



## **Tribunal Procedural Guidance Reference from the Public Services Ombudsman for Wales**

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### **Procedures Relating to Consideration by Case Tribunals and Interim Case Tribunals of References from the Public Services Ombudsman for Wales**

**(This note is a guide only to the procedures that will be adopted which may, subject to compliance with the requirements of the relevant legislation, be varied at the discretion of the President of the Panel and/or the Chair of the relevant tribunal.)**

#### **Introduction**

1. The Adjudication Panel for Wales (“the Adjudication Panel”) is an independent body established under Part III the Local Government Act 2000 (“the 2000 Act”). The Adjudication Panel’s role is to form tribunals to consider whether elected members or co-opted members of county, county borough and community councils, fire and national park authorities in Wales (“relevant authorities”) have breached their authority’s statutory code of conduct.
2. This note provides information on the procedures of case and interim tribunals. A case tribunal will be established to consider a reference from the Public Services Ombudsman for Wales (“the Ombudsman”) under section 71(3) of the Act. An interim case tribunal will be established to consider a reference from the Ombudsman under section 72(4) of the Act. Section 72 of the 2000 Act provides for the Ombudsman to refer an interim report to the Adjudication Panel before the completion of an investigation, where he/she considers it necessary in the public interest.
3. The procedures set out in this note incorporate the provisions of Part III of the Act and ‘The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (SI 2001 No.2288(W.176))’, as amended.

#### **Case Tribunals**

##### **Action Prior to the Hearing**

4. A reference to the Adjudication Panel by the Ombudsman will be made in writing by sending to the President of the Adjudication Panel the report produced in accordance with section 71 of the 2000 Act.

5. The reference will include:
  - a. identifying details (reference number, name and address of the person who is the subject of the investigation, name of the relevant authority, name of the investigating officer and name and address of the original complainant (if applicable));
  - b. the Ombudsman's recital of the facts giving rise to the reference; and
  - c. the Ombudsman's reasoning as to why the facts set out in b. above might be regarded as a failure to comply with the code of conduct of the relevant authority.
6. The Ombudsman is required by section 71(6) of the Act to inform the person who is the subject of the investigation and the person who made the allegation of the outcome of the investigation.
7. The Registrar of the Adjudication Panel will acknowledge receipt of the reference and enter particulars of it into the register held for the purpose. The Registrar will also notify the accused person of the reference. The notification will include:
  - a. the case number entered in the register (which will constitute the title of the adjudication);
  - b. the address to which notices and other communications to the tribunal should be sent;
  - c. a copy of the report and any other such information appropriate to the case, including information about the delivery of a reply; and
  - d. a 4-week listing window during which it is intended that the hearing, if any, should take place.
8. The member must send a written response within 21 days of the date that the notification is received from the Registrar (or such later date that the tribunal may allow) stating:
  - a. whether or not he/she intends:
    - (i) to attend or be represented at the tribunal hearing;
    - (ii) to dispute the contents of the report and, if so, on what grounds;
  - b. the name, address and profession of any person who is to represent him/her and whether that address is to be his/her address for service of documents etc. for the purposes of the adjudication; and
  - c. whether he/she wishes the hearing to be conducted in English or Welsh.
9. The tribunal may determine the adjudication without a hearing in the following circumstances:
  - a. if no reply is received by the Registrar from the accused person within the specified time or any extension of time allowed by the tribunal; or
  - b. if the member states that he/she does not intend to attend or to be represented at the hearing; or

- c. the member does not dispute the contents of the report.

### **Written Representations**

10. A member who does not wish to attend or be represented at the hearing or to dispute the contents of the report, may submit written representations to be taken into consideration by the tribunal before they reach a decision on the case. In these circumstances, following its initial consideration of the case papers, the tribunal will send to the member concerned a list of the relevant facts that it will take into account in reaching its decision. The member will be invited to submit any further written representations in light of the facts identified before the tribunal meets.

