

Adjudication Panel for Wales Annual Report

2014–2015 / 2015–2016
Combined

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

Contents

Foreword		3
Section 1	About Us	4
Section 2	Performance and Progress	7
Section 3	Case Summaries	11
Section 4	Our Customers	14
Section 5	Business Priorities	15
Section 6	Expenditure	15

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

Foreword



This is my first annual report as President of the Adjudication Panel for Wales (APW). The report covers the period 1 April 2014 – 31 March 2016. You will note that this annual report covers a two year period, as opposed to the usual twelve months. The publication of this report was delayed due to the few cases dealt with by the APW and the retirement from office of my predecessor, Mr J Peter Davies. I hope you find the report informative and user friendly.

We aim to ensure that the APW serves the interests of all those in Wales falling within our jurisdiction, by dealing with any disputes both efficiently and effectively. Specifically we make every effort to ensure that all those involved in the dispute ultimately feel that the dispute has been fairly resolved within as short a timescale as is reasonable. We also are conscious that the wider public must have confidence that any breaches of the Code of Conduct by members of relevant authorities will be dealt with fairly and in a timely way in order to uphold trust and confidence in local democracy.

As can be seen from the statistics set out in the Report, various Applications have been made to the APW during the past 2 years. The most common types of cases before the APW relate to allegations concerning failures to disclose personal and prejudicial interests. It would appear that a very small minority of councillors struggle to identify when a personal or prejudicial interest exists, despite training and the guidance issued by the Public Services Ombudsman for Wales.

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

A handwritten signature in blue ink, which appears to read 'C Sharp'.

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. APW hearings will normally be held in public and take place near to the authority area.

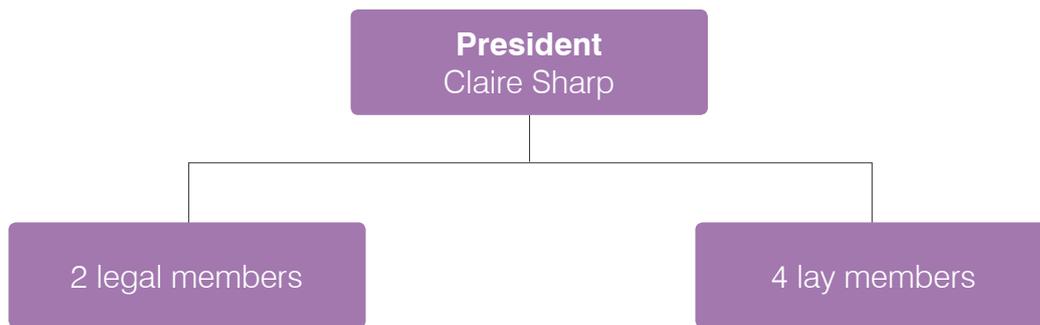
The APW publishes its decisions on the website for the APW. Decisions of Case Tribunals can be appealed on limited grounds to the High Court. Permission to appeal to the High Court must first be sought from the High Court.

Full information and guidance about the APW and its procedures, are provided on the website for the APW. Alternatively please contact the APW secretariat for further information or if you would like to receive publications in a different format. The contact details can be found on page 6.

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.
Legal Members	Legal members are lawyers and have responsibility for conducting proceedings at hearings and advising the Secretariat 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.
Secretariat	The day-to-day administration is largely delegated to the secretariat which deals with all the preliminary paperwork and the processing of applications to the APW. The secretariat consults the President and/or legal members on all legal points arising during the preliminary pre-hearing stages of the proceedings and passes on any rulings and directions in writing to the parties. The secretariat acts as a point of contact for chairpersons, members and APW users and attends hearings to help with the efficient running of proceedings.



Appointments

In January 2016, 3 legal members and 4 lay members were appointed to the APW. Of the legal members appointed, Mrs Claire Sharp has recently been appointed as the President of the APW with effect from 1 May 2016.

