

Adjudication Panel for Wales

Annual Report



2009 - 2010

Foreword

This report reviews the work of the Adjudication Panel for Wales during the financial year 2009-10.

During 2009-10, the Panel received 12 referrals from the Public Services Ombudsman for Wales and one appeal against the decision of a Standards Committee. A summary of the cases that were determined can be found in Section 3 of this report. In comparison to previous years, a relatively high number of referrals were received and I am conscious that some of the cases have not progressed as speedily as I would have liked. Arrangements are, however, in place to address this and, as I write, we will be facing a hectic few months as hearings are scheduled to take place through the late summer and into the autumn. I also intend to review our procedures for listing tribunals with a view to confirming hearing dates at an earlier stage in the process.

During the year, a number of tribunals were observed by a member of the Welsh Committee of the Administrative Justice and Tribunals Council. I am pleased to say that I received very positive reports on the conduct of the tribunals and our underlying procedures from the Committee's observer.

I continue to believe that the training and development of Panel members is of major importance and this has once again been an important part of the Panel's activities.

In December, I was very pleased to welcome Gareth Lewis, a member of the Welsh Committee of the Administrative Justice and Tribunals Council, to our training event in Cardiff. Gareth provided a very informative update on the main findings of the Committee's 'Review of Tribunals Operating in Wales'. The main recommendation here was for moving the responsibility for tribunals away from policy departments within the Welsh Assembly Government and into the Department of the First Minister and the Cabinet. I welcome the report's recommendations and the potential benefits it would bring in terms of the cross-ticketing of tribunal members and more efficient use of resources through more joined up and shared administration arrangements.



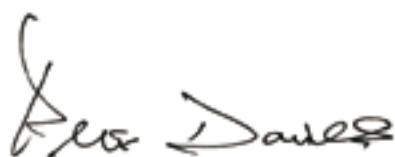
We also had a very successful learning exercise at the December training event on the revised role of the Public Services Ombudsman for Wales and monitoring officers at tribunal hearings, following the introduction of revised regulations in October 2009.

Whilst on the subject of the Public Services Ombudsman for Wales, I should like to record my thanks to Peter Tyndall and his team for their continued support. I have had many meetings with Peter during the year with regards to the work of our respective offices and, once again, these meetings have proved to be extremely helpful.

Looking forward, I would like to touch on the issue of public spending reductions and the potential impact on the resourcing of the work of the Panel. Although we await the full impact of the Government's spending decisions, the Panel will not be immune from the pressures on public services. I will be looking to ensure that we provide an efficient and effective service within the resources available. As a small but immediate contribution, this year's report is being published via the Panel's website only.

Looking further forward, the terms of office of the current members of the Panel will end on 30 September 2012. The Welsh Assembly Government has commenced a phased replacement of the current members, with a number of new appointments expected to be confirmed in the autumn. This will enable us to get the new members fully up to speed before the current terms of office of the existing members come to an end.

Finally, I would like to express my heartiest congratulations to Hywel James who during the year became a District Judge. This is truly a remarkable achievement and, on behalf of the Panel, I would like to wish Hywel all the very best in his new role. I am pleased, however, that Hywel is able to continue his work with the Panel until his current term of office comes to an end.



J PETER DAVIES
President of the Panel



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1. Background

1.1 Local Government Act 2000

Part III of the Local Government Act 2000 ("the 2000 Act") established a new framework to promote observance of consistent standards of conduct by local government members in England and Wales. On 21 June 2001, the National Assembly for Wales made the first set of regulations giving effect to that framework in Wales.

1.2 Principles of Conduct / Code of Conduct

The 2000 Act empowered the National Assembly to specify general principles of conduct and to make a model code of conduct for elected members and co-opted members with voting rights. The principles draw on the 'Seven Principles of Public Life' which were set out in Lord Nolan's report 'Standards of Conduct in Local Government in England, Scotland and Wales.'

