

AWDURDOD TÂN AC ACHUB GOGLEDD CYMRU



NORTH WALES FIRE AND RESCUE AUTHORITY

A meeting of the STANDARDS COMMITTEE will be held THURSDAY 25 FEBRUARY 2021 via Zoom at 10am.

<https://zoom.us/j/91229278818?pwd=VU11RGp3YjAwKzVrOU0zREFFQ1FUUT09>

Yours faithfully

Colin Everett
Clerk

AGENDA

1. **Apologies**
2. **Declaration of Interests**
3. **Notice of Urgent Matters**
Notice of items which, in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B (4) of the Local Government Act, 1972.
4. **Minutes of the meeting held on 17 September 2020**
5. **Matters arising**
6. **Training Session**
7. **PSOW Consultation on Revised Guidance on the Code of Conduct**
8. **Directions Issued by the Adjudication Panel for Wales**
9. **PSOW annual report**
9(i) PSOW casebook
10. **Joint standards committee (verbal update)**
11. **Local Government and Elections (Wales) Act 2021 (verbal update)**
12. **Annual Report**
13. **Attendance Levels**
At its meeting in February 2020 the Committee asked for an update on attendance levels. Shortly thereafter the Authority had to cease physical meetings. The Authority began holding remote meetings in September 2020 and since then only 4 meetings (including one of the Standards Committee) have taken place. This is not a meaningful data sample and so a report will be brought to the meeting later in the year. Officers will report verbally on steps that have nevertheless been taken to ensure good attendance.
14. **Urgent Matters**
To consider any items which the Chair has decided are urgent (pursuant to Section 100B (4) of the Local Government Act, 1972) and of which substance has been declared under item 3 above.

PART II

It is recommended pursuant to Section 100A (4) of the Local Government Act, 1972 that the Press and Public be excluded from the meeting during consideration of the following item(s) of business because it is likely that there would be disclosed to them exempt information as defined in Paragraph(s) 12 to 18 of Part 4 of Schedule 12A of the Local Government Act 1972.

None

**Minutes of the Standards Committee meeting held on
17 September 2020 via Webex**

Present

Sally Ellis
Julia Hughes
Gill Murgatroyd
Gareth Pritchard
Cllr Owen Thomas, Flintshire County Council

Gareth Owens, Deputy Clerk
Alwen Davies, Member Liaison Officer

Apologies

No apologies.

1 ELECTION OF CHAIR AND DEPUTY CHAIR

1.1 A P Young's term of office with the Standards Committee had ended and therefore the Committee was asked to nominate a new Chair and Deputy Chair.

1.2 Sally Ellis nominated Julia Hughes for the role of Chair and this was seconded by all those present and there were no other nominations.

1.3 Julia Hughes then took the Chair and asked for nominations for the role of Deputy Chair. Mrs Hughes nominated Sally Ellis and this was seconded by all those present and there were no other nominations.

2 DECLARATIONS OF INTERESTS

2.1 None.

3 NOTICE OF URGENT MATTERS

3.1 None.

4 MINUTES OF THE LAST MEETING

4.1 The minutes of the meeting held on 28 February 2020 were approved as a correct record.

5 MATTERS ARISING

5.1 It was agreed that a letter of appreciation should be sent to Antony P Young to thank him for his eight years of service to the Committee.

6 TRAINING SESSION

6.1 As agreed at the last meeting, the Deputy Clerk delivered a training session to members on the following topics:

- Dispensations
- The Committee's responsibility on the Service stage 3 complaints
- Increased understanding of the six protocols that the Committee has reviewed over the past year.

6.2 It was agreed that the training notes to be circulated to Members.

6.3 **RESOLVED to note the information.**

7 ATTENDANCE AT MEETINGS

7.1 No meetings of the Authority had been held since February 2020 due to Covid, therefore it was agreed to defer the matter of attendance at meetings until the next meeting.

8 REGISTRATION OF GIFTS AND HOSPITALITY BY MEMBERS OF THE AUTHORITY

8.1 Members were asked to review the value above which gifts and hospitality must be registered by councillors.

8.2 At its meeting in February 2020, the Committee asked the value above which gifts and hospitality must be registered in other Welsh authorities. It was noted that the bulk of authorities (12) who responded set the level above which gifts must be registered at £25.

