

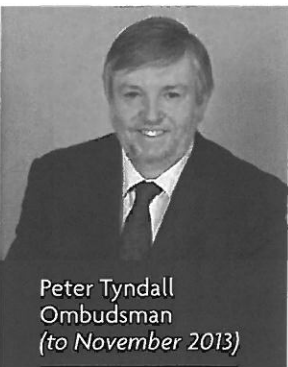
1. Introduction by the Acting Ombudsman



Margaret Griffiths
Acting Ombudsman
(from December 2013)

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

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

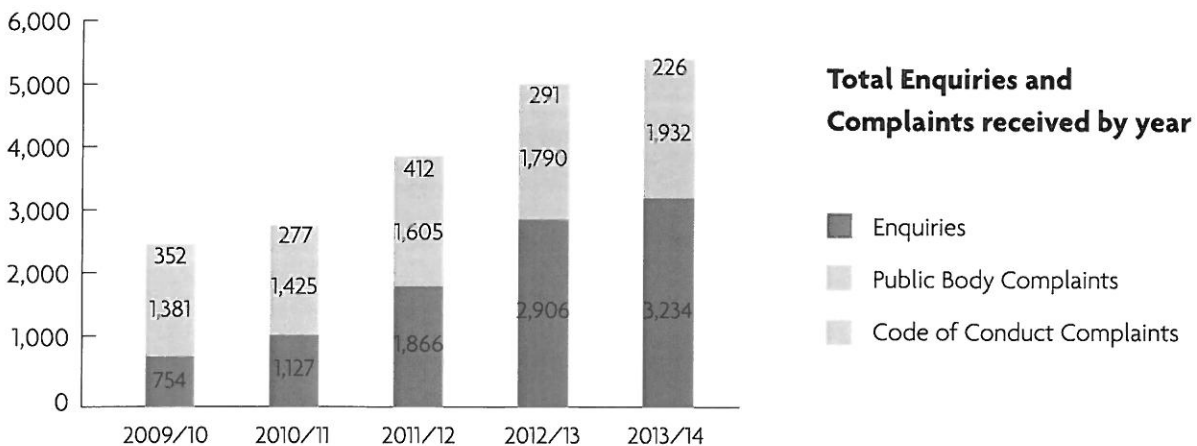


Peter Tyndall
Ombudsman
(to November 2013)

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

An ever-increasing caseload

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



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

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

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

Making a Difference

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

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

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

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

The complaint handling landscape in Wales

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

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

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

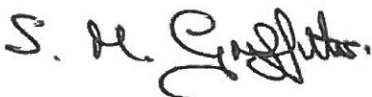
Future considerations

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

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

Peter Tyndall

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



Margaret Griffiths
Acting Ombudsman

4. Code of Conduct Complaints

Headline figures

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

Complaints received

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

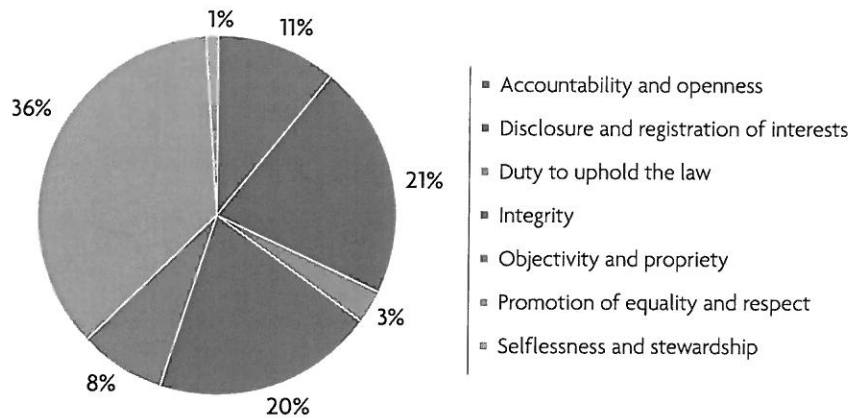
	2013/14	2012/13
Community Council	115	140
County/County Borough Council	111	150
Fire Authority	2	0
National Park	0	0
Police Authority	0	1
Total	228	291

