

Meeting of:	Standards Committee
Date of Meeting:	Thursday, 09 September 2021
Relevant Scrutiny Committee:	No relevant Scrutiny Committee
Report Title:	Public Services Ombudsman for Wales Annual Report and Accounts 2020/21
Purpose of Report:	To present to Members extracts from the Annual Report and Accounts for the Public Services Ombudsman for Wales for the year ending 31st March, 2021 in respect of Members' Code of Conduct matters
Report Owner:	Principal Democratic and Scrutiny Services Officer
Responsible Officer:	Report of the Monitoring Officer / Head of Legal and Democratic Services
Elected Member and Officer Consultation:	This report does not require consultation to be undertaken
Policy Framework:	This is a matter for decision by the Standards Committee
Executive Summary:	<p>The Public Services Ombudsman for Wales report is a combined report relating to the functions of the Public Services Ombudsman for Wales (the Ombudsman).</p> <p>Standards Committee Members are requested to consider the references detailed in the Ombudsman's report in respect of complaints of Members of Local Authorities who have breached their Authority's Members' Code of Conduct as detailed at page 12, at Appendix 1, of this report, pages 13 and 14 at Appendix 2 and pages 32-40 at Appendix 3.</p>

Recommendation

1. That the contents of the report be noted.

Reason for Recommendation

1. To inform Members of the Standards Committee.

1. Background

- 1.1 The Annual Report is a combined report addressing matters relating to the dual functions of the Public Services Ombudsman for Wales (the Ombudsman).

2. Key Issues for Consideration

- 2.1 The report refers to three main roles of the Ombudsman, which are to consider complaints about public service providers in Wales, to consider complaints of members of Local Authorities who have breached their Authority's Members' Code of Conduct and to drive systematic improvement of public services. The link to the full Annual Report can be found at

<https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-Report-and-Accounts-2020-21-Delivering-Justice-FINAL.pdf>

- 2.2 The Ombudsman's office has also produced an Executive Summary and an Easy Read Version of the document which can also be found via the Ombudsman's for Wales website at

<https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-report-2020-21-Executive-Summary-FINAL.pdf>

- 2.3 With particular reference to Members' Code of Conduct complaints, the Ombudsman may consider complaints about the behaviour of:

- County and County Borough Councils;
- Community Councils;
- Fire Authorities;
- National Park Authorities
- Police and Crime Commissioners and Police and Crime Panels.

- 2.4 The Annual Report notes that all the Authorities' Members' Code of Conduct set out in detail how Members must follow recognised principles of behaviour in public life. The Ombudsman further states that if a County Council wishes to make a complaint about another County Council in their own Authority, he would expect them first of all to make their complaint to that Authority's Monitoring Officer as it may be possible to resolve the matter locally without the Ombudsman's involvement.

- 2.5 Members' attention is drawn to the following :

- Page 12 of the Annual Report which is attached at Appendix 1 to this report and provides a snapshot of the year 2020/21;
- Pages 13 and 14 of the report which refers to the Ombudsman's Office Key Performance Indicators, in particular KPI 1 the percentage of Code of Conduct Complaints which are investigated - cases closed at Appendix 2 to this report and to
- The Delivering Justice section of the Ombudsman's report which at pages 32-40 reproduced at Appendix 3 to this report refer to of allegations of breaches of the Code of Conduct by Elected Members.

2.6 The Full Annual report has not been reproduced in its entirety as the remaining sections refer primarily to internal governance arrangements and financial matters.

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

3.1 This report relates to the role of the Standards Committee to promote and maintain high standards of conduct of Members as detailed in the Council's Constitution.

4. Resources and Legal Considerations

Financial

4.1 None as a direct result of this report.

Employment

4.2 None as a direct result of this report

Legal (Including Equalities)

4.3 None as a direct result of this report.

5. Background Papers

None

Snapshot of the Year

April

'Justice Mislaid' Thematic Report published.



June

Started our virtual 'walk' from Pencoed to Bangor to promote staff wellbeing during the pandemic.