8.3 **RESOLVED to recommend to the Fire and Rescue Authority that it retains the value above which gifts and/or hospitality must be registered at £25. It was also agreed to request the Authority to include an obligation within the members' code of conduct as follows:**

"You must, within 28 days of receiving any gift, hospitality, material benefit or advantage from a single source where the total value of that plus any other gifts, hospitality, material benefit or advantage from that same source within the last 12 months exceeds £100, provide written notification to the clerk of the existence and source of the same."

9 REPORT IN TO THE EMERGENCY RESPONSE TO THE MANCHESTER BOMBING

9.1 Following a request from members at the last Committee meeting, the report gave members more information about the Kerslake report and whether there were any ethical lessons to be learned from the bombing that took place in Manchester in May 2017.

9.2 It was noted that the report reviewed the operational response to the bombing with a view to establishing whether the emergency services were prepared for and how they handled a terrorist attack of this type. The focus of the report was therefore on the strategic and operational arrangements that were in place and how they could be improved. It did not touch on ethical behaviour by elected councillors.

9.3 It was further noted that due to all decisions being taken at an operational level there were no governance or ethical issues arising from multi-agency relationships at an Authority level.

9.4 **RESOLVED to note the report.**

10 STANDARDS COMMITTEE'S FORWARD WORK PROGRAMME

10.1 The report was presented to review the Committee's forward work programme.

10.2 At its meeting in February the Committee asked to review its own work programme against the work undertaken by the Committees in the other fire authorities. A revised work programme was presented to members for approval.

10.3 In order for independent members to be able to meaningfully observe Authority meetings, they requested a structured feedback form which the Deputy Clerk will circulate in 2021.

10.4 Due to Covid, the Authority had not met since February 2020 and as meetings would be held virtually for the foreseeable future, it was agreed that any observations would be undertaken in 2021 once FRA members were au fait with the Zoom system. It was suggested that when observations were undertaken that independent members observe in pairs in order to be able to compare notes.

10.5 **RESOLVED to agree the forward work programme subject to adding the following items to the February/March 2021 agenda:**

- FRA members' attendance at meetings
- Joint Standards Committee.

Report to	Standards Committee
Date	25 February 2021
Lead Officer	Colin Everett, Clerk to the Authority
Contact Officer	Gareth Owens, Deputy Clerk 01745 535286
Subject	PSOW Consultation on Revised Guidance on the Code of Conduct



PURPOSE OF REPORT

- 1 To consider response to the consultation by the Public Services Ombudsman for Wales ("PSOW") on revisions to guidance on the code of conduct.

EXECUTIVE SUMMARY

- 2 The PSOW publishes guidance for councillors on how to interpret the Code of Conduct. The guidance applicable to fire authority members also covers county councillors and national parks (link [here](#) to current guidance).
- 3 The Ombudsman has published a consultation on proposed revisions to the guidance (link [here](#) to the draft revisions). The changes to the guidance do not fundamentally alter current advice on the meaning of the code. Rather the changes seek to improve layout, improve clarity and to provide recent examples of the outcome of real life cases.

RECOMMENDATION

- 4 That Members welcome the proposed changes to the guidance by the closing date of 21 March 2021.

INFORMATION

- 5 The Ombudsman issues guidance on the code of conduct to help councillors and officials understand and interpret its provisions. He last reviewed his guidance on the code of conduct in July 2016. The code has not changed significantly since then nor have there been any legal cases in the courts which might affect its interpretation.

- 6 As the code has not changed so too the fundamental elements of the guidance have not changed. The revised guidance seeks to improve wording to aid clarity, place greater emphasis on key messages (eg through the use of bold text) and provides fresh examples from real life of where the code has been breached.
- 7 The principal changes appear to be:
 - a. Ombudsman has expanded the explanation of the 2 stage test applied to decide whether to investigate a complaint;
 - b. Slightly clearer and more emphatic guidance on freedom of speech as it effects the requirement to treat people with respect, the prohibition on bullying and disrepute;
 - c. The guidance on what to do if one has a personal interest is expanded and more explicit.
- 8 In many areas, whilst the changes are small, they do add weight and clarity to the guidance. The changes appear to make the guidance easier to follow.

Report to	Standards Committee
Date	25 February 2021
Lead Officer	Colin Everett, Clerk to the Authority
Contact Officer	Gareth Owens, Deputy Clerk 01745 535286
Subject	Directions Issued by the Adjudication Panel for Wales



PURPOSE OF REPORT

- 1 To consider directions issued by the President of the Adjudication Panel for Wales.

