

Report



Standards Committee

Part 1

Date: 15th November 2022

Subject Ombudsman's Annual Report 2021/2022

Purpose To report the Ombudsman's Annual letter and Annual Report and the numbers of complaints of maladministration and misconduct dealt with during 2021/22

Author Head of Law & Standards

Ward General

Summary Following the publication of his Annual Report for 2021/22, the Ombudsman has now issued the Council with his Annual letter, which sets out information relating to the numbers of complaints of maladministration and misconduct which were referred to his office during this period relating to Newport City Council and its Councillors

Proposal To note the Report and the Ombudsman's Annual letter and Annual report for 2021/22

Action by Head of Law & Standards

Timetable Immediate

Background

1. Following the publication of his Annual Report for 2021/22, the Ombudsman has now issued the Council with his Annual letter, which sets out information relating to the numbers of complaints of maladministration and misconduct which were referred to his office during this period relating to Newport City Council and its Councillors
2. Last year was the final year of Nick Bennett's term of office as Ombudsman, a position which he had held since 2014. He was replaced by Michelle Morris as from April 2022. The new Public Services Ombudsman for Wales is developing her Strategic Plan setting out how her office will work to continue to deliver a fair and independent complaints service, for those dissatisfied with public services, and use the learning from complaints to make improvements.
3. During the financial year from April 2021 to March 2022, the numbers of new complaints received by the Ombudsman's office about local authorities increased by 47% compared with the previous year and are now well above pre-pandemic levels. In total, the Ombudsman received 1143 new complaints of maladministration on the part of local authorities in Wales. However, the level of interventions remained broadly the same, with the Ombudsman's office intervening in 14% of complaints against local authorities compared with 13% in the previous year.
4. In Newport, there were 40 complaints of maladministration referred to the Ombudsman in 2021/22 an increase of 29% compared with the previous year. This represents 0.26 per 1000 residents. Therefore, the increase in Newport was well below the national average. There were 4 interventions by the Ombudsman in Newport cases, compared with 5 in the previous year, which resulted in the complaints being resolved or settled. However, there were no public interest reports issued in 2021/22 relating to findings of serious maladministration.
5. In 2021/22 the Council received 208 compliments, 4267 comments and 321 complaints. This is the highest number of complaints ever received and an increase of 37% compared with the previous year. However, 96% of complaints were resolved through the Council's internal complaints process. Also, the Ombudsman continues to express the view that councils should not view large numbers of complaints negatively, as it does demonstrate that the complaints procedures are transparent and effective and that the public are able to raise concerns about service delivery.
6. The main areas of corporate complaints were in relation to Refuse, waste collection and highways, complaints handling, Planning & Building Control. The Council received 50 social services complaints in 2021/2022, which was an increase of 36% compared with the previous year, but only 3 complaints were escalated to a stage 2 independent investigation, which was a decrease of 50%.
7. With regard to Code of Conduct complaints, the Ombudsman received 294 new complaints about member misconduct in 21/22, which was a 5% reduction compared with 20/21. However, the Report points out that there were an abnormally high number of complaints last year and compared to 2019/20, he received many more new Code of Conduct complaints, particularly in relation to members of Town and Community Councils. In 2021/22, there were 171 complaints about Town and Community Councillor, an increase of 2% compared with the previous year. By comparison, numbers complains against councillors at County and County Borough Councils decreased by 17%.

