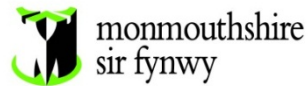


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County Hall
Rhadyr
Usk
NP15 1GA

Friday, 6 September 2019

Notice of meeting

Standards Committee

Monday, 16th September, 2019 at 10.00 am,
Conference Room - Usk, NP15 1AD

AGENDA

Item No	Item	Pages
1.	Apologies for absence	
2.	Declarations of interest	
3.	PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL LETTER 2018/19 AND MCC WHOLE AUTHORITY COMPLAINTS, COMMENTS AND COMPLIMENTS REPORT 2018/19	1 - 30
4.	RECENT ADJUDICATION PANEL FOR WALES OUTCOME	31 - 42
5.	CLERKS CONFERENCE - FEEDBACK AND DISCUSSION	
6.	GUIDANCE ON ASSESSING COUNCIL MEETINGS	
7.	MINUTES OF THE PREVIOUS MEETING	43 - 46
8.	To exclude the press and public from the meeting during the consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information	47 - 48
9.	MONITORING OFFICER EARLY STAGE COMPLAINT HANDLING	
10.	NEXT MEETING TO BE HELD MONDAY 16TH DECEMBER 2019 AT 10AM	

Paul Matthews
Chief Executive

MONMOUTHSHIRE COUNTY COUNCIL
CYNGOR SIR FYNWY

THE CONSTITUTION OF THE COMMITTEE IS AS FOLLOWS:

County Councillors:

R Williams-Flew
P. Easy
D. Evans
S. Woodhouse
P. Clarke
T. Auld (Independent Representative)
R. Stow (Independent Representative)
R. McGonigle (Independent Representative)
I. Cameron (Community Representative)

Public Information

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Watch this meeting online

This meeting can be viewed online either live or following the meeting by visiting www.monmouthshire.gov.uk or by visiting our Youtube page by searching MonmouthshireCC.

Welsh Language

The Council welcomes contributions from members of the public through the medium of Welsh or English. We respectfully ask that you provide us with adequate notice to accommodate your needs.

Aims and Values of Monmouthshire County Council

Our purpose

Building Sustainable and Resilient Communities

Objectives we are working towards

- Giving people the best possible start in life
- A thriving and connected county
- Maximise the Potential of the natural and built environment
- Lifelong well-being
- A future focused council

Our Values

Openness. We are open and honest. People have the chance to get involved in decisions that affect them, tell us what matters and do things for themselves/their communities. If we cannot do something to help, we'll say so; if it will take a while to get the answer we'll explain why; if we can't answer immediately we'll try to connect you to the people who can help – building trust and engagement is a key foundation.

Fairness. We provide fair chances, to help people and communities thrive. If something does not seem fair, we will listen and help explain why. We will always try to treat everyone fairly and consistently. We cannot always make everyone happy, but will commit to listening and explaining why we did what we did.

Flexibility. We will continue to change and be flexible to enable delivery of the most effective and efficient services. This means a genuine commitment to working with everyone to embrace new ways of working.

Teamwork. We will work with you and our partners to support and inspire everyone to get involved so we can achieve great things together. We don't see ourselves as the 'fixers' or problem-solvers, but we will make the best of the ideas, assets and resources available to make sure we do the things that most positively impact our people and places.

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SUBJECT: PUBLIC SERVICES OMBUDSMAN FOR WALES ANNUAL LETTER 2018/19 AND MCC WHOLE AUTHORITY COMPLAINTS, COMMENTS AND COMPLIMENTS REPORT 2018/19

MEETING: Standards

DATE: 16th SEPTEMBER 2019

DIVISION/WARDS AFFECTED: ALL

1. PURPOSE:

The purpose is to fulfil the expectation of the Public Services Ombudsman for Wales that their report is brought to the attention of Cabinet and that is what we are doing.

To provide details of the Council's Whole Authority customer feedback.

2. RECOMMENDATIONS:

- 2.1 Cabinet note the content of the PSOW's annual letter (Appendix 1) and inform the PSOW of their considerations and any proposed actions by 31 October 2019.
- 2.2 Cabinet note the content of the Council's Whole Authority annual report (Appendix 2).
- 2.3 For DMT's to review its complaint handling performance, to improve the service they provide, taking into consideration the evidence from complaints received.
- 2.4 For DMT's to monitor responses to complaints and focus on good practice and compliance.

3. KEY ISSUES:

- 3.1 The PSOW sends every Council an Annual letter which provides a summary of the complaints received and investigated. This compares the number of complaints against the local authority which were received and investigated by the PSOW during 2018/19, with the local authority average during the same period.
- 3.2 The PSOW annual letter provides:
 - a breakdown of the number of complaints about the local authority broken down into subject categories.
 - compares the complaint outcomes for the local authority with the average outcome during the same period.

There was one complaint that was closed after initial consideration.

Town/Community Council Code of Conduct complaints

There were 26 complaints that were closed after initial consideration. 23 of them related to Magor with Undy Community Council. One related to Llantilio Pertholey Community Council, one from Caldicot Town Council and one from Monmouth Town Council.

One complaint concerning Mathern Community council was referred to the Adjudication Panel.

3.4 MCC's Whole Authority complaints, comments and compliments report provides:

- Information on the areas where feedback has been received.
- Details of how many complaints have been formally investigated and the service areas where these complaints have been made.
- Examples where recommendations from complaints have been made to improve practices and procedures.

3.4.1 143 complaints were received. 132 were dealt with at stage 1 and 14 complaints either proceeded from stage 1 or went directly to formal investigation. 2 complainants contacted the Ombudsman after formal investigation. The Ombudsman decided not to investigate these complaints.

- Waste and Highways issues were the issues most complained about. Unfortunately, across the Council staff conduct featured quite a lot and concerns regarding poor communication from the teams.
- With regard to the formal investigations, the majority of them were not upheld.

3.4.2 Comments are dealt with in the same way as informal complaints, customers do not wish to go through a formal process but do want their voice heard. Comments are responded to where appropriate. The common theme again is matters relating to Waste and Highways.

3.4.3 180 compliments were received, many responding to Building Control and Registrars questionnaires when works have been completed.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):

This report provides feedback information from the Public Services Ombudsman for Wales and residents and customers of Monmouthshire. The report does not seek to divert from the Council's corporate priorities and the continued delivery of the wide range of services provided through the Council to the public. As the report deals solely with feedback information, a Future generations and Equality assessment is not considered appropriate in this instance.

5. OPTIONS APPRAISAL

This section is not relevant as the work of the Public Services Ombudsman for Wales is outside of our control. Also, this section is not appropriate as the Whole Authority complaints policy states that any member of the public, including a child, who has received, or was entitled to receive, a service from us may make a complaint.

6. EVALUATION CRITERIA

We will continue to work with the Public Services Ombudsman for Wales office to resolve as many issues as possible at an early stage and monitor the number of complaints the Public Services Ombudsman for Wales receives and deals with.

Likewise, we will continue to review complaints from service areas and promote learning and improvement in the relevant teams. We will focus on managing complaints proactively, monitor action plans to ensure improvements to standards of service are made.

7. REASONS:

7.1 The Public Services Ombudsman for Wales (PSOW) role is to consider complaints about public services providers in Wales and to consider complaints that members of local authorities have broken the Code of Conduct. The PSOW has requested that Cabinet considers the complaints that the PSOW has received and that the Public Services Ombudsman (Wales) Act 2019 has now been introduced.

7.2 The Whole Authority complaints, comments and compliments report provides service users' perspectives on the work of the Council. The report is provided for Cabinet to consider the feedback received.

8. RESOURCE IMPLICATIONS:

There are currently no extra resource costs identified.