EXECUTIVE SUMMARY

- 2 Early in 2020 the Monitoring Officer wrote on behalf of Lawyers in Local Government (LLG) to the President of the Adjudication Panel for Wales (APW) raising concerns about disclosure during a tribunal process.
- 3 Following discussion with the President she has issued directions to clarify the role of the Monitoring Officer during a tribunal hearing and also to create a new disclosure process where one did not exist before.
- 4 The President has also issued a direction on the circumstances in which anonymity will be afforded to witnesses and third parties (never to the accused Member).
- 5 These directions are not legally binding but will guide how each case tribunal handles such issues during a hearing. They represent welcome clarity on the issues concerned and will help to ensure the fairness of proceedings.

RECOMMENDATION

- 6 That the Committee welcomes the practice directions and agrees to consider applying similar principles (as appropriate) where required to any hearing before the Committee.

INFORMATION

- 7 On 6 April 2020 the Monitoring Officer wrote on behalf of LLG to the President of the Adjudication Panel raising issues of concern about process during tribunal proceedings. The President discussed the issues raised within the correspondence and subsequently issued 3 practice directions covering:
 - i. Disclosure
 - ii. The role of the Monitoring Officer during proceedings
 - iii. Anonymity for witnesses and third parties

- 8 The statutory rules governing proceedings before a Case Tribunal are very short and give little detail. There is power vested in the President of the APW to determine procedure to ensure that case tribunal proceedings are fair, open and transparent. They also ensure consistency of process between different case tribunal hearings. The directions issued by the President are not legally binding but indicate how each tribunal will act in given situations or in respect of certain issues.
- 9 Evidence is naturally at the heart of a fair hearing process and often evidence is contained within documents. The Ombudsman's office carries out an investigation into each allegation and will receive documents that can tend to:
 - a. Support the allegation
 - b. Disprove the allegation
 - c. Have no evidential value
- 10 When issuing a report, the Ombudsman's investigator will always append the documents that support the allegation and, where the number is manageable, will disclose all documents gathered during the investigation. However, until this direction was issued there were simply no rules, beyond those of natural justice, in case tribunal proceedings requiring the Ombudsman's investigator to disclose documents to the accused Member nor was there a process for the accused Member (or their legal representative) to request the disclosure of evidence gathered by the Ombudsman or direct from the Member's Council. That process has now been created by agreement with the Ombudsman's office.
- 11 The Monitoring Officer occupies a statutory role during case tribunal hearings. Although the role is not spelled out in any detail, it is to assist the tribunal's understanding of process within the accused Member's Council and to gather further information/documents/evidence that might be requested during a hearing. The practice direction sets out that role in more detail and also repeats part of the direction in relation to the Monitoring Officer's role in relation to disclosure.
- 12 Case tribunals occasionally receive requests to protect the identity of witnesses and third parties named during hearings. The practice direction issues guidelines on how such requests will be determined. The direction does not apply to the accused Member where legal jurisprudence sets out the principles to determine requests for hearings to be held in private.

Presidential Guidance: Disclosure

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

General

1. Unlike *inter partes* litigation (litigation where one party is suing another), the APW deals with references made by the Public Services Ombudsman for Wales (“PSOW”) and appeals brought by members following a decision by a standards committee on the issue of whether the Code of Conduct for members has been breached (and if so, the appropriate sanction). In all cases, the member and the PSOW are parties and entitled to submit evidence, ask for witnesses to be called, and make representations. However, it is a matter for the tribunal to determine what evidence is before it, provided that a fair hearing is undertaken.
2. The tribunal may receive evidence of any fact which appears to the tribunal to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law. It shall not refuse to admit any evidence which is admissible at law and is relevant. In other words, the tribunal should allow evidence to be adduced if it is fair to do so (in the interests of justice) and the evidence is relevant to the determinations it must make; it can exclude irrelevant evidence.
3. The parties are reminded that disclosure is key to a fair hearing and that evidence should be provided to the other party and the APW in advance and in good time before a final hearing; attempts to “ambush” the other party are not in accordance with the spirit of modern litigation practice. It is also inappropriate to ask those who are approached to give or supply evidence to keep the approach confidential from the other party or the APW, particularly monitoring officers, other officers or members of a relevant authority; this does not mean such a person cannot be asked to generally keep the approach confidential, but not in relation to the other party or the APW.

Before APW proceedings start

4. Prior to the commencement of APW proceedings, in the vast majority of cases the PSOW will have undertaken a full investigation (monitoring officers can conduct

investigations in certain circumstances, but generally they ask the PSOW to do so). The PSOW will have gathered evidence from the member, witnesses and relevant third parties, carried out interviews, and asked the member to comment on the draft report.

