

# Adjudication Panel for Wales

## Annual Report



2003 - 2004



# Foreword

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On 1 October 2002 the National Assembly for Wales appointed the first members of the Adjudication Panel for Wales. The Adjudication Panel is a new body set up to deal with allegations of misconduct against local government members under the new ethical framework established by the Local Government Act 2000.

I was privileged to be appointed as the first President of the Panel, which consists of three legal members, namely Helen Cole, Hywel James and Stewart Sandbrook-Hughes and four lay members, Ian Blair, Cllr Colin Evans, Cllr Christine Jones and Juliet Morris.

I would like to express my gratitude to all members of the Panel who, during their first year of office, have worked with great enthusiasm and dedication in assisting me to set up the Panel and dealing with hearings. They have carried out their responsibilities with dignity and fairness. I would also like to thank Stephen Phipps, the Panel's Registrar, and Carol Webber in the Support Unit for their assistance to the Panel and its tribunals.

One of my responsibilities as President is to produce an annual report on the Panel's activities. This, my first report, covers the first 18 months of our work from October 2002 to April 2004.

I am also charged with ensuring that Panel members are properly trained to undertake their functions. A number of training days have taken place during the period in question, which have enabled Panel members to familiarise themselves with the regulations and procedures that govern the way in which the Panel is permitted to conduct its hearings. I wish to record my thanks to my counterpart at the Adjudication Panel for England, David Laverick. He and his staff have provided us with invaluable assistance during these early days by sharing their experiences and information.

The Council on Tribunals has also provided me with support in setting up a new tribunal. Its reform programme and training material on various aspects of tribunal practice and procedure has enabled us to ensure that our Panel has adopted best practice in the way that it conducts its activities.



I have had very useful meetings with Elwyn Moseley, the Commissioner for Local Administration in Wales (the Local Government Ombudsman) until his retirement in September 2003 and with his successor Adam Peat. I have also met most of the Monitoring Officers of the County and County Borough Councils who, together with local standards committees, have a very important role to play in maintaining the ethical standards of their councils.

The determination of allegations against members who are brought before the Panel and, where appropriate, the application of sanctions against those who breach the code of conduct is clearly the prime function of the Panel. However, I also see the work of the Panel as making an important contribution to the wider aims of the code of conduct and the new ethical framework in raising standards and public confidence in the way that local government conducts its business.

The small number of cases dealt with by the Adjudication Panel in the period covered by this report may, in part, reflect a degree of familiarisation with the new ethical framework. However, I am optimistic that it also indicates that elected and co-opted members in Wales recognise the importance of, and aspire to, high standards of propriety in public office.

A handwritten signature in black ink that reads "J Peter Davies". The signature is written in a cursive style with a large initial 'J'.

J PETER DAVIES

President

July 2004



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# 1. Introduction/Background

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## Local Government Act 2000

Part III of the Local Government Act 2000 required the National Assembly for Wales to put in place a new framework to promote observance of consistent standards of conduct by local government members in Wales. The framework was developed as a result of the third report of the Committee on Standards in Public Life, chaired by Lord Nolan, and published in July 1997. On 21 June 2001, the National Assembly made the first set of regulations to put that framework in place.

## Code of Conduct

The basis of the ethical framework is a statutory code of conduct. All parts of local government (with the exception of police authorities) – county, county borough, town and community councils, fire authorities and national park authorities - had until 21 December 2001 to adopt a code of conduct encompassing the provisions of a Model Code of Conduct prescribed by the National Assembly. All local government members, elected and co-opted, had to give an undertaking to abide by the code which their council or authority had adopted.

The Model Code of Conduct automatically applied to any council or authority that had not adopted its own code by 21 December 2001 and their members had to abide by the Model Code from that date.

Police authorities in Wales, as in England, are subject to a model code of conduct prescribed by the UK Government.

## Role of the Commission for Local Administration in Wales/Standards Committees

Anyone may make a written allegation to the Commission for Local Administration in Wales that an elected or co-opted member has breached an authority's code of



conduct. The Local Government Act 2000 gave the Commissioner powers to consider and investigate such allegations.