August

Race and Ethnicity at Work Charter launched.
Wellbeing sessions launched for staff.



October

2 x Public Interest reports published on inadequate health care.



December

2 x Public Interest reports on failures to implement recommendations from the Ombudsman and missing referral times for treatment.



February

Welsh Language Standards came into operation.



May

Investigations into GP and Primary Care cases resumed following positive engagement with the BMA.



July

Certified Investigative training for case work staff completed.



September

Complaints Standards training begins for local authorities.



November

Health Board Complaints Standards launched.



January

Own Initiative investigation into Homelessness started.
2 x Public Interest Reports on failings to provide suitable end-of-life care and diagnosis.



March

'Good Practice' Thematic report published and Public Interest reports on failings in clinical clarity and decision-making and application of lawful planning procedures.



Our Key Performance Indicators

We measure our performance against a challenging set of Key Performance Indicators (KPIs). The table below presents an overview of our KPIs. We discuss these figures in more detail throughout this Report. You can navigate to the relevant sections of the Report by clicking on the KPI title in the table below.

Key Performance Indicators	2020/21 Target	2020/21	2019/20
1. Complaints about public bodies - decision times			
Decision that a complaint is not within jurisdiction < 3 weeks	90%	94%	95%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks	90%	85%	92%
Where we seek early resolution, decision within 9 weeks	90%	88%	94%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	65%	67%
Complaints about public bodies which are investigated – cases closed			
Cases closed within 12 months	85%	52%	81%
2. Code of Conduct complaints – decision times			
Decision taken not to investigate within 6 weeks	90%	90%	93%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	76%	86%
Code of Conduct complaints which are investigated - cases closed			
Cases closed within 12 months	90%	50%	88%
3. Customer satisfaction*			
Easy to find PSOW	91 / 98%	85 / 97%	85 / 97%
Service received helpful	63 / 83%	62 / 91%	62 / 91%
Clear explanation of process and decision	65 / 89%	63 / 96%	63 / 96%

*The results are presented for all respondents (the first figure) as well as those satisfied with the outcome (the second figure).

Key Performance Indicator	2020/21 Target	2020/21	2019/20
4. <u>Compliance</u>			
% of recommendations made, due and complied with by public service providers in the year	N/A	74%	72%
Number of compliance visits	6	7	4
5. <u>HR</u>			
Completion of PRDP (appraisal) reviews	100%	100%	100%
Employee response to staff survey*	N/A	*	92%
6. <u>Staff training</u>			
% of staff achieving target number of days of continuing professional development	95%	77%	93%
7. <u>Staff attendance</u>			
Average number of days lost through sickness per member of staff	6.5	3.0	9.0
% of working days lost through staff sickness	2.5%	1.14%	3.4%
% of working days lost through short term sickness	1%	0.62%	1.0%
% of working days lost through long term sickness	1.5%	0.52%	2.4%
8. <u>Financial</u>			
Cash repaid to Welsh Consolidated Fund	< 3%	0.4%	1.0%
Unit cost per case	£700	£674	£669
Support costs as percentage of budget	< 5%	4.1%	4.3%
External Audit Opinion on Accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts
Internal Audit Opinion on internal controls	Substantial Assurance	Substantial Assurance	Substantial Assurance
9. <u>Complaints about us</u>			
Number of complaints received	N/A	26	36
Number of complaints upheld	N/A	5	7
10. <u>Sustainability</u>			
Waste (kg)	26,000	3,988	26,996
Electricity (kWh)	104,000	71,668	104,521

*No staff survey was carried out this year.

Code of Conduct complaints

New Code of Conduct complaints

This year we received 535 new Code of Conduct complaints (an increase of 47%) and we took forward for investigation 308 complaints.

