

Meeting of:	Standards Committee
Date of Meeting:	Thursday, 06 October 2022
Relevant Scrutiny Committee:	No Relevant Scrutiny Committee
Report Title:	Public Services Ombudsman for Wales Annual Report and Accounts 2021/22
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, 2022 in respect of Members' Code of Conduct matters
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 report does not require consultation to be undertaken
Policy Framework:	This is a matter for decision by the Standards Committee
<p>Executive Summary:</p> <ul style="list-style-type: none"> • The Public Services Ombudsman for Wales Annual report 2021/2022 provides details relating to the functions of the Public Services Ombudsman for Wales (the Ombudsman). • 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 which can be found at page 11 of the Ombudsman's report and as attached at Appendix 1 to this report. • Pages 12, 13 and 14 which are reproduced at Appendix 2 to this report refer to key performance indicators. Pages 16-20 at Appendix 3 provide details relating to the PSOW's Strategic aim of delivering justice and includes an overview of new and closed cases with pages 39-47, at Appendix 4 to this report, providing further detail relating to these cases . 	

Recommendations

1. THAT the contents of the report be noted.

Reason for Recommendations

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) including financial management.

2. Key Issues for Consideration

- 2.1 The PSOW's report addresses the three main roles of the Ombudsman, which are to investigate 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 [ANNUAL-REPORT-2021-22-Signed-Version.pdf \(ombudsman.wales\)](#)
- 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 [\[Executive Summary\]](#)
- 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;
 - Town and Community Councils;
 - Fire Authorities;
 - National Park Authorities
 - 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 Councillor wishes to make a complaint about another County Councillor in their own Authority, it is expected that they first of all 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 Standards Committee Members' attention is drawn to the following :

- Page 11 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 the percentage of Code of Conduct Complaints which are investigated - cases closed which can be found at Appendix 2 to this report;
- The Delivering Justice section of the Ombudsman's report at pages 16-20 at Appendix 3 to this report and
- Complaints about the Code of Conduct at pages 39-47 at Appendix 4 to the report..

2.6 The Full Annual report has not been reproduced in its entirety in this report as the remaining sections refer primarily to internal governance arrangements, complaints about public services 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. Climate Change and Nature Implications

4.1 None as a direct result of this report.

5. Resources and Legal Considerations

Financial

5.1 None as a direct result of this report.

Employment

5.2 None as a direct result of this report.

Legal (Including Equalities)

5.3 None as a direct result of this report.

6. Background Papers

None

Code of Conduct complaints

Our second role is to consider complaints that local councillors have breached their authorities' Codes of Conduct, which set out the recognised principles of behaviour that elected members should follow in public life.

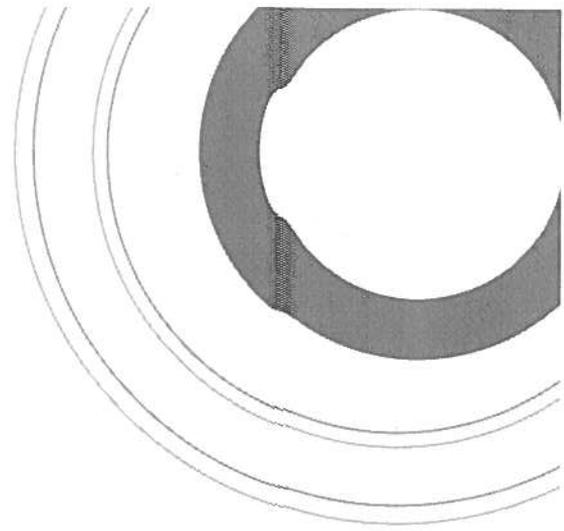
We can consider complaints about elected members of:

- county and county borough councils
- community and town councils
- fire authorities
- national park authorities
- police & crime panels.

Where we find evidence suggesting that the Code has been breached, we refer these cases to a Standards Committee or the Adjudication Panel for Wales for decision.

