

Meeting of:	Standards Committee
Date of Meeting:	Thursday, 09 September 2021
Relevant Scrutiny Committee:	No Relevant Scrutiny Committee
Report Title:	Adjudication Panel for Wales Annual Report 2020-21
Purpose of Report:	To apprise Members of the Annual Report of the Adjudication Panel for Wales 2020-21
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 2020-21 (at Appendix 1) which provides details of the performance and progress for 2020-21.

Recommendation

1. That Members consider the Adjudication Panel for Wales Annual Report 2020-21 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 2016/17 to 2020/21 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.

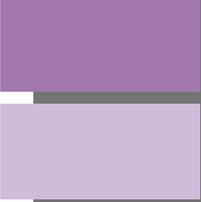
Employment

- 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 2020 – 2021

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 sixth report as President of the Adjudication Panel for Wales. The report covers the period 1 April 2020 – 31 March 2021.

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.

This year has undoubtedly been a year like no other, not only for the APW, but for everyone. Remote technology has enabled the Panel to continue its work unabated. While the use of such technology is likely to remain for the long-term, the return of the “face to face” aspect of our work is hoped for by the end of the next financial year (depending on social distancing guidance). That said, virtual hearings may make it easier for members of the public to attend our hearings which are principally held in public to ensure transparency and uphold the open justice principle. The APW will review for each case the best way to hold a hearing.

During the year covered by this report, the APW issued three Presidential Guidance documents on disclosure, anonymity and the role of the monitoring officer. These documents were prepared following consultation with stakeholders and to ensure both consistency and a deeper understanding of our processes. I also hope that the guidance might assist local government standards committees where appropriate when dealing with their own hearings.

The APW has updated its website to include information videos and briefings about the Panel and its processes, aimed to explain in an accessible way to the public our work and role. Due to the pandemic, we were unable to attend planned outreach events.

I would like to pay tribute to, and thank, all the members of the Panel and the administration, including the Registrar, for continuing to perform their public duty fairly, efficiently and professionally. Their commitment to doing so, even when they, their loved ones or community were affected by COVID-19, is something of which I am immensely proud.

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.

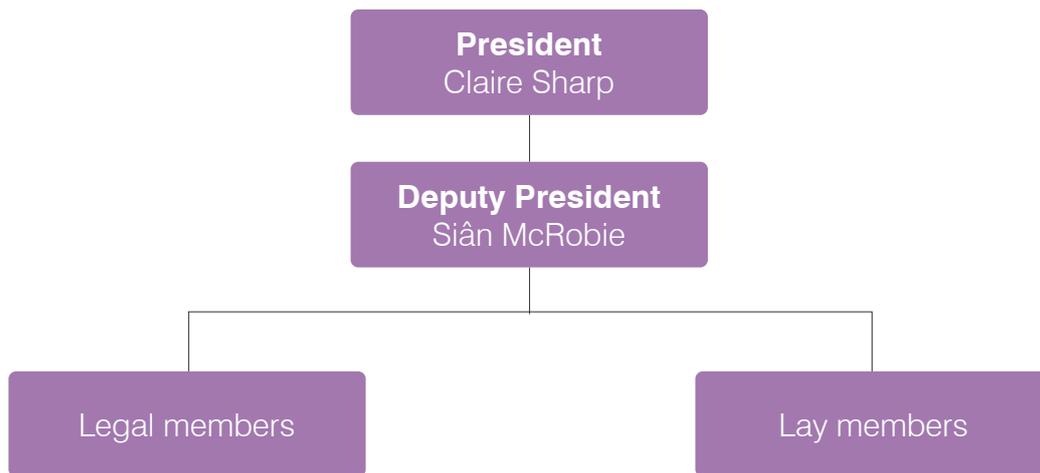
The APW publishes its decisions on the website for the APW. Decisions of Case Tribunals can be appealed on limited grounds to the High Court. Permission to appeal to the High Court must first be sought from the High Court.

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 had no new appointed members.