### **Directions in Preparation for a Hearing**

11. The tribunal may at any time, on the application of a member or of its own motion, give directions to enable the member to prepare for the hearing or to assist the tribunal to determine the issues. An application for directions should be made in writing to the Registrar.
12. The tribunal may give directions requiring any person to provide such particulars as may be reasonably required for the determination of the adjudication. The tribunal may also give directions requiring any person to provide any document or other material which the tribunal requires and which it is in the power of that person to deliver.

### **Varying or Setting Aside Directions**

13. Where a person to whom a direction (including any summons) is addressed had no opportunity of objecting to the direction, he/she may apply to the tribunal to vary it or set it aside. The tribunal will not take such action without first notifying the person who applied for the direction and considering any representations made by him/her.

### **Summoning of Witnesses**

14. The tribunal may require any person (with the exception of the Ombudsman or any member of his/her staff) to attend as a witness at the hearing and to answer any questions or produce any documents or other material in his/her custody or control which relate to any matter in question in the adjudication.
15. Witnesses can give evidence as to the material facts. These witnesses will be heard during the first stage of the hearing. Separately, witnesses can be called to give evidence about the appellant's good character if the tribunal needs to consider what sanction is appropriate, following a finding that there has been a breach of the code of conduct. Such witnesses will be heard in the third stage of the hearing. The tribunal will also accept references and testimonials at this stage.
16. The tribunal decides which witnesses it wishes to hear and can limit the number of witnesses who are called to evidence. The listing direction prepared by the

tribunal will list the witnesses to be heard regarding the material facts. It can also list the witnesses who will give evidence about the appellant's character if the appellant supplies information about such witnesses in APW05 Notice of Appeal.

17. Unless a person accepts a lesser period, any person required to attend in response to a summons will be given at least 14 days notice of the hearing.
18. No person, other than the member, shall be required to attend a hearing or to produce any document in response to a summons, unless the necessary expenses of his/her attendance are paid. Expenses are also paid to those witnesses who attend without a summons.

### **Attendance of the Public Services Ombudsman for Wales**

19. The Ombudsman is entitled to attend, or a tribunal may request (but not require) the Ombudsman to attend, a hearing for the purposes of:
  - Presenting the Ombudsman's report and/or explaining any of the matters in it; and
  - Otherwise playing such part or assisting the tribunal at the hearing as the tribunal considers appropriate.
20. The Ombudsman does not have to attend a hearing personally, but may delegate his attendance to a member, or members, of his staff utilising powers in the Public Services Ombudsman (Wales) Act 2005. The Ombudsman may also be represented at a hearing by a barrister or a solicitor.
21. A request by a tribunal for the Ombudsman to attend must not be unreasonably refused and, if such request is refused, the Ombudsman must give reasons in writing.

### **Role of the Ombudsman at a Hearing**

22. It is for the tribunal to determine the role of the Ombudsman at a hearing in light of the circumstances of the case before it. This may include:
  - Making submissions and producing evidence in support of the findings in the report;
  - Responding to submissions or evidence produced by the respondent or his/her representative in preparation for, or at, the hearing;
  - Questioning those appearing before the tribunal at the hearing i.e. the respondent or any witnesses; and
  - Where a breach of the code of conduct is found, drawing to the tribunal's attention any factors that should be taken into account in reaching its decision on sanction, such as previous breaches or other aggravating factors.

## **Attendance and Role of the Monitoring Officer**

23. The monitoring officer (or a representative) of the relevant authority concerned is entitled to attend a tribunal hearing whether the hearing is held in private or not. In practice, the tribunal will request the attendance of the monitoring officer and will afford him/her opportunities to provide any relevant clarification or information to assist the tribunal.

## **Experts**

24. Where the tribunal considers that any question arises on which it would be desirable to have the assistance of an expert, it may make arrangements for a suitably qualified person to enquire into and report on the matter and, if necessary, to attend the hearing and to give evidence.
25. A copy of the expert's report will be supplied to the member before the hearing or any resumed hearing.

