Ombudsman
PUBLIC SERVICES OMBUDSMAN FOR WALES

ANNUAL REPORT 2007/08

The Annual Report 2007/08

of

The Public Services Ombudsman for Wales

Laid before the National Assembly for Wales
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of the Public Services Ombudsman (Wales) Act 2005

Annual Report 2007/08

Foreword by new Ombudsman

I am pleased to have the opportunity to prepare this foreword to Adam Peat's final Annual Report as Public Services Ombudsman for Wales. Adam's work in developing the office and steering it successfully through its first years has provided me with sound foundations for my tenure. I would like to pay thanks to him for his leadership, judgement and sound management.

The report chronicles a rise in demand for the services of the Ombudsman, which reflects his success in making the service ever more accessible to the people of Wales. I intend to build on this work to ensure that the most vulnerable individuals and communities in Wales, who are often most reliant on our public services, feel confident that the Public Services Ombudsman will help them to achieve an objective and fair response to their complaint about the services they receive from listed bodies. The increased volume of complaints has created real challenges for the service during the year, and I will also want to explore ways of further improving the responsiveness of the service in the context of the ever-growing volume of demand.

I am very conscious of the contribution Adam has made to the improvement of public services in Wales and will want to ensure that the office continues to make a contribution in this field. The Public Services Ombudsman has a unique perspective on the provision of public services in Wales, driven from the views of service users who have been dissatisfied with the outcomes they have achieved. Where cases have wider lessons, it is important that these are communicated to service providers so that they can improve service delivery and reduce dissatisfaction in the future.

I am very aware that Adam's success is in large part due to the strong team which he has built, and I am looking forward to working with them to develop and improve the service in the years ahead. In conclusion, I would like to take the opportunity to wish Adam every success for the future.

Peter Tyndall

1 Introduction

This is my second Annual Report as Public Services Ombudsman for Wales.

I was able to report last year that the inaugural year of the office of the Public Services Ombudsman for Wales had gone smoothly and that more people than ever before had used the Ombudsman service in Wales. The past year saw a further significant increase in the number of complaints my office has received - 10% up on last year. However the number of complaints I upheld during the year is little changed on the previous year, which suggests that the upward trend in complaints received is due to increased awareness of the existence of the Ombudsman among members of the public rather than any deterioration in public services.

However, an increase in caseload is not without its challenges for my office. This is particularly so when it comes to the time it takes to conclude cases. There is inevitably a tension between completing cases as quickly as possible and ensuring that investigation is sufficiently thorough. I said in my last annual report that I hoped to see an improvement during 2007-8 in the time taken to deal with the more complex cases, and in particular a reduction in the number of cases taking more than a year to complete. Sadly, due to the increase in workload, that did not happen. Nevertheless, 81% of the cases dealt with during the year were closed within six months.

Whatever practical problems an increase in caseload may bring in the short term, I welcome increased public awareness of the Ombudsman's role. It is important for the credibility of the whole system of public administration that people should know that in the last resort, there is someone wholly independent they can complain to if they feel they have been treated unfairly or unreasonably by a public body. I have been grateful to the National Assembly throughout my time in office for their support and for their appreciation of the ombudsman's role in the good governance of Wales.

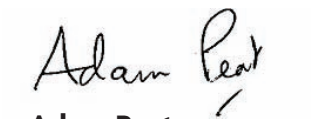
Part of that role is to feed back the lessons learnt from the complaints I investigate to help listed authorities improve both their services and the way in which they respond to citizens' complaints. In March 2008 I issued two complementary sets of guidance to all public bodies in Wales. The Principles of Good Administration and Principles for Remedy are ones that the Parliamentary Ombudsman has issued and which I assisted in developing. I believe that they are relevant to all public bodies and I also believe that they are consistent with the Welsh Assembly Government's initiative, Making the Connections: Building Better Customer Service – Good Practice Guidance

for Public Services. I was pleased to have had the opportunity to continue to contribute to this initiative, particularly in relation to the work on redress.

The majority of the complaints I dealt with during the year, as in previous years, concerned local government. However complaints about the NHS, and working to improve the way in which the NHS responds to patient concerns, also loomed large. Under earlier legislation it was not possible to publish my reports on complaints about NHS bodies. I can now do so where I consider the public interest requires it, and I greatly welcome this increase in transparency, which puts NHS bodies on the same footing as local authorities. I issued two public interest reports this year, both of which attracted considerable attention. The first was a complaint against Health Commission Wales. I found that HCW had acted perversely in declining to fund a particular diagnostic procedure (the cost of which would have come from its own budget) when the alternative procedure would be riskier for the patient and cost the NHS more (but be funded by an NHS Trust budget). Shortly after I issued my report, the Health Minister announced a fundamental review of HCW's role. I gave evidence to that review. In the second of my public interest reports on health service complaints, I found that two NHS trusts and a local health board, who all agreed that specialist equipment should be funded for a severely disabled patient, failed to provide it for three years while they argued which of them should pay for it. I am glad to say that following my report the bodies concerned are working together more effectively to deliver community-based services.

During the year, I was asked to be a member of the Welsh Assembly Government's NHS Putting Things Right Project Board and chair its Investigation and Processes Group. The project aims to develop a system of redress for the less severe instances of clinical negligence which avoids litigation. One aspect of the work of the Investigation and Processes Group has been to consider how the NHS complaints procedure can be integrated with the proposed clinical redress system, and how the NHS complaints system might be streamlined and made more effective.

This is my last Annual Report as Public Services Ombudsman for Wales, as I retire in April 2008. I am grateful to my staff for their commitment and support over past years. I could not have asked for a better team and I wish them all well for the future. I also want to thank my fellow ombudsmen in the United Kingdom whose friendship, advice, and support I have very much valued. I congratulate my successor, Peter Tyndall, on his appointment and wish him well during his term of office.



Adam Peat
Ombudsman

2 My Role as Public Services Ombudsman for Wales

As Public Service Ombudsman for Wales, my primary role is to investigate complaints made by members of the public that they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. Putting that into rather more everyday terms, I am looking to see whether people have been treated unfairly or inconsiderately, or have received a bad service through some fault on the part of the public body providing it.

The bodies in my jurisdiction include local government (both county and community councils); the National Health Service (including GPs and dentists); registered social landlords (housing associations); and the National Assembly for Wales itself (in practice, the Welsh Assembly Government) together with its sponsored bodies.

I expect public bodies to treat people fairly, considerately and efficiently. If I uphold a complaint I will recommend appropriate redress. If I see evidence of a systemic weakness I will also make recommendations which aim to reduce the likelihood of others being similarly affected in future.