9. CONSULTEES:

SLT

Head of Law and Monitoring Officer

Head of People Services & Information Governance

10. BACKGROUND PAPERS:

Appendix 1: The Public Services Ombudsman for Wales Annual letter 2018/19

Appendix 2: The Whole Authority complaints, comments and compliments annual report
2018/19

11. AUTHOR: Annette Evans, Customer Relations Manager

12. CONTACT DETAILS:

Tel: 01633 644647

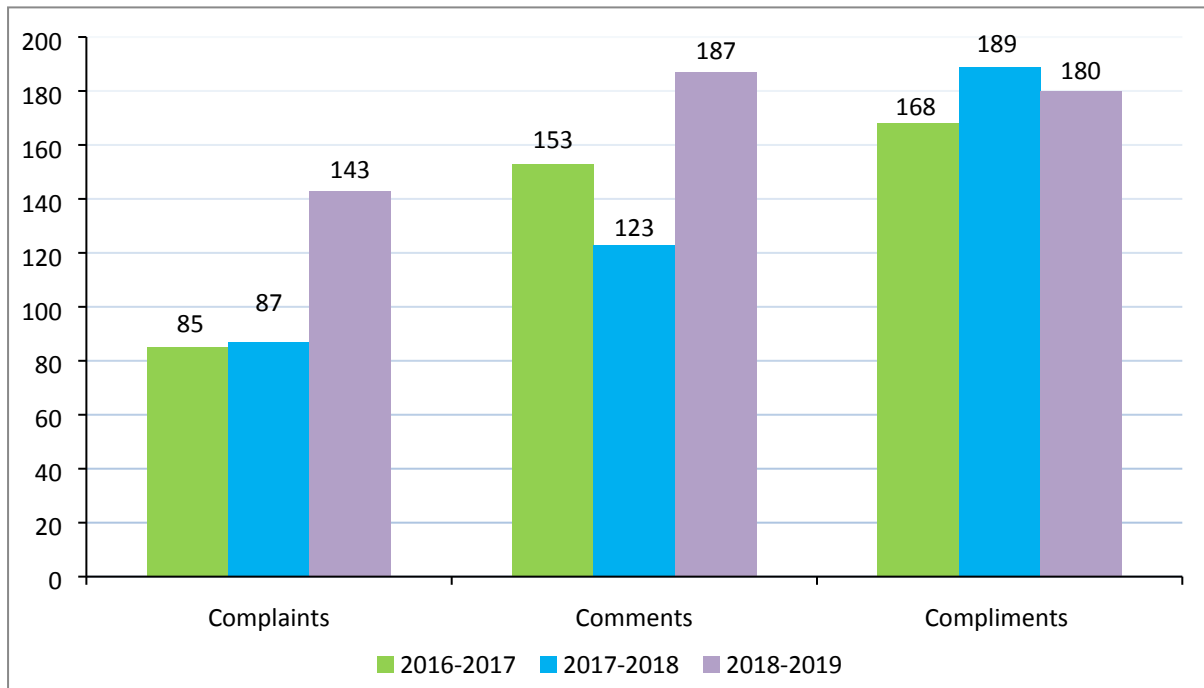
E-mail: annetteevans@monmouthshire.gov.uk

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Whole Authority Customer Feedback

April 2018 – March 2019



Complaints

- 143 Complaints received

Stage 1 - Informal Resolution

- 132 Complaints started

Stage 2 – Formal Investigation

- 14 Formal complaints
 - 5 escalated
 - 9 new

Public Services Ombudsman for Wales

Of the above formal complaints received, 1 complainant went directly to the PSOW. He referred it back to us for subsequent investigation.

2 complainants progressed their complaint to the PSOW after formal investigation. The PSOW did not investigate their complaints.

Complaints: Examples of most common aspects of services complained about:

Waste & Street Services

- Missed bin and food waste collections; irregularity of collections.
- Accessibility of disposing waste at Usk refuse centre.
- Hedges / verges not being cut.
- Staff conduct; communication with the department.

Highways

- Poor communication and responses from department.
- Issues with pothole repairs.
- Issues with street lighting.
- Staff conduct.
- Issues regarding removal of A boards.
- Issues concerning street naming and numbering.
- Inadequate fencing issues

Passenger Transport

- Buses not operating, late / not arrived.
- Issues with bus route.
- Lack of communication; issues with school transport.

Development Management

- Enforcement issues;
- Concerns regarding objection to planning amendments;
- Communication issues;
- Unhappy with the way planning applications administered;
- Issues with planning consent / notice given.

Community Hubs

- Unhappy with withdrawal of online Oxford Dictionary;
- Staff conduct;
- Access arrangements to the Hub;
- Service provided by mobile library;
- State of toilet at the Hub;
- Alleged incorrect information provided.

Others

- Issues concerning the Cider festival
- General lack of response from various sections of the Council either by phone or email
- Staff conduct
- Issues regarding Blue badges
- Issues with Council tax demands for payment

- Issues with home improvement process
- School meals
- Caldicot fireworks event
- Issues regarding grave in graveyard

Stage 2 Formal Investigations concerned matters relating to:

- The handling of planning applications and associated matters for the development of a new dwelling noise and disturbance during construction, and response to initial contact with the department raising concerns.

An element of the complaint was upheld.

- Correct process was not followed in relation to planning decision for new housing development in Raglan

6 elements of the complaint were not upheld and 2 were.

- A complaint was made regarding electoral registration, however the complainant did not progress the matter.
- A complaint was made regarding issues concerning a planning application concerning the siting of huts, however the complainant did not progress the matter.

- Alleged unprofessionalism of staff.

Complaint not upheld.

- Issues between a new contractor taking over premises and existing service.

Complaint not upheld.

- Issues concerning right of way and turning bay.

Complaint not upheld.

- Issues concerning free home to school transport

Complaint not upheld.

- Alleged poor service and request for financial recompense.

Complaint partially upheld.

- Complaint about the blue badge scheme

Complaint withdrawn.

- Issues concerning not being able to sell programmes / tickets at the Borough theatre

Complaint not upheld.

- Issues concerning financial assistance for home adaptations.

Complaint partially upheld.

- Issues concerning equal opportunities at leisure centre facilities

Complaint not upheld.

- Enforcement issues regarding an extension to building

One element of the complaint was partially upheld and two were not.

Note: Social Services complaints are dealt with separately under the Social Services complaints procedure. **51** complaints were received, **90** comments and **150** compliments were made about the service.

Distribution YTD

	Total	Access to Service	Communication Issue	Data Protection	Decision Delay	Discrimination	Member Conduct	Quality of Service	Quality of Works	Reduction in Service	Result of Process	Service Delayed	Service not provided	Service Removed	Staff Conduct	Timescales
Overall Total	143	5	23	1		1	1	67	3	1	11		1		29	
Customer Relations																
Estates and Sustainability								3							2	
People Services															1	
Registrars																
Revenues, Systems & Exchequer			3												1	
Total Resources	10		3					3							4	
Highways			13					9	1						2	
Property Services – Maintenance																
Passenger Transport Unit		1	3					6			2				5	
Transport								1							1	
Waste and Street Services			2					27	1						8	
Operations not allocated								1							1	
Total Operations	84	1	18					44	2		2				17	
Attractions – Caldicot Castle																
Community Hubs, Contact Centre and Community Learning		3						3		1	1		1		2	
Countryside																
Development Management and Planning Policy								8			6					
Housing and Communities			1					1	1						1	
Leisure						1		1			1				2	
Local Democracy				1			1									

Monmouthshire Business, Youth Enterprise & RDP		1						1							
Tourism								1						3	
Enterprise not allocated								1			1				
Total Enterprise	44	4	1	1	1	1	16	1	1	9	1	8			
Environmental Health – Public Health							1								
Registrars							1								
Total Social Care and Health	2						2								
Additional Learning Needs and Special Learning Needs Service							1								
Pupil Referral and Inclusion Service							1								
Total CYP	2						2								
Total External	1		1												

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Comments

- 187 Comments

Total	187
Resources	13
Digital and Technical Services	7
Estates and Sustainability	3
Revenues, Systems & Exchequer	3
Operations	124
Highways	18
Passenger Transport Unit	10
Transport	4
Waste and Street Services	92
Enterprise	20
Building Control	9
Communication	2
Community Hubs, Contact Centre & Community Learning	4
Green Infrastructure & Countryside	1
Housing and Communities	1
Leisure	2
Local Democracy	1
Social Care and Health	15
Environmental Health – Public Health	3
Registrars	12
External	12
Not allocated to any SIP	2
General – covers all of MCC	1

A selection of comments received concerned:

Registrars section: they send out a questionnaire after customers have received a service from them, therefore we do receive a substantial amount of comments and compliments about that service. A selection of them are below:

- The payment system that only postal orders are acceptable for a telephone request is outdated and the fact that if in person a card is used the cost is doubled to £20.
- Too many signs in no particular direction.
- I had to ring back twice to pay over the phone due to cut off times being different on different days which I found very weird.
- The building itself was clean, but a little non descript and clinical.
- The registrar was 25 minutes late for our 3pm wedding. They did not apologise to our waiting guests at the start of the ceremony, which I think was poor conduct.
- £20 for a single birth certificate is way too much money. Other Countries are offering certificates for free after sufficient identification checks.