## **Pre-hearing Review**

26. Where it appears to the tribunal that an adjudication would be facilitated by the holding of a pre-hearing review, it may of its own motion or on the application of an accused person, give directions for such a review to be held. The Registrar will give the member at least 14 days notice of the time and place of the review.
27. The review will be held in private, unless the tribunal directs otherwise, and the member may appear and be represented by any other person.
28. On a review:
  - a. the tribunal, or the Registrar, shall give all such directions as appear to be necessary or desirable to secure the just, expeditious and economical conduct of the adjudication;
  - b. the tribunal, or the Registrar, shall endeavour to secure that any accused person makes all such admissions and agreements as ought reasonably to be made in relation to the adjudication; and
  - c. the tribunal may, if the member agrees, determine the adjudication on the documents and statements then before it without any further hearing.

Any direction given by the Registrar under a. and b. above will be in accordance with the directions of the tribunal and may be set aside or varied by the tribunal of its own motion or on the application of the member.

## **Notice of Place and Time of a Tribunal Hearing**

29. The Registrar will fix the date, time and venue for the hearing and, not less than 21 days before that date, will advise the member of the hearing arrangements. It is the Adjudication Panel's practice, where possible, to hold tribunal hearings in the area of the authority of which the accused person is a member. This is to

facilitate the attendance of members of the public and other interested parties who may wish to observe the proceedings.

30. Included with the notice of the hearing will be:
  - a. information and guidance as to attendance at the hearing of witnesses, the bringing of documents and the right of representation by another person; and
  - b. a statement explaining the possible consequences of non-attendance and of the right of the member who has delivered a reply but who does not attend and is not represented to make representations in writing.
31. The tribunal may postpone a hearing and the Registrar will give the member not less than 7 days notice of such a postponement.
32. The tribunal may from time to time adjourn a hearing and, if the time and place of the reconvened hearing are announced before the adjournment takes place, no further notice shall be required.

### **Public Notice of Hearings**

33. A list of all the hearings giving details of the date, time and venue will be available for public inspection at the offices of the Adjudication Panel, by arrangement with the Registrar. Details will also be published on the Adjudication Panel's web-site.

### **Determination of an Adjudication Without a Hearing**

34. If the member (or every member if more than one is accused) agrees in writing, or if the circumstances described in paragraph 9 apply, the tribunal may determine an adjudication, or any particular issue, without a hearing.
35. The provisions of paragraphs 42 (written representations) and 50 (admissibility of evidence of fact) apply in respect of the determination of an adjudication, or any particular issue, without a hearing.

### **Hearings to be Public**

36. All hearings by a tribunal will be held in public except where the tribunal considers that publicity would prejudice the interests of justice or threaten the personal safety/security of any parties involved in a case.
37. The tribunal will require convincing evidence of substantial harm to either the individuals involved in the hearing or to the public interest generally before holding a hearing in private. In many cases, the tribunal may be able to devise practical means of protecting sensitive information or vulnerable people by, for example, taking evidence from a vulnerable witness in private or directing the use of pseudonyms.
38. The following persons will be entitled to attend a hearing whether or not it is in private:

- a. the President and members of the Adjudication Panel for Wales (whether or not they constitute the tribunal convened for the hearing);
  - b. the Ombudsman or his/her representative; and
  - c. the monitoring officer or his/her representative of an authority of which the accused person is a member or co-opted member.
39. The tribunal may permit any other person to attend a hearing which is held in private.
40. The tribunal can exclude from a hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

### **Failure of Parties to Attend a Hearing**

41. If the member fails to attend or be represented at a hearing of which he/she has been notified, the tribunal may:
- a. determine the adjudication in that person's absence, unless it is satisfied that there is good reason for the absence; or
  - b. adjourn the hearing.
42. Before deciding to determine an adjudication in the absence of the member, the tribunal will consider any written representations submitted by that person in response to the notice of the hearing. For this purpose, any reply shall be treated as a representation in writing.
43. Where the member fails to attend a hearing, the tribunal may make an order as to costs and expenses as it thinks fit.