My investigations are undertaken in private. Where I publish a report, it is anonymised to protect (as far as possible without compromising the effectiveness of the report) the identity not only of the complainant but also of other individuals involved.

The Public Services Ombudsman (Wales) Act 2005 provides for a two-tier structure for reporting formally on my investigations. Nearly all reports under section 16 of the Act are public interest reports. The body concerned is obliged to give publicity to such a report at its own expense. Where I do not consider the public interest requires a section 16 report (and provided the body concerned has agreed to implement any recommendation I may have made) I can make a report under s.21 of the Act. There is no requirement on the body concerned to publicise s.21 reports, although details of them can be found on my website and copies are normally available from my office on request.

Occasionally, I need to direct that a report should not be made public due to its sensitive nature and the likelihood that those involved could be identified. For technical reasons, such a report is issued under s.16 of the Act, even though it is not a public interest report, and I make a direction under s.17 of the Act. There was one such report this year concerning a social services complaint.

The Public Services Ombudsman (Wales) Act 2005 also gives me the power to do anything which is calculated to facilitate the settlement of a complaint, as well as or instead of investigating it. In the right circumstances, a 'quick fix' without an investigation can be of advantage to both the complainant and the body concerned, so I am pleased that there has been an increased use of it over this past year. An example of such a case is set out below:

Social Services: Merthyr Tydfil County Borough Council

Mrs R complained about the way in which the Council had handled her request for financial assistance when she took into her home her daughter's teenaged friend, who had been seriously assaulted by her father in her own home. Mrs R liaised with the Council, who agreed that the child could stay with her. Mrs R told the Council that the child could stay with her indefinitely, as long as she received financial assistance from the Council. Despite regular contact with the Council in the following months, Mrs R received just £150 financial assistance and (as a single parent with three children of her own) was struggling to cope financially. Mrs R complained to the Ombudsman four months after taking her daughter's friend into her home.

After consideration, I asked one of my officers to telephone the Council; it explained that it had not considered that it had any obligations towards Mrs R in terms of financial assistance as they were treating the case as a 'child in need' as opposed to a 'child in care'. At my request, the Council agreed to look at the case again. The following week, the Council contacted my officer to say that it had agreed a £500 emergency payment for Mrs R and that it had arranged to meet with her the following day to discuss her options and, in particular, whether the situation could be considered a private fostering arrangement which the Council would have a responsibility to fund. The outcome of the meeting was that the Council accepted that it had misunderstood the relationship between Mrs R and the child (mistakenly believing that they were in some way related) and that its staff had given insufficient consideration to this aspect. The Council, therefore, agreed that Mrs R was entitled to a weekly fostering allowance and that it should be backdated to the day that she took the child into her home. A lump sum in excess of £1,000 was therefore paid to Mrs R and arrangements were put in place for weekly payments to be made to her thereafter. Mrs R accepted this settlement.

Complaints that members of local authorities have broken the Code of Conduct

The Public Services Ombudsman for Wales also has the role of investigating complaints that members of local authorities have broken the Code of Conduct. The provisions of Part III of the Local Government Act 2000 apply in this regard, as do the relevant Orders made by the National Assembly for Wales under that Act.

Where I find evidence that a member has significantly breached their authority's code of conduct, I am required to submit a report setting out the evidence either to the authority's standards committee, or (generally in more serious cases) to the President of the Adjudication Panel for Wales. It is for the standards committee or a tribunal to consider the evidence I have found together with any defence put forward by the member concerned and determine whether a breach has occurred and, if so, what penalty if any should be imposed.

My aim for the office of Public Services Ombudsman for Wales

My aim is to provide a first class Ombudsman service to Wales, doing this by:

1. investigating complaints as thoroughly as necessary and as quickly as possible

2. raising awareness of the Ombudsman service and making it easily accessible to potential users

3. using lessons learnt from my investigations to promote good practice and good governance by public bodies

4. ensuring good governance and effective management within my office.

I have borne the above aims in mind as I report in the following sections upon the workload and activities undertaken by my office during 2007/08.

3 Complaints of maladministration and service failure

Overview

As can be seen from the table below, the number of complaints of maladministration or service failure by public bodies has continued to rise. Whilst 2006/07 saw a 10% increase in new cases over 2005/06, this year has seen a further 10% increase over 2006/07. My view as to the reason for the increase remains the same as last year; that is, that there is an increased awareness amongst members of the public of the service that I provide. I do not think the increase in complaints stems from a deterioration in performance by bodies in my jurisdiction. The number of complaints which I have upheld is little changed from last year.

	Total Number of Complaints
Cases carried over from 2005/06	410
Cases reopened in 2006/07	12*
New cases 2006/07	1,294
Total complaints 2006/07	**1,716**
Cases carried over from 2006/07	457
Cases reopened in 2007/08	11*
New cases 2007/08	1,420
Total complaints 2007/08	**1,888**
Cases to be carried forward to 2008/09	**445**

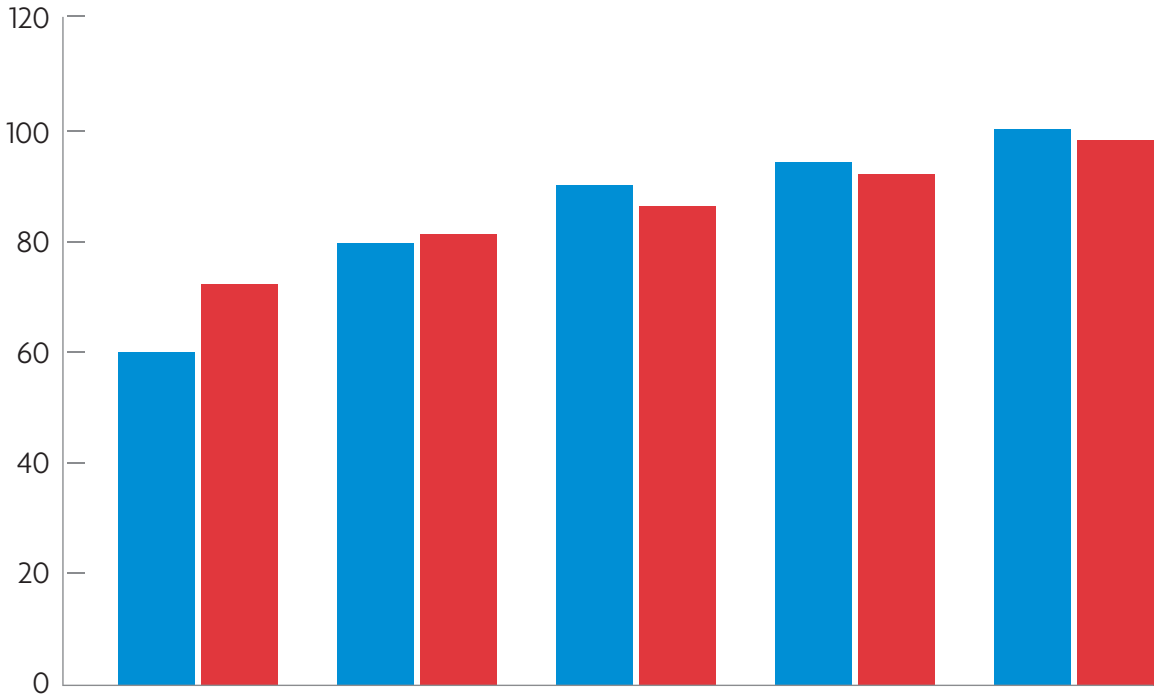
** A small number of cases are reopened from one year to another due to further information having been received from the complainant subsequent to closure.*

