

# The Code of Conduct Casebook

Issue 1 November 2013

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## A word from the Ombudsman

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

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

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

(Continued overleaf)

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

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

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

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



Peter Tyndall  
Ombudsman

## Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains the summaries of all reports issued by this office during the last six months, for which the findings were one of the four set out above. In reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known.

## Case Summaries

### **No evidence of breach**

#### **Promotion of equality and respect - City and County of Swansea**

**July 2013 - Case references 201204336, 201204337, 201204338, 201204389 & 201204706**

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

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

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

#### **Promotion of equality and respect – Powys County Council**

**June 2013 - Case reference 201203179**

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

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

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

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

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

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

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

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

## **No action necessary**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Referred to standards committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Referred to Adjudication Panel for Wales**

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

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

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

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

### **Integrity – Ceredigion County Council January 2013 – Case reference 201102175**

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

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

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

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

## **Integrity – Mumbles Community Council January 2012 – Case reference 201002266**

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

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

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

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

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

## More Information

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

**Public Services Ombudsman for Wales**  
**1 Ffordd yr Hen Gae**  
**Pencoed**  
**CF35 5LJ**

**Tel: 01656 644200**  
**Fax: 01656 641199**  
**e-mail: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk) (general enquiries)**

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