

Meeting of:	Standards Committee
Date of Meeting:	Thursday, 25 March 2021
Relevant Scrutiny Committee:	No Relevant Scrutiny Committee
Report Title:	Adjudication Panel for Wales Annual Report Year 2019 -2020
Purpose of Report:	To apprise Members of the Annual Report of the Adjudication Panel for Wales 2019/20
Report Owner:	Debbie Marles, Monitoring Officer / Head of Legal and Democratic Services
Responsible Officer:	Karen Bowen, Principal Democratic and Scrutiny Services Officer
Elected Member and Officer Consultation:	This is a matter for decision by the Standards Committee
Policy Framework:	This is a matter for the Standards Committee
Executive Summary:	<ul style="list-style-type: none"> To apprise Members of the Adjudication Panel for Wales Annual Report 2019/20 (at Appendix 1) which provides details of the performance and progress for 2019/20.

Recommendation

1. That Members consider the Adjudication Panel for Wales Annual Report 2019/20 attached at Appendix 1 and consider and note its contents.

Reason for Recommendation

1. To apprise Members.

1. Background

- 1.1 The Adjudication Panel for Wales (APW) is an independent tribunal set up to determine alleged breaches of an Authority's Statutory Members' Code of Conduct by Elected and Co-opted Members of Welsh County, County Borough and Community Councils, Fire and National Park Authorities.
- 1.2 The APW has two statutory functions in relation to breaches of the Members' Code of Conduct:
 - To form case or interim case tribunals to consider references from the Public Services Ombudsman for Wales following the investigation of allegations that a Member has failed to comply with their Authority's Members' Code of Conduct; and
 - To consider appeals from Members against the decisions of Local Authority Standards Committees that they may have breached the Members' Code of Conduct.

2. Key Issues for Consideration

- 2.1 The APW Report is attached at Appendix 1 to this report, section 2 (at page 8-11) provides details of the performance and progress from 2014 to 2019 and details the number of references and appeals that have been received each year. Summaries of case tribunal hearings can be found at Section 3 (page 12 - 14) of the APW Report.
- 2.2 Members are requested to consider the contents of the APW Report.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1 The role of the Standards Committee is to promote and maintain high standards of conduct by Councillors, Co-opted Members and Church and Parent Governor Representatives.
- 3.2 The APW is an independent tribunal that has been set up to determine alleged breaches against Authority's Members' Code of Conduct by Elected and Co-opted Members of Welsh County, County Borough and Community Councils, Fire and National Park Authorities.

4. Resources and Legal Considerations

Financial

- 4.1** None as a direct result of this report other than Members are remunerated for attendance at meetings under the Allowance Scheme agreed by the Independent Remuneration Panel for Wales and the Vale of Glamorgan Council's Constitution.

Employment

- 4.2** The Council has a statutory duty to establish and maintain a Standards Committee as defined by legislation as set out in the Standards Committee Rules and Regulations 2001 and the Standards Committee (Wales) Amendment Regulations 2006.

Legal (Including Equalities)

- 4.3** The Council has a statutory duty to establish and maintain a Standards Committee as defined by legislation as set out in the Standards Committee Rules and Regulations 2001 and the Standards Committee (Wales) Amendment Regulations 2006.

5. Background Papers



Adjudication Panel for Wales Annual Report

Year 2019 – 2020

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Foreword

This is my fifth annual report as President of the Adjudication Panel for Wales. The report covers the period 1 April 2019 – 31 March 2020.

We aim to ensure that the Panel serves the public interest by dealing with any disputes both efficiently and effectively. We make every effort to ensure that all those involved in the dispute feel that the dispute has been fairly resolved within as short a timescale as is reasonable. We are conscious that the public must have confidence that any breaches of the Code of Conduct will be dealt with fairly in order to uphold trust and confidence in local democracy.

The cases heard during this financial year involved a variety of alleged breaches of the Code, but for all cases the question of whether the councillor had brought the authority or his office into disrepute arose. The purpose of the Code, standards committees and the Panel is to ensure that not only are standards in public life set out clearly and followed, but to maintain public confidence in local democracy. This aspect of “public interest” remains of central importance as reflected in the Sanctions Guidance.

The Panel has grown to ensure cases are resolved efficiently and to expand the skills and knowledge available to it. Two new legal members were appointed, and the APW took part in the cross-ticketing of lay members to appoint another member. I was gratified to see the success of our members in being cross-ticketed to sister tribunals, demonstrating the abilities of our members and developing cross-jurisdictional judgecraft.