In addition to the above, the office also dealt with **1,046 enquiries** during 2007/08, compared with 1,074 during 2006/07. Enquiries are contacts made by potential complainants asking about the service provided, which do not in the end result in a formal complaint being made to me.

One of my strategic aims is to investigate complaints as thoroughly as necessary and as quickly as possible. I am pleased that despite the increase in the number of cases received this year, the improved performance in the number of cases closed during 2007/08 means that fewer cases will be carried forward to 2008/09 than brought forward this year from 2006/07.

I also set targets in my strategic plan for 2006/07 for the time taken to conclude an investigation from the date an effective complaint was received (an effective complaint is one which gives enough information to enable us to assess whether it is eligible for initial investigation). The outcome against these targets are set out in the following chart.

Decision Times for Concluding Public Body Complaint Cases



	Within 3 months	Within 6 months	Within 9 months	Within 12 months	Within 18 months
Target %	60	80	90	95	100
Outcome %	72	81	86	92	98

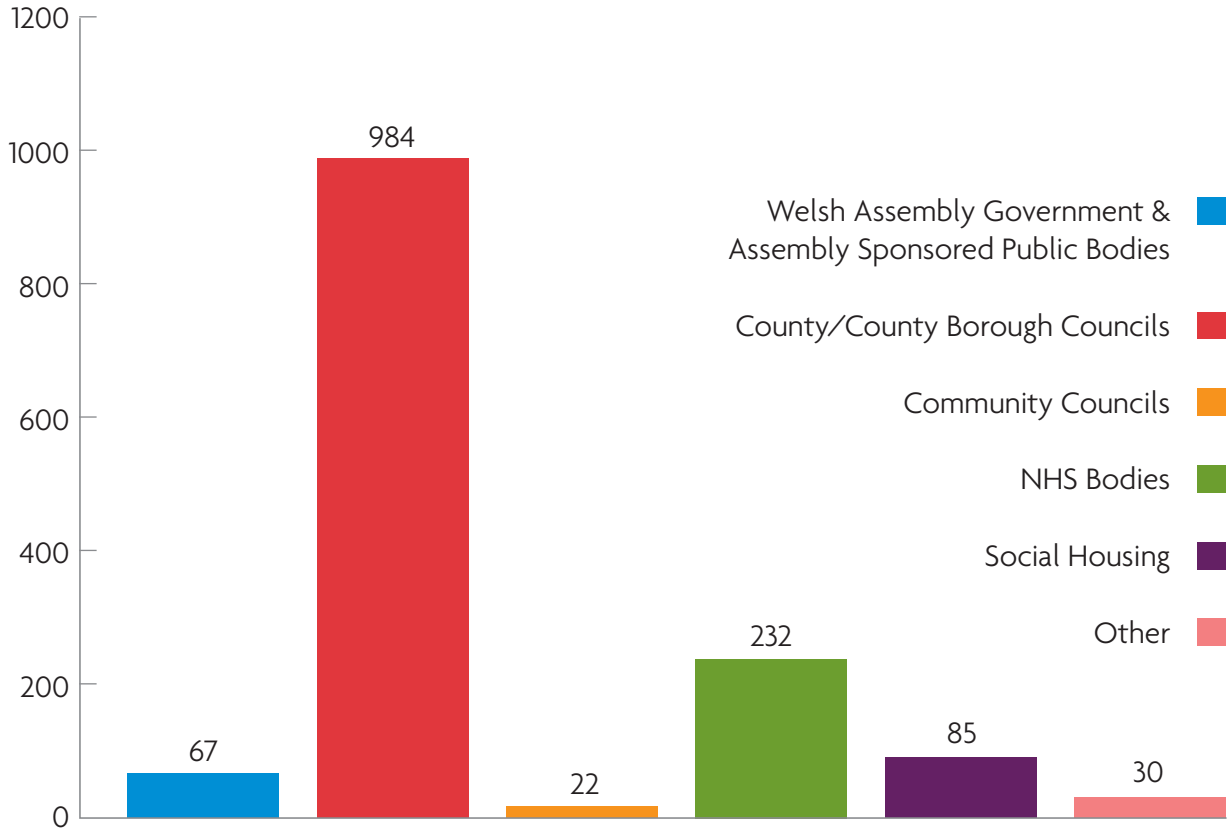
I noted in my annual report last year that I was pleased that progress had been made in reducing the number of cases that had taken over 12 months to complete (6% of the total caseload). I had hoped that it would be possible to improve on this for 2007/08, however, that has not been the case and this figure has risen to 8%.

As a means towards achieving overall faster decision times for cases, I also set targets for the time taken to make the initial decision as to whether to investigate a complaint or not.
These subsidiary target times were not met: 55% of such decisions were taken within 3 weeks, whereas the target was 90%; and 87% were taken within 6 weeks, whereas the target was 100%.

This is a somewhat disappointing position. However, I mentioned earlier in this report the fact that the office had again experienced an increase in the number of complaints received. There is no disputing the fact that this had an impact on the time it took to deal with cases. Further, I have been conscious of the need to protect the thoroughness and quality of investigations and that this should not be lost in the pursuit of trying to meet time targets.

Having become aware that it was taking longer than I would have liked to take decisions on cases that were closed at the early stages of the complaint process, I revised the complaints procedure in September 2007. The outcome of this has been that in the second half of the year more cases have been closed at this earlier (Step 2) stage with quicker decisions being taken. I am hopeful that improved performance at this early stage will reduce the overall time taken to close cases. In view of the change of procedures, I decided to redefine the performance targets to be set in the Strategic Plan for next year.