The general principles are encapsulated in the current model code of conduct prescribed by the Welsh Assembly Government in 2008. All parts of local government in Wales (with the exception of police authorities) - ie county, and county borough councils, town and community councils, national park authorities and fire and rescue authorities - are required to adopt a code of conduct encompassing the provisions of the model code. All elected and co-opted (with voting rights) members must give a written undertaking to observe their authority's adopted code of conduct.

Police authorities in Wales, as in England, are subject to a model code of conduct prescribed by the UK Government.



1.3 Role of the Public Services Ombudsman for Wales/ Standards Committees

Any person may make a written allegation to the Public Services Ombudsman for Wales (“the Ombudsman”) that an elected or co-opted member has breached an authority’s code of conduct.

It is for the Ombudsman to consider whether an allegation warrants investigation and, if so, whether that investigation should be undertaken by his office or the relevant authority’s monitoring officer. The Ombudsman may conclude upon investigation that there was no breach of the code or that no further action needs to be taken. If he finds otherwise, he will produce a report on the completed investigation and send it either to the monitoring officer of the relevant authority concerned, or to the President of the Adjudication Panel for Wales.

If the Ombudsman refers the matter to the monitoring officer, the relevant authority’s standards committee will consider the report of the investigation. They will also consider any representations from the person who is the subject of the investigation and, where there has been a failure to comply with the code, will decide whether any penalty should be imposed. This could range from a censure to a suspension for up to six months.

1.4 Role of the Adjudication Panel for Wales

The Adjudication Panel has two statutory functions:

- To form case or interim case tribunals to consider reports from the Ombudsman following the investigation of allegations that a member has failed to comply with a relevant authority’s code of conduct; and
- To consider appeals from members against the decisions of local Standards Committees.



Case and Interim Case Tribunals

Where the Ombudsman sends a report to the President of the Adjudication Panel, a “case tribunal” formed from the Panel will be convened to consider the report, to receive evidence and to determine whether there has been a breach of the code of conduct.

If the tribunal determines that a failure to comply with an authority’s code of conduct has occurred, it has powers to suspend, or partially suspend, a member for up to one year; or it can disqualify a member for up to five years. Where a case tribunal decides that a person has failed to comply with an authority’s code of conduct, that person may seek the permission of the High Court to appeal that decision, or any decision of the tribunal as regards the sanction imposed.

Where the Ombudsman considers it necessary in the public interest, he may make an interim report to the President of the Adjudication Panel recommending that a member be suspended while an investigation is ongoing. An interim case tribunal will decide whether the member should be suspended or partially suspended for up to six months.

Appeal Tribunals

Where the Ombudsman has referred the matter to a monitoring officer and the standards committee has determined that there has been a failure to comply with the code of conduct, the member concerned has a right of appeal to the Adjudication Panel. This right must be exercised within 21 days of the member’s receipt of notification of the standards committee’s determination. Where the appeal tribunal agrees that there has been a breach of the code, it may endorse the penalty set by the standards committee, or refer the matter back to the committee with a recommendation that a different penalty be imposed. The appeal tribunal can also overturn the determination of a standards committee that a member has breached the code of conduct.



2. Members of the Adjudication Panel for Wales

Members were appointed to the Panel on 1 October 2007 for a further period of five years. The Panel members have a wide range of relevant knowledge and experience. They are located around Wales which means that, providing there is no conflict of interest, members can be appointed to tribunals on a geographical basis.

The President, the legal members and one of the lay members are Welsh speakers.



The President of the Adjudication Panel, **Mr J Peter Davies** runs his own legal practice in Cardiff specialising in civil and commercial litigation and, in particular, regulatory matters. He is a Deputy District Judge and chair of the Solicitors Disciplinary Tribunal.



Mr Stewert Sandbrook-Hughes is a barrister in Swansea and is also an adjudicator for the National Parking Adjudication Service.



Mr Hywel James was, until recently, a partner with James & Bulteel in Cardiff specialising in litigation and in professional negligence in particular. Earlier this year, HM The Queen appointed Hywel to be a District Judge.



Mrs Helen Cole is a senior partner in a general practice in rural West Wales specialising in non-contentious private client work.