“I recognise the understanding and professionalism shown in your contribution to the hearing and deliberation on its outcome. Please accept my gratitude for your management of the case.

We are a “prescribed person” under the Public Interest Disclosure Act for raising whistleblowing concerns about breaches of the Code of Conduct by members of local authorities. We explain this role in more detail in **the Whistleblowing section of the Report**.



Systemic improvement of public services

Our third role is to drive broader improvement of public services. The Senedd approved more proactive powers to do this under the Public Services Ombudsman (Wales) Act 2019 (the PSOW Act 2019).

We can investigate on our own initiative even if we have not received a complaint. We talk about this power in more detail in **the Own Initiative section of this Report**.

We can also set complaints standards for public bodies in Wales. We can publish a statement of principles for complaints handling by public bodies and set model complaints handling procedures for them. We monitor the performance of public bodies in complaint handling, including reviewing their complaint handling data. We also provide training to public bodies on good complaint handling. The **Complaints Standards section of this Report** explains how we have taken this power forward.

“We are very grateful for the time taken to deliver such high-quality training to the Health Board.

Our Key Performance Indicators

We check how well we perform against a set of measures or Key Performance Indicators (KPIs). Below we explain how we aimed to perform and how we did. We discuss these figures in more detail throughout this Report.

Performance indicator	Target	2021/22	2020/21	2019/20
Our decision times in complaints about public bodies				
decision that a complaint is not within jurisdiction within 3 weeks	90%	90%	94%	95%
decision taken not to investigate a complaint (after making initial enquiries) within 6 weeks	90%	83%	85%	92%
where we seek Early Resolution, decision within 9 weeks	90%	88%	88%	94%
decision to investigate and start investigation within 6 weeks of the date sufficient information is received	80%	69%	65%	67%
Complaints about public bodies which are investigated – cases closed				
cases closed within 12 months	85%	76%	52%	81%
Our decision times in complaints about the Code of Conduct				
decision taken not to investigate within 6 weeks.	90%	98%	90%	93%
decision to investigate and start investigation within 6 weeks of the date sufficient information is received	90%	80%	76%	86%
Code of Conduct complaints which are investigated - cases closed				
cases closed within 12 months	90%	67%	50%	88%
Customer satisfaction*				
we are easy to find	91 / 98%	80 / 95%	85 / 97%	91 / 98%
we offer a helpful service	63 / 83%	60 / 86%	62 / 91%	63 / 83%
we clearly explain our process and decision	65 / 89%	65 / 91%	63 / 96%	65 / 89%
How bodies fulfil our recommendations ('compliance')				
proportion of recommendations due and complied with by public service providers	-	81%	85%	72%
number of compliance visits	7	6	7	4

Performance indicator	Target	2021/22	2020/21	2019/20
Human resources				
completion of the appraisal process	-	100%	100%	100%
employee response to staff survey	-	84%	N/A**	92%
Staff training				
proportion of staff achieving target number of days of continuing professional development	-	72%	77%	93%
Staff attendance				
average number of days lost through sickness per member of staff	-		3.0	9.0
proportion of working days lost through staff sickness	-	2.70%	1.14%	3.40%
proportion of working days lost through short term sickness	-	1.04%	0.62%	1.0%
proportion of working days lost through long term sickness	-	1.70%	0.52%	2.40%
Financial performance				
cash repaid to Welsh Consolidated Fund	<3%	2.3%	0.4%	1.0%
unit cost per case	£540	£491***	£695	£521
support costs as percentage of budget	<5%	4.2%	4.1%	4.3%
external Audit Opinion on Accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts	Unqualified accounts
internal Audit Opinion on internal controls	Substantial Assurance	Substantial Assurance	Substantial Assurance	Substantial Assurance
Complaints about us				
number of complaints received	N/A	32	26	36
number of complaints upheld	N/A	12	5	7
Sustainability				
waste (kg)	26,000	9,205	3,988	26,996
electricity (kWh)	104,000	73,754	71,668	104,521

* We present these results for all respondents (the first figure) as well as those satisfied with the outcome (the second figure).