### **Procedure at the Hearing**

44. A tribunal will comprise at least 3 people drawn from the Adjudication Panel. At the beginning of the hearing the Chairperson will explain the order of proceedings that the tribunal proposes to adopt. The procedure to be followed is at the discretion of the tribunal, which will aim to conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the adjudication. The tribunal will, as far as possible, try to avoid formality in its proceedings. Tribunal hearings will be recorded at the tribunal's discretion.
45. The hearing may be conducted in either English or Welsh as directed by the tribunal. The tribunal will take account of and, so far as is reasonably practicable, give effect to any preference stated by the member. In either case an instantaneous translation service will be provided for any person attending and participating at the hearing and who requests it. The tribunal will seek to establish the language preference of each participant prior to the hearing.

46. The member will be entitled to give evidence, call witnesses, question any witnesses and address the tribunal both on the evidence and generally on the subject matter of the adjudication.
47. The tribunal may limit the number of witnesses called by the member where, in the tribunal's opinion, this is conducive to the efficient and judicial hearing of the case. The circumstances in which a tribunal may impose such a limitation include, for example, where it appears to the tribunal that such witnesses will not be presenting significant new evidence or facts, able to give relevant evidence, or where an excessive number of witnesses are being called by the member to give character testimony.
48. Witnesses will not be allowed to sit in the public gallery prior to being called to give evidence by the tribunal. A designated waiting area will be available for witnesses until they are called.
49. Evidence before the tribunal may be given orally or, if the tribunal orders it, by affidavit or written statement. At any stage during the proceedings the tribunal can require the attendance of any person making a written statement.
50. The tribunal can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law. The tribunal shall not refuse to admit any evidence that is admissible at law and is relevant.
51. The member and witnesses will be required to give evidence on oath or affirmation. Witnesses may be released after giving evidence.
52. The usual procedure to be followed is set out in the following paragraphs, but the tribunal is free to depart from that procedure where it considers it appropriate to do so.

### **Preliminary Issues**

53. After the Chairperson has explained the order of proceedings, the tribunal will first seek to resolve any procedural issues or disputes arising from any Listing Direction that may have been given.

### **Stage 1 of the Hearing – Findings of Fact**

54. The tribunal will next seek to resolve any remaining disputes of fact that have been identified in the pre-hearing procedures.
55. Where several matters of fact are in dispute, the tribunal may consider that it is more convenient to consider all such matters together rather than for the hearing to proceed on a fact-by-fact basis.
56. The tribunal may, at its discretion, adjourn to deliberate on the submissions and evidence presented, after which it will announce its findings of fact.



## **Stage 2 of the Hearing - Determination**

57. The tribunal will next seek to establish whether or not the facts do lead to the conclusion that there has been a failure to comply with the relevant authority's code of conduct, if that has not been admitted by the member who is the subject of the Ombudsman's report.
58. The tribunal may, at its discretion, adjourn at this stage to consider whether there has been a failure to comply with the relevant authority's code of conduct.

## **Stage 3 – of the Hearing – Action to be Taken**

59. If the tribunal finds that a failure to comply with the code of conduct has occurred, the Chairperson will enquire of the tribunal clerk whether anything is known of previous breaches by the member concerned. The clerk will provide written evidence of any previous breaches. The Ombudsman will be invited to draw to the tribunal's attention any relevant factors that should be taken into account. The member who is the subject of the report (or his/her representative) will be invited to make submissions on what action the tribunal should take, including any mitigating factors. This may take place at stage 2 if the tribunal has not already adjourned to consider whether or not there has been a failure to comply with the code of conduct.
60. The tribunal will then adjourn to consider whether a failure to comply with the relevant authority's code of conduct warrants a warning as to the member's future conduct, or the suspension or disqualification of the member, before announcing its decision. Where the tribunal decides that a sanction is appropriate, it may:
  - a. suspend or partially suspend the member for a period not exceeding one year or, if shorter, the remainder of the person's term of office; or
  - b. disqualify the member from being, or becoming (whether by election or otherwise), a member of that or any other relevant authority for a period not exceeding five years.