Below are further comments received about the Council:

Contact Centre

- Length of time it's taken to get through to the Council on the phone.
- Not happy that there's only one contact number into the Council.
- Your queueing system should advise which number in the queue each person is, so that they can take an informed decision whether to hold on or not. Some helplines do this and this should reduce the length of the queue. Some warning is given to people joining the queue after a set time that their call may not be answered. To promise to answer all calls (especially those received close to closing time) is evidently not achievable.

Waste and Street Services

- So many comments about missed waste collections; stoppage of green waste over winter period; green waste not collected and that it is a payment service.
- Dog fouling issues
- Pet waste. What do we do with this now between December and March?
- Strongly object to paying £18 for the collection of grass cuttings after forking out over £2000 in Council Tax which itself has risen again.
- Recycling questionnaire. Email received from Mon CC today (31 Aug) mentioning it. First I've seen. Deadline was yesterday (30 Aug). Also, August when everyone is focused on holidays is not a great time to consult!
- Reported rubbish in the car park behind the OAP bungalows where person lives. Gentleman said that he tries to keep the area tidy and clears up the rubbish. Bags of rubbish that need collecting and he was told over a month ago that it would be but nothing has happened.
- It is extremely frustrating to visit the Mitchel Troy Recycling Centre and be repeatedly turned away because they are changing skips on site.

Highways

- Unwanted poorly marked speed humps in Newtown Road Penperlleni.
- A-board on Monnow Street sticks out too far for wheelchair to pass by and is too dark in colour to be easily seen due to visual impairment.
- Annoyed by the recent instruction to stop businesses in Church Street, Monmouth, putting signs, tables, etc outside their businesses. There is no need for this action to be taken, there is plenty of space and it is not a road but a traffic free area. You are trying to kill off a vibrant successful area, and will cause undue harm.
- Highways street lighting is completely blocked at night making path/road in complete darkness whilst walking up or down between Church and main road due to the overgrown tree in Llanellen.

- Speed of cars coming from Llanfoist to Abergavenny bridge – road outside Waitrose. Narrowly avoided getting hit by a car two days ago and again yesterday. Kerbs are getting damaged more and more.
- Street lighting issues since end of May 2018 and still not fixed at Miskin Court and Heronston Way Undy.
- The continuous use of Glascoed Lane via New Inn of HGV's contracted to BAE Systems, Glascoed. There is an almost daily routine of extremely large goods vehicles that are following Sat Nav from Newport M4 and being directed through New Inn.
- Not enough parking spaces in St Andrew's Crescent to supply parking for the amount of houses and flats in the area, people are struggling to park resulting in blocking other cars in or making it extremely hard to manoeuvre safely.

Building Control:

- The initial cost implication of the application for a project like this we felt was too high.
- Some timeliness factors around site visit that held up builders progressing with works that adversely effects the completion date.

Passenger Transport

- Issues with school transport allocation process.
- Issues with reduction of service of the Chepstow to Monmouth 69 service during the road works

Communication / Digital services

- Issues with links to website.
- Online processes and street light reporting, make online process suitable for use on mobile so it can be completed rather than laptop/PC.
- Why am I not able to access my Council Tax account online, to review payments made and manage payments to come. In the modern world we live in where everything from PAYE, NI, Utilities accounts being managed and accessed online why are the councils so far behind the times?
- Your street lighting form has adverts deliberately plastered across the "Submit" button to make it difficult for people to use it. This is unacceptable and no doubt illegal.

Estates

- Market - Abergavenny. Trader has set up large stall outside public display area in shop window and when the stalls are there the display space is obstructed.

Compliments

- 180 Compliments

Total	180
Resources	2
Customer Relations	1
Digital and Technical Services	1
Operations	28
Highways	18
Passenger Transport Unit	1
Transport	1
Waste and Street Services	8
Enterprise	126
Building Control	82
Communication	1
Community Hubs, Contact Centre & Community Learning	9
Development Management and Planning Policy	6
Housing and Communities	2
Leisure	9
Youth Service	17
Social Care and Health	22
Registrars	20
Safeguarding	2
External	1
General – covers all of MCC	1

A selection of compliments received:

A range of compliments about the whole of the Council was received – staff thanked for their professionalism, their quick responses, their efficiency and helpful service.

Some examples:

Building Control send out a questionnaire after providing a service and therefore a large number of compliments are received about their advice given and efficient service.

Registrars: many compliments about staff being helpful and courteous at ceremonies.

- Thank you for making the planning and day of our wedding so memorable and happy
- The staff were extremely helpful and provided excellent parking details and how to find the premises. Very helpful and certificate was issued within 10 mins of my arrival in reception.
- Fantastic service and lovely people.

- Your service via telephone was prompt, clear, very helpful. Next day delivery which was needed. Very impressed with your service. Thank you once again.

Highways

- Blocked Highway drains - great service and it's good to know that reports are acted upon.
- Pleased that MCC have now completed the surfacing in Welsh Street next to the Arch lights (and a bit in High St)
- The street light is now working in sync with the rest of the estate lighting, well done.
- To the team, road grader driver and pothole filling gang, thank you for doing such a clean and excellent job of grading and filling gullies in Nannies Lane, Penyclawd. It had been so bumpy and rutted.
- My thanks to you and your MCC Highways Cleaning Staff for clearing the autumnal debris away from the Chepstow Community Hospital A466 pedestrian crossing as requested and required.
- Fantastic job of keeping the roads clear of ice and snow your gritting crews have done.

Waste & Street Services

- First class job cutting the island area in St Marys Place, Llanfair Kilgeddin.
- A big thank you for cutting the overgrown grass verges. Thank you the service was brilliant.
- Thanks to the teams involved in tidying up the lanes and hedges. It looks much better and was very promptly attended too. Well done.
- Compliments to the council on a class leading recycling service and to add I am a firm believer in recycling my household waste.

Community Hubs

- Thank you all so much for your kind help, patience and understanding and at all times previously. Everyone is amazing and your assistance with such care to our community, myself and beyond is stellar, above and beyond I'd say.
- Big thank you to the library service which our parents have greatly valued over the last 40 years. Particularly in the later years as they became more infirm the library has been a lifeline.
- Called into one stop shop yesterday to report pot hole, the young gentleman who dealt with my complaint was brilliant.

Youth Service / Leisure

- Thank you for everything you have done and do for the awards.
- Just want to say a massive thank you for helping me achieve my Duke of Edinburgh awards. Yesterday made the hard work so worthwhile.
- Pupils who wouldn't normally take part in anything sports fully engaged. The organisation was great (in regards to the band system) and the event ran really smoothly.
- Our sincerest thanks for allowing the ladies from our Wellbeing group to join the Easyline group yesterday. It was already a busy class yet you still found the time to make our ladies feel totally at home and has inspired at least 4 of them to join the GP exercise referral scheme.
- Swift action by leisure centre staff saved a man's life after he collapsed following cardiac arrest while playing five-a-side football.
- Thank you for a great party on Saturday. We were very impressed with the sports coaching and keeping the children entertained the entire time and held their attention brilliantly. They thoroughly enjoyed it. We also had many compliments about the food.
- Really enjoyed summer camp, a big thank you to you and your crew.

Development Management & Planning Policy

- Thank you and the Monmouthshire planning team for your support throughout the application process. Very reassuring to see a professional and well managed planning team in action, especially when on occasions there are complex subjective responses to be resolved.
- Thank you for your professional help with our planning application to remove part of condition 3. I know that it is sometimes a thankless task with the planning team being stuck between a rock and a hard place.

Response Timescales

Our policy for responding to complaints at stage 1 is **10 working days** and for stage 2 formal investigation is **20 working days** plus a further 10 working days for Heads of Service to respond to the report's findings.