Training

A training seminar was held on 1 May 2020, with a continued emphasis on judgecraft; particularly regarding vulnerability and developing a reflective practice. Sessions on applications to hear matters in private and the technology to support the Panel's work were also delivered. A lay member received induction training 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 2021/22 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

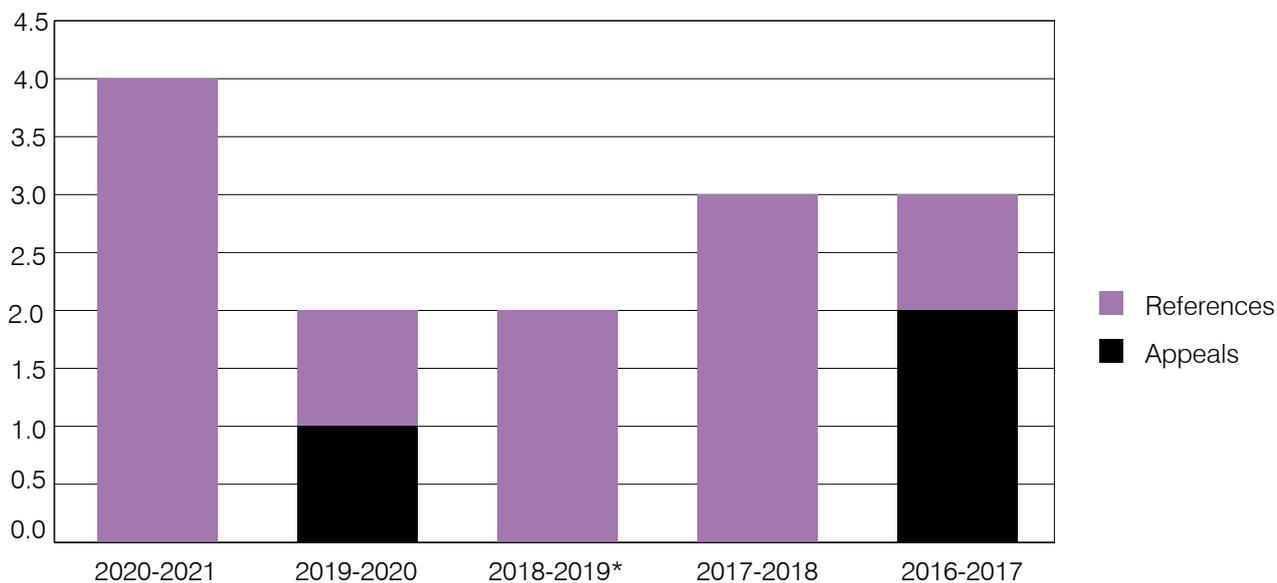
Numbers and Statistics

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:

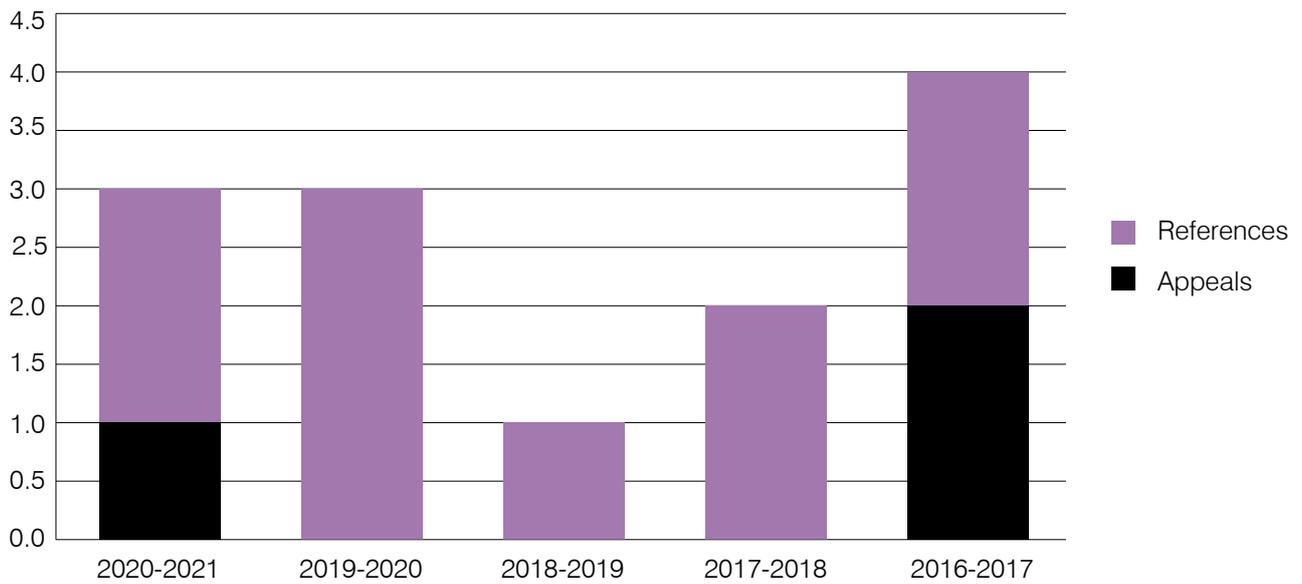
- Number of references and appeals received
- Type of applications received and registered
- Number of applications finalised
- Outcome of applications.

