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Breaches of the Code of Conduct for Councillors

This briefing note is in response to a request for information from the Environment Committee and considers the sanctions available in both England and Wales in relation to breaches of the code of conduct for councillors.

Introduction

The following briefing note is in response to a request from the Environment Committee on the levels of sanctions available to deal with breaches of the code of conduct for councillors in both England and Wales. Concern has been expressed in relation to sanctions and appeals where it has been suggested that the greater the gravitas and the level of sanction, the stronger the case for an appeals mechanism.

By way of a brief overview, it appears that in England where the power to censure or disqualify a member has been removed, there is no right of appeal against a decision made by a local authority's Monitoring Officer. However in Wales where appeals against a decision can be made to the Adjudication Panel for Wales¹, councillors may face suspension for up to 12 months or even disqualification from office for five years.

¹ Ombudsman for Wales [Code of Conduct for members of local authorities in Wales: Guidance](#) (p.7)

Sanctions provided in England

The powers of the local authority in relation to allegations are for local determination through investigation by the local authority's Monitoring Officer or an independent investigator. According to the understanding of the Office of the Northern Ireland Commissioner for Complaints, the adjudication function, following investigation, is undertaken by a sub-committee of the authority in the following way:

- A sub-committee of the relevant committee (this could be the audit and governance committee or a standards committee) will hold a determination hearing to determine the complaint.
- If it is determined that there has been a failure to comply with the authority's code of conduct, the determining panel has no statutory power to sanction the member, as this power was revoked (from 1 June 2012) by the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.²
- However, a motion to censure may be put to full council or a recommendation made to the member's political group that the member is either removed from committee(s) or not appointed in the future.

Sanctions provided in Wales

In Wales investigations into breaches of the code of conduct are handled by the Public Services Ombudsman for Wales. The Ombudsman provides purely an investigating role, where the imposition of sanctions is a matter for an authority's standards committee in relation to certain levels of sanction or for the Adjudicating panel for Wales (AWP)³ for higher levels of sanctions⁴:

- 1) At standards committee level :

Statutory provisions relating to determination, by standards committees, of alleged breaches of the local government code of conduct are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001⁵. The Regulations⁶ provide for a standards committee, having determined that a member of the authority has failed to comply with the authority's code of conduct, to determine that the member should be

²Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012

<http://www.legislation.gov.uk/ukxi/2012/1463/contents/made>

³ The Adjudicating Panel for Wales is an independent body set up under the Local Government Act 2000. The Panel's role is to form tribunals to consider breaches of a local authority's code of conduct. The APW is a panel chaired by a legal chair that sit when required to hear cases and appeals. Members are from a wide variety of backgrounds including local government and legally qualified solicitors.

The Panel will also hear appeals by members against decisions of their authority's Standards Committee.

<http://wales.gov.uk/apwsubsite/APW-PDC/?lang=en>

⁴ Information received through correspondence with the Commissioner for Complaints Office Northern Ireland (11/02/2014)

⁵ Local Government Investigations Regulations 2001 <http://www.legislation.gov.uk/wsi/2001/2281/regulation/9/made>

⁶ Regulation 9

censured or suspended, or partially suspended, for a period not exceeding six months

2) At the Adjudicating Panel level:

Statutory provisions relating to adjudication by the AWP are set out in Part IV of the Local Government Act 2000. The Act (section 79) provides for a case tribunal established by the AWP, having decided that a member of the authority has failed to comply with the authority's code of conduct, to decide that the member should be suspended, or partially suspended, for a period of not exceeding one year, or to be disqualified for being or becoming a member for a period not exceeding five years.

The APW hears appeals from decisions of standards committees and there is a further right of appeal from a decision of APW to the High Court.⁷

Levels of sanctions imposed in Wales 2002-2012

The Office of the Northern Ireland Commissioner for Complaints has provided data on the levels of sanctions imposed in Wales over a ten year period. The data was provided to the Ombudsman Association Legal Interest Group by the President of the Adjudication Panel for Wales in March 2013.

Note: this data this data has not been widely disseminated and it was agreed the Committee could use it for information purposes only.

In summary the data shows:

- The most common sanction awarded over the 10 years was suspension (this may not exceed 12 months⁸) - 49% for normal Case Tribunals (Fig 1) and 60% for Appeal tribunals (Fig 2).
- The most common type of breach of the code was 'bringing office/authority into disrepute – 27% (Fig 3)
- Only one disqualification for five years was given, and two for three years (Fig 4)

For more up to date examples of cases - refer to the Adjudication Panel for Wales Annual Report 2012-2013 available at <http://wales.gov.uk/apwsubsite/APW-PDC/Publications/apw-annual-report-12-13/?lang=en>

⁷ Information provided by the Commissioner for Complaints Office Northern Ireland (11/02/2014)

⁸ For more information on the different sanctions available see the AWP Sanctions Guidance <http://wales.gov.uk/apwsubsite/APW-PDC/guidance/sanctions/?lang=en>