Training

A training seminar was held during November 2014. No training was held during 2015/16 due to the recruitment of new members. A regular programme of performance appraisal for APW members has been completed over previous years. Due to the new appointments this year, it is anticipated that the next round of performance appraisal for APW members will start during the course of the 2017/18 year.

Contacting the APW

To contact the APW Secretariat:

APW Address:	Adjudication Panel for Wales Government Buildings Spa Road East Llandrindod Wells Powys LD1 5HA
APW Helpline:	03000 259805
APW Fax:	03000 259801
APW E-mail:	adjudication.panel@wales.gsi.gov.uk

Accessing the APW

The APW is happy to communicate with you in English or Welsh. 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 secretariat.

Section 2 – Performance and Progress

In this section:

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

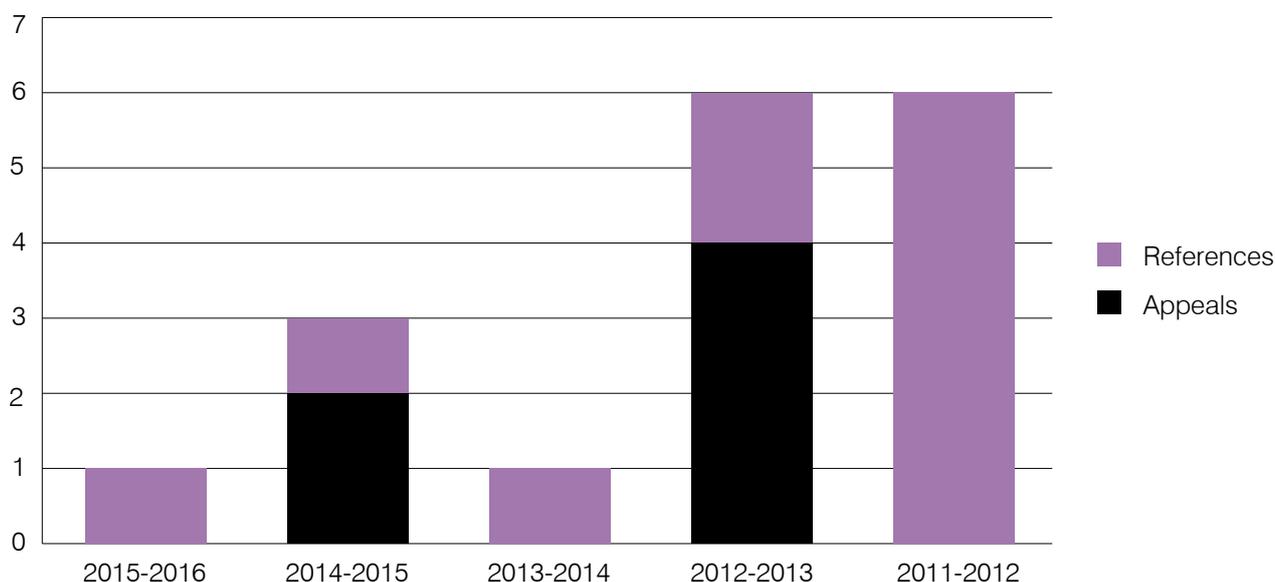
Numbers and Statistics

A Tribunal year runs from April to March. This report covers 2 tribunal years. As the numbers of cases received are relatively low, figures are given for a 5 year period to allow for comparison.

