decision). Vis a vis the officers, he misused his power as a councillor. The case tribunal concluded that, in the circumstances, the breaches were "extremely serious, and "the [Appellant's] conduct has seriously undermined [the standards in public life that the Code of Conduct was designed to protect (paragraph 21 of the Sanctions Decision). I agree.

ii) In respect of the Mills/Dodd exchange, he was found to have brought the Council into disrepute; and his misconduct damaged the relationship between councillors and officers within the authority, and undermined good government. Further, the tribunal found (paragraph 21 of the Sanctions Decision), and I accept, that, looking at the misconduct cumulatively, it could be said to have brought the office of member or the authority into disrepute.

iii) There were repeat breaches (involving a significant number of officers, from a wide range of grades; but several relatively junior), a factor specifically identified in the Sanctions Guidance as being a potential marker for disqualification. Mr Henderson emphasised that most of the incidents took place over a few months when the Appellant was an Executive Member: but, even taking out of account the three breach findings I have quashed, there were repeated incidents, during both the time he was a backbencher and when he was an Executive Member. The misconduct continued despite warnings (although no formal complaint) that he had been guilty of misconduct. In the words of the tribunal (paragraph 20 of the Sanctions Decision), there was a "failing to heed appropriate advice and warnings".

iv) Although it is important not to punish the Appellant for his conduct during the hearing, it is relevant that he showed no remorse or insight into his misconduct (including insight into the effect of his conduct on officers), rather making extreme allegations against officers including allegations that they had manufactured allegations against him and supported them with manufactured documentary evidence. Although Mr Henderson suggested that the four years that the Appellant acted as a councillor after these events without any report of misconduct strongly suggests that there is little risk of a repetition in the future, given his lack of understanding and insight, that risk must be real.

v) Although there was no intent on the Appellant's part to obtain personal financial gain, the tribunal found (and I accept) that the Appellant was attempting to obtain political gain by, improperly, seeking to favour his constituents. The Mills/Dodd exchange incident was a notable example.

223. The tribunal found that the Appellant's conduct had "seriously undermined [the standards in political life] and public confidence", such that "the high threshold required for disqualification... has been crossed (paragraph 21 of the Sanction Decision). I note the "chilling effect" that the fear of sanction potentially has on the freedom of expression (Lombardo at [61]). However, even when the three breaches I have quashed are taken out of account, after anxious consideration, I agree: no sanction short of disqualification would have been appropriate and, in view of the seriousness of the misconduct, disqualification is a proportionate response.

224. However, mindful of the requirement of article 10 to impose the minimum sanction consistent with the aims of maintaining standards in public life, I have come to the view that a period of disqualification of 2 years and 6 months was excessive, and manifestly so. The tribunal considered that this is a case in which a period of disqualification near the upper end of the range (i.e. 5 years) would be appropriate, which they then reduced to reflect the realities of a period of disqualification that went

Extracts from Heesom Judgement

beyond mid-2016, when the next Council elections are due to be held. With respect to the tribunal, and taking into account the automatic disqualification provisions applying to those who are convicted of serious criminal offences (see paragraph 12 above), I do not consider that that gives "adequate head room for the much graver breaches of the Code which could be envisaged" (see Sanders (No 2) at [38] per Sullivan J). In all the circumstances (and on the basis of the breaches limited to those that I have upheld), I consider the appropriate period of disqualification to be one of 18 months.

225. I consider that to be in line with sanctions imposed in other cases, notably Sanders (No 2), the facts of which are related above (paragraph 207). Sullivan J considered that a suspension of six months would have been appropriate. Although each case is different, that incident bears some resemblance to the Mills/Dodd exchange incident. However, Sullivan J stressed (i) that, in Councillor Sanders' case, this was a "one-off", and "there was no suggestion that there was a wider problem of councillors bullying and intimidating officers within the council" (at [41]; and (ii) in principle, bullying and intimidation of officers by a councillor might warrant disqualification (at [35]). In the case of the Appellant, although there is no suggestion of other members of the Council misconducting themselves towards officers, the Appellant himself did so on a number of occasions.

226. Sullivan J notes (at [39]) two cases in which disqualification had been imposed and an appeal against it dismissed, namely Hathaway v Ethical Standards Officer [2004] EWHC 1200 (Admin) and Sloam v Standards Board for England [2005] EWHC 124 (Admin). In Hathaway, a member barged past a traffic warden, thereby assaulting him, to get to a market trader to whom he used violent language. He pleaded guilty to assault, and was fined. Disqualification for one year was upheld on appeal. In Sloam, the member pleaded guilty to attempting dishonestly to evade four penalty charge notice issued by the council. He was fined £225. His appeal against a one year disqualification was also refused. Whilst the facts of these cases are very different from those of the Appellant – and, of course, I appreciate that in those two cases criminal conduct was involved, albeit at the low end – I do not consider that a period of disqualification of 18 months in his case is out of kilter with the sanctions upheld in those cases.

Sanction Conclusion

227. For those reasons, I quash the sanction imposed by the tribunal; and impose in its place disqualification for a period of 18 months to run from 19 July 2013.