** We carry out our staff survey every two years, so there was no staff survey in 2020/21.

*** Figures reported for unit costs reflect the approach introduced in 2020/21. The target and previous years' figures have been restated using the same approach, so figures are meaningful.

Snapshot of the year

- April 2021**  22 County and County Borough Councils become subject to complaint handling standards.
- May 2021**  We publish new Code of Conduct Guidance for members of local authorities in Wales.
- June 2021**  Health Boards and Trusts become subject to complaints handling standards.
- July 2021**  We issue a public interest report about **Cwm Taf Morgannwg UHB** – and our Annual Report 2020/21.
- August 2021**  We launch a new **Our Findings tool**. We issue a public interest report about **Betsi Cadwaladr UHB & Denbighshire Council**.
- September 2021**  We publish complaints standards data for the first time
We issue public interest reports about **Betsi Cadwaladr UHB** and **Bridgend Council**.
- October 2021**  We launch the findings of our first Own Initiative investigation
We issue **a public interest report about Hywel Dda UHB**
We appear before the Senedd's Finance Committee.
- November 2021**  We publish our third **Equality and Human Rights Casebook**.
- December 2021**  We issue **a public interest report about Cardiff and Vale UHB**
- January 2022**  We publish **revised Principles of Good Administration and Principles of Good Records Management**.
- February 2022**  We publish **a public interest report about Cardiff Council**
- March 2022** **20** We refer the 20th complaint about the conduct of councillors in the year and say farewell to outgoing Ombudsman Nick Bennett.

Strategic Aim 1: Deliver Justice

We want our service to be fair, independent, inclusive and responsive to the needs of people who complain to us.



Deliver Justice: our work at a glance

8178

We received 8178 new cases (enquiries, pre-assessments and complaints).

32% more than in 2020/21

14% more than in 2019/20

2726

We received 2,726 new complaints about public services.

45% more than in 2020/21

22% more than in 2019/20

18%

We found that something had gone wrong in 18% of complaints that we closed.

1,131

We issued 1131 recommendations to public service providers.

294

We received 294 new complaints about the Code of Conduct.

5% less than in 2020/21

27% more than in 2019/20

20

We referred 20 complaints about the Code of Conduct to the Standards Committees of the relevant local authorities, or the Adjudication Panel for Wales.

100% more referrals than last year

7%

We upheld only 7% of the review requests we received. Although there is always more work for us to do to improve, this gives us confidence in our decisions.

43% of our complainants that we asked were happy with our customer service - compared to 51% in 2020/21. However, people were much happier with our service when they were also happy with the outcome of their complaint.

43%

43% of people who responded to the national survey knew about us.