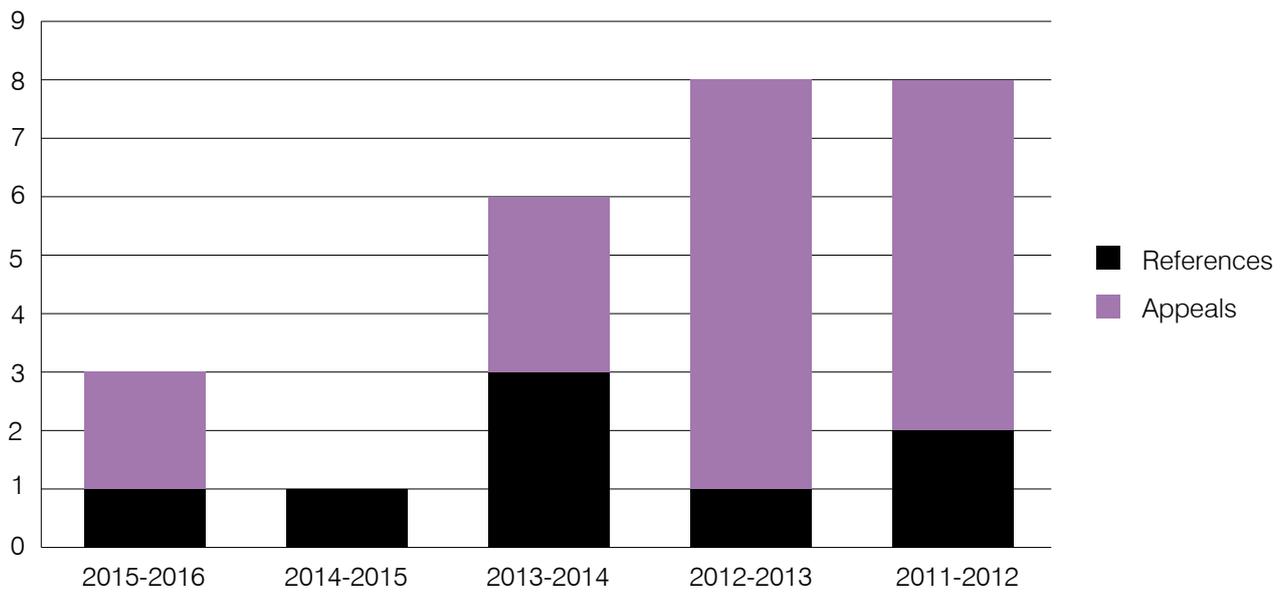
The following statistics are collated:

- 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

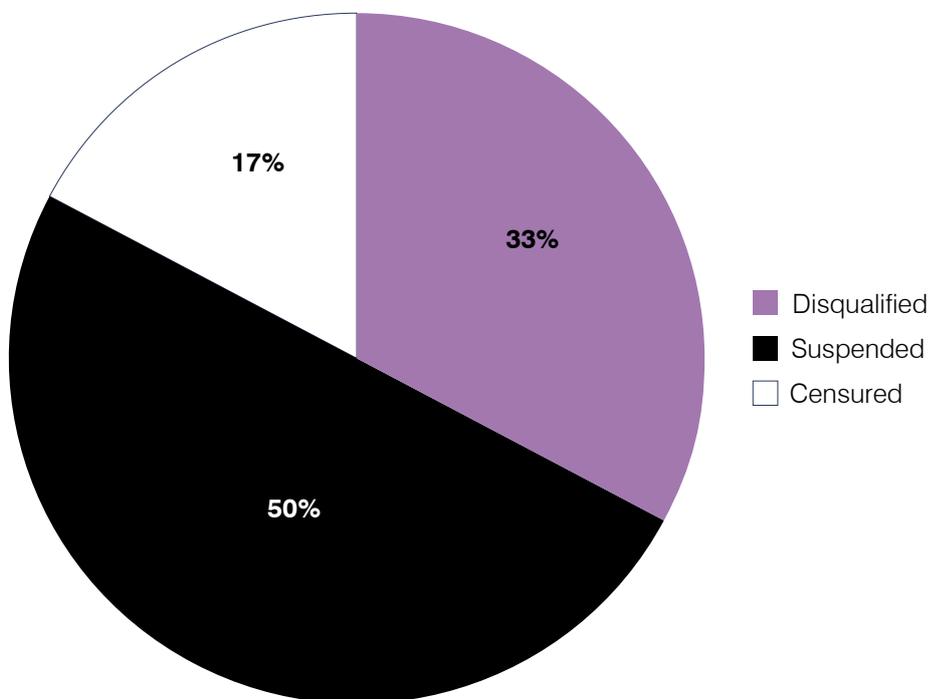


Graph 2.2: Number of references and appeals decided by year April 2011-March 2016