5. A final report is issued by the PSOW, setting out the allegations originally made, the evidence gathered, and his conclusions. The evidence relied upon by the PSOW is exhibited to the final report and served upon the member and either the standards committee or APW.
6. The PSOW has agreed to serve upon the member (and the APW when a reference is made) a schedule setting out what unused material exists to its knowledge (this is material not used to prepare the final report), what it is, and its location (as the PSOW may not hold such material; for example, the monitoring officer may hold it) when the final report is issued. The schedule of unused material may be in two sections – ordinary evidence and sensitive evidence. Sensitive evidence is defined for these purposes as evidence relating to national security, given in expectation of confidence, relating to a criminal investigation or proceedings, relating to a minor, or relating to the private life of a witness (not the member) or third party. If the member seeks disclosure of evidence listed within the unused material schedule, it should be sought within 28 days of receipt of the schedule to avoid unnecessary delay by the member or his representatives. The tribunal may also direct disclosure of a document from the unused material schedule, but it is not obliged to do so.

Once APW proceedings start

7. Once the reference is made by the PSOW or permission to appeal has been given by the President of the APW (or their delegate), the Panel becomes responsible for deciding what evidence may be adduced. It will give directions where appropriate, but broadly the following principles apply:
 - a) The final report and evidence exhibited with it will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to paragraph *h* below);
 - b) The response of the member or their application to appeal will form part of the hearing bundle;
 - c) Evidence submitted by the member with their response will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to point *h* below);
 - d) Any decision made by the standards committee and supporting evidence where provided by either the parties or monitoring officer (if not already within the PSOW's final report) will form part of the hearing bundle;
 - e) Correspondence between the APW and the parties will form part of the hearing bundle, as will listing and other directions or orders;

- f) Submissions from the parties may form part of the hearing bundle (unless made orally), but is not evidence;
- g) Any additional evidence the parties wish to be considered, apart from paragraphs a – e, must either be the subject of an application made to the tribunal or included by way of directions from the tribunal on its own initiative. Applications should be made in good time before the final hearing commences to allow the tribunal to seek the view of the other party and deliver its decision; such applications should be made no later than 28 clear days before the final hearing commences, but the expectation is that such applications should be made before the listing conference. Applications to adduce evidence made at the final hearing or within the 28 day period preceding the start of the final hearing will be viewed as a late application and good reasons as to why the application could not have been made earlier will be required to be given, as will an explanation as to why late disclosure is in the interests of justice;
- h) The tribunal has the right to exclude irrelevant evidence from the hearing bundle and to determine which witnesses will be called to give evidence. It is expected that the parties will be notified in advance and given reasons if evidence is to be excluded.

Powers of the APW

- 8. The APW has the power to require documents or ask for particulars from any person, whether or not they are a party or interested party to the proceedings. If a party requires evidence or information from any person in order to fairly put forward their case to the APW, and they have not been able to obtain it directly themselves (attention is drawn below to the special position of monitoring officers), they should apply to the APW for directions or an order to obtain the evidence or particulars.
- 9. Applications should be made in good time before the final hearing, and ideally before the listing conference. Such applications should not be made at the final hearing or within the 28 day period before the start of a final hearing as costs will already have been incurred by the parties and the APW which may be wasted (the parties should note that the APW does in certain circumstances have the power to make costs orders). The parties should bear in mind that sufficient time should be given to allow submissions to be made by the other party and for the tribunal to make a decision – this is likely to take at least 28 days.

The monitoring officer

- 10. The monitoring officer is notified of the proceedings and invited to attend the final hearing. The monitoring officer's role is set out in more detail in the Presidential Guidance "*The role of the Monitoring Officer in APW proceedings*". The section relating to disclosure and monitoring officers is repeated below for convenience and to ensure that the parties understand that the monitoring officer is neutral and has a key role in upholding standards.

11. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.
12. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.
13. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.
14. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.
15. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.

16. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Presidential Guidance: The role of the Monitoring Officer in APW proceedings

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand the role of the monitoring officer within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and monitoring officers are reminded that this guidance does not supersede their duties, the requirements of the Code of Conduct for Employees or professional obligations.

