

Adjudication Panel for Wales

Annual Report



2005 - 2006

Foreword

This is my second formal report, covering the 2005-06 financial year, on the activities of the Adjudication Panel for Wales since my appointment as President. The 2004-05 financial year was quiet in terms of cases, so last year I brought you up to date on the Panel's work by means of a letter.

There is no statutory requirement for me to produce a formal annual report but, since this last financial year has been a busier one for the Panel, I have decided to produce a more comprehensive report.

Since the beginning of May 2005 the Panel received 7 referrals from the Public Services Ombudsman for Wales and 6 appeals against the determinations of standards committees. A summary of those cases that have been determined can be found at Section 3 of this Report.

Continued training and development has also been an important part of the Panel's activities over the last 12 months. In June 2005 Panel members attended the Council on Tribunals Conference in Cardiff. The conference theme was Advancing Administrative Justice in Wales, which entailed an initial look at the potential future direction of tribunals in Wales in light of the UK Government's tribunal reform programme.

In September, Panel members once again joined their counterparts in the Adjudication Panel for England and the Standards Commission for Scotland for a joint training seminar in Warwick. This enabled members to consider common issues and to share experiences across the jurisdictions.

An Adjudication Panel training event was held in March where members were able to hone their skills and to review our procedures in light of members' increasing experience of sitting on tribunals. In addition, Adam Peat, the Public Services Ombudsman for Wales, joined us to give an update on the number and nature of alleged breaches of the code that he has received.



It has been a pleasure to work with the other members of the Panel in determining procedures and discussing issues, which arise from our cases. I and the other members express our thanks to our Registrar Stephen Phipps and Carol Webber in the Support Unit for their assistance throughout the year.

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 2006



Contents

1. Legislative Background

- Local Government Act 2000
- Code of Conduct
- Role of the Public Services Ombudsman for Wales
- Role of the Adjudication Panel for Wales

2. Members of the Adjudication Panel for Wales

3. Allegations of Misconduct

- Summary of allegations received from the Public Services Ombudsman for Wales
- Summary of Case Tribunals
- Summary of Appeal Tribunals

4. Overview of Procedures

5. Support Unit



1. Legislative Background

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. 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 in Wales (with the exception of police authorities) – i.e. county and county borough councils, community councils, fire and national park authorities - are required 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 must give an undertaking to abide by the code which their council or authority has adopted.

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

Role of the Public Services Ombudsman for Wales/Standards Committees

Anyone may make a written allegation to the Public Services Ombudsman for Wales that an elected or co-opted member has breached an authority's code of conduct. The Local Government Act 2000 gave the Ombudsman powers to consider and investigate such allegations.

The Ombudsman has discretion whether to investigate an allegation and may cease an investigation at any time. He may also refer allegations to the monitoring officer

of the relevant authority concerned to undertake an investigation and to report to the local standards committee.

The Ombudsman 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 concerned, or to the President of the Adjudication Panel for Wales.

If the Ombudsman refers the matter to the monitoring officer, the relevant authority's standards committee will consider the report of the investigation. The committee will also consider any representations from the person who is the subject of the investigation and will decide whether or not there has been a breach and, if so, the penalty that should be imposed. This could range from censure to suspension for up to six months.

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 Public Services Ombudsman for Wales, following the investigation of allegations that a member has failed to comply with the relevant authority's code of conduct;
- to consider appeals from members against the decisions of local standards committees.

Case and Interim Case Tribunals

Where the Ombudsman 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 penalty to be applied under section 79 of the Local Government Act 2000.

Where the Ombudsman 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 Ombudsman 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 the matter 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

Members were appointed to the Adjudication Panel on 1 October 2002 for a period of five years. The Panel members have a wide range of relevant 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 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 Cwmaman Town Council.



Cllr Christine Jones is a Liberal Democrat member of Llandudno Town Council. She is also a member of the Conwy Community Health Council.



Ms Juliet Morris is a Policy Officer with the Local Government Information Unit and freelance social policy researcher for organisations including the Wales Consumer Council. Previously she worked in the independent advice sector in Wales.



3. Allegations of Misconduct

The Public Services Ombudsman for Wales referred seven cases to the Panel during the reporting period. The two cases that were determined by a case tribunal in the period covered by this report are summarised below.

