

# The Annual Report 2010/11

of

The Public Services Ombudsman for Wales

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

# 1. Introduction



I am pleased to introduce this, my third, annual report since taking up my post as Ombudsman and the fifth annual report of the Public Services Ombudsman for Wales following the introduction of the office in 2006.

Two years into the current three year strategic plan, I am very encouraged by the progress we have made. We are now beginning to realise the rewards of the changes we began introducing a couple of years ago and we are now fitter of foot in the way we deal with our casework. I am extremely pleased that we have been able to cut dramatically the backlog of cases caused by a surge in demand and, in particular, with the high number of investigation reports that we issued during the course of this year.

Nevertheless, whilst our complaint handling processes are leaner, we have not lost focus on the importance of quality. We have been keen to identify complaints that lend themselves to resolution without the need to resort to full investigation and examples of such cases can be found in this report. However, we have also been resolute in ensuring that the more complex cases –almost invariably about health or social care issues – receive the detailed, in-depth investigation that they deserve.

Complaints about local authorities have remained fairly stable over the past couple of years, however, health complaints continue to rise (up 10% on last year) and now account for a quarter of the complaints that I receive about public service providers. I expect this increase to continue as a result of the demise of the independent review stage in the health complaints procedure resulting from the NHS Redress Measure. However, equally, I hope the rise will be tempered as a result of Health Boards making a commitment to putting things right at the local level in line with the new redress arrangements, avoiding complaints having to be escalated to me.

In the introduction to my report last year, I referred to the considerable increase in complaints about the conduct of local authority members and my hope that councillors would take on board the advice and direction in the Guidance I would be issuing in April 2010. It has been pleasing to see, therefore, a significant decline (down 21%) in the number of new complaints received this year.

There are two areas where I believe there are anomalies in relation to my jurisdiction. Increasingly, I have been receiving enquiries from residents in care homes (or members of their family) who wish to complain to me but cannot do so because their care is self-funded. I believe this increase has arisen due to the publicity surrounding the changes recently introduced in England in respect of the Local Government Ombudsman. Currently in Wales, a resident in a care home who has his or her care paid for by the state, can complain to me about poor care, while a resident who pays for their own stay at the care home cannot. It seems to me unjust that residents in the same care home receiving the same services do not have the same rights in relation to seeking redress when things have gone wrong.

The other anomalous area, one which received wide media attention following a report that I issued in March 2011, is that I have no jurisdiction to look into complaints about hospices. Whilst such private hospitals are registered charities, they do nevertheless receive public funding. Currently, service users have no recourse to complain beyond the hospice itself. I believe it to be only right that people in receipt of their services have recourse for an independent body to consider their complaint.

I, therefore, look forward to discussing these two issues with the new Welsh Government in the forthcoming year.

Finally, I would like to pay tribute to my staff. They are a highly skilful and effective team. I set an extremely ambitious target when I gave a public undertaking that by 31 March 2011 we would have no cases open older than 12 months old. Achieving this was a true team effort and they should be extremely proud of their achievement. Having arrived at this position, I am satisfied we are now well placed to deal with the anticipated increase in complaints, both as a result of the implementation of the NHS Redress Measure from 1 April 2011 and the pressures being faced by public services in Wales due to the financial constraints upon them in forthcoming years. All this has been accomplished whilst also preparing for the introduction of the new Complaints Wales signposting service, developing an upgraded version of our case handling system and new websites, together with the introduction of new activities such as the Ombudsman's Casebook and Annual Letters.