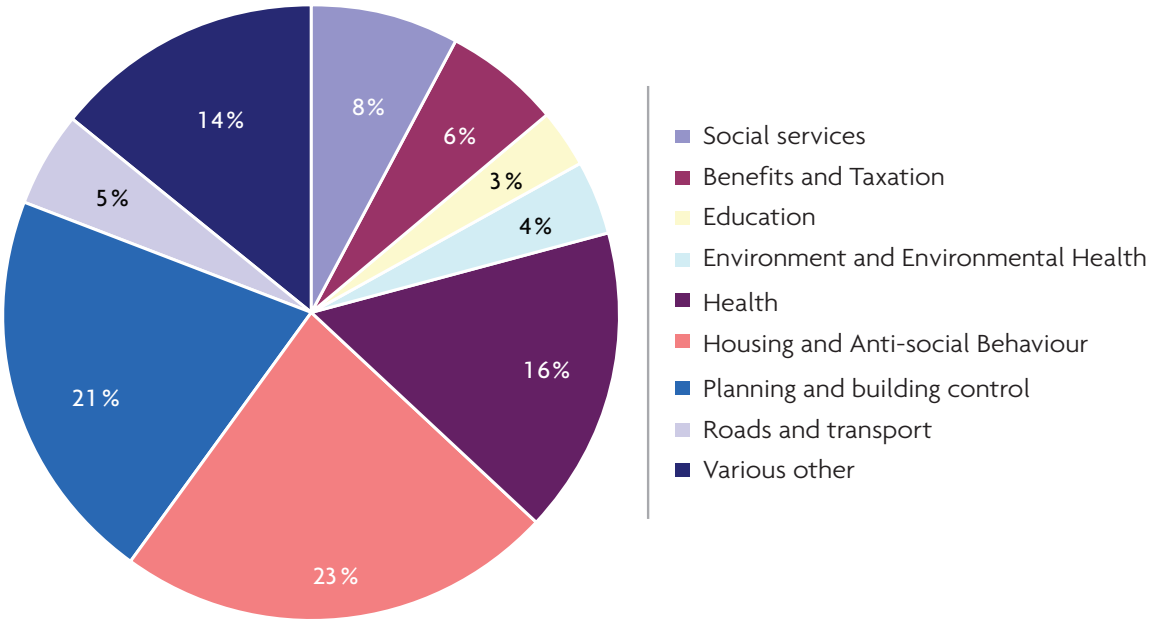
Sectoral breakdown of complaints



As can be seen, the great majority of complaints received are in respect of county/county borough councils. This follows the pattern of complaints received in earlier years, and is to be expected given that county councils provide such an important range of services to the public.

The number of complaints of maladministration against community councils, which came under the Ombudsman's jurisdiction for the first time on 1 April 2006, continues to be low. There were 22 complaints received in 2007/08 compared to 15 in 2006/07. However, the extent of services provided to the public by many community councils is quite limited at present.

Complaints about public bodies by subject



The chart above shows that the top three areas of complaint by service area have been housing, planning and health. However, contrary to recent past years, where planning has been the area where most complaints have been received, this year housing complaints have been the most numerous type of complaint. There is no identifiable reason for the upsurge in housing complaints in the past year.

Summary of Outcomes

The table below is an overall summary of the outcomes of the cases closed during the past year, and it compares the position to last year. (A breakdown by listed authority of the outcome of complaints investigated during 2007/08 is set out at Annex B.).

Complaint about a Public Body	2007/08	2006/07
Decision not to investigate	975	748
Complaint withdrawn	30	16
Complaint settled ("quick fix")	40	27
Investigation discontinued	118	72
Complaint not upheld	164	229
Complaint upheld in whole or in part	139	134
Complaint upheld in whole or in part – public interest report	19	21
Total Outcomes – Complaints	**1,485**	**1,247**

4 Learning lessons, promoting good practice

Formal guidance by the Ombudsman on good administrative practice

Under s. 31 of the PSOW Act I have a power to issue, following consultation, formal guidance to bodies in my jurisdiction about good administrative practice. I am mindful of the large amount of statutory guidance which public bodies have to contend with, and use my power to give formal guidance under the Act sparingly. However, complaints handling and redress are clearly an area of administrative practice on which the Ombudsman is well placed to give guidance.

This year I issued two sets of statutory guidance to all public bodies within my jurisdiction. These were on *Principles of Good Administration* and *Principles for Remedy*. These documents are complementary to, and should be read in conjunction with, each other. In each case the Principles are ones laid down by the Parliamentary Ombudsman. I helped develop these principles and see them valid for all public services. I believe that they are compatible with the Welsh Assembly Government's *Making the Connections: Building Better Customer Service – Good Practice Guidance for Public Services* as well as in the case of the *Principles for Good Administration the Seven Principles of Public Life* as set out by the Committee on Standards in Public Life, and in the case of the *Principles for Remedy*, the HM Treasury's guidelines on remedy as set out in *Managing Public Money*. Both sets of principles can be found on my website at: (**www.ombudsman-wales.org.uk**) – however a summary of the principles can be found overleaf.

These two sets of guidance followed on from the *Guidance to Local Authorities on Complaints Handling* (available on my website at: **www.ombudsman-wales.org.uk**) that I issued in September 2006. This guidance applied only to county and county borough councils formal guidance and was developed in partnership with the Welsh Local Government Association, Society of Local Authority Chief Executives and Citizens Advice Cymru.

I did not consider it would be appropriate at this time to issue statutory guidance on complaints handling to community councils or indeed to National Health Service bodies, as the Welsh Assembly Government lays down a statutory NHS complaints procedure. Instead, I collaborated with One Voice Wales in drawing up good practice advice on complaint handling which took realistic account of the scale on which community councils operate. One Voice Wales sent copies of this advice to all town and community councils in Wales in March 2007.

As regards complaints handling for NHS bodies, I have over the past year contributed to the Welsh Assembly Government's 'Putting Things Right' project. This is a project to develop a system of redress for the less severe instances of clinical negligence, which it is intended to integrate within a revised NHS complaints system. I accepted an invitation to join the Project Board, and I have chaired the Investigation and Processes Group as well as being represented on the other working groups.

Principles of Good Administration

1. Getting it right

- Acting in accordance with the law and with due regard for the rights of those concerned.
- Acting in accordance with the listed authority's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the listed authority expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions.
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the listed authority learns lessons from complaints and uses these to improve services and performance.