The Code of Conduct Casebook

Issue 1 November 2013

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A word from the Ombudsman

I'm very pleased to introduce the first edition of 'The Code of Conduct Casebook'. 'The Ombudsman's Casebook' featuring investigations into complaints about maladministration and service failure is published quarterly and has proved of interest and value to its many readers. It's designed above all to highlight the findings of investigations and quick fixes so the other service providers can learn from them and improve public services.

For quite some time there have been calls for an equivalent publication on Code of Conduct investigations, but this has proved more challenging to produce. While maladministration cases result in reports and recommendations from my office, cases where there is evidence of a breach of the Code of Conduct are referred to either a Standards Committee or a Tribunal convened by the Adjudication Panel for Wales for a decision. Consequently, it is harder to provide the full story of a case in our summary. We have used the learning from Code cases in the form of case examples, however, in developing guidance for County Councillors and Community Councillors which is available here.

In order to develop the Code of Conduct Casebook, we have been including summaries in each report we produce, whether the case is referred or not. We're also grateful to the Local Authority Monitoring Officers and to the Adjudication Panel for Wales for allowing us to include links to their judgements so that the full story of each case can be told.

(Continued overleaf)

I hope you find them useful, and hope also that members of county and town and community councils will find them helpful in considering situations where the Code might possibly be breached. Recently, we have seen a welcome reduction in the number of cases being investigated by my office and I believe that the introduction of local resolution mechanisms by county councils has played an important part in this. Ideally, it would be good to see a further reduction in the months ahead.

The vast majority of councillors pursue their duties in a public spirited, open and transparent fashion. Examples of poor behaviour are thankfully rare. The real problems often arise where acrimony between councillors is allowed to develop to the point of continuous argument with sides being taken and entrenched positions adopted. Typically, this happens within town or community councils and the issues at the heart of the disputes, if they can even be remembered, are often trivial.

I hope that the councils concerned will take a long objective look at themselves, realise they are bringing themselves and their councils into disrepute, and seek assistance either from their monitoring officer or One Voice Wales to resolve the dispute. I would like to pay particular tribute to the Monitoring Officer of the City and County of Swansea who personally engaged in mediation in an attempt to end one particularly protracted squabble. His work, and that of his colleagues across Wales, has been of particular support to my office in improving adherence to the Code of Conduct.

Although this is the first Code of Conduct Casebook, I also anticipate it will be my last as I expect to move to a new role shortly. I would like to take the opportunity to wish all of those in local government in Wales the very best as they head into some very difficult times ahead, and also to pay tribute to the work of some key individuals and organisations who have contributed to driving up standards including the Adjudication Panel for Wales under the capable leadership of its president, Peter Davies; Stephen Phipps both as long time clerk to the Panel and in developing policy for the Welsh Government, and Steve Thomas and Daniel Hurford at the WLGA.



Peter Tyndall
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 the summaries of all reports issued by this office during the last six months, for which the findings were one of the four set out above. 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.

Case Summaries

No evidence of breach

Promotion of equality and respect - City and County of Swansea July 2013 - Case references 201204336, 201204337, 201204338, 201204389 & 201204706

Following complaints made by five individuals, the Ombudsman investigated whether a Councillor had made insulting and abusive comments and behaved in an inappropriate manner during a Special Development Management and Control Committee meeting.

The Ombudsman obtained copies of relevant documents from the Council. The Ombudsman also obtained accounts of events from persons present at the meeting, which included members of the public, elected members and Council officers. The Councillor in question was also given an opportunity to respond to the complaint.

Having considered the available information, the Ombudsman concluded that there was no evidence that the Councillor had breached the Code of Conduct.

Promotion of equality and respect – Powys County Council June 2013 - Case reference 201203179

The Ombudsman received a complaint that a member of Powys County Council breached the code of conduct by sending letters to members of Llandrindod Wells Town Council which contained untrue statements which caused the complainant to suffer harassment, alarm and distress.

The investigation considered whether the Councillor had breached the paragraphs of the Code relating to bullying and harassment and bringing the office of the member into disrepute. The Ombudsman obtained evidence from the Police and County Court; the Councillor in question also provided written comments. Having considered the evidence gathered, it was concluded that, in circulating the letters, it was not the Councillor's intention to cause harassment, alarm or distress to the complainant. It was also established that the statement made in the Councillor's letters (notwithstanding the probable misapplication of terminology in respect of one statement) were in the main representative of the truth.

The finding was that there was no evidence of any failure to comply with the Code of Conduct.

Disclosure and registration of interests – Cefn Community Council July 2013 - Case reference 201202501

Mr A complained that a member of Cefn Community Council had failed to declare a personal and prejudicial interest in the business of a charitable trust of which he was a trustee by virtue of his status as a Cefn Community Council councillor. Mr A said that the interest was that the Councillor's close personal friend was the General Manager of a football club which played on a pitch owned by the charitable trust. Mr A also complained that the Councillor had used his position to disadvantage the football club after his friend had resigned from the club.