Graph 2.1: Number of references and appeals received by year



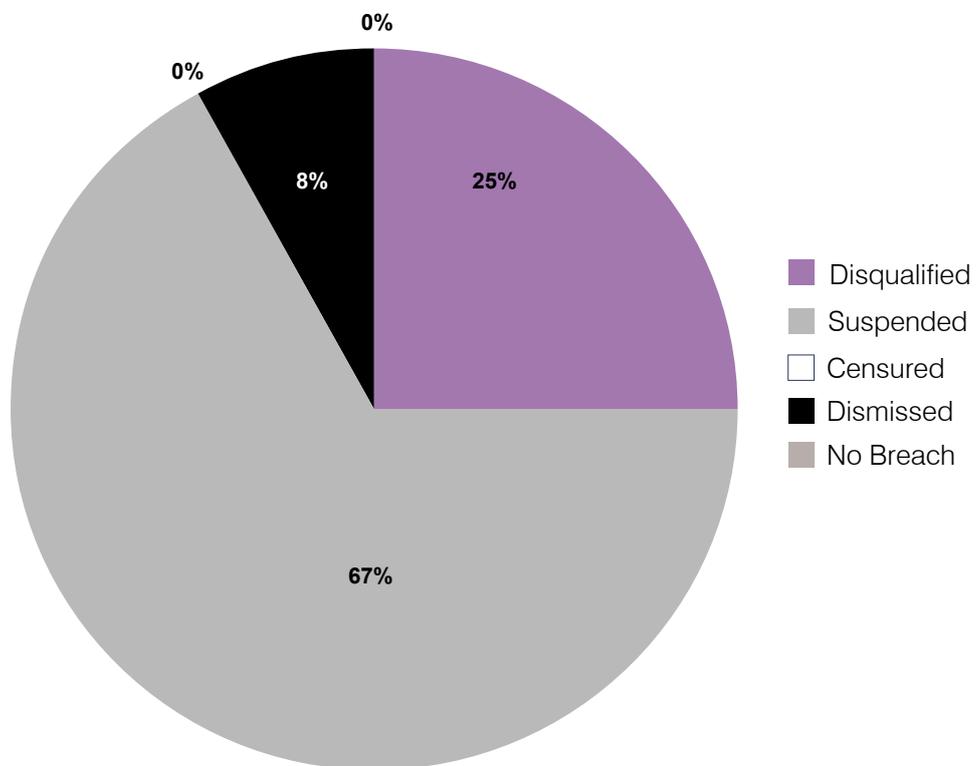
* The 2018-2019 figure was incorrectly detailed in the 2018-2019 Annual Report which has been corrected above.

Graph 2.2: Number of references and appeals decided by year April 2016-March 2021