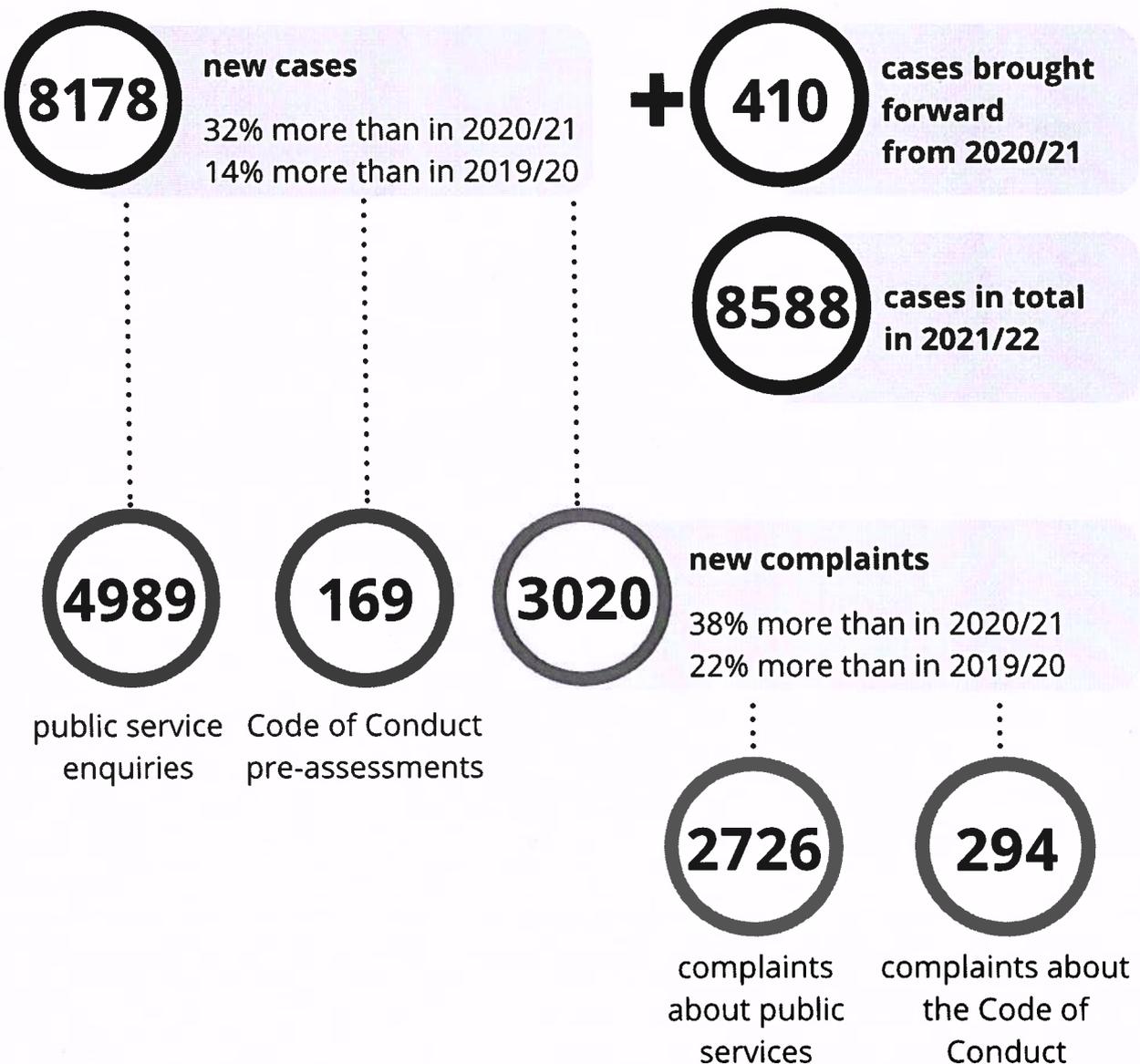
221

We accepted 221 oral complaints - and our first complaint in British Sign Language.

Our caseload

New caseload

Every year, thousands of people contact us about public services or about breaches of the Code of Conduct. This year, we received more new cases than ever before.



Closed caseload

We also closed a record number of cases. We think that this high caseload will continue in 2022/23 and we are looking at ways to improve how we deal with cases even more efficiently.



In the next sections of this Report, we focus on the main trends in **our complaints only**.

Enquiry

This is when someone contacts us with a general query but is not yet ready to complain - or we know straight away that we cannot look into their issue. If that happens, we try to offer advice or direct people to another organisation that can help.

Complaint

These are cases where we have enough information to suggest that it is something we are able to consider.

Assessment

We assess if we can and need to investigate the complaint. For example, we check how much time has passed since the issue complained about.

If we decide that we cannot or should not consider the complaint, we will let the complainant know.

We can propose Early Resolution - suggest that a body takes action to resolve the issue without an investigation.

If we think that we need to get more evidence, or we cannot resolve the issue early, we will investigate.

Investigation

We look into the complaint in more detail, and we gather additional evidence. We aim to complete our investigations within 12 months or sooner.