The Commissioner may conclude upon investigation that there was no breach of the code or that no further action needs to be taken. If he finds otherwise, he will produce a report on the completed investigation and send it either to the Monitoring Officer of the relevant authority or to the President of the Adjudication Panel.

If the Commissioner refers the matter to the Monitoring Officer, the relevant authority's Standards Committee will consider the report of the investigation. They will also consider any representations from the person who is the subject of the investigation and will then decide whether or not any penalty should be imposed. This could range from censure to suspension for up to six months.

The Commissioner may cease an investigation at any time and refer the matters subject to the investigation to the Monitoring Officer of the relevant authority concerned to undertake an investigation and report to the Standards Committee.

## Role of the Adjudication Panel for Wales

The Adjudication Panel has two statutory functions:

- to form case or interim case tribunals to consider reports from the Commission for Local Administration in Wales, following the investigation of allegations that a member had failed to comply with the relevant authority's code of conduct; and
- to consider appeals from members against the decisions of local standards committees.

### Case and Interim Case Tribunals

Where the Commissioner for Local Administration sends a report to the President of the Adjudication Panel, a "case tribunal" formed from the Panel will be convened to consider the report, to receive evidence and to determine whether there has been a breach of the code of conduct.



If the tribunal determines that a failure to comply with an authority's code of conduct has occurred, it has powers to suspend, or partially suspend, a member for up to one year; or it can disqualify a member for up to five years. Where a case tribunal decides that a person has failed to comply with an authority's code of conduct, that person may appeal to the High Court against that decision, or any decision of the tribunal as regards the sanction to be applied under section 79 of the Local Government Act 2000.

Where the Commissioner considers it necessary in the public interest, he may make an interim report to the President of the Adjudication Panel recommending that a member be suspended while an investigation is ongoing. An interim case tribunal will decide whether the member should be suspended or partially suspended for up to six months.

### Appeal Tribunals

Where the Commissioner has referred the matter to the monitoring officer and the standards committee has determined that there has been a failure to comply with the code of conduct, the member concerned has a right of appeal to the Adjudication Panel. The appeal tribunal may endorse the penalty set by the standards committee, or refer it back to the committee with a recommendation that a different penalty be imposed. The appeal tribunal can also overturn the determination of a standards committee that a member has breached the code of conduct.





## 2. Members of the Adjudication Panel for Wales

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The National Assembly appointed the members of the Panel for a period of five years with effect from 1 October 2002. The Panel members have a wide range of knowledge and experience. They are located around Wales which means that, providing there is no conflict of interest, members can be appointed to tribunals on a geographical basis.

The President, the legal members and one of the lay members are Welsh speakers.



The President of the Adjudication Panel, **Mr J Peter Davies**, runs his own legal practice in Cardiff specialising in civil and commercial litigation and, in particular, regulatory matters. He is a deputy District Judge and chair of the Solicitors Disciplinary Tribunal.



**Mr Stewert Sandbrook-Hughes** is a barrister in Swansea and is also an adjudicator for the National Parking Adjudication Service.



**Mr Hywel James** is a partner with James & Bulteel in Cardiff specialising in litigation and in professional negligence in particular.



**Mrs Helen Cole** is a partner in private practice in Newcastle Emlyn. She is a member of the local National Society for the Prevention of Cruelty to Children.



**Mr Ian Blair** is a part time civil engineering consultant. He was lately County Surveyor with Powys County Council and has been an invited lecturer for the University of Wales, Aberystwyth.





**Cllr Colin Evans** is a Labour councillor with Carmarthenshire County Council and is Chairman of the Council's Environment Scrutiny Committee. He is also a councillor with Cwmamman Town Council.



**Cllr Christine Jones** is a Liberal Democrat member of Llandudno Town Council.



**Ms Juliet Morris** is a Policy Officer with the Local Government Information Unit and has previously worked in the Cardiff Law Centre and the National Association of Citizen's Advice Bureaux in Wales.



## 3. Allegations of Misconduct

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### Summary of allegations received by the Commission for Local Administration in Wales

In 2003-2004, the Commission for Local Administration in Wales received 183 allegations of breaches of the code of conduct, of which 98 allegations were not accepted for investigation.