Body	2020/21	2019/20
Town and Community Councils	167	135
County and County Borough Councils	138	96
National Parks	2	0
Fire Authorities	1	0
Total	308	231

Whilst complaints about members of National Parks and Fire Authorities have remained low, Town and Community Council complaints have increased by 23.7% and County and County Borough Councils complaints by 43.8%. The latter appears to be of particular concern. However, it should be noted that we received 35 complaints about 1 County Council member. Several investigations are ongoing in respect of those complaints.

Within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

Where we receive, ‘tit for tat’ complaints we will engage with the Council and the Monitoring Officer of the principal authority to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We have provided training with Monitoring Officers to town and community council which are responsible for a disproportionately high number of complaints to our office.

We categorise the subject of the Code of Conduct related complaints based on [the Nolan Principles](#), which are designed to promote high standards in public life. The table below shows the proportion of complaints received under each principle when compared to 2019/20:

Subject	2020/21	2019/20
Accountability and openness	4%	11%
Disclosure and registration of interests	14%	17%
Duty to uphold the law	8%	7%
Integrity	12%	10%
Objectivity and propriety	5%	2%
Promotion of equality and respect	55%	49%
Selflessness and stewardship	2%	3%

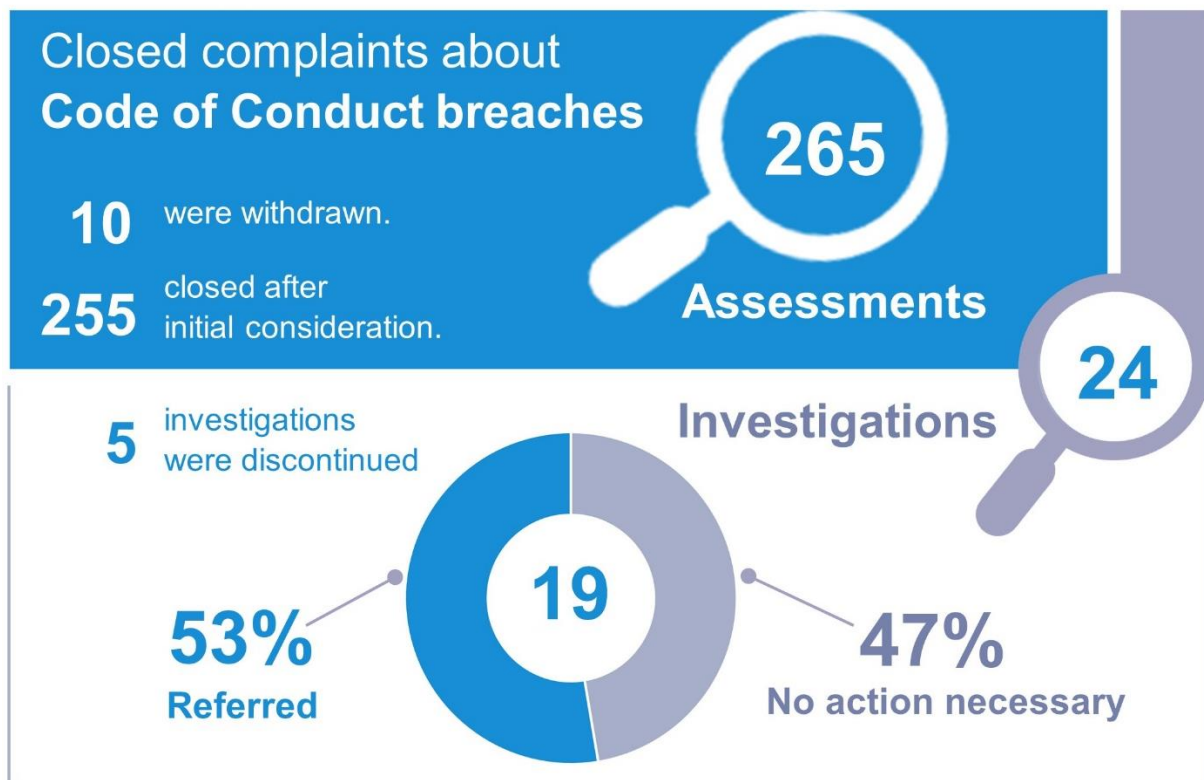
The themes ‘promotion of equality and respect’ (55%) and ‘disclosure and registration of interests’ continue to dominate. There is an annual increase in the number of complaints where bullying behaviour is being alleged.