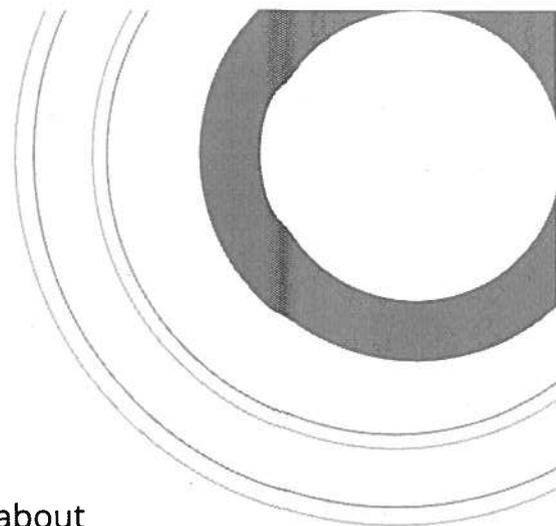
If we decide that nothing has gone wrong, we will issue a report and contact the complainant to explain our decision.

If we decide that something has gone wrong, we can:

propose a voluntary settlement - similar to Early Resolution.

issue a report upholding the complaint.

Complaints about the Code of Conduct



New Code of Conduct complaints

Compared to last year, we received fewer complaints about the Code of Conduct. However, last year the volume of those complaints was unusually high. Compared to 2019/20, we received many more new Code of Conduct complaints. We again saw more complaints about members of Town and Community Councils. In 2021/22:



Find all the complaints data that we refer to in this Report **[on our website here.](#)**

Who people complained about

People complain to us mainly about the conduct of councillors at Town and Community Councils and County and County Borough Councils.

Compared to 2020/21, we had 2% more complaints about councillors at Town and Community Councils. 58% of

our new complaints about the Code of Conduct were about councillors at those bodies – a similar proportion as over the last two years. However, we had 17% fewer complaints about councillors at County and County Borough Councils.

The table below shows the number of our new complaints about councillors at different bodies.

Body	2021/22	2020/21	2019/20
Town and Community Councils	171	167	135
County and County Borough Councils	114	138	96
National Parks	5	2	0
Fire Authorities	0	1	0
Police and Crime Panels	4	0	0
Total	294	308	231

What people complained about

We report the subject of the Code of Conduct complaints based on **the Nolan Principles**, which are designed to promote high standards in public life.

The table below shows the proportion of complaints that we received for each subject.

Subject	2021/22	2020/21	2019/20
Accountability and openness	5%	4%	11%
Disclosure and registration of interests	11%	14%	17%
Duty to uphold the law	9%	8%	7%
Integrity	8%	12%	10%
Objectivity and propriety	11%	5%	2%
Promotion of equality and respect	51%	55%	49%
Selflessness and stewardship	5%	2%	3%

As in previous years, about a half of all new Code of Conduct complaints that we received was about 'promotion of equality and respect'.

Many cases that we categorise under 'respect' are lower-level complaints. These are the ones where we tend to decide quickly that we will not investigate, or where we recommend that the complaint is resolved locally.

However, some of these complaints and many of those that we categorise under 'equality' commonly involve more serious allegations of bullying or discrimination.

The 'two stage test' that we apply when deciding cases helps us focus our resources on such serious allegations.

Our two-stage test

When we assess a complaint about the Code of Conduct, we use a two stage test to decide whether we should investigate it.

Firstly, we decide if we have enough evidence to suggest that there may have been a breach of the Code of Conduct.

Secondly, we decide if an investigation would be 'in the public interest'. Public interest can be described as something which is of serious concern or benefit to the public.

We will not investigate a complaint that does not pass this test.

Our reference: 201906362

The complainant in this case alleged that a councillor from Abertillery and Llanhilleth Community Council 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.