Peter Tyndall  
Ombudsman

## 4. Code of Conduct Complaints

### Headline figures

- We received 277 new complaints, **down 21%** on 2009/10
- We referred 45 investigation reports to either a standards committee or the Adjudication Panel for Wales, **up 73%** on 2009/10.
- We closed 349 cases, **up 15%** on 2009/10
- We had no investigations older than 9 months old open at 31 March 2011

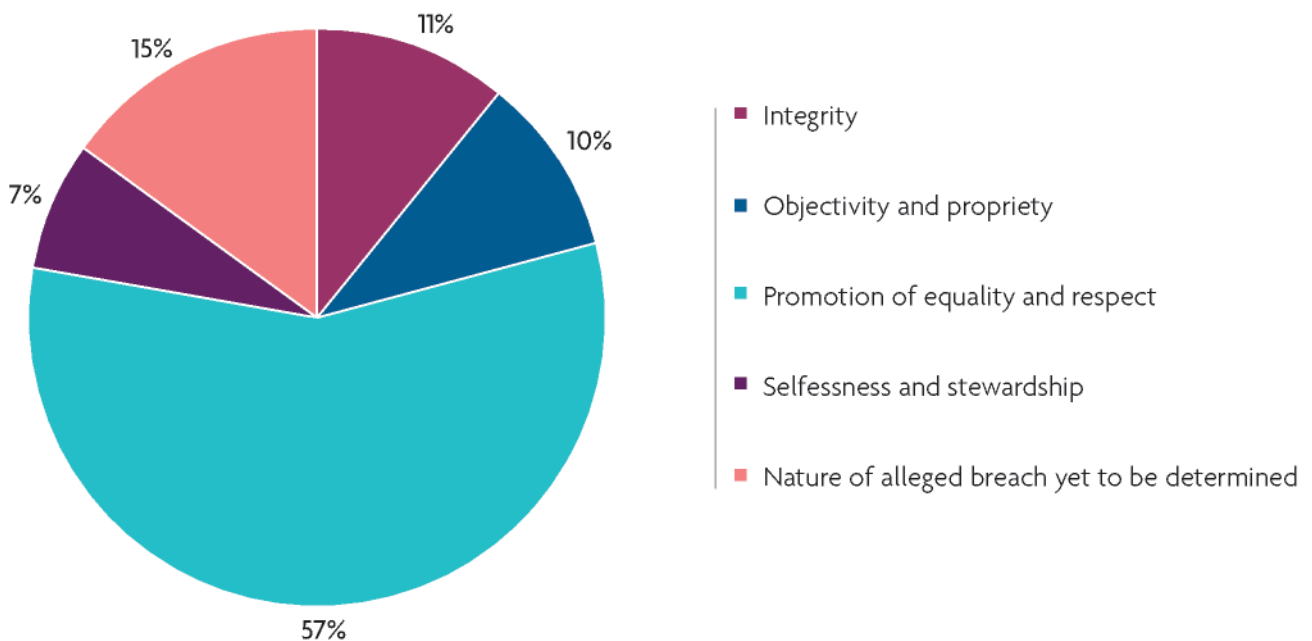
### Complaints received

The table below gives a breakdown of the code of conduct complaints received by type of authority. Last year I reported my concern about a continuing increase in the number of complaints received, it has been pleasing therefore that this year there has been a decline of 21% in the number of complaints received. I address the reduction issue later in this section.

	2010/11	2009/10
Community Council	141	163
County/County Borough Council	135	183
National Park	1	3
Police Authority	-	3
<b>Total</b>	<b>277</b>	<b>352</b>

### Nature of Code of Conduct complaints

As the chart below shows, the majority of complaints received during 2010/11 related to matters of 'equality and respect' (57% compared to 38% in 2009/10).



## Summary of Code of Conduct complaint outcomes

Of the Code of Conduct cases considered in 2010/11 it was decided that the majority did not call for an investigation. The number of cases which I concluded should be referred to either an authority's standards committee or to the Adjudication Panel for Wales was 45 compared to 26 in 2009/10. This is partly a consequence of the higher number of cases closed during the year.

	2010/11	2009/10
Decision not to investigate complaint	194	214
Complaint withdrawn	16	16
Investigation discontinued	43	15
Investigation completed: No evidence of breach	13	6
Investigation completed: No action necessary	38	26
Investigation completed: Refer to Standards Committee	21	12
Investigation completed: Refer to Adjudication Panel	24	14
<b>Total Outcomes – Code of Conduct complaints</b>	<b>349</b>	<b>303</b>

(A detailed breakdown of the outcome of Code of Conduct complaints investigated, by local authority, during 2010/11 is set out at Annex C.).