Summary of Case Tribunals

APW/001/2005/CT - Caerphilly County Borough Council

The referral from the Ombudsman related to allegations that the councillor had breached the council's code of conduct by failing to declare an interest; by failing to take decisions objectively and by making unauthorised disclosures.

The councillor was a member of the council's adoption panel. The alleged breaches of the code were in connection with two applications before the adoption panel.

A hearing by a case tribunal was held in private, as it was considered essential to protect the identity of the children who were subject to the adoption procedure in the case.

The case tribunal found by unanimous decision that the councillor did not fail to comply with paragraph 8(a) of the authority's code of conduct, in that he did not fail to reach decisions on the basis of the merits of the circumstances involved and in the public interest.

In relation to the failure to declare an interest, the councillor contended that while he had previously worked with the adoption applicant's father and was acquainted with both parents, they were not close friends. He had discussed the situation with the chairperson of the adoption panel prior to a meeting and had been told that he did not need to declare an interest.

The case tribunal found that comments made by the councillor at a meeting of the adoption panel established a sufficiently close friendship with the applicant's parents that he should have declared an interest. The tribunal accepted that he



had discussed the matter with the chairperson of the adoption panel, but noted that he had not approached the authority's monitoring officer for advice, in accordance with paragraph 20 of the code. The tribunal held that a declaration of interest was the personal responsibility of a member. It viewed the circumstances of the failure to declare an interest as being unfortunate rather than deliberate.

The tribunal regarded the disclosure of confidential information relating to the adoption panel to a third party as an extremely serious matter, which could result in a disqualification. The councillor accepted that he had passed on confidential information, but in the belief that the third party was already aware of the information from another source. The case tribunal had regard to the distress caused by the disclosure, but gave full credit to the councillor's contrition, co-operation and the isolated nature of the disclosures. The tribunal did not believe that the councillor had acted maliciously and had regard to his long years of service.

The tribunal concluded by unanimous decision that the councillor should be suspended for 6 months from acting as a member of Caerphilly County Borough Council.

In light of its findings, and in exercise of its powers under section 80 of the Local Government Act 2000, the tribunal recommended that the local authority should remind its members that they must exercise personal responsibility in deciding whether they have an interest that should be declared and to seek advice from the authority's monitoring officer.

The tribunal also recommended that all panels and committees of which councillors are members should be reminded that any discussion, whether informal or not, as to a declaration of interest should be recorded in the minutes. Following concerns expressed by the authority's monitoring officer, it was subsequently agreed that, as a matter of good practice, where a request for advice is made at a meeting in public, it should be recorded in the minutes. However, where a request for advice was made in private on a personal and confidential basis, the monitoring officer should retain a written record. This would then be made available as necessary to inform any subsequent investigation of alleged misconduct.

APW/002/2005/CT - Cardiff County Council

The referral from the Ombudsman related to allegations that a former councillor had breached the council's code of conduct by committing a criminal offence of assault and by bringing the office of member and the council into disrepute.

The former councillor had pleaded not guilty before Cardiff Magistrate's Court, but was convicted of assault and was given a twelve month conditional discharge. He was also ordered to pay £75 compensation and Crown Prosecution Service costs of £150.

The tribunal considered that any criminal conviction involving assault proved against a councillor was extremely serious and would usually warrant disqualification or suspension. The tribunal noted that the assault took place at the councillor's own place of business and was unrelated to his role as a councillor. The councillor did not stand for re-election at the local elections in June 2004 as a consequence of his conviction.

The tribunal took into account the fact that the councillor had admitted his breaches of the code of conduct, he had retired from public office and that he had no intention of seeking re-election or further public office in local government.

The tribunal considered that in the wholly exceptional circumstances of the case, the nature of the breaches and the councillor's mitigation, that neither a suspension nor a disqualification was appropriate. The tribunal concluded by unanimous decision that the former councillor should be reprimanded.

Summary of Appeal Tribunals

The Panel received 6 appeals against the determination of a local standards committee. One appeal was withdrawn and one was ruled out of time. Two of the appeals were determined during the period covered by this report and are summarised below.