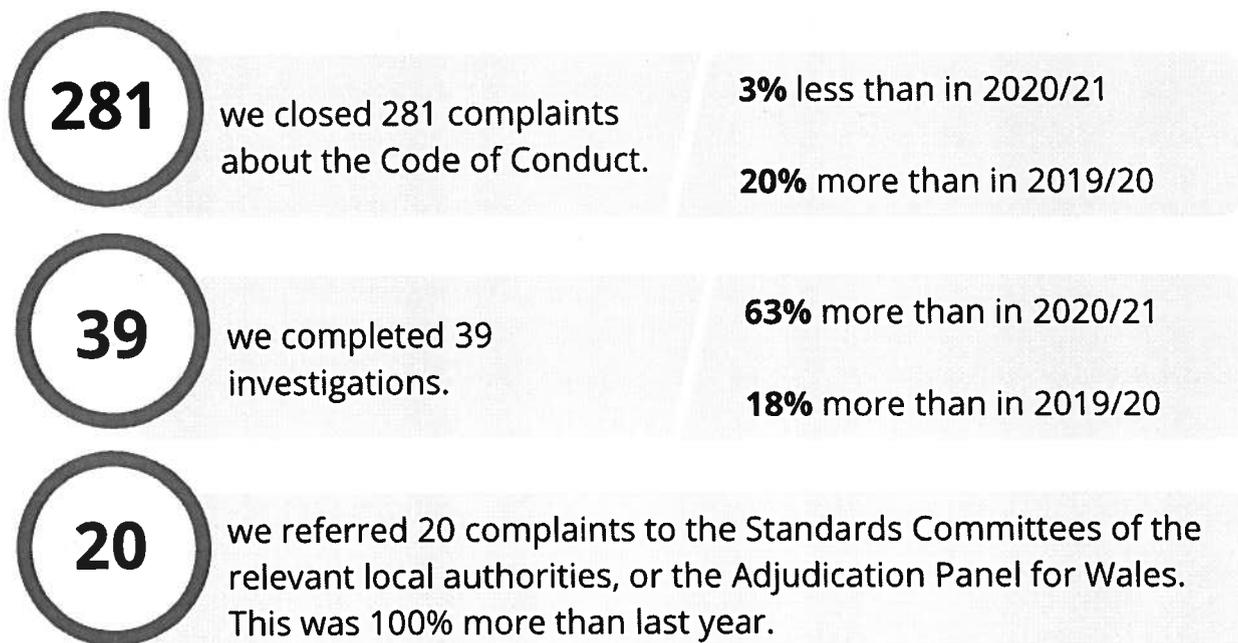
We investigated this complaint and referred our report on this investigation to the Adjudication Panel for Wales. The Panel decided that the councillor breached 4 paragraphs of their Council's Code of Conduct, including by not showing respect and consideration for others and by using bullying behaviour. He also breached the Code for failing to engage with the investigation.

The Panel suspended the councillor for 10 months.



Closed Code of Conduct complaints

Whilst we closed slightly fewer Code of Conduct complaints than last year, we investigated a much higher proportion. This year, we also referred twice as many complaints to the Adjudication Panel for Wales and Standards Committees as last year. This means that we saw many more potentially serious issues that could undermine public confidence in the people who represent them. In 2021/22:



Code of Conduct referrals

Following consideration, we investigate only a small proportion of the Code of Conduct complaints we receive. This reflects that we will only investigate the most serious complaints to ensure that we use our resources wisely. 

In cases where we investigate and have evidence to suggest there may have been a serious breach of the Code of Conduct, we refer the complaint and our findings to a local Standards Committee or to the Adjudication Panel for Wales. It is for those bodies to independently look at the evidence we have gathered, together with any information put forward by the councillor concerned and decide whether the councillor has breached the Code of Conduct and if so, what penalty, if any, should be imposed.

Main trends

This year we closed 281 Code of Conduct complaints – 3% less than last year, but 20% more than in 2019/20.

We closed 86% of complaints after initial assessment. However, we closed investigations into 39 complaints - 63% more than last year and 18% more than the year before.