The position of the monitoring officer

1. The monitoring officer of a relevant authority whose Code of Conduct is at the centre of APW proceedings is not a party to the proceedings, but is present to assist and inform the tribunal. They are notified of the proceedings and the hearing date, and receive copies of the listing directions and final decision. The monitoring officer normally adopts a neutral role.

Attendance at the final hearing

2. The monitoring officer is invited to attend the final hearing (or to send a deputy) to assist the tribunal and to make an appropriate observation or comment if they so wish at each stage of the proceedings. This is an opportunity for the monitoring officer to clarify any procedural points regarding the business of the relevant authority or to provide factual information to the tribunal in relation to any evidence already before it. It is open to the officer to make no comment.
3. The tribunal’s invitation to speak at the oral hearing is not an opportunity for the monitoring officer to adduce new evidence not previously disclosed; any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the Public Services Ombudsman for Wales (“PSOW”) for his consideration (see the disclosure section below).
4. The monitoring officer may ultimately be asked to provide or arrange further training to the councillor or to action matters relating to the exercise of the authority’s functions, the authority’s Code, or the authority’s standards committee if so recommended by the tribunal. Their attendance at the hearing will also enable the monitoring officer to give a detailed report to the standards committee and Council and to deal with any press enquiries as appropriate.

Information required from the monitoring officer

5. Routine enquiries that may be made of the monitoring officer by either the PSOW or the tribunal through its directions or correspondence through the Registrar include confirmation as to when the councillor agreed to be bound by the Code, when the councillor received training on the Code or if the councillor is also a member of another relevant authority, such as a town or community council or national park authority. They will also be asked to confirm the dates of full council meetings or relevant council business that might affect the listing of the hearing, and their personal unavailability dates.
6. The Registrar of the APW will ask the monitoring officer to confirm if there have been any previous adverse findings made by a standards committee regarding a breach of the Code by the councillor; this information will not be disclosed to the tribunal unless it reaches the sanctions stage of the proceedings. At this stage, the clerk will provide this information to the tribunal but the monitoring officer will be given an opportunity to comment, amplify or update the information supplied orally at the hearing.

Disclosure

7. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.
8. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.
9. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.

10. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.
11. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.
12. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Presidential Guidance: Anonymity

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

Power to anonymise

1. The APW does not have the power to issue restricted reporting orders or control what is reported by the press or through social media. However, it does have the power to control its own proceedings and give directions to the parties, witnesses and third parties.
2. The law on the reporting of sexual offences and the naming of alleged victims (s.1 of the Sexual Offences (Amendment) Act 1992) applies to those publishing information about APW proceedings where relevant; where possible, the tribunal considering such matters will remind those in attendance of these provisions, but they apply whether or not such a reminder is given. The APW will give consideration about how to approach matters involving the possible commission of sexual offences and give the necessary directions to the parties prior to the start of the final hearing.
3. While in appropriate cases, the identity of a complainant, witness or third party may be anonymised at the direction of a APW tribunal or the President for the purposes of the hearing and decision, the identity of that individual will be known to the parties and the tribunal. The identity of the member subject to the proceedings will not be anonymised.

European Convention on Human Rights

4. The paramount object of the APW is to do justice in accordance with the right to a fair hearing, but if it is strictly necessary to withhold either evidence or the identity of an individual from public consideration because it is in the interests of justice to do so, this can be directed following a balanced consideration of the various rights of those involved and the open justice principle. The Convention entitles parties to a fair and public hearing, but the press and public may be excluded from all or part of the hearing where the interests of the parties so require, or to the extent strictly necessary where publicity would prejudice the interests of justice.

5. Rights that may be engaged include the right to privacy and the right to a family life, as well as the right to freedom of expression, which is generally always engaged in APW proceedings. Examples of when such rights may be engaged could include the disclosure of medical information pertaining to a witness (such information being confidential), painful and humiliating disclosure of personal information about a witness where there is no public interest in its being publicised, or disclosure of information affecting minors.