With regard to the referrals heard by a Standards Committee or a tribunal of the Adjudication Panel during 2010/11, the outcomes were as follows:

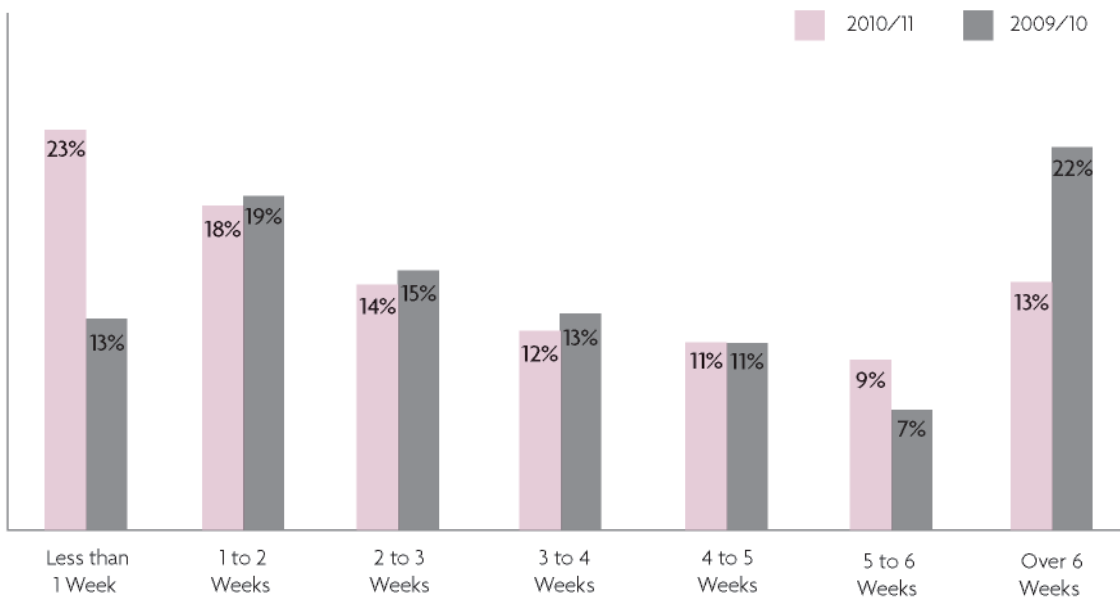
	No. of hearings	Outcome and Sanction (if any)
Adjudication Panel for Wales tribunals	11	Breach x 11 <ul style="list-style-type: none"> <li>▪ 18 month suspension x 1</li> <li>▪ 12 month suspension x 3</li> <li>▪ 4 month suspension x 1</li> <li>▪ 2 month suspension x 2</li> <li>▪ 3 month partial suspension x 1</li> <li>▪ 2 month partial suspension x 1</li> <li>▪ No action x 2</li> </ul>
Standards Committees	16	Breach x 14 <ul style="list-style-type: none"> <li>▪ 6 month suspension x 1</li> <li>▪ 3 month suspension x 1</li> <li>▪ 2 month suspension x 1</li> <li>▪ 1 month suspension x 1</li> <li>▪ 28 day suspension x 1</li> <li>▪ Censure &amp; training x 1</li> <li>▪ Censure x 5</li> <li>▪ No action x 3</li> </ul> No evidence of breach x 1 No case to answer x 1