The Ombudsman considered various minutes arising out of Community Council and charitable trust meetings, as well as copies of documentation relating to the status of the charitable trust. The Ombudsman considered complaint correspondence which had been exchanged by the Community Council and also interviewed three members of the Community Council as well as the Clerk.

The Ombudsman found no evidence that the Councillor had used his position to disadvantage the football club. The Ombudsman did not consider that the Councillor's association with the Football Club's General Manager was such that it gave rise to the need to declare a personal interest.

The Ombudsman's finding was that there was no evidence of a breach of the Code.

No action necessary

Promotion of equality and respect – Isle of Anglesey County Council August 2013 - Case reference 201204406

A complaint was made that a member of the Isle of Anglesey County Council had breached the code of conduct during the live broadcast of a current affairs programme in conflict with one of the panellists by making comments about the panellist that were considered to be personal, insulting and unnecessary.

The conclusion was that the Councillor's comments were in general political rather than personal expressions and that they were not a matter of breaching the code. However, during part of the discussion, the Councillor made a comment regarding the panellist's lineage. It was considered that what was said could possibly be interpreted as being a personal and unnecessary expression and not a political one. It was considered that his comments were unwise and inappropriate.

The finding was that there was no need to take action in respect of the matters investigated.

Promotion of equality and respect – Caerphilly County Borough Council August 2013 - Case reference 201203463

The Ombudsman received a complaint that a member of Caerphilly County Borough Council had failed to observe the code of conduct for members of the Council. It was alleged that, during a meeting of Pentricwm Community Association (PCA), the Councillor had accused the complainant of failing to maintain confidentiality in the context of their work in cancer care. The complainant said that the accusation damaged their reputation and lowered their standing in the community. The complainant also alleged that the Councillor pointed their finger and shouted directly at them. The complainant said that the Councillor continued to verbally attack them and refused several requests from the chairperson to stop.

During the investigation evidence was obtained from the Council and the PCA. The Councillor in question, the complainant, and four witnesses were also interviewed.

The investigation found that there was evidence to suggest that the Councillor may have breached the Code by failing to show respect and consideration towards the complainant. However, there was conflicting evidence about exactly what was said and how it was said. There was also evidence to suggest that whatever exchange did take place was in the heat of the moment following an element of provocation from other people. The Councillor was reminded of their obligation under the Code and it was found that no action needed to be taken in respect of the matters investigated.

**Promotion of equality and respect – Penmaenmawr Town Council
July 2013 - Case reference 201201768**

Ms W complained that a member of the Town Council had acted aggressively towards her. This was witnessed by others.

The Councillor was interviewed and strenuously denied the allegation. Having investigated, the Ombudsman determined that, as the evidence was contradictory, no further action would be taken.

**Promotion of equality and respect – Member of Llanfaelog Community Council
July 2013 - Case references 201201908, 201201909, 201201910, 201201911 &
201201913**

A number of complaints were made regarding the behaviour of a Councillor from Llanfaelog Community Council. It was alleged that the Councillor had used bad language and had behaved inappropriately during a meeting.

The Ombudsman decided to investigate the matter to determine whether there was evidence of breaches of the Code of Conduct, which requires members to show respect and consideration to others and not to conduct themselves in a manner which could bring the role of member or the Council itself into disrepute.

Evidence was obtained from all members of the Council who were present at the meeting. The evidence gathered supported the fact that the Councillor was heard muttering offensive words under his breath. However, it does not appear that the language used was specifically directed at an individual. The Councillor said that it was possible he used the language described as a means of voicing his frustration during the meeting.

The Ombudsman found that the evidence suggested that the Councillor's actions may have breached the Code. However, whilst he would not in any circumstances condone the use of such language, when reaching his decision, the Ombudsman was mindful of the fact that this was an isolated incident, the comments were made in the heat of the moment and were not directed at a particular person. On this basis, the Ombudsman decided that no further action needed to be taken in respect of the matters investigated.

Disclosure and registration of interests – Cefn Community Council July 2013 - Case reference 201202499

Mr A complained that a member of Cefn Community Council had failed to declare a personal and prejudicial interest in the business of a charitable trust of which he was a trustee by virtue of his status as a Cefn Community Council councillor. Mr A said that the interest was that the Councillor's son was the Assistant Manager of a football club which played on a pitch owned by the trust. Mr A also complained that the Councillor had used his position as councillor to disadvantage the football club after his son had resigned from the club.

Having investigated, the Ombudsman found no evidence that the Councillor had used his position to disadvantage the football club but did find that he may have failed to properly declare a personal and prejudicial interest. Whilst the Ombudsman concluded that the evidence was suggestive of a breach of the Code of Conduct, there was no evidence to suggest that the Councillor had done so deliberately.

The Ombudsman's finding was that no further action was necessary in respect of the matters complained about.

Disclosure and registration of interests – Cefn Community Council July 2013 - Case reference 201202500

Mr A complained that a member of Cefn Community Council had failed to declare a personal and prejudicial interest in the business of a charitable trust of which he was a trustee by virtue of his status as a Cefn Community Council councillor. Mr A said that the interest was that the Councillor's brother-in-law was the general manager of a football club which played on a pitch owned by the trust. Mr A also complained that the Councillor had used his position as councillor to disadvantage the football club after his brother in law had resigned from the club.

