Ombudsman
PUBLIC SERVICES OMBUDSMAN FOR WALES

How to complain

that a local authority member has broken the code of conduct

1 Who is the Public Services Ombudsman for Wales?

The Ombudsman is appointed by the Queen to look into complaints about public services in Wales. The Ombudsman also investigates complaints that members of local government bodies have behaved wrongly. He is independent and unbiased. The current Ombudsman is Nick Bennett.

The Ombudsman can consider complaints about the behaviour of members of:

- county and county borough councils;
- community councils;
- fire authorities, and national park authorities; and
- police and crime panels.

All these authorities have a code of conduct which sets out in detail how members must follow recognised principles of behaviour in public life.

2 Who can make the complaint and what can you complain about?

Anyone can make a complaint, as long as they have direct knowledge of the behaviour they are complaining about.

If you are a councillor, under your authority's code you must report any evidence which you have of a fellow councillor breaking the code. If you are a county councillor and your authority has a local resolution process and you want to make a complaint against another councillor in your authority, you should first of all make your complaint to your authority's Monitoring Officer. The reason for this is that it may be that your complaint can be resolved locally without the need for the Ombudsman to be involved. You must nevertheless remember that you also have a duty under the code not to make complaints which are vexatious (that is, they must not be made just to make mischief).

Examples of ways in which a member may break an authority's code of conduct include:

- behaving in a way that negatively affects their authority's reputation;
- using their position unfairly to gain an advantage for themselves or someone else – or to do someone else down;
- improper use of their authority's resources;
- failing to declare an interest;
- bullying behaviour;
- failing to treat everybody equally; and
- revealing confidential information about individuals without good reason.

3 What the Ombudsman cannot investigate

- Complaints about the behaviour of individual employees of an authority. (But if their behaviour led to you being unfairly treated, or receiving a bad service, you can complain about the authority itself. There is a separate leaflet to help you to do this.)
- Complaints not made in writing, or made anonymously.

4 How do you make a complaint?

- You must be prepared for your name and what you say in your complaint to be passed on to the member concerned and to the authority. You must also be prepared for the possibility that it may become public knowledge. You may need to be interviewed as part of any investigation.
- Your complaint must be in writing, preferably using the form in this leaflet. If you are unable to do this yourself, please contact us on 0300 790 0203.
- You must tell the Ombudsman specifically what you believe the member has done which has broken their authority's code of conduct. (You have to give some direct evidence of this – the Ombudsman will not investigate a complaint which is based on what someone else has told you.)

5 What happens after you have filled in the complaint form and returned it to the Ombudsman?

We will write to acknowledge we have received your complaint. We will then assess it to decide if we will investigate it. Sometimes, we may need to get in touch if some aspect of your complaint is not clear. If we decide not to investigate, we will tell you the reason. If we decide to investigate, we will let you know when we have started, and let you know the outcome.

The Ombudsman can decide whether he will investigate any complaint. Some of the complaints he receives are not serious enough to need investigating.

A number of the complaints which come to the Ombudsman are about rude or controversial things that members have said. The code of conduct is not meant to prevent robust political debate.

In deciding whether to investigate a complaint of a breach of the code the Ombudsman applies a two stage test:

- first he looks to see whether there is evidence that a breach actually took place;
- if there is, he then considers whether the breach alleged, if proved, would be likely to lead to a sanction being imposed on the member. In making his decision, the Ombudsman takes account of the outcomes of previous cases considered by standards committees and Adjudication Panels across Wales.

If the Ombudsman concludes that the first stage of the two stage test is met but not the second stage he will write to the relevant local authority Monitoring Officer stating that he does not intend to investigate the complaint. The Ombudsman will ask the Monitoring Officer whether they wish to carry out a local investigation. Where the Monitoring Officer agrees that an investigation is not called for the complainant will be told of the decision not to investigate. If the Monitoring Officer says that a local investigation is appropriate, then as allowed by the law, the matter will be passed to the Monitoring Officer for their own local investigation.

6 What are the possible outcomes of an investigation?

The Ombudsman will investigate the matter thoroughly and fairly. He will act as quickly as possible. The time taken to complete an investigation will vary according to how complicated it is. Normally it will be completed within nine months. We will keep in touch with you and let you know what progress is being made. If he thinks it is appropriate, the Ombudsman can end his investigation at any time.

Once his investigation is complete, the Ombudsman may decide that there is no evidence that the code has been broken, or decide that no further action needs to be taken.

If he decides that there is enough evidence to do so, he will send a formal report either to the authority's standards committee or, depending on the circumstances, to the Adjudication Panel for Wales. You might be asked to give evidence to them. They will then decide if the code of conduct has been broken and, if so, what penalty to give the member concerned. The maximum penalty that a standards committee can apply is suspension for six months and the maximum that a tribunal of the Adjudication Panel can determine is five years' disqualification from office.

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Printed on 100% recycled paper
January 2016