APW/003/2005/A - Dunvant Community Council

An appeal was received against the determination of the City and County of Swansea Community Council Standards Sub-Committee that the councillor had breached Dunvant Community Council's code of conduct and should be suspended for 3 months and 4 months, to run concurrently. The allegations were that the councillor had:

- a. failed to declare an interest in the up-keep of an access way at meetings of the community council;
- b. failed to have regard to the decision of the Community Council Standards Sub-Committee to refuse her a dispensation to speak and vote on the matter.

At the appeal hearing, the councillor contended that while she had a personal interest, the nature of the interest was not such that it required her to withdraw from consideration of the matter. She also maintained that the council had deferred consideration of the matter and there had not, therefore, been a substantive discussion.

The appeal tribunal found that a member of the public might reasonably conclude that the fact that the councillor's daughter lived in close proximity to the access way would significantly impact on her ability to act purely on the merits of the case. The appeal tribunal considered that the councillor's application for a dispensation to speak on the matter was a tacit admission of such an interest. The appeal tribunal accepted that there had been no substantive discussion of the access way, but concluded that this was irrelevant under the terms of paragraph 16(3) of the code and the councillor should have declared an interest and withdrawn at the commencement of the discussion.

The appeal tribunal was, however, wholly satisfied that there was no suggestion that the councillor had an ulterior motive or intention to gain. It gave due regard to her long service, good character, commitment and the respect held for her by members of the community. The tribunal accordingly decided by unanimous decision to uphold the determination of the Community Councils Standards Sub-Committee that the councillor had breached paragraphs 16(3) and 20 of the community council's code of conduct. The tribunal further determined to refer the matter back to the standards committee with a recommendation that the councillor should be suspended from being a member or co-opted member of Dunvant Community Council for a period of one month for each breach, to run concurrently.

The Community Councils Standards Sub-Committee subsequently upheld its original determination in respect of the sanction, acting in accordance with its powers under regulation 9(2) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.

APW/004/2005/A - Llangennith, Llanmadoc and Cheriton Community Council

An appeal was received against the decision of the City and County of Swansea Community Councils' Standards Sub-Committee that the councillor had breached the community council's code of conduct and should be censured. The allegations were that the councillor had:

- a. declared an interest in an employment tribunal relating to the dismissal of the council clerk at a meeting of the community council, failed to disclose the nature of that interest, not completed the form provided for the purpose and not withdrawn from consideration of the matter;
- b. declared an interest in an application by his nephew to the community council for the grant of an easement, but failed to withdraw from consideration of the matter at a meeting of the council.

The councillor contended that having declared an interest in the matter of the employment tribunal, there had been little opportunity for him to define the nature of the interest because when he indicated that he did not intend to withdraw the meeting was immediately adjourned. He further contended that while he had declared an interest in the application by his nephew it was unnecessary for him to withdraw, as the council had not discussed the application.

The councillor also made a number of assertions about the validity of the conduct of business undertaken by the community council. He maintained that, contrary to information before the tribunal, the council had not formally adopted a code of conduct as required by section 51 of the Local Government Act 2000.

The appeal tribunal was not satisfied that the council had formerly adopted a code of conduct, but found that members of the council were nonetheless governed by the terms of the model code of conduct by virtue of section 51(5) of the Act. The tribunal determined that procedural matters relating to the proper conduct of business by the council were not within its remit and had no bearing on its adjudication.



The appeal tribunal found that the councillor had been given an opportunity to disclose the nature of his interest in matters relating to the employment tribunal, that he should have withdrawn when the matter was to have been discussed and that his failure to do so caused the meeting to be adjourned. The tribunal found that there had been a discussion of the application for an easement from which the councillor should have withdrawn. The tribunal noted, however, that the councillor did not vote on the matter.

The appeal tribunal found by unanimous decision that there was a failure to comply with paragraphs 16(3) and 16(2) of the code of conduct, respectively.

The tribunal upheld the determination of the standards committee that the councillor had breached the code of conduct. The tribunal further determined to endorse the decision of the standards committee that the councillor should be censured in respect of both breaches.



4. Overview of Procedures

The work of the Adjudication Panel for Wales 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. There may be other reasons from time to time for not holding a hearing, or part of a hearing, in public.

Hearings will usually take place locally where suitable accommodation is available. 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).



5. Support Unit

The Panel is supported by:

Stephen Phipps, Registrar to the Adjudication Panel.

Carol Webber, Adjudication Panel Support Unit

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