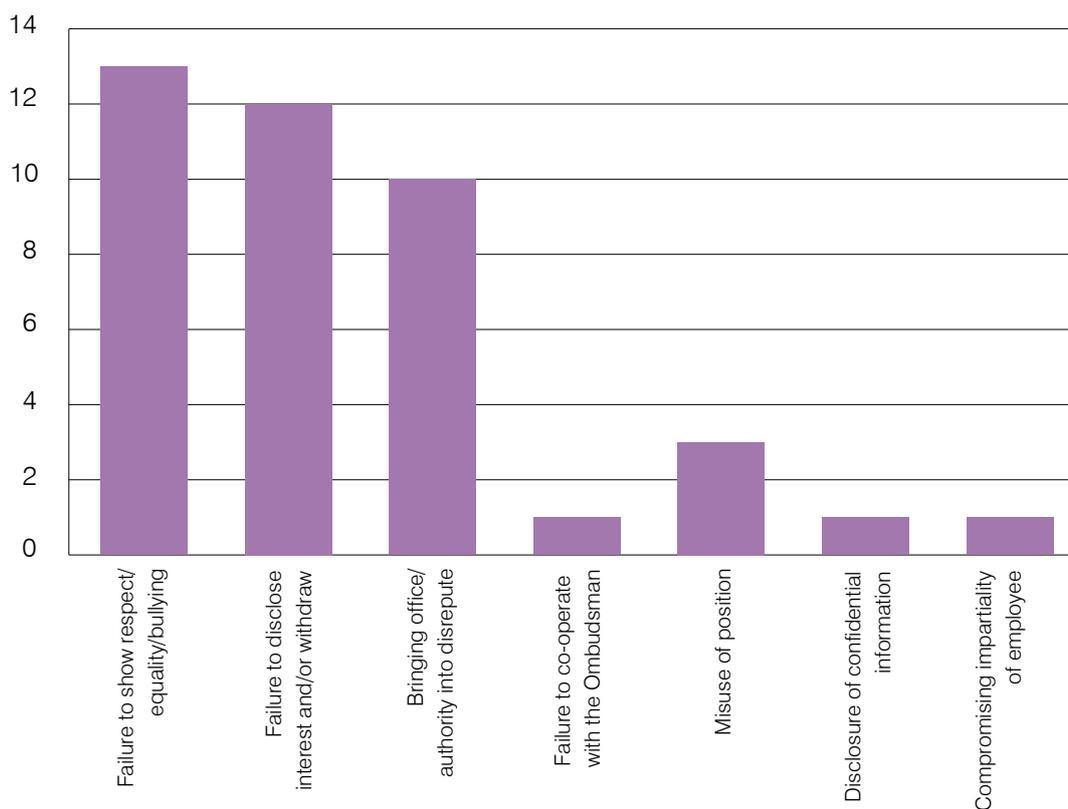


Charts 2.3: Outcomes of references and appeals April 2016-March 2021

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 2016-March 2021



Hearings data

During 2020-2021:

Type	Length (in days)
Reference	3 hearing days
Appeal	1 hearing day

1 listing conference 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, though one councillor obtained an extension of time to appeal.

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 2020-2021

Target: 95% of queries dealt with or cases accepted within 10 working days of receipt	➔	Target achieved in 100% of cases
Target: 100% of notices of hearing issued to respondent/appellant at least 15 working days prior to the hearing and at least 5 working days prior to any adjourned hearing	➔	Target achieved in 100% of cases
Target: 100% of notices of hearing issued to witnesses within 10 working days of the hearing	➔	Not Applicable as none issued
Target: 90% of decision reports issued within 30 working days of the hearing	➔	Target achieved in 100% of cases
Target: 75% of applications discharged within 12 months	➔	Target achieved in 100% of cases

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, 2 case tribunals took place resulting from a reference from the Ombudsman. A summary of the cases determined by the APW appears below:

APW/001/2020-021/CT

Merthyr County Borough Council

The allegations were that the councillor had breached the Code of Conduct for Merthyr County Borough Council by failing to show respect and consideration for others, conducting himself in a manner reasonably regarded as bringing the office or authority into disrepute, failing to disclose a personal interest in council business when attending a meeting or making written representations, seeking to influence decisions by the council when he had a prejudicial interest (without obtaining a dispensation), and making oral representations in respect of a matter in which he had a prejudicial interest (without obtaining a dispensation).