This financial year the Panel gained access to technology allowing it to hear cases remotely and in public. This has enabled the Panel’s work to continue unaffected by the pandemic underway as this report is written, and may lead to changes in our procedures; for example, pre-hearing reviews may be heard virtually, saving costs and travel time. The first Panel Practice Direction was issued to ensure councillors fully understand the importance in completing the response form and the consequences of failing to do so.

Any questions or comments arising as to any aspect of the workings of the Panel, or as to the contents of the Report, are most welcome and should in the first instance be addressed to the Registrar.



Claire Sharp
President, Adjudication Panel for Wales

Section 1 – About Us

In this section:

- Basis for the APW
- The APW's Function
- The APW's Regulations
- The APW's Process
- Members of the APW
- Appointments
- Training
- Contacting the APW
- Accessing the APW

Basis for the APW

The Adjudication Panel for Wales (APW) is an independent tribunal that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

The APW was established under Part III of the Local Government Act 2000.

The APW's Function

The Code of Conduct for an authority provides its members with a set of standards expected of them in public life. The code of conduct covers various requirements as to how members should conduct themselves and includes requirements in relation to equality, personal and prejudicial interests, confidential information, their authority's resources and the need to avoid bringing their office or authority into disrepute.

The APW has two statutory functions in relation to breaches of the Code of Conduct:

- to form case or interim case tribunals ("Case Tribunals") to consider **references** from the Public Service Ombudsman for Wales (PSOW), following the investigation of allegations that a member has failed to comply with their authority's Code of Conduct; and
- to consider **appeals** from members against the decisions of local authority standards committees that they have breached the Code of Conduct ("Appeal Tribunals").

The APW's Regulations

- The APW operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the APW are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the APW clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the APW. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

APW's procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended), and
- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

The APW's Process

Anyone wishing to respond to a reference from the PSOW or to make an application for permission to appeal to the APW must complete and send the relevant form to the APW.

At an APW hearing the panel is composed of a legally qualified chairperson and 2 lay members. Legally qualified members can also sit as a lay member. APW hearings are normally held in public and take place near to the authority area.

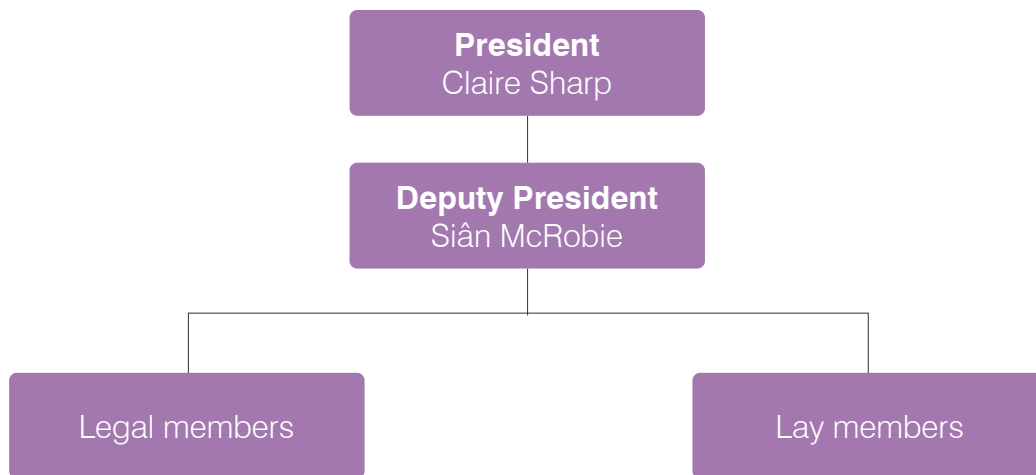
The APW publishes its decisions on the website for the APW. Decisions of Case Tribunals can be appealed on limited grounds to the High Court. Permission to appeal to the High Court must first be sought from the High Court.

Full information and guidance about the APW and its procedures, are provided on the website for the APW. Alternatively, please contact the APW administration for further information or if you would like to receive publications in a different format. The contact details can be found on page 7.

Members of the APW

Appointments to the APW are made by the First Minister after consideration of recommendations made by the Judicial Appointments Commission.