Having investigated, the Ombudsman found no evidence that the Councillor had used his position to disadvantage the football club but did find that he may have failed to properly declare a personal and prejudicial interest. Whilst the Ombudsman concluded that the evidence was suggestive of a breach of the Code of Conduct, there was no evidence to suggest that the Councillor had done so deliberately.

The Ombudsman's finding was that no further action was necessary in respect of the matters complained about.

Disclosure and registration of interests – Rogiet Community Council June 2013 - Case reference 201204415

The Ombudsman received a complaint that a former member of Rogiet Community Council had breached the Code of Conduct. It was alleged that the former Councillor had failed to declare an interest during meetings of the Community Council. The former Councillor was co-opted to the Community Council in July 2012. The Community Council managed allotments on behalf of the County Council. The former Councillor had been an allotment holder for several years.

The investigation considered information from the complainant, the former Councillor, the Community Council and Monmouthshire County Council. The investigation concluded that the former Councillor had, on occasion, failed to declare a personal interest in the Community Council's discussions about the allotments. The former Councillor's conduct was therefore suggestive of a breach of the Code. However, the former Councillor had stepped down from the Council in April 2013. Therefore, the Ombudsman found that no action needed to be taken in respect of the matters investigated. The former Councillor was reminded that, if he were to be elected as a member of a council in the future, he should be mindful of his obligation to comply with the Code.

Disclosure and registration of interests – Blaengwrach Community Council June 2013 - Case reference 201204755

The Ombudsman received a complaint that a Councillor had breached the Code of Conduct on 14 February 2013 by remaining in the room when the Community Council discussed matters relating to her husband. The complainant also complained that the Councillor and others made inappropriate remarks to her for having reported her husband's behaviour to the Community Council. This had caused the complainant concern.

Although the recollections of the parties varied as to the exact circumstances under which the Councillor remained in the room when matters relating to her husband were discussed, it was the Ombudsman's view that she should not have remained. It is the responsibility of each member to decide whether or not they have a personal interest and the views of other members on the matter are not relevant. Further, it is clear that a matter concerning a person so closely related to a member gives rise to a personal and prejudicial interest.

The Code itself and the Ombudsman's Guidance to Members are quite clear on these matters. The Ombudsman provisionally found that there was evidence that a breach may have occurred under the relevant provisions of the Code, but that it was unlikely that a sanction would be applied if the breach were found. In accordance with his procedures, the Ombudsman consulted with the Monitoring Officer, who agreed that a sanction was unlikely but said that he would issue appropriate advice to the Community Council on the subject of personal interests. The Ombudsman concluded that in the circumstances of this particular complaint, no further action was necessary.

With regard to the concerns about inappropriate comments being made by the Councillor, the Ombudsman was not persuaded that the comments as reported provided sufficient evidence of a breach. The Ombudsman's finding in relation to that matter was that there was no evidence of a breach under the relevant provision.

Duty to uphold the law – Pembrokeshire County Council July 2013 - Case reference 201201986

A complaint was made that a former Councillor had used the Council's computer systems to produce election leaflets for his colleagues. The former Councillor was interviewed and accepted that he had created, or been the last person to have saved, 23 files of election material and manifestos for some candidates who had difficulty using computers. He said that none of the files were printed using the Council's resources.

The former Councillor accepted that the Council's internal policy and the Code of Conduct did not permit members to use its resources for political purposes. He also accepted that he was wrong to have done so and was of the view that the rules concerning the use of Council computers should be changed.

There was evidence suggestive of a breach of the Code and the matter was referred to the Council's Monitoring Officer to determine whether he wanted to consider the matter locally. The Monitoring Officer agreed with the Ombudsman that, as the former Councillor had resigned and moved away from the area, no further action needed to be taken

Objectivity and propriety – Llandrindod Wells Town Council April 2013 - Case reference 201204096

The complaint arose as a consequence of another complaint which was being investigated. The investigation considered that the Councillor may have breached the Code of Conduct in the way that he handled a complaint to the Council about another Councillor's behaviour.

It appeared that the Councillor had not considered his personal association with the person complained about, and also failed to comply with the Council's procedure and this may have brought the Council into disrepute. The evidence also indicated that the Councillor may have disclosed information which could reasonably be regarded as confidential.

The Ombudsman decided that, whilst there was evidence to suggest breaches of the Code of Conduct, the matters were minor in nature and it was unlikely that a standards committee would impose a sanction. The matter was referred to the Council's Monitoring Officer, who considered that further local investigation was not appropriate.

Referred to standards committee

Objectivity and propriety – Gorseinon Town Council April 2013 - Case reference 201201628

The Ombudsman received a complaint that a member of Gorseinon Town Council had failed to observe the Code of Conduct. It was alleged that the Councillor had made untrue and malicious statements about a local bar and restaurant in a Town Council meeting. The complainant said the comments were later reported by the South Wales Evening Post and associated website. The complainant said that the Councillor lived close to the premises and was using his position to “continue a vendetta” against it.