Mr Ian Blair is a part time civil engineering consultant. He was County Surveyor with Powys County Council and has been an invited lecturer for the University of Wales, Aberystwyth. He is a member of the Courts Board for Mid and West Wales.





Cllr Colin Evans is a Labour councillor with Cwmamman Town Council.



Cllr Christine Jones is an Independent member of Conwy County Borough Council. She is also a Board member with Cartrefi Conwy, representing Conwy County Borough Council.



Ms Juliet Morris runs an organic farm business in Carmarthenshire. Previously, she worked in social and public sector policy for organisations including the Local Government Information Unit, the Wales Consumer Council and independent advice sector in Wales.



3. Allegations of Misconduct

3.1 Overview

In the period October 2002 to 31 March 2010, the Adjudication Panel made determinations on 21 references from the Ombudsman and 8 appeals against the decision of standards committees. Figures 1 to 3 give a breakdown of the outcome of those determinations. A summary of the sanctions imposed is in the Annex to this report.

Figure 1: Case tribunal decisions October 2002 to March 2010

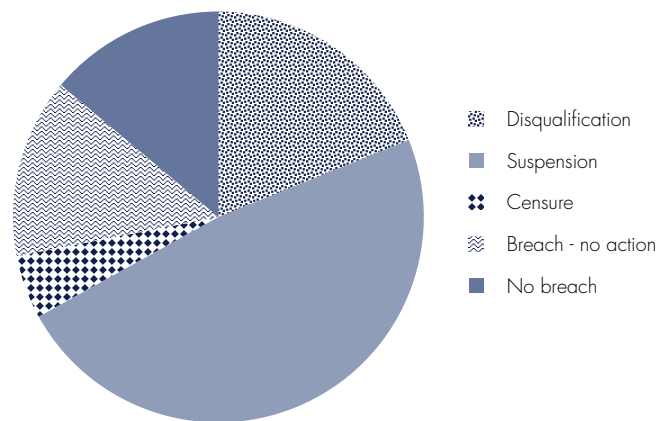


Figure 2: Appeal tribunal decisions - October 2002 to March 2010

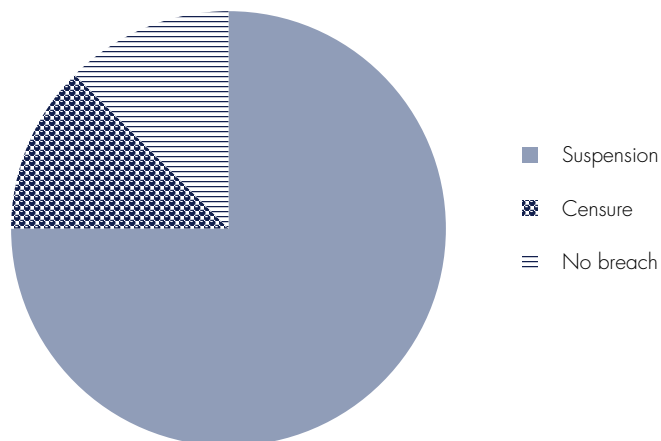
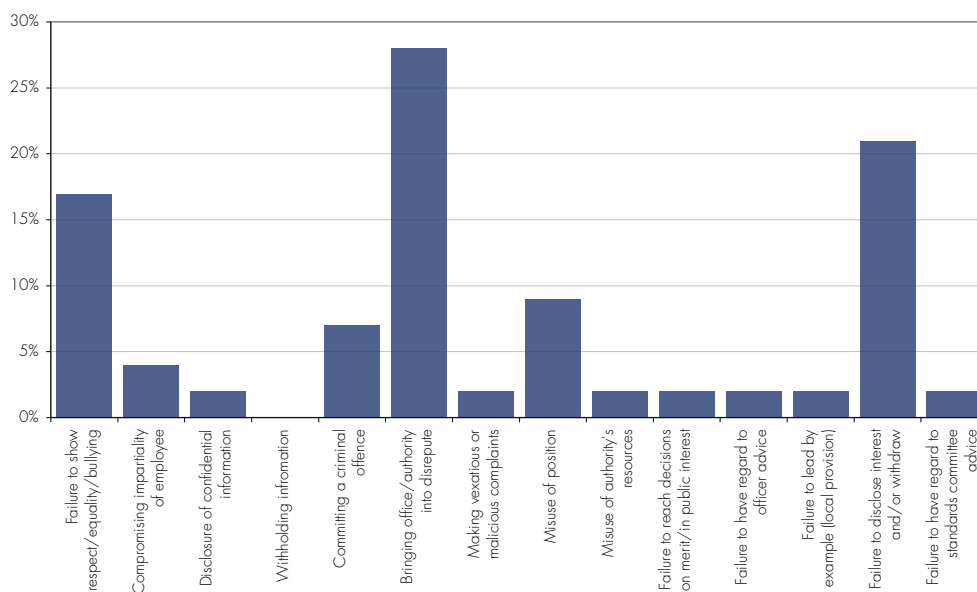