Whole Authority Timescales	2017/18		2018/19	
	Stage 1	Stage 2	Stage 1	Stage2
Up to 10 working days	59	0	94	1*
11 – 30 working days	14	6	31	4
30+ working days	3	7	7	9
Total	76	13	132	14

*Received no further contact so complaint was closed

Requests for service

These are recorded and acted upon:

Total	21
Operations	11
Highways	3
Passenger Transport Unit	1
Waste and Street Services	7
Enterprise	6
Community Hubs, Contact Centre & Community Learning	1
Green Infrastructure and Countryside	3
Leisure	1
Policy and Performance	1
Social Care and Health	2
Environmental Health – Public Health	2
External	2

Analysis of Complaints / Comments

Year	Stage 1 complaints	Stage 2 complaints	Comments	Compliments
2018-19	132	14	187	180
2017-18	76	13	123	189
2016-17	79	11	153	168
2015-16	103	6	155	109
2014-15	100	25	150	90

Service improvements

Complaints are generally resolved on an individual basis. Most formal investigation reports make recommendations for improvements to processes. These are followed up to ensure the recommendations are addressed.

Here are some examples where recommendations have been made for changes to practices / processes / procedures, as a result of people making complaints.

Apologies given where appropriate.

Improve internal and external communication, ensuring that when customers are promised something we see that through.

Officers to be reminded that they are responsible for checking voicemails left on their landline. If they are out of the office, then the voicemail message should provide an alternative contact number for the caller to follow up.

Remind teams of the importance in clarifying to customers when they can expect an officer to respond to any queries.

The data in this year's Joint Housing Land Availability study is checked for accuracy prior to publication.

Mediation is offered to all parties to try and move forward professionally

Complainant be advised to seek legal advice to determine and/or confirm whether she has private rights of access to the turning bay within the curtilage of her property.

Reiterate to crews the importance of updating the MCS system in a timely manner as to why rubbish was not collected e.g. no bags presented, contamination, excess bags etc.

Remind teams of the need to prioritise 'chasers' and highlighting any resource issues to a manager if they are unable to prioritise.

Review information on the Monmouthshire County Council website to ensure that there is clarity for our residents on how they can make requests regarding waste and street services – ie. blue bins need to be arranged by telephone or directly through the hubs.

When the Borough Theatre fully transfers back to MCC all staff should attend MCC induction.

Theatre Manager should ensure all policy and operating procedures are in place following transfer back to MCC and that staff are aware of those policies.

Theatre Manager should ensure that all hirers are aware of procedures eg. selling of raffle tickets etc. when hiring the Theatre

Ensure that clear processes and systems are put in place for the separation of an application of Disabled Facilities Grant (DFG), Housing Improvement Loan (HIL) and ENABLE funding.

Analysis is undertaken to establish the 'gap' between males and females participating in swimming / exercise within Monmouthshire to justify that the ladies only swimming sessions are needed in the future, and continues to support 'positive action' under the Equality Act.

To continue monitoring demand and ensuring that the swim programme adapts to changing needs and priorities.

Give consideration to how anonymous objectors can remain informed of development in relevant cases; if this is not practicable, to give consideration to how it can be made clear to objectors who wish to retain their anonymity that a possible consequence of this is that they may not be kept apprised of developments.

That the existing plans to revise the council's planning web pages are carried out swiftly in order to make the content more easily navigable for all interested parties.

Commentary

The Authority is provided with a wealth of information via complaints and customer comments; it's a missed opportunity if service areas don't act on the intelligence received through repeated enquiries, complaints and comments, to improve their services.

An important part of dealing with and resolving complaints are the lessons learned and the actions that have been agreed and implemented as a part of the resolution. There is a risk to our reputation if residents and the Public Services Ombudsman's office perceive that complaints are not taken seriously and dealt with appropriately.

Service areas should ensure that requested information is provided in a timely manner in order to avoid a complaint being made. We, the Customer Relations team, work closely with the service areas to prevent complaints escalating and becoming repetitious.

The increase in complaints and comments continues to be a challenge as this year complaints increased by 74 % and comments by 52 %. There's been a rise of 56 complaints and 64 comments this year.

Compliments have dipped slightly from 189 in 2017-18 to 180 this year.

We, the Customer Relations team, are receiving an increasing number of calls with enquiries about issues across the Authority which fall outside the definition of a complaint. Dealing with these calls can be resource intensive as they're often from people in the community who need assistance. Earlier intervention and staff engaging directly with customers solves problems straight away, reducing the level of complaints received.

Customer feedback is welcomed as it allows us to continue to inform and improve the way we handle complaints.


Annette Evans, Customer Relations Manager

July 2019


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Our ref: NB

Ask for: Communications

 01656 641150

Date: 7 August 2019

 communications
@ombudsman-wales.org.uk

Councillor Peter Fox OBE
Council Leader
Monmouthshire County Council

By Email Only
peterfox@monmouthshire.gov.uk

Dear Councillor Peter Fox OBE

Annual Letter 2018/19

I am pleased to provide you with the Annual letter (2018/19) for Monmouthshire County Borough Council. This year I am publishing my Annual Letters as part of my Annual Report and Accounts. I hope the Council finds this helpful and I trust this will enable it to review its own complaint handling performance in the context of other public bodies performing similar functions across Wales.

Whilst overall the number of complaints received relating to local authorities across Wales increased from 794 to 912, I am pleased that local authorities continue to work with my office to resolve many of these complaints at an early stage. This provides complainants with appropriate and timely remedies avoiding the need for my office to fully investigate complaints.

A summary of the complaints of maladministration/service failure received relating to the Council is attached.

Also attached is a summary of the Code of Conduct complaints relating to members of the Council and the Town & Community Councils in your area.

You will note that we received a relatively high number of complaints this year relating to members of Community and Town Councils in the Council's area. However, please be assured that I do not consider that this is indicative of a fall in

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standards of conduct generally or indeed in the Council itself. I can advise that the majority of these complaints related to an individual Community Council and a position of conflict between its members. Most of these complaints did not meet the two stage test used to assess complaints of this nature and were therefore closed after initial consideration.

I am very grateful to the Monitoring Officer of the Council who, in view of this position, took a proactive approach and arranged a training session for the Clerks to the Community Councils which gave us an opportunity to talk about the Code of Conduct and our work. This event was an example how a local authority can work with its community and town councils to promote standards and raise awareness of the Code of Conduct. I am keen to encourage local leadership and accountability in this manner in all authorities in Wales and I intend to refer to the example set by your Council in this regard as an exemplar of good practice.

The Public Services Ombudsman (Wales) Act 2019 has now been introduced. I am delighted that the Assembly has approved this legislation giving the office new powers aimed at:

- Improving access to my office
- Providing a seamless mechanism for complaint handling when a patient's NHS care is inextricably linked with private healthcare
- Allowing me to undertake own initiative investigations when required in the public interest
- Ensuring that complaints data from across Wales may be used to drive improvement in public services for citizens in Wales.

I am very much looking forward to implementing these new powers over the coming year.

Action for the Council to take:

- Present my Annual Letter to the Cabinet to assist Members in their scrutiny of the Council's performance
- Work to reduce the number of cases which require intervention by my office
- Inform me of the outcome of the Council's considerations and proposed actions on the above matters by **31 October 2019**.

This correspondence is copied to the Chief Executive of your Council and to your Contact Officer. Finally, a copy of all Annual Letters will be published on my website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a large, sweeping flourish at the end.