The Councillor said that he had not received training on the Code and he did not believe he had breached it. He said his comments were “...genuinely held, reasonable and honest beliefs and represented ...the views of [his] constituents [and] many residents of Gorseinon...”. He confirmed that he made the comments but said he did not know the press were present. He said that if he had known he may “...have chosen [his] words differently...”.

The investigation established that the Councillor may have had a personal and prejudicial interest in the Council’s discussions about the restaurant. The Ombudsman concluded that the Councillor’s conduct was suggestive of a breach of the Code. The Ombudsman’s report was referred to the Monitoring Officer of the City and County of Swansea for consideration by its Standards Committee. It determined that the Councillor’s conduct had breached the Code but concluded that no further action should be taken.

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

Promotion of equality and respect – Monmouthshire County Council March 2013 – Case reference 201102666

The Ombudsman received a complaint from an officer of Monmouthshire County Council that a member of the Council had failed to observe the Code of Conduct. It was alleged that the Councillor had provided information about the officer’s private life to other members and a member of the public.

It became apparent during the course of the investigation that the Councillor may also have failed to act within the scope of the dispensation awarded to him by the Council’s Standards Committee. That dispensation restricted his ability to participate in discussions involving the operation of a local attraction in which his wife worked, and in which he therefore had a personal and prejudicial interest.

The evidence found by the Ombudsman's investigation suggested that the Councillor may have breached provisions of the Code of Conduct. The Ombudsman decided to refer the matter to the Council's Monitoring Officer, for consideration by the Council's Standards Committee. It concluded that the Councillor had breached the specified paragraphs of the Code and determined that he should be suspended for four months.

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

Integrity – Neath Port Talbot County Borough Council February 2013 – Case reference 201200387

A member of the public complained that a member of Neath Port Talbot County Borough Council had sent out an election letter using Council-headed paper before the election that took place on 3 May 2012.

The Ombudsman concluded that the evidence that he had obtained during his investigation suggested that the Councillor may have misused the Council's resources for political purposes, thereby bringing their office or authority into disrepute. The Ombudsman decided that he should refer his report on this investigation to the Monitoring Officer of Neath Port Talbot County Borough Council, for consideration by the Council's Standards Committee.

It found that the Councillor had breached the Code and censured him for both breaches and required him to attend training, on the Code, within three months.

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

Objectivity and propriety – Llandudno Town Council February 2013 – Case reference 201103150

An individual complained that a member of Llandudno Town Council breached the Code of Conduct for members when she attempted to enter their licensed premises after hours by saying that she was a Town Councillor. The complainant said that, when her request was refused, she became abusive and made threats concerning their licence and business. Subsequently, the member circulated unfounded written allegations about the complainant's behaviour to other town councillors and senior elected members, which were investigated by the County Council's licensing officer.

The Ombudsman concluded that the Councillor's actions in attempting to gain entry to the licensed premises after hours, and subsequent e-mail to other town councillors and elected members making unfounded comments about the complainant's behaviour, suggested that she had misused her position as a councillor and thereby brought the office into disrepute. He referred the matter to the Monitoring Officer of Conwy County Borough Council for consideration by the Council's Standards Committee.

It found that the Councillor's actions, in using her position in order to confer an advantage for herself, had brought her office into disrepute. The Standards Committee also found that the Councillor had failed to comply with requests made by the Ombudsman's office during the investigation. The Councillor was suspended for a period of six months.

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

Objectivity and propriety – Powys County Council February 2013 – Case reference 201200003

It was alleged that a Councillor had breached the Code of Conduct for members of Powys County Council in that he disclosed sensitive information which was given to him in confidence and which he knew, or reasonably should have known, it to be confidential.

The Ombudsman concluded that the evidence suggested the Councillor had been provided with confidential information which he had then disclosed, and that in doing so, he may have breached the Code of Conduct. The Ombudsman decided that his report on this investigation should be referred to the Monitoring Officer of Powys County Council for consideration by its Standards Committee.

It found that the Councillor had disclosed information he knew to be confidential and so had breached the Code and, in so doing, brought his office as a member into disrepute. The Councillor was suspended for a period of one calendar month.

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

Referred to Adjudication Panel for Wales

Promotion of equality and respect – Flintshire County Council July 2010 – Case reference 200802503

The Ombudsman investigated a complaint against a member of Flintshire County Council. The complaint alleged that the Councillor breached the Code of Conduct by failing to show respect and consideration for officers of the Council; by using bullying or harassing behaviour; attempting to compromise the impartiality of officers and, in so doing; that he conducted himself in a manner likely to bring the office of member of the Council into disrepute.

The Adjudication Panel found that the Councillor had breached the Council's Codes of Conduct which were in force at the time of the events being complained about. It decided that the Councillor should be disqualified from being or becoming a member of an authority for a period of two and a half years.

The decision of the Adjudication Panel can be found [here](#). The former Councillor has been granted leave to appeal the decision to the High Court.

Integrity – Ceredigion County Council January 2013 – Case reference 201102175

The Ombudsman received a complaint that a former Councillor had failed to observe the Code of Conduct for members of Ceredigion County Council. It was alleged that the Councillor had over-claimed mileage expenses over a period of 11 years.