Figure 3: Breaches by type



3.2 Summary of Case Tribunals

The Public Services Ombudsman for Wales referred 12 cases to the Panel during 2009-10 and 1 case was carried over from the previous year. The 4 cases determined by a case tribunal in the period covered by this report are summarised below.

APW/002/2008-09/CT - Blaenau Gwent County Borough Council

An officer of the Council alleged that the councillor concerned (a member of the executive) had bullied and intimidated her during a telephone call and at two subsequent meetings, including a portfolio briefing meeting.

The referral from the Ombudsman concerned allegations that the councillor had breached the Council's code of conduct by failing to show respect and consideration towards an officer of the Council; that his behaviour compromised, or was likely to have compromised the impartiality of the officer; and that he behaved in a manner which could reasonably be regarded as bringing the office of a member into disrepute.

The Case Tribunal found that the councillor by his tone, manner and comments during the telephone call had intimidated the officer and conducted himself inappropriately. The Case Tribunal also found that the councillor intimidated the

officer in one of the two meetings. Both of these occurrences amounted to a breach of paragraph 4(a) of the 2001 code of conduct.

The Case Tribunal found that there was no evidence to substantiate a breach of paragraph 4(b) of the 2001 code of conduct, in that there was nothing to suggest that anything the councillor had said or done had influenced any decision or conduct on the part of the officer.

The Case Tribunal, did, however, find that the member's conduct was such as to bring his office into disrepute in breach of paragraph 6(1)(b) of the 2001 code.

The tribunal concluded that the councillor should be suspended from acting as a member of Blaenau Gwent County Borough Council for a period of 9 months.

APW/001/2009-010/CT - Barmouth Town Council

The referral from the Ombudsman related to allegations that the councillor had breached the Council's code of conduct by making statements that were malicious, defamatory, factually inaccurate and homophobic in a letter to the Assembly Government's then Deputy Minister for Regeneration.

The letter contained statements about an employee of Gwynedd Council and the organisation of which he was the controller. The letter was copied to the Chief Executive of the Council.

The Case Tribunal noted the grave effect that the content of the letter had on the employee and that the letter had been deliberately copied to his employer, Gwynedd Council. The Case Tribunal was not satisfied, on the balance of probability, that the main motivation of the councillor in his letter to the Deputy Minister was a denial of opportunity, primarily on the basis of sexual orientation, and thus did not find a breach of paragraph 4(a) of the 2008 code of conduct on that basis.

The Case Tribunal was, however, satisfied that the words used in the letter and their meaning amounted to a breach of paragraph 4(b) of the 2008 code, in that the councillor had failed to show respect and consideration for another person. The words used in his letter could, and did, cause serious offence. The Case Tribunal further found that the words used brought the office of the member into disrepute in breach of paragraph 6(1)(a).



In contesting the findings of breach the councillor gave cause for the Case Tribunal to be concerned that the councillor was likely to repeat his comments in carrying out his duties as a councillor. The Case Tribunal therefore concluded that the councillor should be disqualified for a period of 12 months from being or becoming a member of Barmouth Town Council or of any other relevant authority.