Principles for Remedy

1. Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2. Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

3. Being open and accountable

- Being open and clear about how listed authorities decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what listed authorities have decided on remedies and why.

4. Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate.
- Treating people without bias, unlawful discrimination or prejudice.

5. Putting things right

- If possible, returning the complainant and, where appropriate, others who have suffered similar injustice or hardship to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action or financial compensation).
- Providing the appropriate remedy in each case.

6. Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

Public interest reports

I issued a total of 19 public interest reports under Section 16 of the PSOW Act during the year. Summaries of each of those reports are at Annex A and their full text is available on my website at **www.ombudsman-wales.org.uk**

The majority of these reports concern county councils. However, I have for the first time been able to issue public interest reports in respect of health cases under the provisions of the PSOW Act for those matters that occurred after 1 April 2006. As might be expected, health reports attract a good deal of public attention, and both of the cases in question attracted attention across all types of media, including television, radio and newspapers.

Joint working with other Ombudsman

Under the PSOW Act I am also able to co-operate with other Ombudsmen. In conjunction with the Commission for Local Administration in England, work commenced in the latter stages of 2007/08 on the production a special report on 'Common faults in planning administration'. It is expected that the report will be published during the first half of 2008/09.

Also during the year, I conducted two joint investigations with colleague Ombudsmen in England.

The first concerned a complaint about the care of a child living in Wales and involved a GP based in Wales and a hospital Trust in England. The Health Service Ombudsman for England and I agreed that the investigation should be conducted jointly to provide a single enquiry into all the issues raised.

The second joint investigation arose from a complaint about primary health care at a prison in Wales. The complaint concerned involved events spanning the time when the responsibility for commissioning primary health care services at the prison transferred from the Prison Service to the National Health Service (which occurred in April 2006). The remit for investigating complaints about the provision of primary health care services in prisons before that date falls to the Parliamentary Ombudsman, and after that date to myself as Public Services Ombudsman for Wales. Using the provisions in our respective statutes, we agreed that the complaint was best answered by a joint investigation and a single, joint report.

I also commenced two other joint investigations this past year, the first with the Health Service Ombudsman for England. The complainant's daughter, normally resident in Wales, fell ill whilst visiting a friend in England. The complainant has stated that confusion and disagreement occurred between a Primary Care Trust in England and two Welsh NHS bodies about the treatment, and the funding of it, for her daughter. The Health Services Ombudsman for England has agreed that this complaint should be handled as a joint investigation.

The other joint investigation currently underway is with the Commission for Local Administration in England. This complaint involves two social services departments, one located in England and the other in Wales. It was agreed that this complaint would best be handled as a joint investigation rather than two separate investigations.

Working with the Welsh Assembly Government

As mentioned above, I have been contributing to the Welsh Assembly Government's NHS Putting Things Right project.

Also in relation to health matters, I have contributed, by providing evidence, to the Review of Health Commission Wales being conducted by Professor Mansel Aylward, Chair of the Wales Centre for Health, and commissioned by the Welsh Assembly Government. I was particularly pleased to be able to do so in view of the conclusions and recommendations contained in a report that I issued as a result of an investigation that I undertook in respect of this body (see Annex A of this report for details).

I have continued to be involved with the Welsh Assembly Government's work on raising customer service standards in the public service across Wales through "Making the Connections", particularly in relation to the core principle which states that citizens should find it easy to complain and to get things put right when the service they receive is not good enough. Work has now commenced on implementing this principle and policy and it is intended to continue to contribute to this work in the forthcoming year by participating in relevant working groups etc.

I have also over the past year been keeping abreast with the Welsh Assembly Government's Local Service Boards initiative. It is again the intention to seek out opportunities to contribute to fora that will consider the governance arrangements for such Boards and in particular to ensure that appropriate complaint handling systems are in place for services that are to be provided via partnerships between public and other organisations.

Learning from other Ombudsmen

During the year, I met on a number of occasions with fellow public sector ombudsmen. Members of my staff have also benefited from discussions with their counterparts at British & Irish Ombudsman Association meetings. These have been valuable opportunities to exchange examples of good practice and to share and discuss issues of mutual concern.

5 Code of Conduct Complaints

The table below gives a breakdown of the code of conduct complaints that I received by type of local authority. I was pleased to see a further decline in complaints against members of community councils compared with last year's Annual Report, when I reported that there had been a dramatic decline in the number of complaints that I had received about community council members. There had been a pattern in prior years of members in a handful of community councils making trivial complaints against one another on a 'tit-for-tat' basis. I had found it necessary in the past to warn all councillors of certain community councils that making vexatious allegations was in itself was a breach of the code of conduct.

The number of complaints received against county councillors was up by 24 on 2006-07. However, 29 complaints were against the members of Merthyr Tydfil County Borough Council in respect of a planning matter. I decided that these complaints did not warrant investigation. Similarly, I received a batch of 19 complaints against members of Flintshire County Council, also about a planning matter. I commenced investigation, but discontinued it having concluded that no action was necessary.

Breakdown of Code of Conduct complaints received by type of local authority

	2007/08	2006/07
Community Council	65	81
County/County Borough Council	160	136
National Park	4	5
Police Authority	1	3
Total	**230**	**225**