During his investigation, the Ombudsman took account of the fact that a Council investigation found that the Councillor had over-claimed expenses as a Member and as Chairman of the Council. The Councillor repaid £5100.42 to the Council.

The Ombudsman concluded that the evidence suggested breaches of the Code relating to misusing his position to gain an advantage for himself, failing to follow the Council's requirements when claiming expenses thereby bringing the office into disrepute. His report on the investigation was referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal. The tribunal found that the Councillor had breached the Code and that he should be disqualified, for a period of three months, from being or becoming a member of Ceredigion County Council or any other relevant authority.

The decision of the Adjudication Panel for Wales can be found [here](#).

Integrity – Mumbles Community Council January 2012 – Case reference 201002266

A Councillor alleged that another member of Mumbles Community Council had failed to observe the Code of Conduct. It was alleged that the accused Councillor had brought the office of Councillor and the Council into disrepute by making misleading statements about his assets to an Employment Tribunal.

The Ombudsman concluded that there was evidence to suggest that the Councillor's conduct may have breached the Code. His finding was that his report should be referred to the Monitoring Officer of the City and County of Swansea, for consideration by the Standards Committee.

It found that the Councillor's conduct in relation to misleading statements he had made about his assets amounted to a breach of the Code in that it had brought his office as Councillor and the Council into disrepute. It decided that the Councillor should be suspended from being a member of the Council for a period of 18 weeks.

The Councillor subsequently appealed to the Adjudication Panel for Wales. The Adjudication Panel for Wales unanimously endorsed the decision that the Councillor had breached the Code of Conduct. It also endorsed the decision to suspend him from being a member of the Council for a period of 18 weeks.

The decision of the Adjudication Panel for Wales can be found [here](#).

More Information

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

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The Code of Conduct Casebook

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A word from the Ombudsman

The Code of Conduct Casebook was introduced by my predecessor, Peter Tyndall, as a mechanism for focussing attention on the work of this office in investigating complaints about alleged breaches of the Code of Conduct applicable to all councillors, in whatever capacity they may be serving and irrespective of the Council on which they sit. Mr Tyndall has now moved to a new post as the Ombudsman and Information Commissioner for Ireland and, thus, it falls to me as the Acting Public Services Ombudsman for Wales to provide the introduction for this second edition.

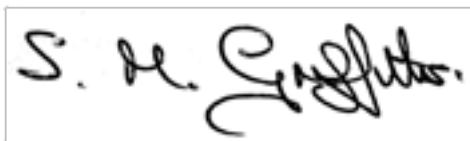
It is pleasing that the number of complaints we have received concerning alleged breaches of the code of conduct has fallen. It is too early to tell whether this is a long term trend and whether we will again receive a high number of complaints during an election year, but this may partly be down to local resolution processes which have now been in operation across Wales for some time. There are for those taken into investigation by this office four possible outcomes, as detailed more fully in the Introduction to this Casebook; namely, no evidence of breach of the code or no action needed and referral to an authority's standards committee or the Adjudication Panel for Wales. Given the sheer volume of work that is undertaken by Council Members, it is very pleasing to note that the numbers of members who are complained about are relatively few, leading to the conclusion that the vast majority of such work is undertaken without any adverse issues arising. This is undoubtedly to the benefit of constituents.

Reviewing the complaints which have arisen in the last six months, it is noteworthy that there are three main areas that give rise to disputes.

The first relates to the difficulty that councillors may have differentiating between activities undertaken in their official role and things done in a private capacity. It can be a difficult line to draw. More significantly, constituents may only see the official persona and always expect their councillors to behave in a manner befitting the role and not act in any way that might bring their office into disrepute.

The second theme relates to the relationship between councillors themselves and between councillors and officers. It is to be expected that councillors will be passionate about pursuing the interests of their constituents but it may be that there is a legitimate difference of opinion between fellow councillors or between councillors and officers as to how this is best to be achieved. Naturally, it is crucial that forceful lobbying does not step over the mark into bullying or harassment, either of which would involve a breach of the Code.

Finally, councillors should always be aware of the divide between, on the one hand, their actions as a councillor representing their constituents and, on the other hand, their political activities. This distinction can be crucially important in relation to the use of council facilities which will be legitimate when acting as a councillor but unacceptable when being utilised for political purposes.



Professor Margaret Griffiths
Acting 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 the summaries of all reports issued by this office for which the findings were one of the four set out above. 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 2013 to March 2014, but also includes the summaries of older cases for which the standards committee or Adjudication Panel hearings were concluded during this period.

Case Summaries

No evidence of breach

Blaenau Gwent County Borough Council – Promotion of equality and respect Case reference 201305131 – March 2014

The Ombudsman received a complaint that, following a meeting of the Council on 21 November 2013, a Councillor ('the complainant') felt he had been bullied by another Councillor. The complainant stated that the Councillor had clenched his fist and threatened to "sort him out". The complainant stated that he had felt in fear of being punched.