8. The Ombudsman's office closed slightly fewer Code of Conduct complaints than last year, but investigated a much higher proportion. They also referred twice as many complaints to the Adjudication Panel for Wales and Standards Committees compared with last year. The Report comments that this increase in investigations and referrals demonstrates that there were many more potentially serious issues that could undermine public confidence in the people who represent them.
9. In 2021/22, The Ombudsman's Office:-
 - closed 281 complaints about the Code of Conduct (a decrease of 3%)
 - completed 39 investigations (63% more than last year)
 - discontinued 19 investigations and/or decided not to take any further action. The main reason for taking no further action was that the councillors had acknowledged their behaviour and apologised, or had taken steps to put things right.
 - made 11 referrals to Standards Committees
 - made 9 referrals to the Adjudication Panel for Wales.
10. The Annual Report confirms that it was necessary for the Ombudsman to refer those complaints to maintain public confidence in those holding public office. Although they still refer a very small proportion of all Code of Conduct complaints received, it was more than half of those they decided to investigate. It was also twice as many as last year and the highest number of referrals made since 2012/13. The Ombudsman expressed concern in his commentary about this increase in referrals. It suggests that the ethical standards of a small number of councillors have the potential to undermine public confidence and the reputation of local government democracy. However, in all referrals, the Standards Committee and the Adjudication Panel upheld the complaints and found breaches of the Code, which given the Ombudsman additional assurance that the two-stage process for considering these complaints is sound.
11. As in previous years, about a half of all new Code of Conduct complaints received were about 'promotion of equality and respect' (51% of all complaints). Other areas of complaint related to disclosure and registration of interests' (11%) and 'the duty to uphold the law' (10%).
12. Many cases that are categorised under 'respect' are lower-level complaints. These are the complaints where the Ombudsman's office tend to decide quickly that they will not investigate, or where they recommend that the complaint is resolved locally, through the Local Resolution Protocol. However, some of these complaints and many of those that are categorised under 'equality' commonly involve more serious allegations of bullying or discrimination.
13. In Newport, 4 Code of Conduct complaints were referred to the Ombudsman about City Councillors in 2021/212 and 9 complaints regarding Community Councillors. 2 of the complaints against City Councillors were not accepted for investigation as there was no evidence of any breach and 1 was discontinued. There is reference in the Annual report to the one serious complaint which was referred to Standards Committee in the financial year 2021/22. Of the 9 community council complaints, 3 were discontinued, there was no evidence of any breach in 3 cases and no action was required in the other 3. The outcome of these complaints has been reported to Standards Committee throughout the year, on an anonymised basis.

14. The outcome of the one referral and misconduct hearing was reported to Council in the last Standards Committee Annual Report in November 2021. Standards Committee decided unanimously that the Councillor concerned had failed to comply with paragraph 7(a) of the Code of Conduct in that she had improperly tried to use her position as an elected Councillor and member of the Health Board to secure medical priority for a constituent, in breach of standard Practice procedure and patient confidentiality under GDPR, and also in pursuing a personal complaint about the Practice to the Health Board. The Committee considered that this was a serious breach of the Code, in view of a number of aggravating factors, in particular the failure of the Councillor to show any insight or understanding about what she had done wrong, and her deliberate and punitive act in pursuing an unfair complaint about the Practice. In order to reflect the seriousness of the misconduct, to act as a deterrent to others and to restore public trust and confidence, the Committee decided that the Councillor Watkins should be suspended from her role as a Councillor for a period of 3 months and recommended to Council that she be removed and replaced as a representative on the Health Board.

15. Whistle-blowing

The Annual Report notes that, since 1 April 2017, the Ombudsman is a 'prescribed person' for the purposes of whistle-blowing under the Public Interest Disclosure Act 1998. The Act provides protection for employees who make a whistle-blowing complaint in the public interest about alleged wrongdoing.

16. As a 'prescribed person', the Ombudsman is required to report annually on whistleblowing disclosures made in the context of Code of Conduct complaints only. In 2021/22, the Ombudsman received 27 Code of Conduct complaints that would potentially meet the statutory definition of disclosure from employees or former employees of a council. Almost a half of those disclosures (12) related to allegations that the members concerned had 'failed to promote equality and respect'. The Ombudsman investigated 11 of these complaints. The Ombudsman's office concluded investigations into 8 relevant complaints which were ongoing from 2020/21. Of these, 1 case was referred to a Standards Committee, who censured the member, and 1 case was referred to the Adjudication Panel for Wales, who have not yet decided that complaint. In 3 cases, they discontinued the investigation and in another 3 cases, they decided that they did not need to take any action further action in respect of the matters investigated.