APW/003/2009-010/CT - City and County of Swansea

This case concerned alleged breaches of both the 2001 and 2008 codes of conduct. It was alleged that the member failed to declare an interest and to withdraw when nominations for the appointment of school governors were considered by the Council's Cabinet, when her husband was an applicant. It was also alleged that that the member failed to declare a personal and prejudicial interest and to withdraw from a meeting of the authority's Standards Committee when the Committee considered allegations of misconduct by another member. The complainant in that case was the same person who had made the allegations against the councillor relating to the school governor appointments.

The Case Tribunal found that by participating in the decisions of the Cabinet relating to the governorship of a school the councillor had used her position improperly to confer on, or secure for her husband an advantage, although there was no evidence of any deliberate intention or motive on her part.

In relation to the Standards Committee meeting, the Case Tribunal heard that there was a history of personal animosity on the part of the complainant towards the councillor. The Case Tribunal concluded that, on an objective test, the depth of this animosity was such as to give rise to a personal and prejudicial interest in the matters before the Standards Committee. The Case Tribunal found no evidence, however, that the councillor's participation in the Standards Committee's decision was actually or consciously affected by the animosity displayed against her.

The Case Tribunal noted that the councillor had sought the advice of the Monitoring Officer and had followed the advice that she was given, which was incorrect. The Case Tribunal decided that in view of the very strong mitigating circumstances, it was not appropriate, necessary or desirable to impose a sanction.



APW/004/2009-010/CT - Rhondda Cynon Taf County Borough Council

The referral from the Ombudsman related to allegations that the councillor concerned had breached the code of conduct by failing to show respect for the feelings of a third party when sending an e-mail, thereby bringing the office of member into disrepute.

The councillor indicated that he did not dispute the content of the Ombudsman's Report and requested that the matter be determined by way of written representations.

The Case Tribunal found that there had been a failure to comply with the Council's code of conduct and that the councillor had failed to show respect and consideration to others. His e-mail failed to take into account the feelings of the recipient, whose son had been involved in a recent road traffic accident. The contents of the e-mail also made a number of serious allegations against the recipient. The Case Tribunal concluded that the e-mail could reasonably be regarded as bringing the office of a councillor into disrepute.

In considering the appropriate sanction, the Case Tribunal took into account mitigating circumstances, including ill health and the councillor's full co-operation with both the Ombudsman and the Tribunal. However, this was the councillor's second referral to the Adjudication Panel for similar behaviour. The Case Tribunal gave serious consideration to a disqualification, but concluded that this was an incident involving a single e-mail where there was an acknowledgement of its inappropriate nature.

The Case Tribunal concluded that the councillor be suspended from acting as a member of Rhondda Cynon Taf County Borough Council for a period of 12 months.



3.3 Summary of Appeal Tribunals

One appeal against the decision of a standards committee was received and determined during the period covered by this report and is summarised below.

APW/006/2009-010/A - Llanarmon yn Iâl Community Council and Llandegla Community Council

An appeal was received against the decision of Denbighshire County Council's Standards Committee that the councillor had breached the community councils' codes of conduct and that he should be suspended for 3 months.

The allegations were that the councillor concerned had breached the community councils' codes of conduct through inappropriate behaviour at a meeting of Llanferres Community Council in July 2008.

The councillor was a former member of Llanferres Community Council, but had lost his seat at the 2008 local elections. He was therefore attending the meeting in July 2008 as a member of the public. He had addressed the community council on a number of matters with the council's consent, but was refused consent to address the council on another specific matter. It was alleged that the councillor spoke with a loud voice whilst the council discussed that item; that he interrupted the meeting; and that the Chairman asked him to stop interrupting and reminded him about his obligations under the code of conduct. The Chairman warned the councillor that if he did not stop interrupting the meeting, he would ask him to leave. Following further interruptions, the Chairman did indeed ask the councillor concerned to leave the meeting, but he declined to do so.