President	The President has judicial responsibility for the APW and its members.
Deputy President	The Deputy President supports the President and fulfils the duties of President if the President is unable to carry out her duties, either temporarily or permanently.
Legal Members	Legal members are qualified lawyers and have responsibility for conducting proceedings at hearings and advising the administration on matters of law. Legal members write APW decisions and give directions where necessary.
Lay Members	Lay members have a wide range of knowledge and experience relevant to the work of the APW.
Administration	The day-to-day administration is largely delegated to the administration which deals with all the preliminary paperwork and the processing of applications to the APW. The administration consults the President and/or legal members on all legal points arising during the preliminary pre-hearing stages of the proceedings and sends rulings and directions in writing to the parties. The administration acts as a point of contact for chairpersons, members and APW users and attends hearings to help with the efficient running of proceedings.



Appointments

During this period, we have appointed 1 new lay member cross ticketed from another tribunal. 2 new legal members were appointed (through the Judicial Appointments Commission) under the Local Government Act 2000.

Training

A training seminar was held on 10 May 2019, with a continued emphasis on judgecraft. Sessions on communication and freedom of expression were also delivered. All new members received induction training in addition (legal members in May 2019 and lay member in April 2020).

A programme of performance appraisal for APW members has been completed over previous years. It is anticipated that the next round of performance appraisal for APW members will start during the course of the 2020/21 year, depending on the pandemic.

Contacting the APW

To contact the APW Administration:

APW Address: Adjudication Panel for Wales
Oak House
Cleppa Park
Celtic Springs
Newport
NP10 8BD

APW Helpline: 03000 259805
APW E-mail: adjudication.panel@gov.wales

Accessing the APW

The APW is happy to communicate with you in Welsh or English. If a Welsh speaker is not immediately available then we will arrange for a Welsh-speaking member of staff to phone you back.

You can choose to have your hearing conducted in Welsh or English. If your first language is not Welsh or English and you wish to speak in your first language during the hearing, we can arrange for an interpreter to be present. If you need a sign language interpreter to attend the hearing we will arrange this.

If you or anyone you are bringing to the hearing has any other access requirements that may affect our arrangements for the hearing, provisions will be made.

To enable arrangements for interpreters or to make provisions for any additional needs of attendees, sufficient notice must be given to the administration.

Section 2 – Performance and Progress

In this section:

- Numbers and statistics
- Hearings Data
- Onward appeals
- Achievement against key performance indicators
- Complaints

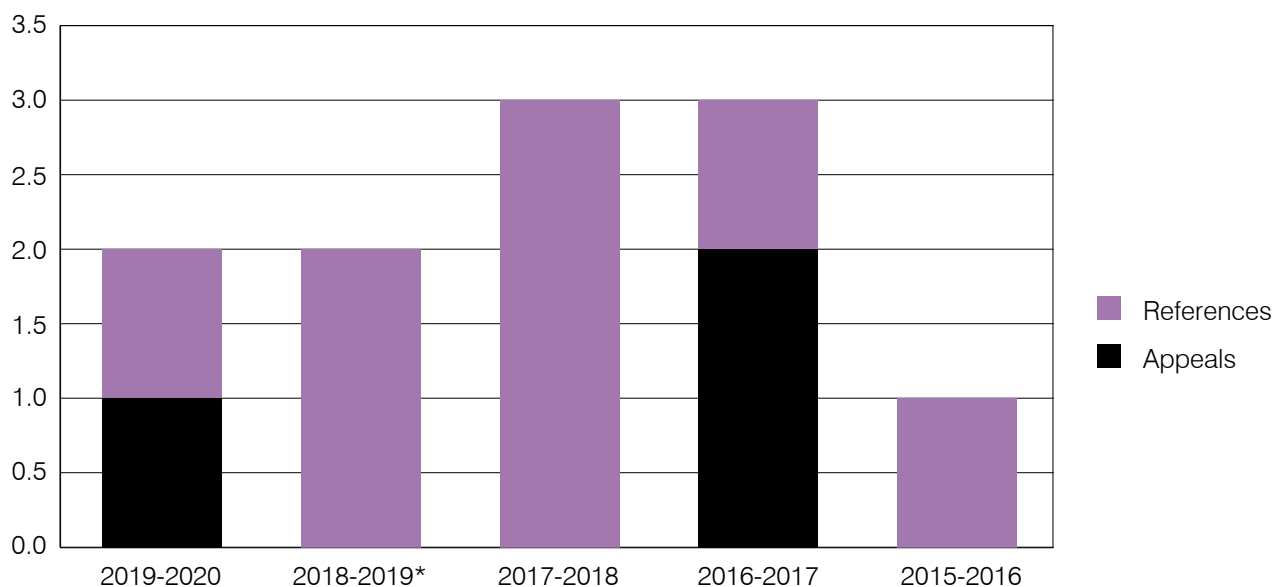
Numbers and Statistics

A Tribunal year runs from April to March. As the numbers of cases received are relatively low, figures are given for a 5 year period to allow for comparison.