Code of Conduct training is essential to becoming a ‘good councillor’. Our impression from investigations is that many members of Town and Community Councils often do not take up training opportunities offered on the Code of Conduct. Whilst there is no statutory obligation for members to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

Closed Code of Conduct complaints

This year we closed 289 Code of Conduct complaints. This represented a 23% increase compared to the previous year. Despite the significant increase in the number of complaints received, closures have almost matched that number.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2020/21.



All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- A complaint is supported by direct evidence that is suggestive that a breach has taken place.
- It is in the public interest to investigate that matter.

Public interest can be described as “something which is of serious concern and benefit to the public”.

In 2020/21, we closed 92% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is higher than the previous year (86%).

The remaining 8% (24) complaints taken forward to investigation represented the most serious of the complaints received. Of these, 10 complaints were referred to the local standards committee or the Adjudication Panel for Wales, a 100% increase on the previous year.

When an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This can be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made such determinations in 58% (14) of the Code of Conduct investigations this year, a significant decrease on the previous year (85%). This reflects that although fewer cases are being referred for investigation, of those that are, we are finding evidence suggestive of a breach of the Code of Conduct in more cases. This suggests that we are using our two-stage test to good effect and identifying more of the most serious cases at the assessment stage.

Cases which feature serious breaches of the Code, are referred to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2020/21 we made 10 referrals (3%) of all the Code complaints that we closed. This is an increase from 2% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'.

Referrals

In 2020/21 we made:

- 6 referrals to Standards Committees.
- 4 referrals to the Adjudication Panel for Wales.

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

There were 6 referrals to the Standards Committees this year. At the time of writing 5 are yet to be concluded. The matter which has already been considered related to a former member of Laleston Community Council who used Council funds for personal items. The Standards Committee issued a censure, the only sanction available to it as the member had resigned. A Standards Committee also considered 2 cases which were referred to it in the previous year, relating to 2 members of Conwy Town Council who had failed to disclose an interest in business relating to a member of staff who had made a bullying complaint against them which had not been resolved at the time of the events. Both members were suspended for 1 month.

There were 4 referrals to the Adjudication Panel for Wales. 2 have already been considered. The first concerned the conduct and behaviour of a member in relation to their failure to disclose their personal and prejudicial interests and their actions towards a member of staff. In this case the member of Merthyr Tydfil County Borough Council was suspended for 7 months. The second related to Facebook posts made by a member of Sully and Lavernock Community Council, which contained extreme and gratuitous violent references about female politicians. The member was disqualified for 15 months. Two other referrals have been made and are yet to have been considered by the Adjudication Panel.

In 20/21 the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 100% of our referrals.

Lessons

Despite the increase, we make referrals only in a very small number of complaints. The increase in the number of complaints referred for further consideration in respect of potentially serious breaches of the code last year, is of concern and suggests there has been some decline in member conduct. Of the complaints referred for hearing which are yet to be determined, it is concerning that the complaints suggest disreputable conduct and that some members may have misused their positions as members.

Nevertheless, our investigations and the outcomes of these case referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

We are currently trialling a change in process which we anticipate will reduce the time taken to decide whether a complaint should be investigated and improve overall investigation times. Where appropriate, we also want to give members the opportunity to account for their own actions, even when we do not refer a case for hearing because it does not meet our public interest test.

We use our investigation as an opportunity to promote good practice and training opportunities for members. We have revised and consulted upon our Code of Conduct Guidance for members of local authorities in Wales. [The revised Guidance can be found here.](#)

The new duties in the Local Government & Elections Act 2021 bring welcome additions to the ethical framework, which should help encourage greater local ownership and accountability for conduct matters, when these provisions come into force in May 2022.