17. Case studies

The Annual Report makes reference to a number of case studies, as examples of misconduct and sanctions:-

- Caerphilly CBC

The Councillor represented Caerphilly County Borough Council as a member of the Cardiff Capital Region (CCR) City Deal's Regional Cabinet. The complaint was that he had purchased shares in a company that had been leased premises by CCR City Deal and that he had then not declared an interest as appropriate. Following the Ombudsman's referral, the Adjudication Panel for Wales decided that the councillor had improperly used his position in attempting to gain an advantage for himself by purchasing shares in a company after receiving confidential information relating to the Cardiff Capital Region City Deal. It also found that the councillor had a personal and prejudicial interest in the company which he had failed to declare and he did

not leave a meeting when the matter was being considered by the Council. The Panel suspended the councillor 5 months for several breaches of the Code of Conduct.

- Abertillery and Llanhilleth Community Council

The complainant in this case alleged that a community councillor had shown a disregard for the principle of equality. This was demonstrated by making comments about another member's hearing impairment and deliberately making it difficult for that member to participate in Council meetings. The Ombudsman referred the matter to the Adjudication Panel for Wales. The Panel decided that the councillor breached 4 paragraphs of their Council's Code of Conduct, including by not showing respect and consideration for others and by using bullying behaviour. He also breached the Code for failing to engage with the investigation. The Panel suspended the councillor for 10 months.

- Tywyn Town Council

A member of that Council had been disrespectful to the Clerk and had repeatedly undermined her. Following the Ombudsman's referral, Gwynedd Council's Standards Committee found that the member had used discriminatory language towards the Clerk relating to her gender and had used disrespectful, bullying and harassing behaviour towards her. A censure was the only sanction available to the Standards Committee as the member had resigned shortly before the hearing. However, the Committee put on record that, had the member not resigned, he would have been suspended for 6 months.

18. Promoting better practice

The Annual report contains a number of observations and recommendations for promoting better practice.

- (a) The Ombudsman wants to see the overall number of low-level complaints about members of Town and Community Councils reduce and is also concerned about the high number of referrals this year;
- (b) The Ombudsman strongly believes that the way to overturn these trends is through training for councillors on the Code of Conduct. He also encourages greater use of local resolution procedures. These procedures can deal with problems early and prevent the need for further escalation to our office, which can improve working relationships.
- (c) Since not all members take up opportunities to undertake training, the Ombudsman was pleased that, under the Local Government and Elections (Wales) Act 2021, Town and Community Councils must now make and publish a plan about the training provision for its members and staff. The first training plans must be ready and published by 5 November 2022. He expects these plans to include training about the Code of Conduct.
- (d) He also welcomes the additional responsibilities that Group Leaders at principal councils have to promote good standards of behaviour. The Ombudsman looks forward to working with Monitoring Officers and Standards Committees as they take up their additional duties.

Financial Summary

There are no financial implications

Links to Council Policies and Priorities

The Nolan principles, which underpin the ethical standards framework, and principles of good governance, are all enshrined in the Council's corporate and well-being objectives.

Proposed action

To note the report and the Ombudsman's annual letter and Annual Report for 2021/22

Comments of Chief Financial Officer

There are no financial implications

Comments of Monitoring Officer

Set out in the Report.

Comments of Head of People Policy & Transformation

There are no specific staffing or policy implications

Fairness and Equality Impact Assessment:

- **Wellbeing of Future Generation (Wales) Act**
- **Equality Act 2010**
- **Socio-economic Duty**
- **Welsh Language (Wales) Measure 2011**

The principles of fairness and equality are embodied within the Members Code of Conduct and the Ethical Framework. No FEIA is required, as the Ombudsman's Annual letter is for information purposes only.

- There are no negative impacts in terms of equalities or social disadvantage.
- In terms of the sustainable development principle and 5 ways of working

Long-term – The Annual Report will assist Standards Committee in taking a long-term view about improving ethical standards

Prevention – The Annual Report guide will help to prevent future complaints of maladministration and misconduct

Integration – The Annual Report has been produced in consultation with key stakeholders

Collaboration – The Annual Report will assist people in interacting with councils and elected members, in a more collaborative way. It will also facilitate collaboration between Standards Committee in discussing matters of common interest.

Involvement – The Annual Report will encourage greater involvement in reporting and resolving complaints

Background Papers

Ombudsman's Annual Report and letter 2021/22

A copy of the Annual Report can be found at

<https://www.ombudsman.wales/wp-content/uploads/2022/08/ANNUAL-REPORT-2021-22-Signed-Version.pdf>

Dated: 28th October 2022