## **Decision of the Tribunal**

61. The decision of a tribunal may be taken by a majority, with the Chairperson having a casting vote should that be needed. The decision will record whether it was unanimous or taken by a majority.
62. The decision may be given orally at the end of the hearing or reserved. In any event, whether there has been a hearing or not, the decision will be recorded in a document recording the tribunal's decision and setting out the reasons for its decision. This document will be signed and dated by the tribunal chairperson. Every document will, as soon as possible, be entered in the register held for the purpose.
63. Where a document refers to evidence that has been heard in private, only a summary of the document will be entered in the register, with such material omitted as the tribunal may direct.

64. The decision of the tribunal will be notified to the standards committee of the relevant authority (and, if the person is no longer a member of that authority, any other relevant authority of which the person is a member), the person who is the subject of the notice, the Ombudsman and the person who made the original allegation (if known). A copy of the notice will also be published in one or more newspapers circulating in the area of the relevant authority concerned.
65. The Adjudication Panel will also publish notice of the decision on its website. Where there is need to preserve the confidentiality of any evidence heard in private, the Panel may make necessary amendments to the text of the notice.

### **Orders for Costs and Expenses**

66. Save for paragraph 41 (failure to attend a hearing), the tribunal will not normally make an order awarding costs and expenses but may make an order against a person if it is of the opinion that that person has acted frivolously or vexatiously or that their conduct has been wholly unreasonable.
67. Where the tribunal is minded to make an order against a person, that person will first be given an opportunity to make representations against the making of the order.
68. An order may require the person against whom it is made to pay another person either a specified sum in respect of the costs and expenses incurred by that other person in connection with the adjudication, or the whole or part of such costs as assessed (if not otherwise agreed).
69. Any costs required by such an order shall be assessed in the county court on the standard basis. Costs and expenses awarded by a tribunal shall, unless set aside and subject to any variation on appeal or review, carry interest from the 14<sup>th</sup> day after the date of the award at the rate for the time being prescribed under section 69 of the County Courts Act 1984.

### **Appeals**

70. Where a tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned, that person may seek the permission of the High Court to appeal against that decision or any suspension, partial suspension or disqualification imposed by the tribunal.

### **Interim Case Tribunals**

71. Where the Ombudsman considers it necessary in the public interest, he/she may produce an interim report before the completion of an investigation. Where this results in the report being referred to the Adjudication Panel, an "Interim Case Tribunal" will be drawn from the Panel to consider it.
72. The procedures of interim case tribunals mirror those of case tribunals, subject to the differences explained below.

## **Action Prior to the Hearing**

73. Where the prima facie evidence is such that it appears to the Ombudsman that:
- a. the member has failed to comply with the code of conduct of the relevant authority concerned;
  - b. that the nature of the failure is likely to lead to disqualification under section 79(4)(b) of the 2000 Act; and
  - c. that it is in the public interest to suspend or partially suspend that person immediately,

the interim report may include a recommendation that the person should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned for a period not exceeding six months or (if shorter) the remainder of the person's term of office.

74. An interim report containing such a recommendation must be referred to the Adjudication Panel for an adjudication by a tribunal.

## **Decisions of Interim Case Tribunals**

75. An interim case tribunal must decide whether the member should or should not be suspended or partially suspended for a period not exceeding six months or (if shorter) the remainder of the person's term of office.
76. The interim case tribunal will give notice of its decision to the person who is the subject of the report and to the monitoring officer of the relevant authority concerned. The tribunal will also take reasonable steps to inform the person who made the allegation that gave rise to the investigation.
77. If the interim case tribunal decides that a member should be suspended or partially suspended the notice must give details of the suspension or partial suspension and specify the date on which the suspension or partial suspension is to begin.
78. The decision of the interim case tribunal does not prevent the Ombudsman continuing with the investigation.
79. A person who is suspended or partially suspended under this section may seek the permission of the High Court to appeal against:
- a. the suspension or partial suspension, or
  - b. the length of the suspension or partial suspension.

**For further information please contact**

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