We look forward to contributing to the Welsh Government's review of the ethical framework, which in Wales has been in operation for approaching 20 years.

Whistleblowing disclosure report

Since 1 April 2017, the Ombudsman is a 'prescribed person' under the Public Interest Disclosure Act 1998. The Act provides protection for employees who pass on information concerning wrongdoing in certain circumstances.

The protection only applies where the person who makes the disclosure reasonably believes that:

1. They are acting in the public interest, which means that protection is not normally given for personal grievances.
2. The disclosure is about one of the following:
 - Criminal offences (this includes financial improprieties, such as fraud).
 - Failure to comply with duties set out in law.
 - Miscarriages of justice.
 - Endangering someone's health and safety.
 - Damage to the environment.
 - Covering up wrongdoing in any of the above categories.

As a 'prescribed person' we are required to report annually on whistleblowing disclosures made in the context of Code of Conduct complaints only.

In 2020/21 we received 36 Code of Conduct complaints that would potentially meet the statutory definition of disclosure from employees or former employees of a council. The disclosures mostly related to allegations that the members concerned had 'failed to promote equality and respect'. Eleven complaints were investigated. Investigation is continuing into 10 complaints and 1 was discontinued as the investigation was no longer in the public interest.

The 2 complaints ongoing from 2019/20 were concluded. One was referred to the Standards Committee. The former Member received a censure for misusing funds. The second was referred to the Adjudication Panel for Wales. The Member was suspended for failing to declare an interest and poor behaviour towards a member of staff.

Timeliness

We are conscious of the need to deliver a timely service. We need to investigate thoroughly, consider the views and comments of complainants and public bodies and draw on professional advice when needed.

2020/21 proved to be a hugely challenging year. The pandemic affected the ability of public bodies to engage with us on complaints. The switch to our staff working at home was achieved smoothly, but this, coupled with disruption to normal schooling and childcare arrangements of staff, has also affected our ability to progress our casework. We temporarily suspended ongoing health and GP investigations during the early weeks of the pandemic and, mindful of the pressures on public services in the early stages of the pandemic, did not commence new investigations between April and June. This has significantly affected our performance, particularly on the time to start an investigation and to complete our work. The table below shows performance during the year 2020/21.

Key Performance Indicators	2020/21 Target	2020/21	2019/20
Complaints about public bodies - decision times			
Decision that a complaint is not within jurisdiction < 3 weeks.	90%	94%	95%
Decision taken not to investigate a complaint (after making initial enquiries) < 6 weeks.	90%	85%	92%
Where we seek early resolution, decision within 9 weeks.	90%	88%	94%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received.	80%	65%	67%
Complaints about public bodies which are investigated - cases closed.			
Cases closed within 12 months.	85%	52%	81%
Code of Conduct complaints - decision times.			
Decision taken not to investigate within 6 weeks.	90%	92%	91%
Decision to investigate and start investigation within 6 weeks of the date sufficient information is received.	90%	76%	86%
Code of Conduct complaints which are investigated - cases closed.			
Cases closed within 12 months.	90%	50%	88%

We measure timeliness from the time we receive sufficient information from the complainant. This is so that our reported performance reflects the experience of complainants. However, it also means that our performance is affected by any delays on the part of public bodies, or our clinical advisers to respond to us, as well as the timeliness of our own work. In 2020/21, these factors have had more than impact usual.

We reported last year on the increased complexity of health complaints and on ongoing older cases that would affect our ability in 2020/21 to meet our target of 85% of maladministration or service failure cases closed within 12 months. In 2020/21 we closed only 52% of investigated maladministration/service failure complaints within 12 months. For Code of Conduct cases this was 50%. We have, however, worked hard during 2020/21 to complete investigations, particularly for older cases. Our year-end complaints caseload was 403, compared with 439 at the end of 2019/20, and our open caseload included only 12 cases over 12 months at the year-end. We recognise the importance of timeliness to complainants, Councillors and public bodies, and we will have a continued focus on this in the year ahead.