The approach of the APW

6. APW final hearings take place in public, except where the tribunal considers that publicity would prejudice the interests of justice. However, anonymisation can allow all or the majority of the hearing to take place in public, enabling the public to fully understand the proceedings without breaching the rights of the individual whose identity has been concealed. This is compliant with the open justice principle; it is less restrictive to anonymise individuals than to have a private hearing in whole or in part.
7. It is appreciated that some complainants will only make a complaint if anonymisation at the hearing is likely. The quality of the evidence given at a hearing may be diminished due to fear or distress if anonymity is not granted. Only the tribunal hearing the case or the President can make such a direction – no party can guarantee anonymity to a complainant, witness or third party.
8. When considering whether to direct anonymisation, the tribunal will consider and balance the rights of the individual involved against the open justice principle and the right to a fair hearing in public, and the likely effect of anonymisation (or failure to do so) on the evidence to be adduced. It will also consider whether the identity of the individual is already widely known, rendering anonymisation pointless. Reasons will be provided to the parties for its decision.
9. If an interested person, such as the press, wishes to apply to set aside the anonymity order, they may apply to the tribunal for the application to be heard. It is a matter for the tribunal when the application is considered, but the views of the parties will be sought and considered. The view of the individual themselves may or may not be sought, depending on the approach adopted by the tribunal.

Practical measures

10. To guard against inadvertent disclosure, at the outset of the hearing and at the start of a relevant witness' evidence the chair will remind the parties, witnesses and the public that a particular individual's identity has been anonymised and they should be referred to as "Witness A/B/C/ etc" or "Mr/Ms A/B/C etc".
11. The hearing bundle may be redacted or altered to ensure that the name of the anonymised person is as directed, depending on the directions of the tribunal. The witness bundle and any press bundle (if prepared) must be so redacted or altered to avoid disclosure of the identity if inspected by the press or public.

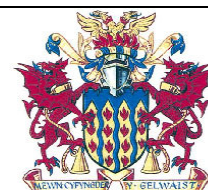
12. The tribunal may direct use of special measures, such as a screen or video link, to enable the witness to give their evidence without disclosure of their identity.
13. Prior to the commencement of APW proceedings, if the parties anticipate that it is highly likely the identity of a witness or third party will be anonymised while gathering evidence, they may submit a suitably redacted version of the evidence (only anonymising the name of the individual and replacing with an appropriate anonymised name) to the APW for inclusion within the bundle. However, the original evidence must be disclosed to the other party, either before the matter is sent to the APW or when the redacted evidence is disclosed to the APW. The redaction must be brought to the tribunal's attention in a covering letter, and the letter must also include the reasons for the redaction and an application for directions permitting the anonymisation as sought.
14. The APW expects the parties to attempt to agree the issue of anonymisation before submitting an anonymised bundle to the panel, but if agreement cannot be reached, provided the process outlined above is followed, one party may request anonymity for an individual/s and submit an anonymised bundle for the approval of the panel or President.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

Report to	Standards Committee
Date	25 February 2021
Lead Officer	Colin Everett, Clerk to the Authority
Contact Officer	Gareth Owens, Deputy Clerk 01745 535286
Subject	PSOW Annual Report 2019/20



PURPOSE OF REPORT

- 1 To summarise the Annual Report of the Public Services Ombudsman for Wales ("PSOW") for the year 2019/20.

EXECUTIVE SUMMARY

- 2 The PSOW has published his Annual Report for 2019/20 pursuant to Paragraph 15 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019.
- 3 This report summarises the headline matters in the annual report with a particular focus on matters relating to standards of county and town and community councillors.

RECOMMENDATION

- 4 That Members note the matters relating to Code of Conduct Complaints (CCC's) reported in the annual report.

INFORMATION

- 5 The PSOW has published his annual report for 2019/2020 pursuant to Paragraph 15 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2019. The annual report has been combined with the annual accounts for the PSOW as in previous years.
- 6 The annual report sets out the workload that has been dealt with by the PSOW during 2019/2020. It breaks the workload down into the number of enquiries received and the number of complaints received, and also breaks down the complaints into those received about services (public body complaints) and those received in relation to CCC's. This report will highlight the data relating to CCC's only (issues arising from public services or the annual accounts section of the annual report are beyond the scope of this report).

- 7 The number of CCC's has fallen by 18% since 2018/19. The total number of complaints for the year 2018/19 were 282 and for 2019/20 were 231. 49% of the complaints related to the promotion of equality and respect; 17% related to the failure to disclose or register interests; 11% related to accountability and openness; 10% related to integrity; 7% related to failure of the duty to uphold the law; 3% related to selflessness and stewardship and 2% to objectivity and propriety. 235 complaints were closed during the year (23.7% less than were closed last year). Of those complaints, 202 complaints were closed after initial assessment and 33 were investigated and closed on investigation.
- 8 The 18% decrease in CCC's is almost wholly due to a decrease in complaints regarding town and community councillors.
- 9 Further statistical data is contained at pages 28 to 31 of the annual report. However, in general terms the nature of the complaints were weighted towards those around equality and respect, followed by failure to register or declare interests and then issues related to integrity, which mirrors the position last year and in previous years.
- 10 The most common outcome of the complaints were that they were 'Closed after initial assessment.' Of the 235 complaints closed in 2019/20, the majority were closed (202) under this outcome. These include decisions where there is no 'prima facie' evidence of a breach of the Code, and it is not in the public interest to investigate.
- 11 Of the cases the PSOW investigated and closed during this year, 1 case were referred to the Adjudication Panel for Wales and 4 to the relevant Standards Committee.
- 12 The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority. At the time of writing the annual report, the Adjudication Panel for Wales was considering an appeal, on the issue of sanction only, in this case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing the annual report, these two referrals were awaiting determination.
- 13 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