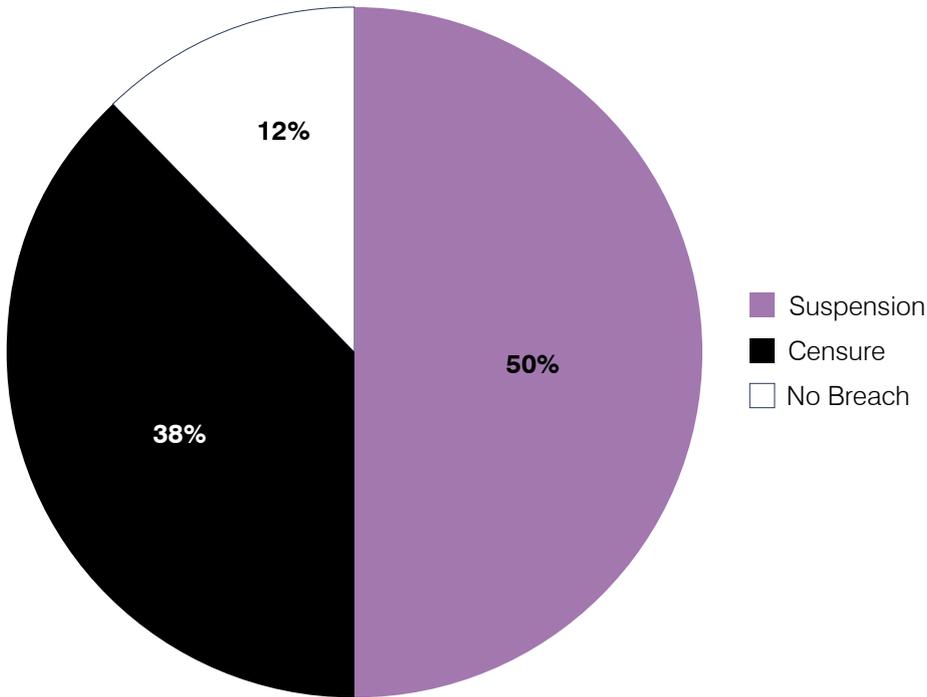


Charts 2.3 and 2.4: Outcomes of references and appeals April 2011-March 2016

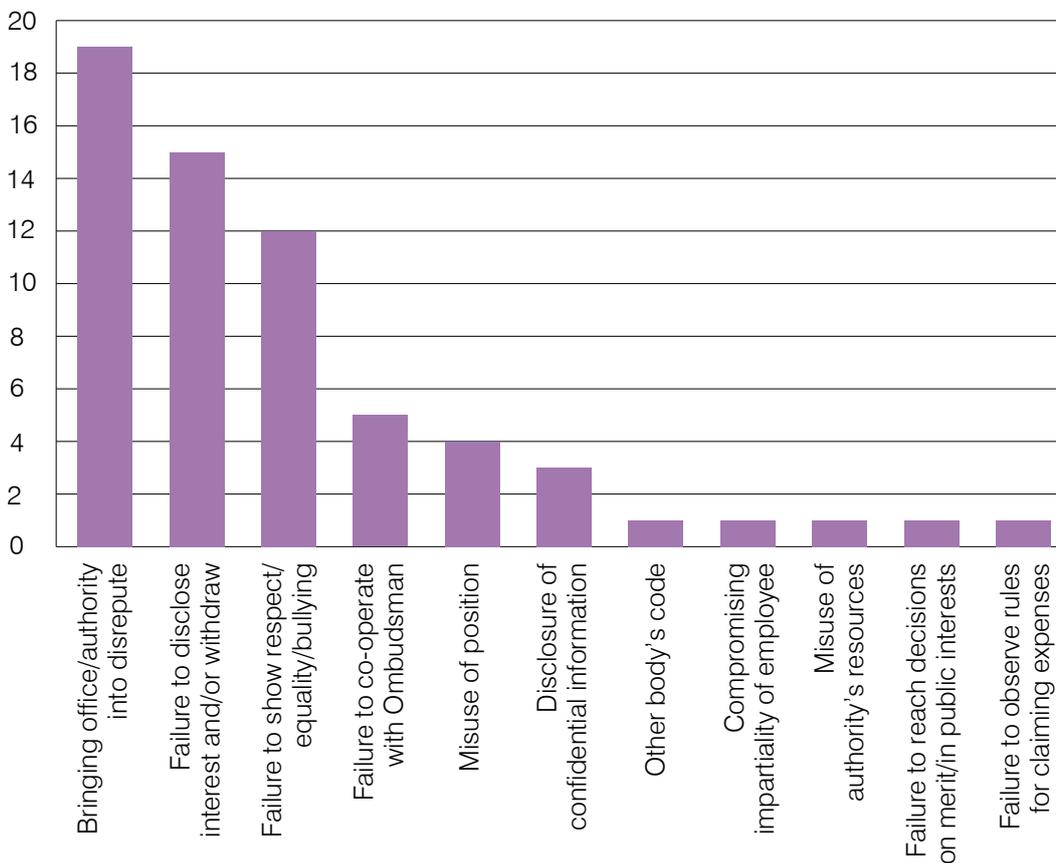
The chart below shows the outcome of references decided by the Adjudication Panel over the last 5 years.



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



Graph 2.5: Percentage of breaches by type April 2011-March 2016



Hearings data

During 2014 – 2016, 2 referrals from the PSOW and 2 appeals against the determination of standard committees proceeded to hearing, resulting in a total of 5 hearing days:

Type	Length (in days)
Referrals	2 hearing days
Appeal	3 hearing days

There were also 4 telephone conferences which took place in relation to these cases.