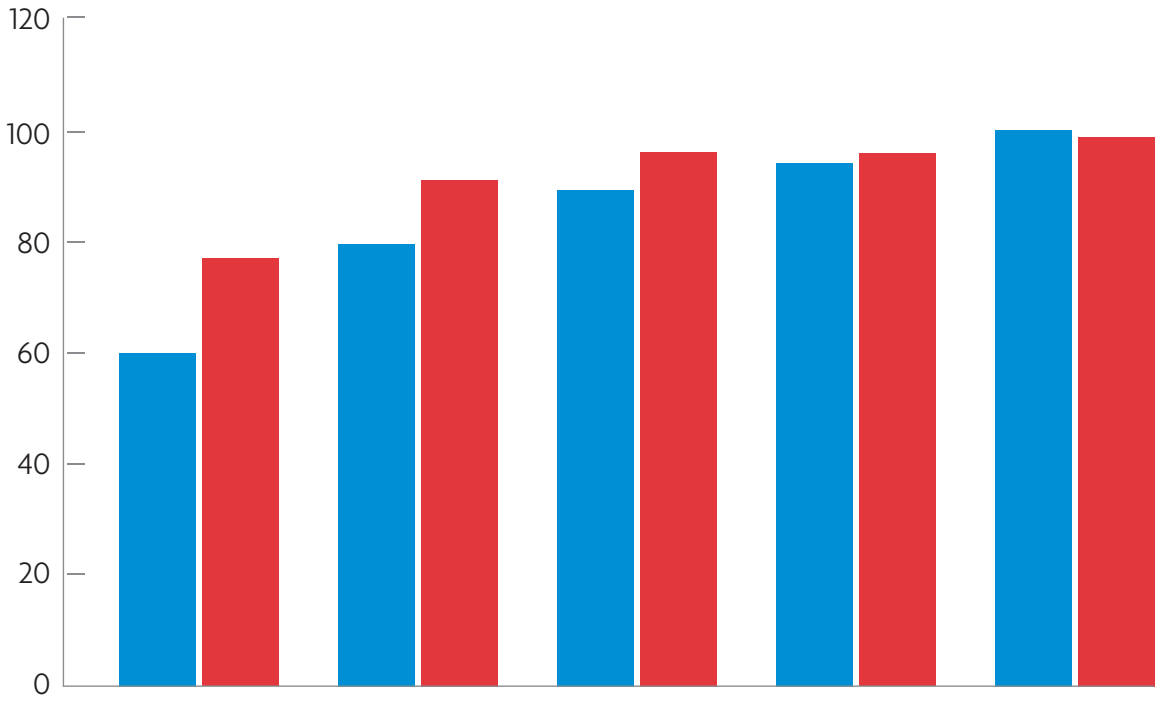
As the table opposite shows, of the Code of Conduct cases considered in 2007/08, I decided that the large majority did not call for an investigation. Indeed, where I did investigate, I concluded that only 9 cases warranted further formal action. This compares with 19 in 2006/07.

Summary of Code of Conduct Complaint Outcomes

Decision not to investigate complaint	153
Complaint withdrawn	1
Investigation discontinued	28
Investigation completed: No evidence of breach	12
Investigation completed: No action necessary	8
Investigation completed: Refer to Standards Committee	6
Investigation completed: Refer to Adjudication Panel	3
Total Outcomes	**211**

I am conscious that being the subject of an unresolved Code of Conduct complaint is stressful for the councillor concerned. I am pleased, therefore, that the chart below shows that the large majority of cases dealt with last year were resolved within 3 months and that only 8% of cases took longer than 6 months.

Decision Times for Concluding Code of Conduct Complaint Cases



	Within 3 Months	Within 6 Months	Within 9 Months	Within 12 Months	Within 18 Months
Target %	60	80	90	95	100
Outcome %	77	92	97	97	99

6 Making the Ombudsman accessible

I have aimed to make the Ombudsman's service as accessible to members of the public as possible. A number of activities were undertaken during the year to increase awareness of the service and to encourage take-up, especially amongst vulnerable and disadvantaged groups.

My leaflet 'How to complain about a public body' has this year been made available in Polish and Somali, having already been made available in Arabic, Bengali, Cantonese and Urdu; and produced on tape and CD. The leaflet is also available on my website, whose home page is also accessible in the ethnic minority languages I have mentioned. It has also been pleasing to note that over the past year there has been an increase in the number of visits to the website and the use of the on-line complaint form.

In May, I completed a programme of regional events where I had been meeting with the chairs/leaders and chief executives of the public bodies within my jurisdiction, with voluntary/advocacy organisations and with members of the media.

In addition, my staff and I also took the opportunity – in partnership with One Voice Wales - to hold seminars in north, mid and south Wales for community council members and clerks. This was an opportunity to explain better my role as Ombudsman and also to discuss the guide to good complaints handling issued by One Voice Wales with my collaboration.

I also held a briefing session at the National Assembly for Wales for Assembly Members and their research staff.

In addition to this, my staff and I have been taking opportunities to address a wide variety of voluntary, community and professional organisations. These have ranged from sessions at local adult continuing education centres to nursing staff at hospitals.

Media coverage is a key means of raising public awareness of the role of the Ombudsman and I'm pleased that the number of calls and contacts from both television and press generally has continued to be as high in this past year as the previous year. My office issued a number of press releases during the year to draw media attention to public interest reports. Two reports on complaints about the health service received particularly wide attention and I gave television and radio interviews.

Finally, a number of local authorities kindly agreed that I could place an advertisement free of charge in their council newsletter. The advertisement briefly drew attention to the service that I provide. These council newsletters are of course distributed to all households within an authority area and I would wish to express here my thanks to those authorities concerned for helping me to raise awareness of my service among members of the public in their area.

7 Governance and management of my office

Governance

The Public Services Ombudsman (Wales) Act establishes the office of the Ombudsman as a 'corporation sole'. I am of course accountable to the National Assembly, both through the mechanism of this annual report, and because I am the Accounting Officer for the public funds with which the National Assembly entrusts me to undertake my functions.

The use that I make of those resources is subject to the scrutiny of the Wales Audit Office, which audits my accounts (this will be outsourced by the Wales Audit Office in 2008/09 to Grant Thornton, although the Auditor General will remain ultimately responsible for the function). To advise me in discharging my duties as Accounting Officer I established an Audit Committee with an independent Chairman. I was delighted that Mr Laurie Pavelin FCA agreed to take on this role. RSM Bentley Jennison act as my internal auditors and their programme of work is guided and overseen by the Audit Committee. The Committee met five times during 2007/08 and I was pleased that no substantive matters of concern were raised during this time.

I also welcomed the opportunity to appear before the National Assembly for Wales's Finance Committee in October 2007, where I had the opportunity to discuss with the Committee members my Budget Estimate for 2008/09 and how I intended to use the public monies that I receive in the forthcoming year.

Staffing

The staff that enable me to operate effectively as Ombudsman are my most valuable resource. The current organisation structure of my office is shown at the end of this section. I now receive advice on human resources from the Wales Audit Office, under a service level agreement.

Work began during 2007/08 on preparations for applying for the Investors in People Standard. The way forward for this work will be considered at the beginning of 2008/89. The past year also saw the first year's operation of the staff appraisal scheme.

Knowledge Management

I have invested this year in a knowledge management system which will interface with the complaints administration handling system. The system will set out matters such as relevant legislation, precedent cases, and those aspects to look out for when undertaking investigations of a specific type. There will be a significant staff resource implication to produce and transfer the knowledge and information for this system and it is important that this work should not disrupt the day to day aim of investigating complaints as promptly as possible. Therefore this will be a project which will need to be incrementally developed over years to come. Nevertheless, I hope that it will in due course become a valuable resource for staff and that it will help those undertaking investigations new to them and ultimately itself facilitate a quicker conclusion to cases.

Complaints about the PSOW Service

As previously mentioned, I aim to provide a first class Ombudsman service for Wales.