Figure 1: Case Tribunal decisions October 2002 to March 2012

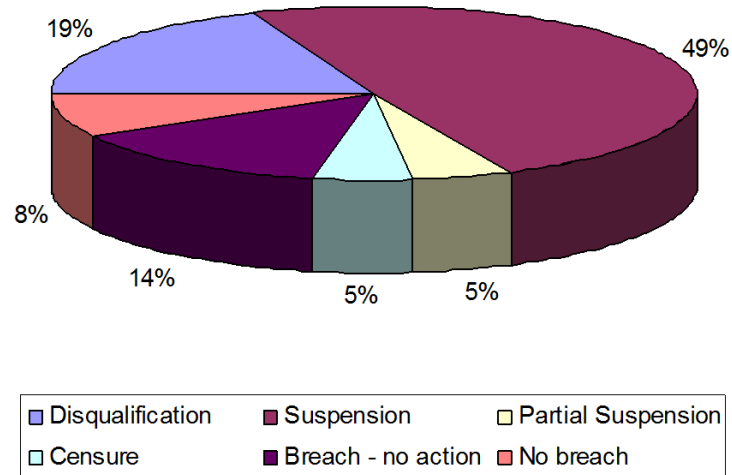


Figure 2: Appeal Tribunal decisions - October 2002 to March 2012

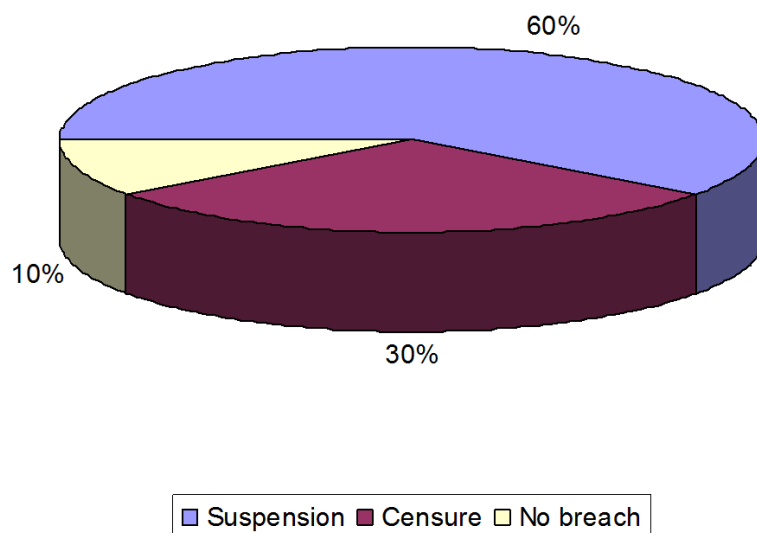
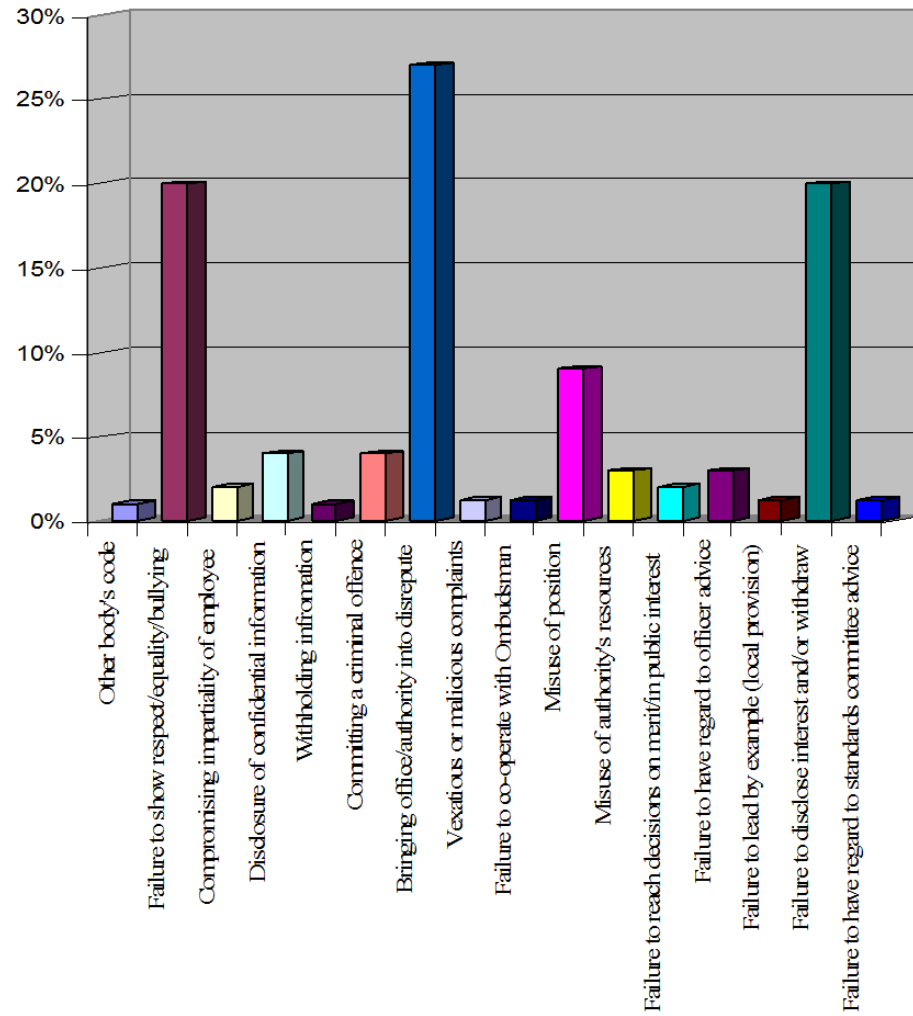


Figure 3: Breaches by type October 2002 - March 2012



**Summary of Sanctions Imposed by Case Tribunals and Appeal Tribunals in the Period
October 2002 to March 2012**

Sanction	Period	No. of Decisions
Disqualification	5 years	1
	3 years	2
	2 years 6 months	1
	2 years	1
	1 year 6 months	1
	1 year	3
Suspension	12 months	7
	9 months	4
	6 months	5
	4 months	1
	3 months	2
	2 months	4
	1 month	3
Partial Suspension	3 months	1
	7 weeks	1
Censure	-	6
Breach – no action	-	5
No Breach	-	4
Withdrawn	-	2