Onward appeals

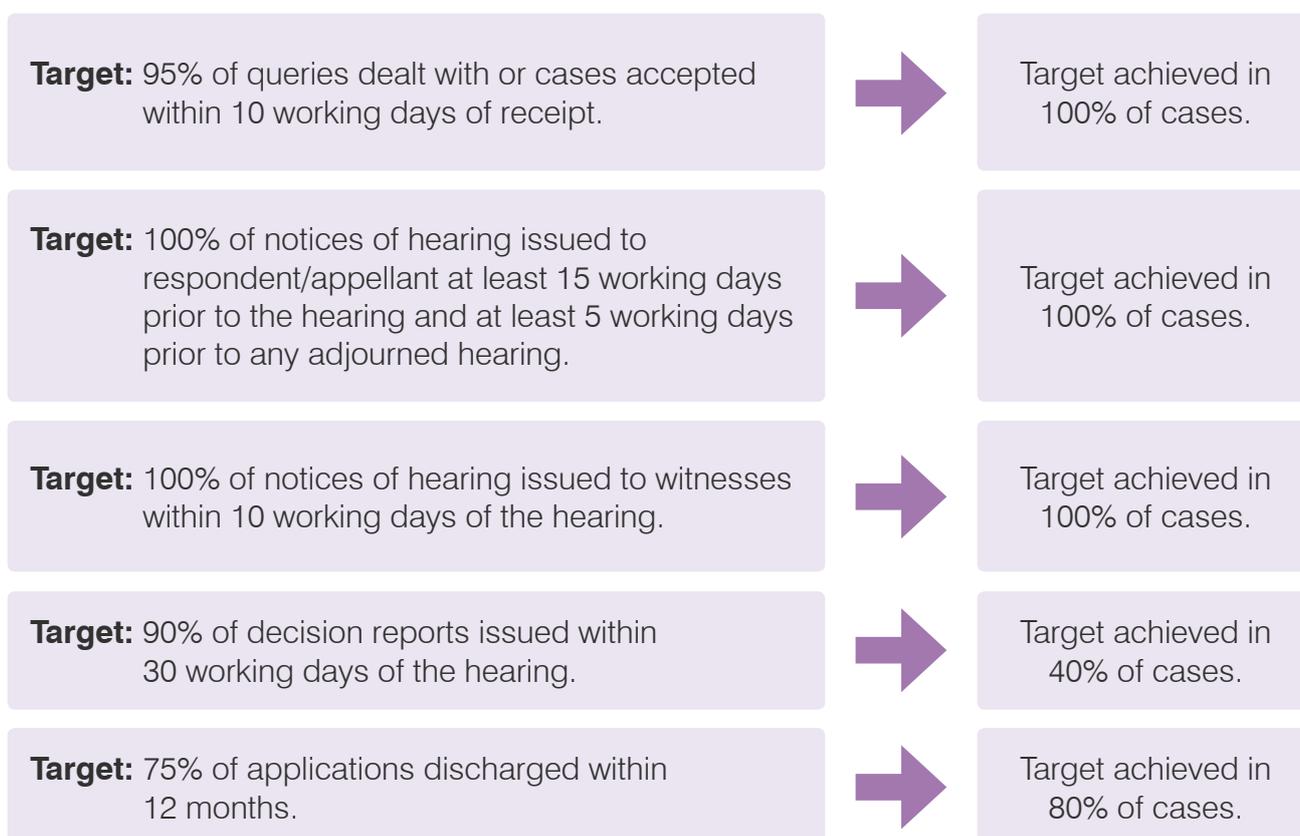
Applications for permission to appeal a decision of a Case Tribunal of Interim Case Tribunal can be made to the High Court on limited grounds. Over the period of this report, no applications for permission have been made.

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). To measure customer satisfaction, we use an indicator that is derived from feedback forms that are issued when a case is complete (see section 4).

Speed of our service 2014-2016



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 tribunal hearings took place resulting from references from the Ombudsman. Summaries of the cases determined by the APW appear below.

APW/002/2014-015/CT

Llanfihangel ar Arth Community Council

The allegation was that the councillor had breached Llanfihangel ar Arth Community Council's Code of Conduct by failing to declare a personal and prejudicial interest at a meeting of the Community Council.

The incident arose when a planning application on land adjacent to a property owned by the councillor was considered by the Community Council, and a secret ballot held to decide whether or not the Council would support or oppose the application.

The Case Tribunal found by unanimous decision that the councillor failed to comply with Llanfihangel ar Arth Community Council's Code of Conduct as follows:

- 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 prejudicial interest in any business of your authority, you must, unless you have obtained a dispensation from your authority's Standards Committee, withdraw from the room, chamber or place where a meeting is considering the business is being held (paragraph 14(1)).

The Case Tribunal concluded by unanimous decision that the councillor should be suspended from acting as a member of Llanfihangel ar Arth Community Council for a period of 3 months.

APW/001/2015-016/CT

Magor with Undy Community Council

The allegation was that the councillor had breached Magor with Undy Community Council's Code of Conduct by not declaring or leaving a meeting where the Community Council considered the remuneration package of the clerk.

The incident arose as the councillor was in a relationship with the clerk, and they married several months later.

The Case Tribunal found by unanimous decision that the councillor failed to comply with Magor with Undy Community 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));
- 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, withdraw from the room, chamber or place where a meeting is considering the business is being held (paragraph 14(1)).

The Case Tribunal concluded by unanimous decision that the councillor should be suspended from acting as a member of Magor with Undy Community Council for a period of 3 months. It also recommended that the councillor undertook further training about the Code of Conduct before returning to office.

Appeals

During the reporting period 2 appeal tribunal hearings took place resulting from appeals by members of decisions by Local Authority Standards Committees. Summaries of the cases determined by the APW appear below.