Of the 85 allegations accepted for investigation, the Commission decided that in 26 cases there had been no breach of the code. Only 2 cases were ultimately referred to the Adjudication Panel for determination. These are summarised below.

### Summary of Case Tribunals

#### APW/001/2003/CT - Flintshire County Council

The referral from the Commissioner related to allegations that the councillor had breached the code of conduct of the county council and the community council of which she was a member, having committed a criminal offence by dishonestly securing remission of the whole, or part, of an existing council tax liability.

The councillor had pleaded guilty to the charge and had been convicted at Mold Magistrates' Court and was fined £125 plus costs.

A hearing was held by a case tribunal drawn from Panel members. The case tribunal was satisfied that there had been a deliberate attempt by the councillor to deceive the county council by falsely representing her financial position. The case tribunal found, by her conviction at Mold Magistrates' Court and circumstances surrounding her application for Council Tax benefit, the councillor had failed to comply with paragraph 6(1)(a) of her councils' code of conduct, namely:

*Members must not in their official capacity or otherwise, commit a criminal offence or cause one to be committed.*



The case tribunal considered all the facts of the case and in particular gave credit to the councillor for her co-operation with the tribunal, to the written testimonials and to her length of service and commitment to the electorate.

However, having regard to all the circumstances, the case tribunal considered that the breach of the code of conduct was a most serious one. The tribunal concluded by unanimous decision that the councillor should be disqualified for 2 years from being or becoming a member of the relevant authorities concerned, or of any other relevant authority.

### APW/002/2003/CT - Taffs Well Community Council

The referral from the Commissioner related to allegations that the councillor had breached the council's code of conduct by committing the criminal offences of cultivating cannabis plants and of possessing cannabis resin.

The councillor was convicted at Cardiff Crown Court on 1 May 2003 of cultivation of cannabis and possession of cannabis contrary to the Misuse of Drugs Act 1971.

The councillor had a previous conviction at the same Crown Court on 14 May 1999 for cultivation of cannabis.

With the councillor's agreement, the case tribunal determined its adjudication by way of written representations. The case tribunal considered all the facts of the case and, in particular, gave credit to the councillor for his co-operation with the tribunal and to the written testimonials submitted.

Having regard to all the circumstances, the tribunal considered that the breach of the code was serious. The convictions at Cardiff Crown Court were aggravated by the fact that the councillor had a previous conviction for a similar type of offence.

However, the tribunal took into account that the drug in each offence was cannabis and of a small quantity for his personal use. The tribunal also took account of the sentence imposed by the Crown Court. The tribunal also had regard to the mitigation furnished by the councillor.

The tribunal concluded by unanimous decision that the councillor should be suspended for 6 months from acting as a member of Taffs Well Community Council.



## Summary of Appeal Tribunals

The Panel received one appeal against the determination of a local standards committee in the period covered by this report.

### APW/003/2003/A - Monmouthshire County Council

An appeal was received against the determination of Monmouthshire County Council's Standards Committee that the councillor had breached the authority's code of conduct and should be suspended for a period of one calendar month. The allegations were that the councillor had:

- a. failed to show respect and consideration for others;
- b. behaved in such a way as to compromise, or be likely to compromise, the impartiality of the council's employees;
- c. disclosed information given in confidence without the express consent of the person authorised to give such consent;
- d. behaved in a manner which could be reasonably regarded as bringing the office of member or the council into disrepute.

During his investigation, the Commissioner found no evidence to support allegation c. The appeal tribunal considered all the facts of the case and took into account the councillor's length of service, the written character references and his written submissions, including those presented on the day. Whilst not doubting the councillor's integrity, the tribunal considered the councillor's behaviour had been wholly unacceptable and all the more so because of his length of service and his standing in the community.

The appeal tribunal concluded by unanimous decision to uphold the determination of the standards committee that the councillor had breached Monmouthshire County Council's Code of Conduct. The tribunal further decided to refer the matter back to the standards committee with a recommendation that the councillor should be suspended from acting as a member of the authority for a period of 6 months.