In 19 of the complaints that we investigated, we decided that either the member did not breach the Code of Conduct, or it was appropriate to discontinue the investigation or we did not need to take further action. The main reasons we might decide no further action is necessary are if the councillor has acknowledged their behaviour and apologised, or has taken steps to put things right.

However, we referred 20 of the complaints that we investigated to the Standards Committee of the relevant local authority, or the Adjudication Panel for Wales.

Referrals

In 2021/22 we made:

- 11 referrals to Standards Committees
- 9 referrals to the Adjudication Panel for Wales.

We believe that it was necessary to refer those complaints to maintain public confidence in those holding public office.

Although this means that we still refer a very small proportion of all Code of Conduct complaints received, it was more than half of those we decided to investigate.

It was also twice as many as last year and the highest number of referrals that we made since 2012/13.

We are concerned about this increase. 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.

It takes time for Standards Committees and the Adjudication Panel for Wales to consider our referrals.

Of the 20 complaints we referred during 2021/22, they have, by 31 March 2022, considered 11.

Overleaf, we give examples of two decisions by these bodies on our referrals issued this year.

The Adjudication Panel for Wales and Standards Committees upheld and found breaches in all our referrals they considered in 2021/22.

This gives us additional assurance that our process for considering these complaints is sound.

Our reference: 201903571



In this complaint, 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 our 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.

Our reference: 201906873



We received a complaint from the Chair of the Personnel Committee of Tywyn Town Council that a member of that Council had been disrespectful to the Clerk and had repeatedly undermined her.

Following our 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.

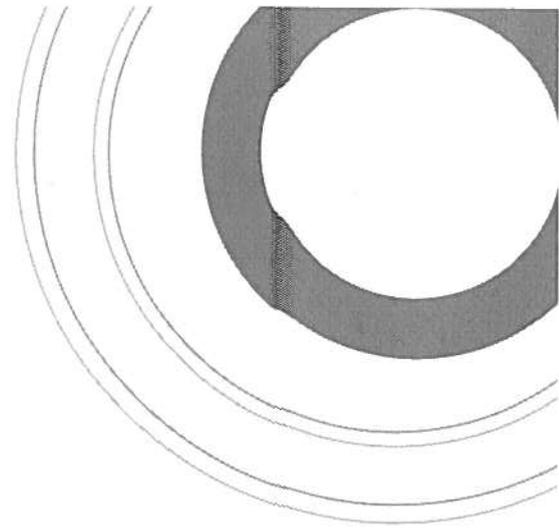
Promoting better practice

We would want to see the overall number of low-level complaints about members of Town and Community Councils reduce and we are also concerned about the high number of referrals this year.

We strongly believe that the way to overturn these trends is through training for councillors on the Code of Conduct. We would also encourage 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.

Since not all members take up opportunities to undertake training, we are 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. We expect these plans to include training about the Code of Conduct.

We also welcome the additional responsibilities that Group Leaders at principal councils have to promote good standards of behaviour. We look forward to working with Monitoring Officers and Standards Committees as they take up their additional duties.



Last year, Richard Penn (formerly the National Assembly for Wales Commissioner for Standards) undertook, on behalf of the Welsh Government, an independent review of the Ethical Standards Framework for Wales.

We look forward to working with the Welsh Government and other key stakeholders on matters arising from the Penn review.

Whistleblowing disclosure report

Since 1 April 2017, we are 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 2021/22, we 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'. We investigated 11 of these complaints. So far, we have closed one of those investigations. We decided in that case that no further action was necessary.

We concluded investigations into 8 relevant complaints which were ongoing from 2020/21. Of these:

- we referred one case to a Standards Committee. The Committee decided that there was a breach of the Code of Conduct and censured the member.
- we referred one case to the Adjudication Panel for Wales. The Panel has not yet decided on that complaint.
- in three cases, we discontinued the investigation.
- In three cases, we decided that we did not need to take any action further action in respect of the matters investigated.

One of the investigations opened in 2020/21 is still ongoing.



What you and your team do is so important. It brings answers to families in dire need and helps so much when we are literally alone in the dark.