The following statistics are collated:

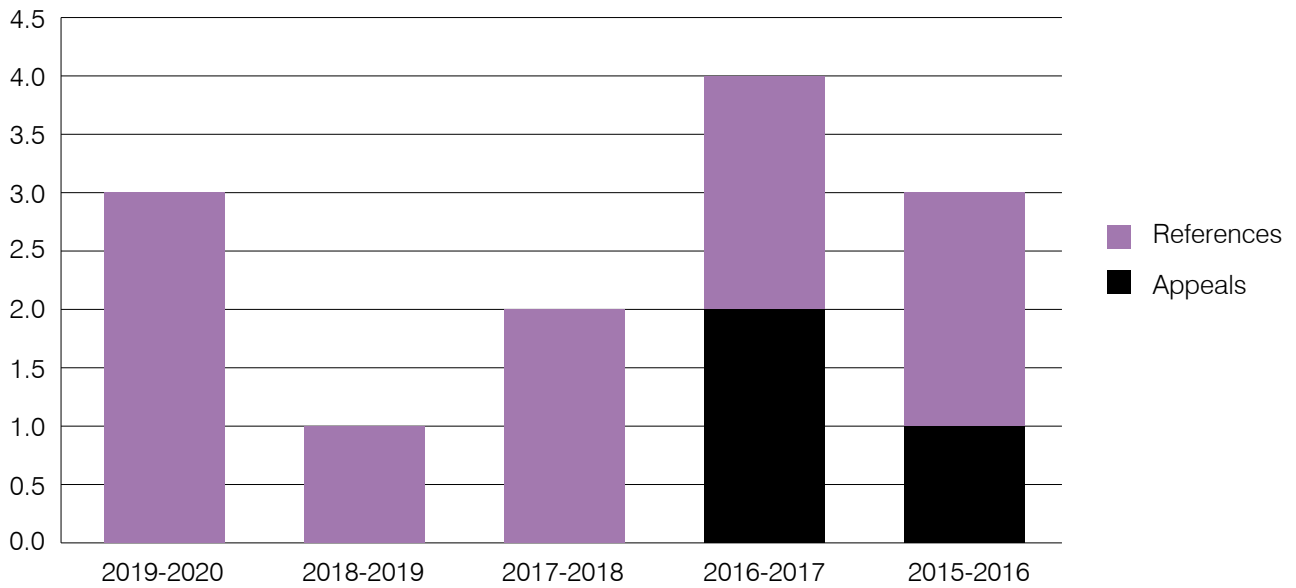
- Number of references and appeals received
- Type of applications received and registered
- Number of applications finalised
- Outcome of applications.

Graph 2.1: Number of references and appeals received by year



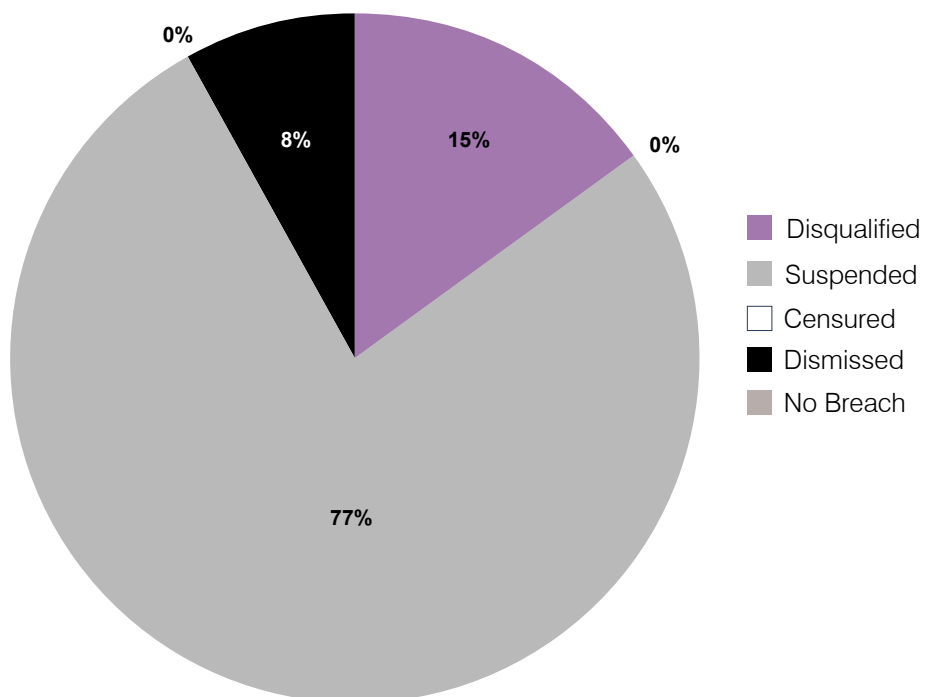
*The 2018-2019 figure was incorrectly detailed in the 2018-2019 Annual Report which has been corrected above.