During the course of the investigation, information was received from the Council and witnesses were interviewed. While there was evidence of a heated discussion between the complainant and the Councillor at the end of the meeting, there was no evidence to support the complaint that the complainant had been threatened by the Councillor.

Having reviewed the evidence, the Ombudsman concluded that there was no evidence that the Councillor had breached of the Code of Conduct.

Cardiff County Council - Promotion of equality and respect Case reference 201204852 – February 2014

A member of Cardiff County Council ('the complainant') complained about the conduct of a fellow Councillor. The complainant stated that the Councillor had failed to show him respect and consideration during a coffee break at the meeting of the full Council in October 2012; in failing to do so, the Councillor had brought the role of member and the Authority into disrepute. The complainant also complained about the language used by the Councillor to describe him when corresponding with members of the public by email in February 2013.

During the course of the Ombudsman's investigation, information was obtained from the Council and a number of elected members who were in the vicinity at the time of the alleged incident.

The evidence obtained in relation to the incident during the coffee break did not support the allegation made. Further, the Ombudsman was mindful that the complainant was not specifically named in the emails sent to the members of the public by the Councillor. In the absence of any specific reference to the complainant, the Ombudsman was unable to conclude, on balance, as to who was being referred to in the emails. The Ombudsman concluded that the evidence gathered during the investigation did not suggest that the Councillor had breached the Code of Conduct.

Powys County Council – Accountability and openness
Case reference 201204510 – November 2013

Mr G complained that a member of Powys County Council built properties on his land without planning permission and that, when the member in question accepted a position on the Brecon Beacon's National Park Authority planning committee, he breached the Code of Conduct. Mr G said that planning history for this site was complex and the Council had sought legal advice.

The Councillor said that he had erected a house in 2007 on the basis of approved planning permission. He had purchased his property in 2000 and included copy of planning permission for the erection of motel units and private accommodation issued in 1994. The Councillor said that, where possible, his wife or agent took the lead so that his position was not compromised, although this would not obviate his requirement to abide by the Code. He said that his property, was outside the boundaries of the National Park and he was not a member of Powys Council's Planning, Taxi Licensing and Rights of Way Committee.

The Ombudsman found that there was no evidence to suggest the Councillor had been involved in planning decisions relating to his land, and that there was no evidence of a breach of the Code of Conduct.

No action necessary

Torfaen County Borough Council – Disclosure and registration of interests Case reference 201306694 – March 2014

A member of Torfaen County Borough Council referred herself to the Ombudsman for consideration of a potential breach of the Code of Conduct to the Ombudsman. The Councillor said that she may have breached the Code by failing to declare a personal and prejudicial interest in a small schemes grant payment she made in November 2013. The Councillor explained that she considered whether she had a personal interest when making the application for a grant for an organisation within which she is a member, but following discussions with an officer of the Council concluded that she did not.

The matter was highlighted by the relevant scrutiny committee and, having considered the matter further, the Councillor felt it was appropriate to make a self referral. The Councillor accepted full responsibility for the potential breach and made unreserved apologies in respect of her actions.

The circumstances of the grant were considered and it was determined that, by reason of the Councillor's regular attendance at meetings and her membership of the organisation, she had a personal interest and that this interest would also be prejudicial. It therefore followed that her conduct, in failing to declare these interests, suggests of a breach of the Code of Conduct.

However, having taken into consideration the Councillor's conduct in referring this matter, her acceptance of responsibility and apology, the Ombudsman determined that no action should be taken in respect of the matters investigated.

The City and County of Swansea – Promotion of equality and respect Case reference 201203127 – November 2013

A complaint was made by Mr X about a member of the City and County of Swansea. Mr X complained that the Councillor had bullied and harassed fire officers, visited fire stations without permission, solicited confidential information from fire brigade officers and involved himself in Fire Brigade Union business.

Having conducted an investigation, the Ombudsman found that the complaints that had been made were serious and called into question the Councillor's behaviour towards officers within the fire service.

The Ombudsman found that, whilst it was appropriate for Mr X to make the referral because it raised serious concerns about what the Ombudsman described as the Councillor's potentially divisive, manipulating and disrespectful behaviour, no further action should be taken in this matter. The Ombudsman decided that, whilst the evidence did not exonerate the Councillor, it did show that, in the majority of the incidents complained of, he was not acting in his official capacity, and the evidence available was not sufficiently conclusive to show that he had brought his office or authority into disrepute.

With respect to the remaining issues, the evidence was contradictory and lacked independent corroboration. Finally, consideration was also given to the Councillor's Article 10 human rights insofar as he was entitled to raise any concerns about the fire authority that had been brought to his attention in his capacity as a Member. The Ombudsman decided that no further action was necessary.

Referred to standards committee

Pembrokeshire County Council – Duty to uphold the law **Case reference 201203889 – November 2013**

An individual stated that they had anonymously received a DVD that appeared to show that a Councillor had used the Council's computer system to create election materials for colleagues. An examination of the DVD showed that the Councillor had been either responsible for the creation, or had been the user to have last 'saved' 21 documents of a political nature on the Council's computer system. This appeared to be a breach of the paragraph of the Code of Conduct which states that the resources of the authority must not be used for political purposes.