APW/001/2014-015/AT

Sully and Lavernock Community Council

An appeal was received against the determination of the standards committee that the councillor had breached Sully and Lavernock Community Council's Code of Conduct and should be suspended from office for 6 months and was required to undergo training.

The standards committee had found that the councillor had breached the following paragraphs of the Code of Conduct in emails about another member of the Community Council:

- 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)).

The councillor appealed on the basis that the standards committee had failed to give sufficient weight to the evidence that the emails were sent from a private email address and in his capacity as a private citizen, and ignored the provocation by the member who was the subject of the emails. The councillor also submitted that the sanction imposed was disproportionate.

The Appeal Tribunal found that some of the emails had been sent in a private capacity, but some were official. It also found that some of the emails were political expressions and attracted enhanced protection under Article 10 of the European Convention of Human Rights.

The Appeal Tribunal concluded by unanimous decision that the councillor had not breached Sully and Lavernock Community Council's Code of Conduct and overturned the decision of the standards committee.

An appeal was received against the determination of the standards committee that the councillor had breached the Isle of Anglesey County Council's Code of Conduct and should be suspended from office for 1 month.

The standards committee had found that the councillor had breached the Code of Conduct when communicating with officers of the Council about the sale of a particular piece of land; when the councillor failed to declare a close personal association with the prospective purchaser of the land and when the councillor misused his position as a member to gain an advantage for the prospective purchaser:

The Standards Committee indicated that the following paragraphs of the code of conduct had been breached:

- 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));
- You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest (paragraph 10(1));
- 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 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 personal interest in any business of your authority and you make oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation (paragraph 11(2)(b));
- 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, withdraw from the room, chamber or place where a meeting is considering the business is being held (paragraph 14(1)(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, not seek to influence a decision about that business; not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business (paragraph 14(1)(c-d)).

The councillor appealed on the basis that he did not have a longstanding relationship with the prospective purchaser, and that the sanction of suspension did not properly take into account the harm done to him and his family once the matter was published in the press.

The Appeal Tribunal concluded by unanimous decision that the councillor did have a close association with the prospective purchaser and had breached Isle of Anglesey County Council's Code of Conduct. It referred the matter back to the standards committee with a recommendation that the councillor should be suspended from office for 3 months.

Section 4 – Our Customers

In this section:

- Customer satisfaction survey

Customer satisfaction survey

The APW strives to improve customer service delivery and its aim is to put our customers at the heart of everything we do.

During 2014-2016 the APW distributed a customer satisfaction survey on case completion. The feedback from the survey enables us to gain a better understanding of our customers' needs and gives a valuable insight into what the APW is doing well, as well as highlighting those areas where the APW needs to improve.

We received 2 completed forms during 2014-2016. Of those:

- 100% of completed responses said the APW was prompt to respond;
- 100% of completed responses said the APW was polite and helpful;
- 100% of completed responses said they were satisfied with the information they received;
- 100% of completed responses said they were able to understand the process;
- 100% of completed responses said they found the information in the guidance forms useful; and
- 100% of completed responses said we processed the case efficiently.

Section 5 – Business Priorities

In this section:

- Business priorities for 2016-2017

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 2016-2017

- Plan and deliver an all-members training event and induction for new members;
- Implement a new appraisal system for all members;
- Continue to monitor and update the APW website;
- Deliver an effective and efficient service, meeting key performance indicators and responding to feedback on customer satisfaction surveys.

Section 6 – Expenditure

In this section:

- Expenditure for 2014-2016

Expenditure for 2014-2015

Content	Amount
Members Fees and Expenses for tribunal proceedings*	£12,000
Tribunal events (hearing costs)	£121.36
Total	£12,121.66

* rounded to the nearest £1,000

Expenditure for 2015-2016

Content	Amount
Members Fees and Expenses for tribunal proceedings*	£15,000
Tribunal events (hearing costs)	£6,577.78
Total	£21,577.78