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Questions to the Ombudsman

Question	
1	The Local Government (Democracy) (Wales) Act 2013 allows for regional Standards Committees to be formed. When the regulations are in place, how does the Ombudsman suggest that this power should be exercised among the North Wales Authorities. What is the current timetable for bringing this power into effect?
Answer	The Ombudsman confirmed that he was very supportive of the North Wales Regional Forum as he considered that it promoted a consistency of approach by Standards Committees of various authorities. He confirmed that his support for the introduction of regional Standards Committee, having been a member of the Williams Commission that had looked at the need to rationalise the number of public bodies.
2	<p>Why do cases accepted by the Ombudsman take so long to investigate?</p> <p>Surely a member who has been accused of misconduct has a reasonable expectation that the allegation(s) be addressed and determined as soon as possible?</p> <p>There is also a public interest for the electorate in knowing as soon as possible whether their democratically elected representative has breached the code of conduct.</p>
Answer	<p>The Ombudsman began his response by confirming that he had only been in post for four months at the time of the meeting.</p> <p>He wanted to put the issue into the context of reducing levels of public spending. The information provided by civil servants to the Williams Commission confirmed that public spending would not return to the level seen in 2011 until approximately 2022 to 2025.</p> <p>There is an ageing population, leading to an increased demand for public services, and is likely that the number of complaints in respect of service delivery will continue to go up. The Ombudsman pointed out that over the past five years the number of complaints to the Ombudsman's office has more than doubled.</p> <p>Complaints about local government services have increased by 117% and complaints about health bodies have increased by 146%.</p> <p>The only area where there has not been a large increase in complaints is in respect of complaints alleging breaches of the Code of Conduct. Local resolution has, in the Ombudsman's view, reduced the number of complaints that are referred to his office.</p> <p>However the Ombudsman recognised that the next three years are all election years and that sadly, the trend is that complaints in respect of the Code of Conduct are likely to increase during election years. The Ombudsman reiterated that he takes a dim view of vexatious complaints and that his office</p>

	<p>does receive complaints which are simply not worthy of investigation.</p> <p>The Ombudsman informed the forum that his office receives £4 million per annum and that this money has to be spent on all of the Ombudsman's activity which includes the investigation of complaints relating to the delivery of public services and that he would have to prioritise those resources. The public may take the view that complaints about some areas of public services activity, for example health, may be more deserving of the Ombudsman's attention.</p> <p>The Ombudsman referred to the data for the previous year and confirmed that 81% of decisions on whether to investigate a complaint were made within 4 weeks. Of those matters that were investigated 85% were completed within 9 months and the remaining 15% between 9 and 12 months. The Ombudsman confirmed that he would seek to improve those timescales where possible but also suggested that the use of local resolution could speed up the process by which matters were dealt with.</p> <p>Of those complaints that were received by the Ombudsman in respect of the Code of Conduct only 19% of complaints in respect of the Code of Conduct that relate to County Councils are actually investigated, and only 1% of those result in a Standards Committee hearing. As far as Town and Community Councils are concerned, 16% of the overall complaints are investigated, with 5% resulting in a hearing.</p> <p>The Ombudsman referred to his desire to introduce a public interest test on top of the current two stage test in determining whether or not an investigation should be conducted.</p> <p>The Ombudsman indicated that 10 years ago 15% of complaints received by his office related to health matters but this figure had now risen to 30%. In his view, decisions to investigate need to take into consideration value for money and the public interest.</p>
3	<p>In a letter to the Ombudsman from the Chairman of the North Wales Standards Committee Forum (NWSCF) it was asked whether:-</p> <ul style="list-style-type: none"> (i) The Ombudsman would be willing to provide sanctions guidance specifically tailored to the needs and powers of standards committees rather, than seeking to apply relevant passages from the Adjudication Panels Guidance; and (ii) The first issue of "The Ombudsman's Code of Conduct Casebook" was considered very useful. However, the NWSCF considers that it would be even more useful if case summaries could be published as and when the cases are concluded, perhaps on the Ombudsman's website? It was asked whether or not this could be accommodated or, alternatively, might the case summaries be published quarterly? <p>Negative responses to each request was received from the former Ombudsman. Is the current Ombudsman willing to re-visit these issues and, if not, could he elaborate on the reasoning behind his predecessor's decision.</p>
Answer	<p>The Ombudsman did not think that he had sufficient resources available to produce a monthly casebook but did confirm that the Ombudsman's office would release details of cases onto its website as soon as they became live.</p> <p>As far as sanctions guidance was concerned, the Ombudsman confirmed that</p>