Graph 2.2: Number of references and appeals decided by year April 2015-March 2020

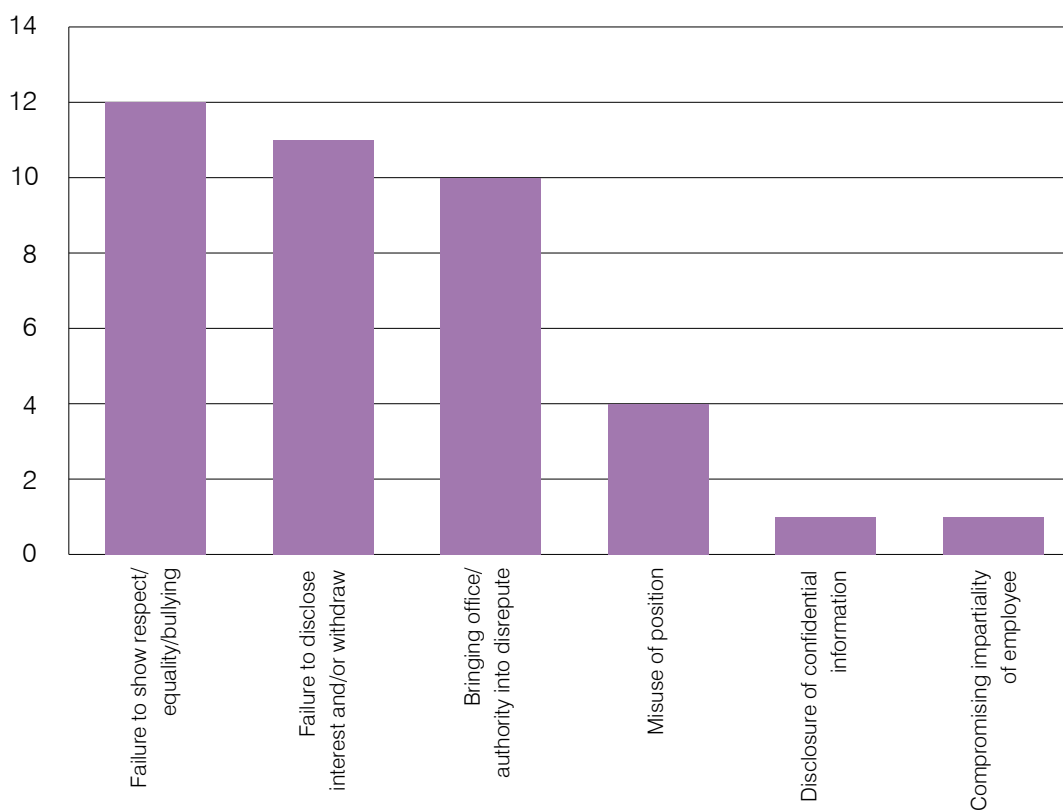


Charts 2.3: Outcomes of references and appeals April 2015-March 2020

The chart below shows the outcome of references and appeals decided by the Adjudication Panel over the last 5 years



Graph 2.4: Breaches by type April 2015-March 2020



Hearings data

During 2019-2020:

Type	Length (in days)
Reference	5 hearing days
Appeal	0 hearing days

There was also 3 telephone conferences which took place in relation to these cases.