Full written decision reports on these cases can be found on the Adjudication Panel's web-site ([www.adjudicationpanelwales.org.uk](http://www.adjudicationpanelwales.org.uk)).



## 4. Member Training and Development

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Considerable emphasis has been placed on ensuring that Panel members are fully equipped to fulfil their roles on tribunals, consistent with the 'Competence Framework for Chairmen and Members of Tribunals' published by the Judicial Studies Board in October 2002. The Panel has a policy of continuous improvement and, to ensure that training programmes are relevant, members are asked to provide feedback on the courses they attend.

### Panel Training

Members met on four occasions for training and general familiarisation and team development in the period of this report.

The first training seminar was held on 18 and 19 March 2003. This was the first time the members of the Panel had met one another since their appointment to the Panel. It was also an opportunity for them to meet members of the Panel Support Team.

This first course was intensive and covered a wide range of topics. It began with a talk from Dianne Bevan who, before her appointment as Deputy Clerk to the National Assembly, had been Director of Legal Services and Monitoring Officer at the City and County of Cardiff. Dianne shared with members her perspective of the practical implications of the model code of conduct and the role of the monitoring officer.

Elwyn Moseley gave valuable insight to the role of the Commissioner for Local Administration in Wales in dealing with allegations of misconduct. There were also interesting and informative sessions by Yvette Genn from the Judicial Studies Board, on equal treatment and avoiding discrimination at tribunals, and by Dr David Miers, Professor of Law and Deputy Head at Cardiff Law School, who provided an overview of the Human Rights Act 1998.

Members have also undertaken a wide range of practical training and development and in this have benefited from the experience and expertise of Michael Woolley



who, until his retirement in August 2001, was the Senior Training Adviser at the Judicial Studies Board. Michael has taken the members through the range of skills that are necessary for them to function as a tribunal.

## Judicial Studies Board

As already indicated, all members have participated in training based on the competence framework developed by the Judicial Studies Board, which sets out the generic skills, knowledge and behavioural attributes needed to perform effectively as tribunal members. In addition, all legal members of the Panel attended a 3 day training course run by the Judicial Studies Board for those acting as chairmen/chairwomen of tribunals.

## Joint Training

Following tripartite discussions with David Laverick, President of the Adjudication Panel for England and Lorne Crerar, Convener of the Standards Commission for Scotland, it was agreed to hold joint training for panel members to facilitate the sharing of knowledge and experience of the different ethical frameworks in each country. The first such event was arranged to take place in May 2004.



## 5. Overview of Procedures

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The work of the Adjudication Panel is governed by Part III of the Local Government Act 2000 and subordinate legislation made by the National Assembly for Wales and the UK Government (the latter in respect of police authorities).

The overriding aim of the Adjudication Panel is to ensure that all parties are able to have their cases presented and to have them considered as fully and fairly as possible.

Tribunals will normally comprise a legally qualified chairperson, plus two others. This may be varied at the President's discretion.

Tribunal hearings will normally be held in public except where the tribunal considers that publicity would prejudice the interests of justice, or where the respondent agrees that the allegations may be dealt with by way of written representations.

Hearing arrangements take account of any special needs of those attending eg wheelchair access, interpreter, hearing assistance.

A simultaneous translation service is provided for those who wish a tribunal hearing to be conducted in Welsh and all tribunal chairpersons are Welsh speaking.

The person who is the subject of the allegations is entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal on matters pertinent to allegations under consideration.

Details of tribunal hearings and their outcome are published on the Panel's web-site and in the local press, as appropriate.

There is a right of appeal under sections 78(10) and 79(15) of the Local Government Act 2000, as appropriate, against the decisions of interim case tribunals and case tribunals established by the Adjudication Panel. There is no right of appeal against the decisions of appeal tribunals, but, as a public body, the Adjudication Panel and its tribunals may also be subject to judicial review where appropriate.

Further information on tribunal procedures can be found on the Adjudication Panel's web-site ([www.adjudicationpanelwales.org.uk](http://www.adjudicationpanelwales.org.uk)).





## 6. Support Unit

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The Panel is supported by:

Stephen Phipps, Registrar to the Adjudication Panel.  
Carol Webber, Adjudication Panel Support Unit

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