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

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

Nature of Code of Conduct complaints

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



Summary of Code of Conduct complaint outcomes

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

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

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

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

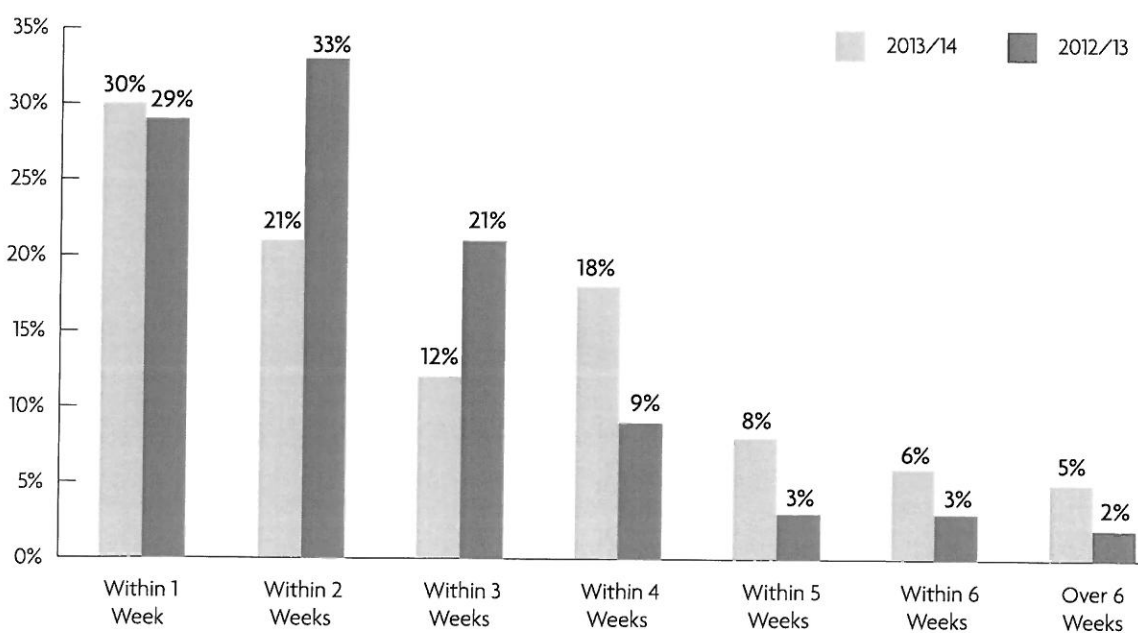
Not only have the number of code of conduct complaints to the office decreased over the past year, notable is the reduction in the number of cases referred to either an authority's standards committee or to the Adjudication Panel for Wales, which fell significantly from 20 in 2012/13 to 6 in 2013/14.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

Decision times

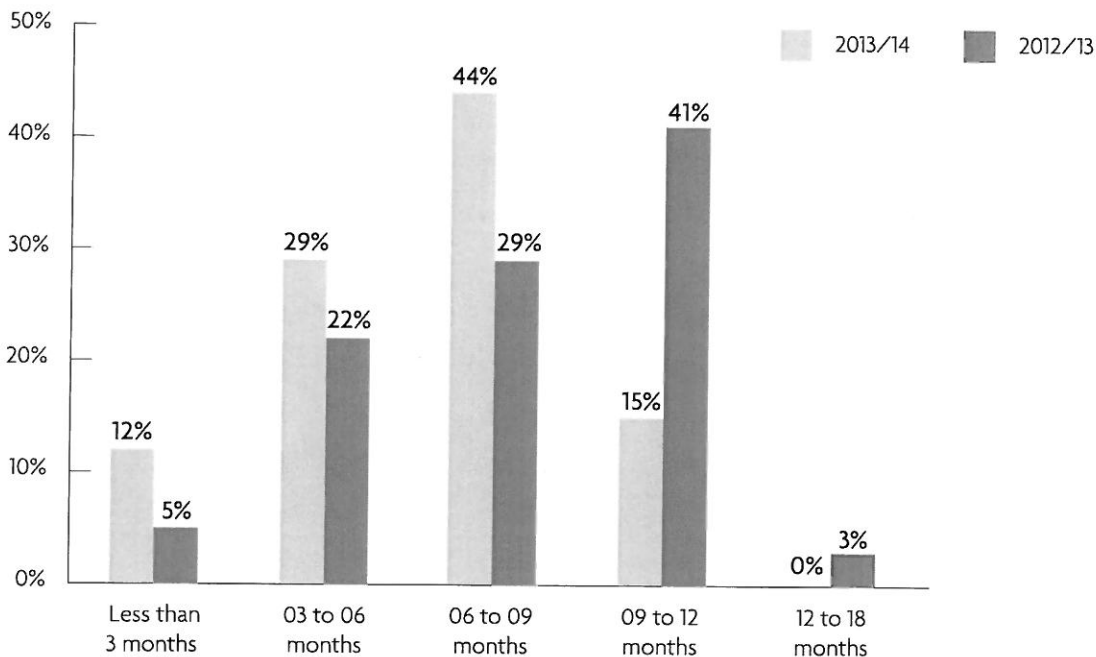
Below are the decision times for code of conduct complaints. The time targets set for code of conduct complaints are similar to those for complaints about public bodies, that is:

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

Decision times for informing complainants we will take up their complaint



Decision times for concluding code of conduct investigations



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

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

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

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

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

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

Annex C
Code of Conduct Complaints:
Statistical Breakdown of Outcomes by Local Authority

COUNTY/COUNTY BOROUGH COUNCILS

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

COMMUNITY/ TOWN COUNCILS

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

COMMUNITY/ TOWN COUNCILS (CONTINUED)

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

COMMUNITY/ TOWN COUNCILS (CONTINUED)

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