Onward appeals

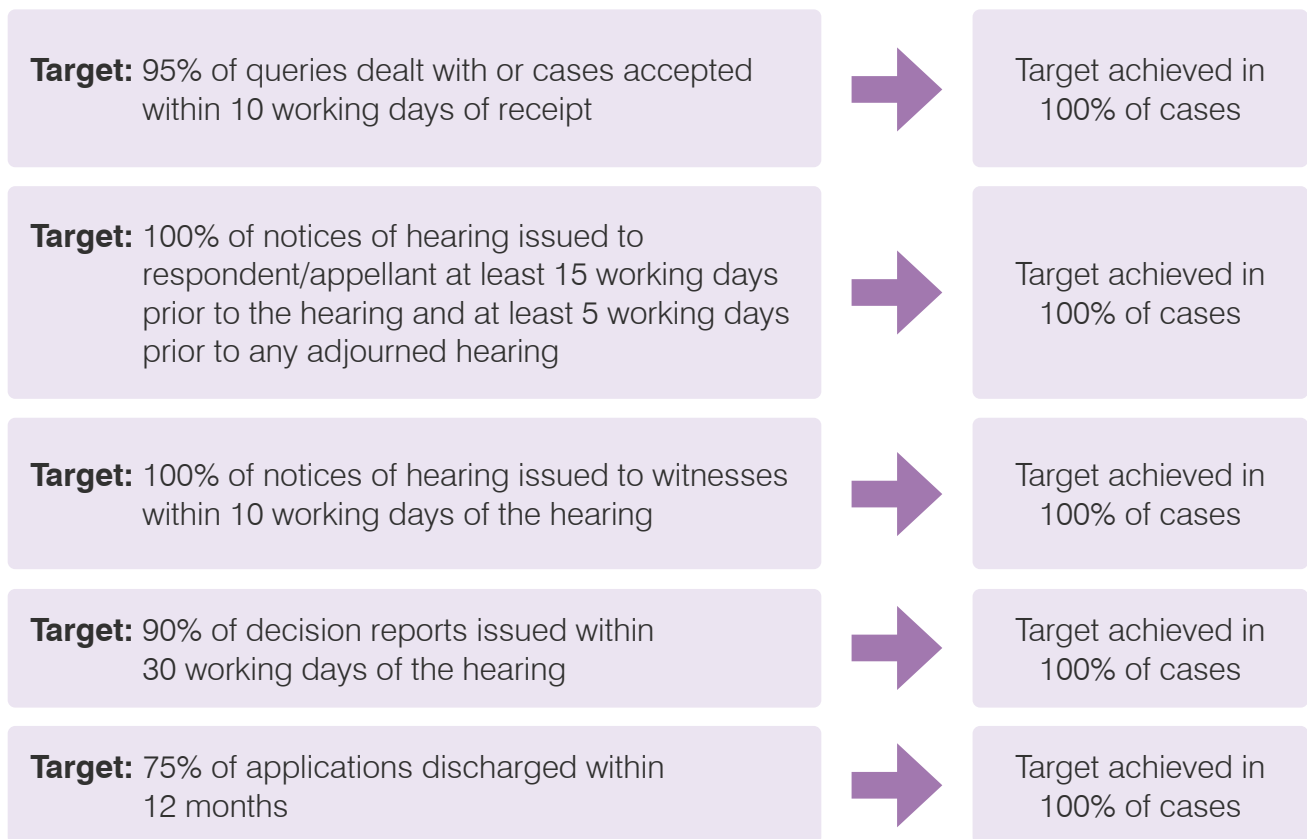
Applications for permission to appeal a decision of a Case Tribunal or Interim Case Tribunal can be made on limited grounds to the High Court. Over the period of this report, no applications for permission were made.

Achievement against key performance indicators

To monitor how effectively services are delivered, we have key performance indicators aimed at measuring two key aspects of our business; the speed of our service and the quality of service through customer satisfaction.

To measure the speed of our service, we have a series of primary performance indicators based on the time taken to process an application – from receipt to the hearing or disposal (see below).

Speed of our service 2018-2019



Complaints

The APW received no formal complaints during the reporting period.

Section 3 – Case summaries

In this section:

- References
- Appeals

References

During the reporting period, 3 case tribunals took place resulting from a reference from the Ombudsman. A summary of the cases determined by the APW appears below.

APW/001/2018-019/CT

Monmouthshire County Council (currently Mathern Community Council)

The allegations were that the councillor had breached the Code of Conduct of Monmouthshire County Council by conducting himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute.