The councillor was Leader of the Council. The proceedings arose from the purchase of a property next door to the councillor's home by a private organisation intending to house children from troubled backgrounds. In addition, the councillor's conduct towards the then chief executive of the council in front of other officers was alleged to have been in breach of the Code of Conduct.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Merthyr County Borough Council 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));
- Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent (paragraph 11(1));
- Where you have a personal interest in any business of your authority and you make –
(a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication (paragraph 11(2)(a));
- Where you have a prejudicial interest in any business of your authority, you must, unless you have obtained a dispensation from your authority's Standards Committee, you must not seek to influence a decision about that business (paragraph 14(1)(c));

- Where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee, not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business (paragraph 14(1)(d));
- Where you have a prejudicial interest in any business of your authority, you must, unless you have obtained a dispensation from your authority's Standards Committee, you must not make any oral representations in respect of that business (paragraph 14(1)(e)).

The Case Tribunal concluded by unanimous decision that the councillor should be suspended for a period of 7 months and recommended that he attend further training on the Code of Conduct within a month of resuming his office as councillor. It found that the councillor's interest was both personal and prejudicial, and he had failed to follow the advice of the monitoring officer about how to deal with the matter. The Case Tribunal also concluded that the councillor's conduct towards the chief executive was "inappropriate, hectoring and uninterruptible, and went beyond assertiveness". It judged that the councillor showed a lack of insight into his misconduct.

The councillor obtained an extension of the period to appeal the decision of the Case Tribunal from the High Court, but did not ultimately appeal the decision.

[APW/002/2020-021/CT](#)

[Sully and Lavernock Community Council](#)

The allegations were that the councillor had breached the Code of Conduct for Sully and Lavernock Community Council by bringing his office or authority into disrepute and failing to supply information and evidence requested by the Public Services Ombudsman for Wales in connection with an investigation conducted in accordance with his statutory powers.

The proceedings arose from posts made by the councillor on his Facebook account between 10 January 2019 and 11 March 2019. Within those posts, the councillor made a number of comments about three elected female politicians and Shamina Begum. He claimed to the Public Services Ombudsman for Wales that his posts were not visible to the public, but failed to disclose his activity log and confirmations he claimed he received from Facebook about the status of his account, despite requests from the Ombudsman.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Sully and Lavernock Community Council 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 comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers." (Paragraph 6(2)).

The Case Tribunal concluded by unanimous decision that the councillor should be disqualified from office in a relevant authority for a period of 15 months. It found that the councillor's comments were inflammatory and extreme, threatening in nature and promoted violence towards individuals. The tribunal added that the councillor had deliberately avoided providing information or full and frank responses to the Ombudsman.

Appeals

During the reporting period, 1 appeal tribunal took place arising from a decision made by a local government standards committee. A summary of the cases determined by the APW appears below:

APW/002/2019-020/AT Cardiff Council

An appeal was received against the determination of the standards committee that the councillor had breached Cardiff Council's Code of Conduct and should be suspended from office for 4 months.

The proceedings arose from the councillor's conduct towards staff at a children's home and his involvement in the case of a child in its care. The standards committee had found on 14 January 2020 that the councillor on 29 April 2018 and 11 May 2018 had breached the following paragraphs of the Code of Conduct:

- You must show respect and consideration for others (paragraph 4(b));
- You must not use bullying behaviour or harass any person (paragraph 4c);
- 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)).

The councillor applied for permission to appeal to the President. The appeal was permitted to proceed in respect of the sanction imposed only; the councillor argued that the sanction was too harsh and/or disproportionate.

The Appeal Tribunal by unanimous decision endorsed the four month suspension sanction imposed by the standards committee. It considered the breaches of the Code by the councillor to be "quite serious, bordering on very serious", and repeated. The Appeal Tribunal noted that the councillor had been subject to previous sanction by the Panel for similar misconduct and showed a lack of insight.

Section 4 – Business Priorities

In this section:

- Business priorities for 2021-2022

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 2021-2022

- Plan and deliver an all-members training event;
- Continue to deliver an effective and efficient service, meeting key performance indicators;
- Pandemic permitting, return as appropriate to “face to face” hearings and attend key outreach events;
- Depending on the outcome of the Law Commission report on Welsh tribunals and the review of the Ethical Framework, action any changes as required by the legislature.

Section 5 – Expenditure

In this section:

- Expenditure for 20120-2021

Expenditure for 2020-2021

Content	Amount
Members Fees and Expenses (proceedings and training)	£43,126
Tribunal events (hearing and other costs)	£15,682
Total	£58,808

Rounded to the nearest £1,000