The councillor argued, among other things, that he had attended the meeting as a member of the public and was not subject to the codes of conduct of the other councils.

The Appeal Tribunal found that the councillor's conduct at the meeting amounted to a breach of paragraph 6(1)(a) of the 2008 code of conduct (which applies to a member at all time and in any capacity) in that it brought the office of member into disrepute. The Appeal Tribunal found it unacceptable conduct by an elected member, whether attending a council meeting as an elected member or as a



member of the public, to speak when refused permission to do so; to interrupt; and to disregard warnings given, and requests made, by the Chairman not to behave disrespectfully towards the Chairman or his office.

The Appeal Tribunal upheld the determination of the Standards Committee that the councillor had breached the codes of conduct. The Appeal Tribunal endorsed the decision of the Standards Committee that the councillor should be suspended for a period of 3 months.

3.4 Ongoing Cases

At the time of drafting, the Adjudication Panel had determined 7 cases in the current financial year and a further 8 were on going. These cover a range of actual or potential breaches, such as failing to declare interests in relation to planning matters, seeking to mislead the Ombudsman's investigation, failing to have regard to the advice of the monitoring officer, failing to show respect, attempting to misuse their position as a member and intimidating and bullying behaviour towards council employees.

Further information on completed cases can be found in the tribunal decision reports which are published on the Panel's website: www.adjudicationpanelwales.org.uk.



4. Overview of Procedures

The work of the Adjudication Panel for Wales is governed by Part III of the Local Government Act 2000 and subordinate legislation made by the National Assembly for Wales / Welsh Assembly Government and the UK Government (the latter in respect of police authorities).

The overriding aim of the Adjudication Panel is to ensure that all parties are able to have their cases presented and to have them considered as fully and fairly as possible.

Tribunals will normally comprise a legally qualified chairperson, plus two others. This may be varied at the President of the Adjudication Panel's discretion.

Tribunal hearings will normally be held in public except where the tribunal considers that publicity would prejudice the interests of justice, or where the respondent or appellant agrees that the allegations may be dealt with by way of written representations. There may be other reasons from time to time for not holding a hearing, or part of a hearing, in public.

Hearings will usually take place in the relevant authority's area where suitable accommodation is available. Hearing arrangements take account of any special needs of those attending, such as wheelchair access, interpreter, hearing assistance etc.

A simultaneous translation service is provided for those who wish a tribunal hearing to be conducted in Welsh.

The person who is the subject of the allegations is entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal on matters pertinent to allegations under consideration.

Details of tribunal hearings and their outcome are published on the Panel's web-site and in the local press, as appropriate.



There is a right to seek the permission of the High Court to appeal the decision of interim case tribunals and case tribunals established by the Adjudication Panel. There is no right of appeal against the decisions of appeal tribunals, but, as a public body, the Adjudication Panel and its tribunals are subject to judicial review where appropriate.

Further information on tribunal procedures can be found on the Adjudication Panel's web-site (www.adjudicationpanelwales.org.uk).



5. Support Unit

The Adjudication Panel is supported by:

Stephen Phipps, Registrar to the Panel

John Davies

Carol Webber

Jane Hanbury

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Annex

Summary of Sanctions Imposed by Case Tribunals and Appeal Tribunals in the Period October 2002 to March 2010

Sanction	Period	No of decisions
Case and Appeal Tribunals		
Disqualification	2 years 6 months	1
	2 years	1
	1 year	2
Suspension	12 months	3
	9 months	3
	6 months	4
	3 months	2
	2 months	2
	1 month	2
Partial Suspension	-	-
Censure	-	2
Breach - no action	-	3
No breach	-	4
Appeals		
Breach of code upheld/dismissed	7 (87.5%) / 1 (12.5 %)	
Sanction endorsed	5	
Different sanction recommended	1 increase / 1 decrease	
Not accepted/withdrawn	1	
• Out of time	1	
• Not in jurisdiction	1	
• Withdrawn	1	