As part of that commitment, I aim to:

- provide an accessible, simple and transparent process for looking into complaints about the service I give
- respond quickly to complaints; and
- apologise and provide any appropriate redress if a poor service has been given.

The complaints procedure for members of the public to complain about the service offered by my office was established during 2006/07 and was reviewed and revised during 2007/08. The procedure can be used if, for example, a complainant may wish to complain about undue delay in responding to correspondence; or that they feel that a member of staff has been rude or unhelpful; or that we had not done what we said we would.

However, if a complainant is unhappy with:

- a decision not to investigate their complaint, or
- a decision to discontinue our investigation of their complaint, or
- the outcome of our investigation

then they should appeal to me either by writing to me directly or through the officer dealing with their case. I will consider their appeal personally. My decision on any appeal is final and they cannot use the 'complaints about us' procedure to complain about it. Further details about the 'complaints about us' procedure are available on my website: **www.ombudsman-wales.org.uk**.

Details of the 'complaints about us' received during 2007/08 are as follows:

Total received	Outcome	
	Not upheld or redirected to other procedure (ie public body/code of conduct complaints procedures)	Upheld
18	**16**	**2***

*Note: The first of these two complaints was in respect of incorrect information given by a temporary member of front line staff regarding the Ombudsman's jurisdiction. A letter of apology letter was sent.

The second of the complaints upheld was in relation to the anonymity of third party information included in a report. A letter of apology was sent.

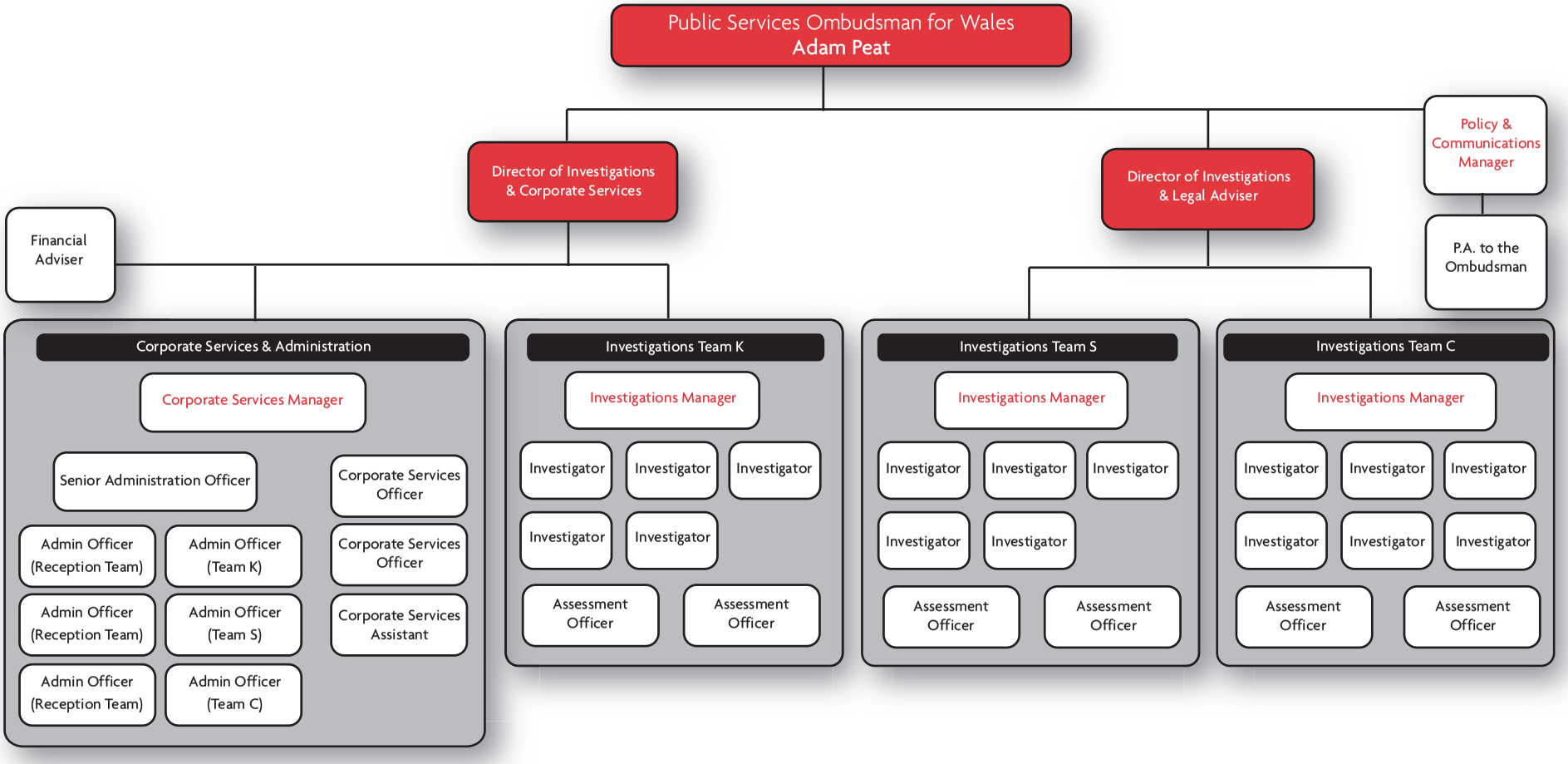
Customer satisfaction survey

I commissioned Opinion Research Services (ORS) to undertake two types of "customer satisfaction surveys" during the past year – one amongst complainants and the other among the bodies within my jurisdiction who had been the subject of a complaints investigation(s).

ORS asked complainants to put out of their mind the outcome of their complaint when evaluating aspects of the service such as courtesy of staff, the ease of understanding my complaint forms and other correspondence from my office, and whether my office had done what it had promised to do. This is a difficult thing to ask of complainants, and it is evident that those whose complaints had been upheld tended to have a markedly more favourable view of all aspects of the service than those whose complaints had not (or indeed those complainants whose complaints had been not been investigated because for example, their complaint was out of jurisdiction or premature). There was a very positive response indeed in relation to courtesy of staff and the use of plain English, however, there is a greater degree of dissatisfaction that my office did not 'do what was promised'. It is currently unclear as to why there is a greater degree of dissatisfaction in this regard. It is possible that more needs to be done to explain the role of the Ombudsman and to manage complainants' expectations of the service. Nevertheless, future surveys will invite complainants who make such as statement to explain what they mean by this.