Nick Bennett
Public Services Ombudsman for Wales

CC: Paul Matthews, Chief Executive
Annette Evans, Contact Officer

Factsheet

A. Complaints Received and Investigated with Local Authority average adjusted for population distribution

Local Authority	Complaints Received	Average	Complaints Investigated	Average
Monmouthshire County Council 2018/19	20	27	0	1
Monmouthshire County Council 2017/18	16	23	0	1
Blaenau Gwent County Borough Council	8	20	0	0
Bridgend County Borough Council	33	41	0	1
Caerphilly County Borough Council	65	51	1	1
Cardiff Council	115	103	0	2
Carmarthenshire County Council	49	53	1	1
Ceredigion County Council	23	21	0	0
City and County of Swansea	83	70	0	2
Conwy County Borough Council	41	33	2	1
Denbighshire County Council	26	27	1	1
Flintshire County Council	50	44	2	1
Gwynedd Council	32	35	2	1
Isle of Anglesey County Council	31	20	2	0
Merthyr Tydfil County Borough Council	15	17	0	0
Neath Port Talbot County Borough Council	38	40	1	1
Newport City Council	38	43	0	1
Pembrokeshire County Council	35	35	0	1
Powys County Council	67	38	4	1
Rhondda Cynon Taf County Borough Council	36	68	0	2
Torfaen County Borough Council	12	26	1	1
Vale of Glamorgan Council	24	37	0	1
Wrexham County Borough Council	45	38	3	1
Grand Total	886		20	

B. Complaints Received by Subject with Local Authority average

Monmouthshire County Council	Complaints Received
Adult Social Services	2
Benefits Administration	2
Children Social Services	5
Community Facilities. Recreation and Leisure	3
Complaints Handling	3
Planning and Building Control	3
Various Other	2

C. Comparison of complaint outcomes with average outcomes for Local Authorities, adjusted for population distribution

Local Authority	Out of Jurisdiction	Premature	Other cases closed after initial consideration	Early Resolution / Voluntary settlement	Discontinued	Other Report - Not upheld	Other Report - Upheld in whole or in part	Public Interest Reports
2018/19								
Monmouthshire	5	7	11	-	-	-	-	-
Monmouthshire (adjusted)	5	8	9	4	-	-	1	-
2017/18								
Monmouthshire	4	3	6	1	-	-	-	-
Monmouthshire (adjusted)	4	7	8	3	-	-	1	-

D. Number of cases with PSOW intervention

Local Authority	No. of complaints with PSOW intervention	Total number of closed complaints	% of complaints with PSOW intervention
Monmouthshire County Council 2018/19	0	23	0%
Monmouthshire County Council 2017/18	1	14	7%
Blaenau Gwent County Borough Council	2	7	29%
Bridgend County Borough Council	6	36	17%
Caerphilly County Borough Council	8	68	12%
Cardiff Council	19	110	17%
Carmarthenshire County Council	4	48	8%
Ceredigion County Council	5	24	21%
City and County Swansea	10	80	13%
Conwy County Borough Council	5	39	13%
Denbighshire County Council	4	30	13%
Flintshire County Council	16	56	29%
Gwynedd Council	6	35	17%
Isle of Anglesey County Council	5	31	16%
Merthyr Tydfil County Borough Council	0	14	0%
Neath Port Talbot County Borough Council	4	40	10%
Newport City Council	7	43	16%
Pembrokeshire County Council	6	33	18%
Powys County Council	11	64	17%
Rhondda Cynon Taf County Borough Council	4	34	12%
Torfaen County Borough Council	1	12	8%
Vale of Glamorgan Council	7	30	23%
Wrexham County Borough Council	8	43	19%

E. Code of Conduct Complaints Closed

Local Authority	Closed after initial consideration	Discontinued	No Evidence of Breach	No Action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
2018/19								
Monmouthshire	1	-	-	-	-	-	-	1
2017/18								
Monmouthshire	3	-	-	-	-	1	-	4

F. Town/Community council Code of Conduct Complaints

Town/Community Council	Closed after initial consideration	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total
Caldicot TC	1	-	-	-	-	-	-	1
Chepstow TC	-	-	-	1	-	-	-	1
Llantilio Pertholey CC	1	-	-	-	-	-	-	1
Magor with Undy CC	23	-	-	-	-	-	-	23
Mathern CC	-	-	-	-	-	1	-	1
Monmouth TC	1	-	-	-	-	-	-	1
Trellech United CC	-	-	-	1	-	-	-	1

Appendix

Explanatory Notes

Section A compares the number of complaints against the Local Authority which were received and investigated by my office during 2018/19, 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 Local Authority which were received by my office during 2018/19. The figures are broken down into subject categories.

Section C compares the complaint outcomes for the Local Authority during 2018/19, with the average outcome (adjusted for population distribution) during the same period.

Section D provides the numbers and percentages of cases received by my office in which an intervention has occurred. This includes all upheld complaints, early resolutions and voluntary settlements.

Section E provides a breakdown of all Code of Conduct complaint outcomes against Councillors during 2018/19.

Section F provides a breakdown of all Code of Conduct complaint outcomes against town or community councils.

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 via email to communications@ombudsman-wales.org.uk



DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW001/2018-019/CT

RE: REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT- COUNCILLOR GRAHAM DOWN

RESPONDENT: Councillor Graham Down

RELEVANT AUTHORITY: Mathern Community Council (formerly of Monmouthshire County Council).

Procedural background.

- 1 On 22nd March 2019 the Case Tribunal was convened to hear the substantive hearing of this matter, preparatory steps having been taken by the parties following a listing direction dated 19th February 2019.
- 2 The Case Tribunal was to determine whether the Respondent had breached paragraph 6(1)(a) of the Code of Conduct for members and co-opted members of Mathern Community Council (“the Code”). The failures alleged and referred by the Public Services Ombudsman for Wales (“PSOW”) were:
 - i. That at a public hearing of the Adjudication Panel for Wales (“APW”) on 19th July 2018 after the Panel announced its decision the Respondent said;
“I cannot be part of a system where I am required to suppress my conscience. I will not do so, nor will I stand up for, defend or promote the hideous and sickening perversions of shirt-lifters.”
 - ii. On 24th July 2018, the Respondent wrote to the APW and stated;
“I believe homosexuality to be a sickening, depraved practice and I shall continue to say so.”

These matters, the subject of this decision, will be described as ‘the second referral’.

3. In responding to the initial Notice of Reference from the PSOW to the APW, the Respondent in his Reply form and covering letter dated 22nd November 2018 said “.....it is questionable as a matter of law that there are any grounds for referral to the Panel.” He did not elaborate further. The PSOW in his response to the APW commented on Councillor Down’s letter and indicated that the legal basis for the referral was set out in section 69(4)(d) of the Local Government Act 2000 (“the Act”) and the Ombudsman was satisfied that the referral was in the public interest.
4. The Panel considered the various documentation, submissions and evidence before issuing the listing direction. The Panel in that direction said, in relation to the Respondents contention about the legality of the referral

“With regard to the first point, the Ombudsman suggests, in his representation to the panel that the legal basis for the referral is set out in paragraph 69(4)(d) of the Local Government Act 2000. The Case Tribunal agrees that this is a correct statement of the law and that the referral was lawful, that is, it was based on legal grounds.”

5. Upon further consideration of the matter prior to the substantive hearing, the Case tribunal was concerned that, whilst section 69(4)(d) of the Act does indeed empower the PSOW to refer matters that are the subject of the PSOW’s investigation to the president of the APW, that (notwithstanding the view expressed in the listing direction that the referral was based on lawful grounds), in fact the Case tribunal required further information about the investigation and whether it accorded with section 69 (1) of the Act with regards to the alleged breaches of the Code in this case. The Case tribunal was also mindful that it had not heard any detailed argument or submissions on this point prior to completing the listing direction and that it was procedurally fair and correct to raise the issue of the investigation with the parties.
6. At the hearing on 22 March 2019, Miss Sinead Cook on behalf of the PSOW confirmed that the written allegation relied upon as the basis for the Ombudsman’s investigation in the current case (the second referral) was the same written allegation as for case number APW/003/2017 – 018/CT (the first referral). Councillor Down argued that the comments that are the subject of the first allegation in this case were made during a previous legal hearing and therefore cannot constitute a fresh breach of the Code of Conduct. The Case tribunal gave directions for both parties to provide submissions and argument on the question of whether the Ombudsman’s investigation in this case has been undertaken in accordance with section 69 (1) the Act.
7. The parties duly provided their submissions. The Respondent’s submissions were to have been filed by 3 May 2019. In the event they were not received by the APW until 7 May 2019 however, in the circumstances nothing turns upon this short delay. The PSOW by email of 9th of May 2019 asked whether the Panel would consider this matter without a hearing in order to save public funds and the tribunal by letter of 5th of June 2019 to the Respondent asked if he was in agreement with this suggestion. By letter of 13th of June 2019 (received by the APW on 18th 2019) the Respondent agreed that this aspect of the case should be dealt with on the papers. Under regulation 15 of The Adjudications by Case

Tribunal's and Interim Case Tribunal's (Wales) Regulations 2001 the tribunal may determine an adjudication or any particular issue without a hearing if every accused person so agrees in writing. Accordingly this matter has been determined on the basis of the totality of the written evidence and representations without an oral hearing.