	<p>he had no plans to issue sanctions guidance. In reply to a supplementary question as to whether or not sanctions guidance would improve consistency, the Ombudsman said that he was not convinced that there was a significant problem with regard to consistency of approach to sanctions, or that Standards Committees would necessarily appreciate being told what to do. He did however confirm that he would ask his officers to look again at whether there was value in producing sanctions guidance.</p>
4	<p>In the Ombudsman's Guidance on Local Resolution Protocols (page 6 of the guidance to the code) it is mentioned that there is an expectation on County Councils to implement local resolution procedures to deal with low level complaints and that: “these mechanisms are initially being adopted by principal councils, but I am supportive of this extending to cover community councils in due course”.</p> <p>This anticipates that County Councils may be expected to operate local resolution protocols in community council disputes? Alternatively, does the Ombudsman envisage that such protocols should be adopted by Community Councils themselves and operated by those Councils? Even if these anticipated arrangements are not “rolled out” does the Ombudsman think that Standards Committees should take an active role in sorting out minor complaints within Town and Community Councils, before they are escalated to the Ombudsman?</p>
Answer	<p>The Ombudsman indicated that although there had been a decrease in the overall level of Code of Conduct complaints received by his office there were still over 200 each year and 50% of these came from Town and Community Councils. At a recent One Voice Wales Conference, people had been sympathetic to Town and Community Council complaints being included in local resolution procedures. Issues were raised by members of the Forum regarding the resources required to operate local resolution procedures for Town and Community Councils. Some members of the Forum also raised the issue of whether or not there would be sufficient resources for clerks of Town and Community Councils to operate a local resolution protocol.</p>
5	<p>It is understood that the Ombudsman will publish new guidance on the code of conduct (particularly in light of Calver). Is the Ombudsman able to give any indication as to when this new guidance will be available and to provide some information regarding the timeframe for consultation on any draft?</p>
Answer	<p>The Ombudsman confirmed that guidance in respect of the Calver judgement had been issued and was contained within the reissued guidance document.</p> <p>The Ombudsman confirmed that he was going to have to change the guidance again in light of a recent judgement and was also looking to simplify the guidance relating to the declaration of interests. In addition he wanted to include a public interest test in the consideration of whether or not to investigate. The Ombudsman will be consulting soon on these issues.</p>
6	<p>Within our Whistleblowing Policy we refer to the Ombudsman as a regulator to whom an employee may speak regarding their concerns. Does the Ombudsman have a role here? If so, what kind of whistleblowing complaints would fall within the Ombudsman's remit? Should this be removed from our policy?</p>
Answer	<p>The Ombudsman pointed out that he was not a regulator. He did however point out that he understood, in particular in relation to Code of Conduct issues, why people may want to raise issues with him in that way and he would not want to stop people raising such issues.</p>
7	<p>What percentage of complaints received by the Ombudsman, investigated by the Ombudsman, referred by the Ombudsman to a Standards Committee/Adjudication Panel, are from Community Councils as opposed to</p>

	unitary authorities? The concern is that the public will see the word "Councillor" and be unable to distinguish between County Councillors and Community Councillors.
Answer	The Ombudsman referred to the earlier statistics he had given in respect of the number and make up of complaints to his office. He confirmed that his office would continue to monitor the split between County Councils and Town and Community Councils over the next few years.
8	Where the Ombudsman refers a matter to a Standards Committee for hearing and the Council's own Legal Section is conflicted by the subject matter of the referral, what (if any) are the Ombudsman's views on whom should provide the legal advice to the Standards Committee?
Answer	As far as conflicts of interest were concerned the Ombudsman confirmed it was a matter for each individual to consider and suggested that where everyone within a specific department felt that they were conflicted, then they may turn to their neighbouring authorities for assistance.
9	How does the Ombudsman intend to develop his role in relation to the Code of Conduct? Does he have any new initiatives in mind?
Answer	The Ombudsman confirmed that he had no new initiatives as such to bring forward. He did however confirm that he intended to develop and consult on the public interest test and update his guidance in the light of recent judgements and to simplify the guidance given to members in respect of Code of Conduct.
10	The NWSCF wrote to One Voice Wales earlier this year requesting support for Community Councils in developing the ethical content of their websites when this becomes a statutory requirement (see letter attached). We are yet to receive a response. What advice will the Ombudsman provide to Community Councils on this issue?
Answer	The Ombudsman said that he had no specific advice to give. He hoped that the Forum would receive a response to its correspondence and he would be interested to see it.
11	Will you as the Ombudsman, consider passing more breaches of the Code of Conduct, to the Standards Committees to deal with at a local level.
Answer	<p>The Ombudsman confirmed that he would consider passing more breaches of the Code of Conduct to a local level. The take up on this has been limited, with one case being taken up in 2013 and four cases since April 2014. In response to a supplementary question on whether or not a review should be conducted into the length of sanctions available, the Ombudsman indicated that he did not necessarily believe that the length of sanction was the issue but more the appetite to take investigations on. The Ombudsman confirmed that given the reducing resources available there was a desire to see a more local approach to investigations.</p> <p>The Ombudsman was asked about his views in respect of the public perception of the approach to investigations. There may be occasions where a genuine complaint appears to have no substance but if dismissed out of hand may lead to a public perception of unfairness.</p> <p>The Ombudsman confirmed that public confidence in the democratic process was vital. The Ombudsman confirmed that he was accountable to the National Assembly for Wales for the resources that were at his disposal and the way in which they had been deployed. He pointed out that all of the Standards Committees that he had spoken to took the issue of fairness seriously but there was a need to consider how to deal with vexatious complaints. The Ombudsman considered that there was a need to take a balanced view. The Ombudsman's desire is to maintain capacity to deal with the issues that weigh</p>

	most heavily in the public interest.
12	Whether the Ombudsman has any intention of clarifying paragraph 10 (2) (b) of the Members' Code beyond that contained in the guidance issued in September 2012 (page 27). That guidance indicated that the then Ombudsman would review that guidance in light of any future decisions and case law on the effect of this provision.
Answer	The Ombudsman confirmed that his understanding was that Welsh Government had indicated that it intended to amend the Code of Conduct and remove paragraph 10(2)(b) by regulation once they had introduced the Local Government Democracy Wales Act. The Ombudsman's guidance would be amended following such a change.
13	A complaint is usually made against a member as a member of a particular authority. Consequently any suspension would be from acting as a member of that authority. Often however, the member will also be a member of another relevant authority (e.g. a county councillor who is also a community councillor). This can lead to a situation, where a member is suspended for behaviour which is considered unacceptable for a member of any authority (e.g. conduct that brings the office into disrepute) but he/she is free to continue to act as a member of another authority in the meantime.
Answer	The Ombudsman confirmed that, where appropriate, it would be possible to extend the remit of an investigation to cover another relevant authority as well as the one in respect of which the conflict arose.