## Decision times

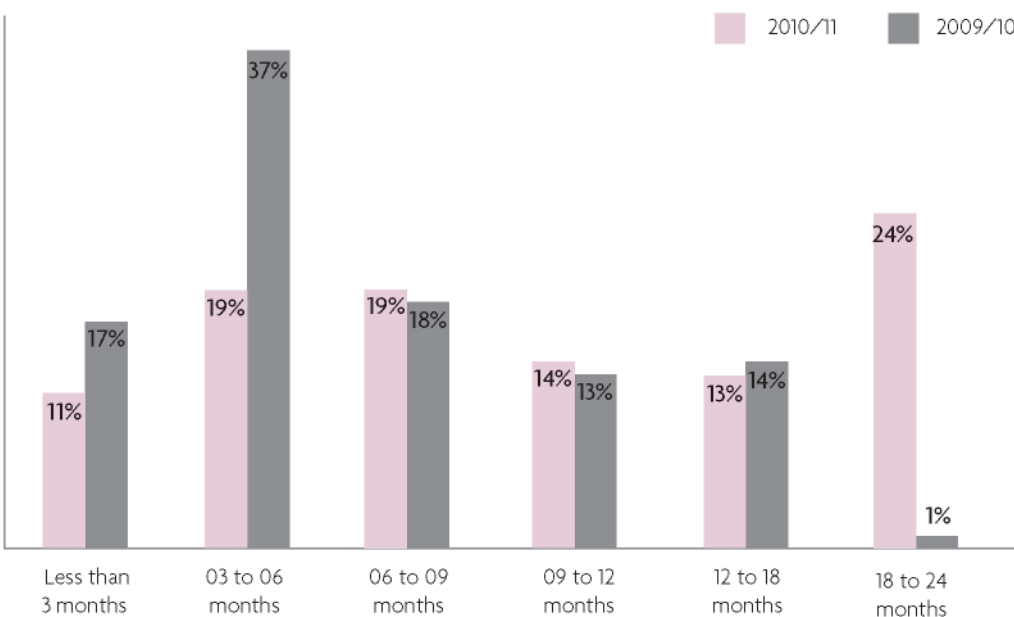
Below are the decision times for code of conduct complaints. The time targets set for code of conduct complaints are similar to those for complaints about public bodies, i.e.

- to tell complainants within 4 weeks whether we will take up their complaint.
- to conclude cases within 12 months from the point that a decision is made to take up a complaint (that is, to commence investigation of a complaint).

### Decision times for informing complainants if Code of Conduct complaint will be taken up



### Decision times for concluding Code of Conduct complaint cases



We have not been able to achieve the improvement in decision times for notifying complainants whether we will take up their complaint or not to the same extent as for complaints about public bodies. This to a large degree is a consequence of having to deal with these complaints in their initial stages in a different way. However, I am still pleased that we have been able to improve on last year's position.

I have been concerned over the past couple of years with the time it has been taking to deal with Code of Conduct investigations. I have previously explained that this is partly due to the consequences of members increasingly engaging legal representation. Nevertheless, I have also been aware that being the subject of a Code of Conduct complaint is a stressful experience for a councillor, often intensified by media speculation. Our process was therefore changed with a view to improving performance over this past year. Whilst the outcome of decision times for the past year in themselves are disappointing this is largely due to the impact of closing older cases during the year. It has also been impacted by the fact that 32 linked cases in respect of one particular authority was especially complex and took over 18 months to conclude. Having said this, I am very pleased that by 31 March 2011 we had reached the position where we had no Code of Conduct investigations open that were older than 9 months.

### **Code of Conduct for local authority members**

In April 2010, in response to requests from local authority monitoring officers and others, I issued guidance for local authority members on the Model Code of Conduct issued in 2008. This was developed following an initial consultation inviting local authorities to identify which aspects of the Code they would value guidance upon, and a subsequent consultation with the Association of Council Secretaries and Solicitors, One Voice Wales, the Welsh Assembly Government and the Adjudication Panel for Wales on the draft. A session was held on the guidance at the Annual Standards Conference, which was held in October. I believe that the publication of the guidance has made a positive contribution to the decline in the number of code of conduct complaints received by my office over the past year.

In addition, in issuing the guidance, I gave an undertaking that this would be a 'living' document and that, if the need arose, I would issue supplementary guidance. It has already become apparent that there are areas of the Code on which members and monitoring officers would welcome further direction and I intend issuing additional guidance on those areas in the forthcoming year.