Factual background.

8. The first referral (case number APW/003/2017 – 018/CT) related to breaches of the Code of Conduct by the Respondent Councillor Down when he was a County Councillor at Monmouthshire County Council. Full details can be found in the decision report of the APW dated 10 August 2018 following a hearing on 19 July 2018. Broadly, the PSOW investigated two sets of email exchanges between the Respondent and Mr Paul Matthews the Chief Executive of Monmouthshire County Council. Mr Matthews written complaint was received by the PSOW on 12 October 2016 and it related to email exchanges on 12 February 2016 (the first day of Monmouthshire County Council's LGBT+ youth conference) and further exchanges in early October 2016.
9. On 1st November 2016 the PSOW wrote to Councillor Down to inform him that he would be investigating the complaint made against him by Mr Paul Matthews. On 18 July 2017 the Ombudsman wrote to Councillor Down and explained that the first stage of the investigation into the complaint made against him by Paul Matthews had now been completed and invited him for interview. On 24th of August 2017 Councillor Down was duly interviewed by the PSOW's representatives.
10. The first referral Case Tribunal found the Respondent's comments in three of his emails were in clear breach of paragraph 4(b) of the Council's Code of Conduct, and concluded that the Respondent should be suspended from acting as a member of Mathern Community Council for a period of two months, or, if shorter, the remainder of his term of office.
11. It was at the announcement of the tribunal's findings at the conclusion of the hearing on 19 July 2018 that the Respondent made the comments recorded at paragraph 2 i above. Councillor Down was sent the APW's decision by letter of 20th July 2018 and he responded to the Panel by letter of July 24th 2018 and included the comment that *"...I believe homosexuality activity to be a sickening, depraved practice and I shall continue to say so."* Councillor Down, by letter of 23rd August 2018 to the PSOW, included a copy of his letter of July 24th to the APW. The Ombudsman said *"I decided to investigate whether Councillor Down's actions at the public hearing may amount to a further failure to comply with the Code."* (Paragraph 3 on page 3 of "The investigation of a complaint against Councillor Graham Down of Mathern Community Council" A report by the Public Services Ombudsman for Wales 26th October 2018).
12. That investigation report was duly sent to the APW by the Ombudsman by letter of 26 October 2018 (the second referral) and thereafter preparatory steps were undertaken to hear this case including the listing direction and the subsequent directions given at the hearing on 22 March 2019.

The law.

13. The relevant law is to be found in Chapter III of the Local Government Act 2000 as amended. The sections relating to our considerations starting with section 69 are set out below;

“69— Investigations by the Public Services Ombudsman for Wales.

(1) *The Public Services Ombudsman for Wales may investigate—*

(a) **cases in which a written allegation is made to him by any person** that a member or co-opted member (or former member or co-opted member) of a relevant authority has failed, or may have failed, to comply with the authority's code of conduct, and

(b) **other cases** in which he considers that a member or co-opted member (or former member or co-opted member) of a relevant authority has failed, or may have failed, to comply with the authority's code of conduct and **which have come to his attention as a result of an investigation under paragraph (a).**

(2) *If the Public Services Ombudsman for Wales considers that a written allegation under subsection (1)(a) should not be investigated, he must take reasonable steps to give written notification to the person who made the allegation of the decision and the reasons for the decision.*

(3) *The purpose of an investigation under this section is to determine which of the findings mentioned in subsection (4) is appropriate.*

(4) *Those findings are—*

(a) *that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned,*

(b) *that no action needs to be taken in respect of the matters which are the subject of the investigation,*

(c) *that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned, or*

(d) **that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(1).**

(5) *Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority, the reference in subsection (4)(c) to the monitoring officer of the relevant authority concerned is to be treated as a reference either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority (and accordingly if the Public Services Ombudsman for Wales reaches a finding under subsection (4)(c) he must decide to which of those monitoring officers to refer the matters concerned).*

70— Investigations: further provisions.

(1) *The National Assembly for Wales may by order make provision with respect to investigations under section 69 (including provision with respect to the obtaining or disclosure of documents or information).*

(2) *The provision which may be made by virtue of subsection (1) includes provision which applies or reproduces (with or without modifications)—*

(a) any provisions of sections 60 to 63 as those sections had effect immediately before their repeal by the Localism Act 2011, or

(b) any provisions of sections 13 to 15 and Part 2B of the Public Services Ombudsman (Wales) Act 2005.

(3) *The Public Services Ombudsman for Wales may cease an investigation under section 69 at any stage before its completion.*

(4) *Where the Public Services Ombudsman for Wales ceases an investigation under section 69 before its completion, he may refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned.*

(5) *Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority, the Public Services Ombudsman for Wales may, if he thinks it more appropriate than making such a reference as is mentioned in subsection (4), refer the matters which are the subject of the investigation to the monitoring officer of that other relevant authority.*

71— Reports etc.

(1) *Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under section 69(4)(a) or (b) is appropriate—*

(a) he may produce a report on the outcome of his investigation,

(b) he may provide a summary of any such report to any newspapers circulating in the area of the relevant authority concerned,

(c) he must send to the monitoring officer of the relevant authority concerned a copy of any such report, and

(d) where he does not produce any such report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation.

(2) *Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under section 69(4)(c) is appropriate he must—*

(a) produce a report on the outcome of his investigation,

(b) subject to subsection (4)(b), refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned, and

(c) send a copy of the report to the monitoring officer, and the standards committee, of the relevant authority concerned.

- (3) **Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under section 69(4)(d) is appropriate he must—**
- (a) produce a report on the outcome of his investigation,**
 - (b) refer the matters which are the subject of the investigation to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(1), and**
 - (c) send a copy of the report to the monitoring officer of the relevant authority concerned and to the president of the Adjudication Panel for Wales.**
- (4) *Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority –*
- (a) the references in subsections (1)(b), (c) and (d), (2)(c) and (3)(c) to the relevant authority concerned are to be treated as including references to that other relevant authority, and*
 - (b) if the Public Services Ombudsman for Wales reaches a finding under section 69(4)(c) he must refer the matters concerned either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority.*
- (5) A report under this section may cover more than one investigation under section 69 in relation to any members or co-opted members (or former members or co-opted members) of the same relevant authority.**
- (6) *The Public Services Ombudsman for Wales must—*
- (a) inform any person who is the subject of an investigation under section 69, and*
 - (b) take reasonable steps to inform any person who made any allegation which gave rise to the investigation, of the outcome of the investigation.***

72— Interim reports.

- (1) *Where he considers it necessary in the public interest, the Public Services Ombudsman for Wales may, **before the completion of an investigation under section 69**, produce an interim report on that investigation.*
- (2) *An interim report under this section may cover more than one investigation under section 69 in relation to any members or co-opted members (or former members or co-opted members) of the same relevant authority.*
- (3) *Where the prima facie evidence is such that it appears to the Public Services Ombudsman for Wales –*
- (a) that the person who is the subject of the interim report has failed to comply with the code of conduct of the relevant authority concerned,*
 - (b) that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b), and*
 - (c) that it is in the public interest to suspend or partially suspend that person immediately,*

the interim report may include a recommendation that that person should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned for a period which does not exceed six months or (if shorter) the remainder of the person's term of office.

- (4) *Where the Public Services Ombudsman for Wales produces an interim report under this section which contains such a recommendation as is mentioned in subsection (3), he must refer the matters which are the subject of the report to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within section 76(2).*
- (5) *A copy of any report under this section must be given–*
 - (a) *to any person who is the subject of the report,*
 - (b) *to the monitoring officer of the relevant authority concerned, and*
 - (c) *to the president of the Adjudication Panel for Wales.*
- (6) *Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority –*
 - (a) *the second reference in subsection (3) to the relevant authority concerned is to be treated as a reference to that other relevant authority, and*
 - (b) *the reference in subsection (5)(b) to the relevant authority concerned is to be treated as including a reference to that other relevant authority.*

74. Law of defamation.

For the purposes of the law of defamation, any statement (whether written or oral) made by the Public Services Ombudsman for Wales in connection with the exercise of his functions under this Part shall be absolutely privileged.”