The conduct arose during a previous case tribunal involving the councillor (in which he had been found to have homophobic statements over several months in 2016 and had been suspended by Panel for two months) and shortly after that hearing. The councillor made two statements in July 2018 when the Panel was delivering its finding regarding sanction at the first case tribunal and in a letter sent afterwards to the Panel, which were alleged to be a breach of paragraph 6(1)(a) of the Code.

The case tribunal dismissed the reference on the basis that the Public Services Ombudsman for Wales had not received a written allegation as required under section 69(1) of the Local Government Act 2000 to commence an investigation to come before a second case tribunal. It did not accept that the Ombudsman could rely on the written allegation received for the first case tribunal as the allegations before the second case tribunal did not come to his attention as a result of the investigation undertaken for the first case tribunal.

APW/002/2018-019/CT

Powys County Council and Brecon Beacons National Park Authority

The allegations were that the councillor had breached the Code of Conduct for Powys County Council and Brecon Beacons National Park Authority by failing to show respect and consideration for others, conducting himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute, and using or attempting to use his position improperly to confer on or secure for himself or any other person an advantage or create or avoid for himself or any other person a disadvantage.

The proceedings arose from an incident at a meeting of the National Park Authority where the councillor made contact with part of another councillor's anatomy, which led to a complaint being raised. The accused councillor later made a number of comments to third parties which appeared to be threatening consequences if the complaint was continued; these comments led to a new complaint from one of the third parties present.

The case tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Powys County Council and Brecon Beacons National Park Authority as follows.

- You must show respect and consideration for others (paragraph 4(b));
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a)).

The case tribunal concluded by unanimous decision that the councillor should be suspended for four months from being a member of Powys County Council and Brecon Beacons National Park Authority within the meaning of the Local Government Act 2000. It also recommended that the councillor received further training regarding his duties under the Code of Conduct from or on behalf of the monitoring officer of the Brecon Beacons National Park Authority by 31 January 2020.

APW/001/2019-020/CT
Flintshire County Council

The allegations were that the councillor had breached the Code of Conduct of Flintshire County Council by conducting himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute; by using or attempting to use his position improperly to confer on or secure for himself or any other person an advantage or create or avoid for himself or any other person a disadvantage; and by using or authorising others to use the resources of the authority imprudently, in breach of the authority's requirements, unlawfully, other than in a manner which is calculated to facilitate or to be conducive to the discharge of the functions of the authority or office to which he had been elected or appointed, or improperly for political or private purposes.

The allegations centred on alleged conduct by the councillor involving one member of council staff. It was alleged that the councillor had assisted the member of staff to giving her an opportunity to view interview questions, and that he had used or allowed the member of staff to use a vehicle hired through a council scheme in breach of paragraph 7(b) of the Code. It was further alleged that the councillor had conducted himself in a manner that could reasonably be regarded as bringing his office or the authority into disrepute through the use or authorisation of the use of the vehicle, and by the exchange of inappropriate messages, including those of a sexual nature, with the member of staff.

The case tribunal found by unanimous decision that the councillor had failed to comply with Flintshire County Council's Code of Conduct as follows:

- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a)).

The case tribunal concluded by unanimous decision that the councillor should be suspended for three months from being a member of Flintshire County Council within the meaning of the Local Government Act 2000.

Appeals

One application to appeal was made to the President of the APW during the reporting period. Permission was granted to appeal the sanction imposed by the standards committee of the relevant authority and the appeal was concluded during the following financial year.

Section 4 – Business Priorities

In this section:

- Business priorities for 2020-2021

It is important that the APW continues to develop in order to deliver the best possible service for our customers. This section is about how the APW will build on its achievements through focusing on business priorities and our commitment to our customers.

Business Priorities 2020-2021

- Plan and deliver an all-members training event;
- Complete a communication strategy in order to inform the public in a more accessible manner about the APW and its work, including updating the APW website to include non-written forms of communication;
- Deliver an effective and efficient service, meeting key performance indicators;
- Provide further guidance to users on a variety of topics.

Section 5 – Expenditure

In this section:

- Expenditure for 2019-2020

Expenditure for 2019-2020

Content	Amount
Members Fees and Expenses (proceedings and training)	£30,072
Tribunal events (hearing and other costs)	£4,006
Total	£34,078

rounded to the nearest £1,000