Report to	Standards Committee
Date	25 February 2021
Lead Officer	Colin Everett, Clerk to the Authority
Contact Officer	Gareth Owens, Deputy Clerk 01745 535286
Subject	PSOW Casebook - Issue 23



PURPOSE OF REPORT

- 1 To consider Issue 23 of the Public Services Ombudsman for Wales ("PSOW") Casebook.

EXECUTIVE SUMMARY

- 2 The PSOW considers complaints that members of local authorities in Wales have breached the Code of Conduct (the Code). There are four findings the PSOW can arrive at:
 - (a) that there is no evidence of breach;
 - (b) that no action needs to be taken in respect of the complaint;
 - (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 (the APW) for adjudication by a tribunal.
- 3 The PSOW summarises the complaints that he has investigated on a quarterly basis in the Code of Conduct Casebook (the Casebook). In reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the standards committee or APW have been concluded and the outcome of the hearing is known. Edition 23 covers October to December 2019.
- 4 This edition highlights that 2 complaints were investigated by the PSOW during this time, of which both were findings of no action necessary. There were no referrals to monitoring officers for consideration by their standards committees and there were no referrals to the APW for adjudication by a tribunal.

RECOMMENDATION

- 5 Having reviewed the cases summarised in the issue 23 of the Casebook the committee is satisfied no action needs to be taken.

INFORMATION

- 6 The summary of the findings in this edition of the Casebook, are as follows:-

No action necessary


- 7 Merthyr Tydfil County Borough Council – Duty to uphold the law
Case Number: 201805269 - Report issued in December 2019
The PSOW received a complaint that a Member (“the Member”) of Merthyr Tydfil County Borough Council (“the Council”) had breached the Code by voting on the setting of the rate of council tax at a meeting of Full Council in March 2018 when he was in arrears of council tax for a former home. It is an offence under s106 of the Local Government Finance Act 1992 for a member to vote on setting the rate of council tax when they are themselves in arrears.
- 8 The relevant parts of the Code in this case are paragraphs 6(1)(a) relating to bring the authority into disrepute and paragraphs 10(1), 11(1) and 14(1)(a), (b) and (c) about the actions a member should take if they have a personal and prejudicial interest in a matter the authority is considering. The PSOW obtained relevant documentary evidence, including copies of the council tax records for the property involved. He also viewed the webcast for the meeting of Full Council and interviewed the Council's Monitoring Officer and the Member.
- 9 The Ombudsman considered that the evidence suggested that the Member had breached the Code as he accepted that he had not declared an interest and had voted on setting the council tax rate. The Member also accepted that at the time of that meeting he was in arrears of council tax for the former property. However, the Ombudsman decided that it would not be in the public interest to pursue the matter given the significant mitigating circumstances in this particular case. These included the personal circumstances that had led to the Member incurring the original debt and the fact that the member was inexperienced. He had apologised, paid off the arrears and said that it would not happen again. In view of the mitigating circumstances, the Ombudsman concluded that no further action needed to be taken.

Merthyr Tydfil County Borough Council – Disclosure and registration of interests.

- 10 Case Number: 201807334 – Report issued in December 2019. The PSOW received a complaint that a Member (“the Member”) of Merthyr Tydfil County Borough Council (“the Council”) had breached the Code of Conduct. It was alleged that, contrary to the Monitoring Officer’s advice that a conflict of interest existed, the Member accepted a specific cabinet position. It was also alleged that the Member had failed to declare an interest in such matters.

- 11 During the investigation, information was sought on the Monitoring Officer's advice, and the Member was interviewed. The Member explained that he had considered the advice of the Monitoring Officer and was confident that an appropriate strategy had been formulated to manage and mitigate any potential conflicts of interest. The Member said that he and the Leader of the Council had undertaken research to identify where similar scenarios had occurred in other councils and the impact it had on those authorities. The Member also produced evidence of declarations of interest that he had made.