Save for the headings of the sections above, the other highlighted sections in bold are to emphasise wording of particular relevance to this decision.

The Ombudsman's written representations.

14. The Ombudsman cited section 69 (1) of the 2000 Act and submitted that this effectively creates two ways in which the PSOW can acquire the jurisdiction to undertake an investigation, firstly cases where he receives a written allegation that a breach of the code has been committed or may have been committed and secondly “cases” where the PSOW “considers” that a breach of the code has or may have been committed “and which have come to his attention as a result of an investigation under paragraph (a).” The PSOW received a written allegation in relation to what they described as the first referral (namely the earlier proceedings in case number APW/003/2017 – 018/CT arising from the email exchanges of February and October 2016) and relied upon section 69 (1) (a) as the jurisdiction to investigate that first referral complaint. The PSOW “did not receive a written allegation regarding the events which led to the PSOW's investigation and the current case being referred to the APW. (APW/001/2018 – 019/C T – the second referral).”
15. The PSOW “contends that the wording in section 69 (1) (b) “which have come to his attention as a result of an investigation under paragraph (a)” is sufficiently

broad enough to cover information which came to the PSOW's attention at the case tribunal hearing which was a culmination of "an investigation under paragraph (a)". The Ombudsman further adds "such information came to the attention of the PSOW as a result of his earlier investigation under paragraph (a) because the hearing on 19th of July would not have occurred but for the PSOW's previous investigation under section 69 (1) (a) (APW/003/2017 – 018/CT).

16. At the hearing on 22 March 2019 Councillor Down argued that as the comments which the PSOW investigated and which led to the current referral to the APW were made during a previous legal hearing, they cannot constitute a fresh breach of the Code of Conduct. The Ombudsman made representations on this issue and on the question of core immunity with reference to the cases of *Darker v Chief Constable West Midlands* [2001] 1 AC 435, and *A & B v Chief Constable of Hampshire* [2012] EWHC1517, submitting that there is no legal basis for the argument that core immunity gives any councillor core immunity from an investigation under the 2000 Act by the PSOW or an adjudication by the APW for things said during an APW hearing.

The Respondent's written representations.

17. Councillor Down submitted that the Ombudsman's case must fail on two grounds, firstly that he fails to specify which authority's code of conduct he alleges has been breached; and secondly that the alleged breach did not come to his attention as a result of his investigation. He pointed out that the first referral was instigated following a written complaint by the Chief Executive of Monmouthshire County Council in October 2016 at which time he was a member of that County Council. By the time of 19 July 2018 and the incident that led to the 2nd referral he had ceased to be a member of Monmouthshire County Council and argued that he was not bound by the provisions of its code of conduct.
18. The Respondent argues that section 69(1)(b) refers to "authority" in the singular and submits that the PSOW cannot stretch his investigation to alleged breaches of a second authority's code about which there has been no written complaint. He argues that he cannot have been in breach of Monmouthshire County Council's Code of Conduct because he was not a member of that council on 19 July 2018 and there has not been any complaint, written or otherwise that he has breached Mathern Community Council's Code of Conduct.
19. The Respondent submits that the investigation that gave rise to the first referral commenced on or about 1 November 2016 and concluded with the publication of the Ombudsman's report some months later and the referral of the allegations to the panel. He argues that *"it would be manifestly unjust for any further allegations which happen to come to the attention of the PSOW to be "tagged on" to that investigation once it was concluded. I contend that there should be a new investigation initiated in the proper way, that is to say by way of a written complaint under section 69 (1)(b)."* He adds; *"furthermore, the expression used and upon which the PSOW bases his referral was not "a result of an investigation" but a result of the decision of the Panel. It was made in a highly charged, emotional moment and whilst I do not retract the words used, I regret my conduct and apologise to the Panel for the outburst."*

20. The Respondent also argued, (by reference to the two cases cited in paragraph 16 above), that participants in court proceedings have the benefit of immunity and that his statement which formed the basis of the report and the second referral by the PSOW was made during the course of proceedings before the Panel on 19th July 2018 and was therefore covered by immunity.

Case tribunal's decision.

21. We do not find the Respondent's submissions in relation to the wording of section 69(1)(b) as referring to 'authority' in the singular to be persuasive, on the basis that the section clearly refers to member of former member of a relevant authority in Wales, however in the light of our conclusions below, this is not central to the decision.

22. There is no dispute of fact that Councillor Down said the words attributed to him at the hearing on 19 July 2018 or that he wrote the comments in his letter of 24 July 2018 which together comprise the second referral to the APW. The preliminary issue for the Case Tribunal is whether this case has been properly referred to the APW in accordance with the law? There was no written allegation received by the PSOW in respect of the second referral matters at all as acknowledged by the PSOW. In the Ombudsman's letter to the Respondent of 17th August 2018 the Ombudsman's Investigation and Improvement Officer Sinead Cook wrote;

"Section 69(1)(b) states that the Public Services Ombudsman for Wales may investigate cases in which he considers a member of a relevant authority in Wales has failed, or may have failed, to comply with the authority's Code of Conduct and which has come to his attention as a result of an investigation.

The Ombudsman has decided to investigate whether your actions at the hearing may amount to a failure to comply with paragraph 6(1)(a) of the Code...."

23. However the Case Tribunal consider that to be a misleading and inaccurate statement of the law, since section 69(1)(b) actually says "*which have come to his attention as a result of an investigation under paragraph (a).*" Section 69(1)(a) says that the PSOW may investigate "*cases in which a written allegation is made to him by any person...*". There is a clear and obvious connection between the written allegation and the investigation in section 69(1)(a) that is triggered by it. Section 69(1)(b) is conjunctive with 69(1)(a). The Case Tribunal is of the unanimous view that the meaning of 69(1)(b) is that, where the PSOW is investigating the particular written allegations that he receives, if during the course of that investigation, other apparent breaches of the code by a member of a relevant authority in Wales come to his attention that were not the subject of the initial written allegations, then the PSOW may also investigate such apparent breaches. In other words the investigation is not constrained solely by the written allegation. This is a perfectly practical provision since it may hypothetically be the case that an investigation into a written allegation against a certain member may, reveal other behaviour of which the original complainant was unaware by that member or others which may also constitute a breach of

the code. It would plainly be perverse if the Ombudsman in such a scenario was unable to investigate and refer such matters.

24. The Case Tribunal notes the PSOW's contention in the written submissions that the wording in section 69 (1)(b) "*which have come to his attention as a result of an investigation under paragraph (a)*" is sufficiently broad enough to cover information which came to the PSOW's attention at the case tribunal hearing **which was a culmination of "an investigation under paragraph (a)"**. Such information came to the attention of the PSOW as a result of his earlier investigation under paragraph (a) because the hearing on 19th July would not have occurred but for the PSOW's previous investigation under section 69(1)(a)(APW/00302017-018/CT)". (our emphasis).
25. The Case Tribunal do not accept this submission nor the reasoning behind it. The hearing was not a culmination of the investigation. The Case Tribunal find that the investigation into the first referral was completed on 20th December 2017 when the Ombudsman said that "my report on this investigation should be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal." Indeed in the PSOW's submissions there are contradictions as there is reference to the PSOW's previous investigation, thereby tacitly accepting that the previous investigation was complete.
26. It is clear that in investigating the first referral matters that the focus was on whether e mails sent in February and October 2016 constituted a breach of the code. When the Respondent was interviewed on 24th August 2017 about this, he was told by the PSOW's interviewer that once the Ombudsman has considered the information and the available evidence, that if there were not any further enquiries he can reach his determination. It was explained that one of those determinations or options was referral to the APW (see page 34 of the transcript of the Respondent's interview). Indeed the Respondent was encouraged to provide any further information that he wanted to be taken into account in the two weeks whilst waiting for the interview transcript to be produced and told that "*we will strive to give you a determination on this then as quickly as we possibly can.*"
27. Section 71(3) of the Act (see paragraph 13 above) relates to reports when the PSOW determines that a referral to the President of the APW is appropriate. Section 71(3)(a) requires the PSOW to produce a report on the "**outcome of his investigation.**" In other words, the investigation is clearly concluded and the report will refer to that. The investigation does not remain open ended to be added to at a future date. Further, at 71(6)(b) the Ombudsman is to take reasonable steps to inform any person who made any allegation which gave rise to the investigation, of the **outcome** of the investigation.
28. Section 72 of the Act on Interim Reports allows the PSOW "*before the completion of an investigation under section 69*" to produce an interim report. Whilst there were no interim reports in either the first or second referral against the Respondent, the wording of this section with reference to the completion of the investigation further fortifies the Case Tribunal's view that the investigation report of the PSOW that is referred to the APW constitutes the completed report and the conclusion of the investigation. The subsequent hearing before the

Case Tribunal is not the culmination or the continuance of the investigation by the PSOW but the testing of the allegations and evidence revealed by that investigation.