I recognise that there has been concern about certain aspects of the Code and the use of complaints for political purposes. I would want to play a full part in any proposals for reform and believe that the experience of my office will offer a useful contribution to improving the framework in future.

## **Annex C**

### **Code of Conduct Complaints: Statistical Breakdown of Outcomes by Local Authority**



## COUNTY/COUNTY BOROUGH COUNCILS

County/County Borough Council	Decision Not to Investigate	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Blaenau Gwent	1			2				3
Bridgend	2			1				3
Caerphilly	4			1	2			7
Cardiff	11			1	1		1	14
Carmarthenshire	4			1				5
Conwy	1							1
Ceredigion	3			1			1	5
Denbighshire	3						2	5
Flintshire	8		2			2	1	13
Gwynedd	4	1			1			6
Isle of Anglesey	9					2		11
Merthyr Tydfil	6		1	1	1	5		14
Monmouthshire	5		1	4	2	2		14
Neath Port Talbot							1	1
Newport	1							1
Pembrokeshire	2		1				1	4
Powys				2				2
Rhondda Cynon Taf	6			1				7
The City and County of Swansea	8	34	1				2	45
The Vale of Glamorgan	1							1
Torfaen	10	1		1	2	7	1	22
Wrexham	3							3
<b>TOTAL</b>	<b>92</b>	<b>36</b>	<b>6</b>	<b>16</b>	<b>9</b>	<b>18</b>	<b>10</b>	<b>187</b>

## COMMUNITY/TOWN COUNCILS

Community/Town Council	Decision Not to investigate	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Bishopston	1							1
Blaenhonddan	1							1
Borth	1				2			3
Brymbo	1							1
Bryngwran							1	1
Buckley	1							1
Caldicot Town Council					1			1
Cardigan	4							4
Clydach	2							2
Coedfranc	1	3		1			1	6
Conwy				1				1
Coychurch Higher				1				1
Ffestiniog		2						2
Flint			1					1
Ganllwyd	2							2
Glyneath	1							1
Gorseinon	5	1						7
Gwersyllt	1							1
Haverfordwest	2							2
Hawarden	1							1
Llanddowror	3							3
Llandeilo	2							2
Llanfairfechan				1			1	2
Llanfechain	5							5
Llanfihangel Ystrad	1							1
Llangennech	1							1
Llangynwyd Lower					1			1
Llanidloes				2				2

## COMMUNITY/TOWN COUNCILS (continued)

Community/Town Council	Decision Not to investigate	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Llantrisant	1							1
Llay	8			1				9
Manorbier	2				2			4
Mold	2							2
Old St. Mellons	2			1				3
Onllwyn					3			3
Pembroke Dock			1	4				5
Pencaer			1					1
Penrice					1			1
Pontarddulais	11							11
Ponthir	1							1
Pontypool	1							1
Portskewett	1							1
Prestatyn	15		3	3			2	23
Pyle							1	1
Resolven	1							1
Rhyl	7							7
Saltney	2					4		6
Shotton	1							1
St Brides Major		1			2			3
Tenby	1			5				6
Tonyrefail	1							1
Trelawnyd & Gwaenysgor				1				1
Tudweiliog						1		1
Tywyn Community	1							1
Tywyn Town	3							3
Willington & Worthenbury	1							1
<b>TOTAL</b>	<b>98</b>	<b>7</b>	<b>7</b>	<b>21</b>	<b>12</b>	<b>5</b>	<b>6</b>	<b>156</b>

## NATIONAL PARK AUTHORITIES

National Park Authority	Decision Not to investigate	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
Brecon Beacons	2							2
Pembrokeshire Coast	1			1				2
<b>TOTAL</b>	<b>3</b>			<b>1</b>				<b>4</b>

## POLICE AUTHORITIES

Police Authority	Decision Not to investigate	Discontinued	No evidence of breach	No action necessary	Refer to Standards Committee	Refer to Adjudication Panel	Withdrawn	Total Cases Closed
North Wales	1					1		2
<b>TOTAL</b>	<b>1</b>					<b>1</b>		<b>2</b>