- 12 Although the PSOW was satisfied that the Member had regard to the Monitoring Officer's advice, the lack of transparency in relation to aspects of the appointment (including the timing of the Member's resignation from employment which would have conflicted with the appointment) was of concern and caused others to reasonably question the appointment. As the Member had eventually resigned from his former employment and taken up his role the PSOW found that it was not in the public interest to pursue the matter further and found that no further action needed to be taken. Given the potential for a conflict of interest to arise, the Member was reminded of the need to seek advice from the Monitoring Officer in future matters.

Report to	Standards Committee	
Date	25 February 2021	
Lead Officer	Colin Everett, Clerk to the Authority	
Contact Officer	Gareth Owens, Deputy Clerk 01745 535286	
Subject	The Standards Committee's Draft Annual Report to the FRA	

PURPOSE OF REPORT

- 1 To present the draft Standards Committee Annual Report for Members' comments and consideration.

EXECUTIVE SUMMARY

- 2 As a matter of good corporate governance the Standards Committee provides the Authority with an annual report on its activities during each financial year.
- 3 Consequently the Committee's sixteenth annual report is attached for Members' consideration.

RECOMMENDATION

- 4 That Members consider the attached draft report and suggest amendments as necessary, noting that the final version will be presented to the FRA meeting in March.

ANNUAL REPORT OF THE STANDARDS COMMITTEE OF NORTH WALES FIRE AND RESCUE AUTHORITY 2020/21

Background

This is the Standards Committee's sixteenth annual report to the Fire and Rescue Authority and spans the period from April 2020 to March 2021. Legislation requires that Standards Committees meet at least annually.

The Terms of Reference of the Standards Committee provide a remit to promote and maintain high standards of conduct by Members of the Authority. Also, where statute permits, to receive reports and complaints about Members and to conduct or oversee investigations and make recommendations to the Authority.

Membership

Mr A P Young's second term of office came to an end in March 2020, therefore he was ineligible to remain on the Committee for another term. There were no other issues in relation to independent members.

In terms of FRA representatives on the Committee, it was agreed that since Cllr Dylan Rees had been appointed Deputy Chair of the FRA it would be prudent to have another member of the Authority sit on the Committee; Cllr Michael Dixon will join Cllr Owen Thomas on the Committee to represent the FRA. Therefore, the Standards Committee's membership is as follows:

Independent Members

Sally Ellis 01/01/18 – 31/12/2021

Julia Hughes 01/01/18 – 31/12/2021

Gill Murgatroyd 01/09/19 – 31/08/23

Gareth Pritchard 01/09/19 – 31/08/23

Fire and Rescue Authority Members Councillor Owen Thomas (19/06/18 until the next council elections)

Councillor Michael Dixon (09/11/20 onwards)

Attendance and Issues

The Standards Committee met twice during the year.

A meeting was held on 17 September via Zoom. Julia Hughes was elected Chair and Sally Ellis elected Deputy Chair. Gill Murgatroyd, Gareth Pritchard and Cllr Owen Thomas were in attendance.

The Committee reviewed FRA members' attendance at meetings. It was highlighted that failure to attend meetings represents a significant issue for the Authority as it reduces its capacity and creates gaps in Members' understanding that can take time to overcome. In order to move forward with this issue, members asked that the Deputy Clerk send letters of appreciation to members with over 50% attendance rate and that letters outlining the importance of attending meetings be sent to those FRA members who have 50% and under attendance rate. These letters will be copied to the Group Leader and Chief Executive of each council.

The Committee met again on 25 February 2021. At this meeting, Members considered the following matters:

- PSOW Consultation on Revised Guidance on the Code of Conduct
- Directions Issued by the Adjudication Panel for Wales
- PSOW casebook and annual report
- Joint standards committee
- Local Government and Elections (Wales) Act 2021 (verbal update).

Complaints against Members of the Fire and Rescue Authority

There were no complaints about FRA Members during this period.

Financial Implications

The budget for the Standards Committee is managed through a single budget heading for all Authority costs. Since 2012, independent members of the Standards Committee are entitled to claim remuneration based on meetings and events attended. For attending meetings in this financial year, a total of £850 has been claimed.

Conclusion

The Standards Committee recommends that the North Wales Fire and Rescue Authority notes its annual report 2020/21.