29. It is also noteworthy that the first referral investigation report related to potential breaches of 4(b) of the Code which were pursued before the July 2018 Case Tribunal, whereas the second referral and investigation report related to paragraph 6(1)(a) of the Code. The Case Tribunal does not accept that the second referral information has come to the attention of the PSOW as a result of the first referral investigation. That first investigation related to events of 2016 and had been completed in December 2017, many months before the events of July 2018. **It follows that the Case Tribunal find that the second referral to the APW and the subject matter of this case was not in accordance with the requirements of section 69(1)(a) or (b) of the Act in that there was no written complaint about the alleged breaches of the Code and the potential breaches of the Code did not come to the PSOW's attention as a result of an investigation under 69(1)(a) and accordingly we dismiss the application.**
30. There are very obvious practical policy (as well as legal) reasons for the requirements of section 69 and the need for a written complaint from any individual outside the PSOW's office to be observed. Under the Act the PSOW is to investigate complaints from third parties, not to **initiate** the complaints or the investigation himself. It is not for the PSOW to proactively investigate potential breaches of the Code absent a written allegation (save for in the circumstances in section 69(1)(b) that the Case Tribunal has determined do not apply here.)
31. In the light of the Case Tribunal's decision to dismiss the case, it is not necessary to examine the respective submissions on core immunity.



Signed.....
Richard Payne
Chairperson of the Case Tribunal

..... Date 17th July 2019

Sian Jones
Panel Member

Richard Nicholas
Panel Member

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Public Document Pack Agenda Item 7

MONMOUTHSHIRE COUNTY COUNCIL

Minutes of the meeting of Standards Committee held
at Conference Room - Usk, NP15 1AD on Monday, 17th June, 2019 at 10.00 am

PRESENT: County Councillors: R Williams-Flew, P. Easy, D. Evans,
S. Woodhouse and I. Cameron (Community Representative)

OFFICERS IN ATTENDANCE:

Matthew Phillips	Head of Law/ Monitoring Officer
Nicola Perry	Senior Democracy Officer
Andrew Wathan	Chief Internal Auditor

APOLOGIES:

Councillors P. Clarke and R. McGonigle (Independent Representative)

1. Election of Chair

It was proposed and seconded that Mr. T. Auld be elected as Chair of Standards Committee.

2. Appointment of Vice Chair

It was agreed that Mr. R. Stow be appointed as Vice-Chair.

3. Declarations of interest

None.

4. Minutes of previous meeting

The minutes of the meeting held on 18th March 2019 were approved and signed by the Chair.

5. MONMOUTHSHIRE COUNTY COUNCIL ANNUAL GOVERNANCE STATEMENT, 2018/19

The Chief Internal Auditor presented a draft version of the Council's Annual Governance Statement (AGS) prior to inclusion into the Statement of Accounts 2018/19.

The Statement demonstrates that Monmouthshire has governance arrangements in place to meet the challenges of the governance principles and that a review has been undertaken to assess the effectiveness of those arrangements. It demonstrates that in most areas we have effective governance arrangements in place which are continually improving, but also recognise that there is further work to do.

Members were invited to comment.

MONMOUTHSHIRE COUNTY COUNCIL

Minutes of the meeting of Standards Committee held at Conference Room - Usk, NP15 1AD on Monday, 17th June, 2019 at 10.00 am

It was confirmed that in terms of school finances, officers look at a sample basis on a rotation, looking at income, expenditure and payroll. Finances are looked at in general to identify controls in place.

The process around school deficit budgets are supported by school management teams.

It was asked that where training is due, members of Standards Committee are invited to interact.

With regards to Brexit a risk manager is in place to identify mitigations to manage risks. This is monitored on a regular basis.

It was agreed that the within the executive summary, Governance needs revisiting and updating ahead of the constitution review.

It was asked, with regards to Principle A of the guidance, how external providers are required to act with integrity, and how the Council addresses this. We were advised that as well as through the Equalities Act and Data Protection, 3rd party providers are held to account via contract. An exercise had been undertaken a few years ago regarding partnerships and arrangements, it was agreed this could be refreshed.

6. FEEDBACK FROM PSO BRIEF ON NEW POWERS

The Monitoring Officer and Customer Relations Manager had attended the Public Services Ombudsman's briefing.

The PSO has worked with Welsh Government to create a new bill, which is now at the point of coming into force. This is a means to introduce the bill to practitioners which were predominantly health boards, but also housing associations and fire authorities.

The biggest change identified was the introduction of 'own initiative investigations', and being able to accept verbal complaints. The criteria for investigations was identified in five parts:

1. Is it of public interest?
2. Reasonable suspicion of systematic maladministration
3. Impact on citizens who may be vulnerable
4. Weight of evidence
5. Persuasiveness of evidence

There were concerns around who guards the guardians and it was noted that the system would take a while to embed, and further feedback will be useful.

7. DISPENSATION REQUEST DISCUSSION

MONMOUTHSHIRE COUNTY COUNCIL

Minutes of the meeting of Standards Committee held at Conference Room - Usk, NP15 1AD on Monday, 17th June, 2019 at 10.00 am

The Chair presented a dispensation example for discussion. The Monitoring Officer had emailed a regulations report to provide a checklist.

There were many comments but overall it was recognised that public perception was important. It was agreed this would be an interesting matter for discussion at the upcoming Clerks Conference.

It was agreed that the format of the form should be amended and updated.

8. CLERKS CONFERENCE

The Committee were advised of a Clerks Conference due to take place on Wednesday 26th June 2019 at 9:30 am. All Monmouthshire Clerks are invited to attend as an opportunity to liaise with other clerks and officers. Matters will include a representative from WLGA with regards to a review of Town and Community Councils; an update from One Voice Wales; a representative of the Public Services Ombudsman and an update from Wales Audit Office.

Standards Committee Members were invited to attend.

9. STANDARDS COMMITTEE ANNUAL WORK PLAN

It was agreed to continue arranging the work plan via email communication.

Items suggested for the following meeting included:

- Protocol for Member self-regulation for conduct
- Whole Authority report on complaints
- Ombudsman Annual Report and Accounts.

10. DATE OF NEXT MEETING: 16th SEPTEMBER 2019, 10AM

Noted.

The meeting ended at 12.00 pm

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SCHEDULE 12A LOCAL GOVERNMENT ACT 1972 EXEMPTION FROM DISCLOSURE OF DOCUMENTS

Meeting and Date of Meeting: Standards Committee 16 Sep 19

Report: Monitoring Officer Early Stage Complaint Handling

Author: Matt Phillips

I have considered grounds for exemption of information contained in the background paper for the report referred to above and make the following recommendation to the Proper Officer:-

Exemptions applying to the report:

Factors in favour of disclosure:

Openness & transparency in matters concerned with the public.

Prejudice which would result if the information were disclosed:

This item will consider early stage conflict resolution and complaints handling that makes reference to members of the public and will include information that could potentially identify such individuals.

My view on the public interest test is as follows:

Factors in favour of disclosure are outweighed by those against.

Recommended decision on exemption from disclosure:

Maintain exemption from publication in relation to this discussion item.

Date: 2 Sep 19

Signed:

Post: Head of Law and Monitoring Officer

I accept the recommendation made above

Signed: 

Date: 2 Sep 19

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