The Councillor was interviewed and admitted that he had helped colleagues prepare their election material, but was clear that Council equipment had not been used for printing these items. The Councillor said that some files had been created in his role as Secretary and he then believed that he could occasionally use the Council computer for other purposes. He accepted that this was not the case. The Councillor stated that the information received by the complainant had been stolen from his computer.

The Ombudsman decided that the matter should be forwarded to the Monitoring Officer for consideration by the Council's Standards Committee. It concluded that the Councillor had breached the Code of Conduct and determined that he should be suspended for two weeks. The decision of the Standards Committee can be found [here](#).

Gwynedd Council – Promotion of equality and respect **Case reference 201100986 – April 2012**

The Ombudsman received a complaint that, on 6th July 2011, a Councillor had posted in his blog that the complainant had taken satisfaction at a third party's resignation as a Councillor. The Councillor had also said that the complainant intended to retire as a head teacher and would stand for election as a Councillor for a particular ward.

The complainant said that the suggestion that he intended to retire and stand for election were untrue. The complainant said he had no intention of retiring, and had chaired the meeting when the Member complained about had been nominated to represent a party during the forthcoming 2012 elections.

The complainant alleged that the Councillor had brought his office into disrepute. The complainant considered that the Councillor had created a disadvantage for the complainant in his professional capacity by spreading rumours about his alleged intended retirement which could create difficulties should he seek further employment. The complainant stated that the blog could have caused difficulties for him with his governing body, and confusion amongst his school staff and pupils' parents.

The Ombudsman found that the evidence suggested that the Councillor had breached the Code of Conduct and referred his report to the Monitoring Officer of Gwynedd Council for consideration by the Council's Standards Committee. It concluded that the Councillor had breached the Code of Conduct and determined that he should be suspended for three months.

The Councillor subsequently submitted an appeal against the decision of the Standards Committee to the Adjudication Panel for Wales. The tribunal upheld the decision of the Standards Committee. The decision of the Adjudication Panel for Wales can be found [here](#).

Pentyrch Community Council – Selflessness and stewardship **Case reference 201002530 – January 2012**

The chairman of Pentyrch Community Council made a complaint against a Councillor in relation to concerns that his manner of conducting council business was inappropriate and constituted bullying and harassment of the Clerk and the Chairman himself. It was said that the Councillor made unreasonable demands and frequently asked for actions to be taken which were in conflict with the standing orders of the Community Council. This behaviour had gone on for around three years. It was also alleged that he had failed to declare a personal interest in matters that arose in Council business.

The Community Council provided extensive written record of the exchanges between itself and the Councillor, and he was given an opportunity to respond.

The Ombudsman's decided that there was evidence of multiple breaches of the Code of Conduct, and referred his report to the appropriate Standards Committee for consideration. The Standards Committee of Cardiff City Council found that breaches had occurred as outlined above. However, by the time of the hearing, the Councillor was no longer a member. As such, a censure was issued, and the Standards Committee commented that, had he still been a serving member, it would have applied a six month suspension as it viewed the breaches very seriously.

The Councillor submitted an appeal against the decision of the Standards Committee to the Adjudication Panel for Wales. The tribunal upheld the decision of the Standards Committee, having considered the implications of Article 10 of the Human Rights Act. The decision of the Adjudication Panel for Wales can be found [here](#).

Referred to Adjudication Panel for Wales

Llandrindod Wells Town Council – Promotion of equality and respect Case reference 201202775 – April 2013

A member of the Council ('the complainant') complained that a former Councillor ('the accused member') pursued a course of conduct towards him which would amount to harassment. The accused member approached the County Council about a naked photograph the complainant had taken of himself and sent to a fellow pupil while both were still at school. The incident had occurred three years before the complainant was elected and no criminal action was taken. The Council investigated the matter and advised the accused member that it had no child protection concerns.

The accused member conducted a survey of members of the public which included a description of the events which appeared to falsely accuse the complainant of committing a sexual offence against a minor. This caused significant reputational damage to the complainant and forced him to speak publicly about a historical private matter.

It appeared that the accused member may have breached a number of paragraphs of the Code of Conduct in his pursuit of the complainant and in misleading members of the public about the event. This matter, and the subsequent Police Information Notice issued to the accused member by the police under the Protection from Harassment Act 1997 (PHA), were widely reported in the local press. This appeared to amount to a further breach of the Code of Conduct.

The accused member indicated that he conducted his survey because he felt that the complainant had breached the Code of Conduct. However, as he did not report this alleged breach of the Code of Conduct to this office, this also appeared to be a breach of the Code of Conduct.

The accused member resigned from his post and refused to engage in the investigation process. The Ombudsman took the view that this may have been an attempt to frustrate the investigation process, which itself may also amount to a breach of the Code of Conduct.

As the evidence gathered suggested that the accused member may have breached multiple paragraphs of the Code of Conduct, the Ombudsman referred his report to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

The tribunal decided that the Councillor had breached the Code of Conduct and that he should be disqualified for a period of three years. The decision of the Adjudication Panel for Wales can be found here.

More Information

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

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