The outcome of the survey of bodies within jurisdiction was very pleasing and the survey - which focused on the politeness of staff, whether requests for information were reasonable, whether investigations were non-confrontational, whether staff were professional and well informed, fairness, quality of reports, etc - revealed very high satisfaction scores. Whilst it is essential that the Ombudsman's office maintains its impartial position, it is in everyone's interest that good professional, positive and co-operative relationships exist between the Ombudsman and those organisations that are the subject of an investigation.

Organisational Structure



ANNEXES

Annex A

PUBLIC INTEREST REPORTS – CASE SUMMARIES

Health: Bro Morgannwg NHS Trust, Cardiff and Vale NHS Trust and Vale of Glamorgan Local Health Board (Public Interest report 200501955, 200600591, 20051951 and 200700641 issued November 2007)

S, a 28-year old woman with a learning disability, epilepsy and cerebral palsy, is cared for at home by her parents. In October/November 2003 professionals involved in S's care deemed her current sleeping arrangements unsafe, and identified her need for a specialist profiling bed. In March 2004, her need for a specialised seating system was identified. Whilst the Vale of Glamorgan Local Health Board commissions services for clients in its area from Cardiff & Vale NHS Trust, acute and specialist services for Learning Disabilities clients are commissioned from Bro Morgannwg NHS Trust.

Meetings and discussions took place from April 2004 between representatives of the Vale of Glamorgan Council, the Vale of Glamorgan Local Health Board, Cardiff & Vale NHS Trust and Bro Morgannwg NHS Trust over responsibility for providing the necessary equipment. No agreement was reached between the respective bodies, and S was not provided with the equipment until October 2006 when the Vale of Glamorgan Local Health Board purchased the equipment, whilst reserving its right to seek reimbursement for the expenditure from the responsible party.

I concluded that the Council had identified that the responsibility for providing the specialist equipment for S was that of the NHS, and that although the Council could have been more proactive on S's behalf it had not been guilty of maladministration or service failure. I did not uphold the complaint against the Council.

I considered that where an individual had a clear need for an NHS service all the NHS bodies concerned had a shared responsibility to ensure that there was no undue delay in the provision of the service pending a decision on which body should fund it. I found that there was no written agreement between the bodies concerned for the provision of community based services. I concluded that the failure by the LHB to seek to put in place such agreement amounted to maladministration. I concluded that the LHB should have funded the necessary equipment as an interim measure, and that the failure to do so at an earlier stage was maladministration. I also concluded that the LHB had a duty to draw failings in the provision of necessary paperwork to the appropriate bodies, and that it did not do so. I upheld the complaint against the LHB.

I concluded that both Cardiff & Vale and Bro Morgannwg NHS Trusts failed to engage constructively and with a sense of urgency with the LHB to resolve the dispute. I concluded that

this failure amounted to maladministration, and thus upheld the complaint against both Trusts.

I recommended that the LHB apologise to Mr & Mrs D on behalf of all three NHS bodies, and pay them the sum of £2000 to be used for the benefit of S. I recommended that each Trust should contribute one quarter of this sum to the LHB. I recommended that the LHB should, in conjunction with the Council, ensure multi-disciplinary assessments are carried out when procedures require them to be.

I recommended that the Vale of Glamorgan Local Health Board and Cardiff & Vale NHS Trust should develop a written agreement regarding the delivery of community-based services, including the provision of aids and equipment for use in the community. The LHB and Bro Morgannwg should develop a written agreement for the delivery of services for learning disabled clients in the community.

Health: Welsh Assembly Government – Health Commission Wales (Public Interest report 200601273 issued September 2007)

Mrs T complained to me that Health Commission Wales (HCW), an agency of the Welsh Assembly Government, had acted unreasonably in the manner it decided not to fund a specialist scan known as a PET scan. She explained to me that her doctors had identified a mass located near to her lungs which they had been unable to access using conventional techniques. Mrs T was told that in order to determine whether the mass in question was malignant it would be necessary to undertake a PET scan or perform a thoracotomy which was a major surgical procedure. In order for patients in Wales to receive PET scans on the NHS, Health Commission Wales must first approve the funding. Mrs T's consultant applied to HCW for funding but his request was refused on the grounds that Mrs T did not have a proven case of lung cancer and therefore did not fall within their access criteria. HCW also said there were no grounds to consider Mrs T's case as exceptional. Mrs T appealed the decision arguing that a PET scan was a much less dangerous and traumatic procedure than a thoracotomy and pointed out that a PET scan would cost the NHS considerably less than a thoracotomy with all the associated costs of major surgery, hospitalisation and convalescence. HCW reviewed their decision but concluded that because Mrs T did not have lung cancer funding was not appropriate and they would not authorise the use of PET scan as a diagnostic tool. An appeal to an External Review Panel was also unsuccessful. In order to avoid having to undergo the thoracotomy Mrs T funded her PET scan privately.

I considered that HCW's decision failed to take appropriate account of obviously relevant factors and was perverse in view of the evidence available to it. The decision appeared to be driven by a desire to protect HCW's own budget. I commented that it was absurd for a Welsh Assembly Government agency to take funding decisions which were wasteful of NHS resources overall, since those resources all came from the WAG.

I upheld Mrs T's complaint and recommended that the Welsh Assembly Government should ensure that HCW reimbursed her the cost of her PET scan and provided her with additional compensation of £500. I recommended that the Welsh Assembly Government ensures that HCW review its PET scan policy and that it revisit the terms of reference for its external review Panels. I also recommended that the Welsh Assembly Government should urgently review the framework within which the HCW operates with a view to optimising the use of NHS resources overall. In particular, the review should ensure that budgetary arrangements for HCW do not create perverse incentives. I was pleased that the Welsh Assembly Government, on seeing a draft of my report, agreed to accept these recommendations.

Housing: Conwy County Borough Council (Public Interest report 2006/01392/200700123 & 200600912 issued November 2007)

The report deals with two complaints made by Mr T and one complaint made by Mr D. They complained that the Council had not dealt adequately with their complaints about anti social behaviour (ASB) in their locality.

Mr T bought a house on a mixed tenure estate in May 2002. He immediately became subject to noise nuisance and ASB from his next door neighbour who was a Council tenant. Having failed to resolve matters through the Council or with the involvement of the MP, Councillors and the community association he submitted two complaints to the Ombudsman. The first in 2003 was not subject to a full investigation and he made a further complaint in 2006 as matters had still not been resolved. He said that he and his family had been subject to ASB from 2002 until early in 2007 when the Council tenant was moved. He said that these matters had impacted adversely upon his mental health, employment and the wellbeing of his family.

Mr D had lived on the estate from 2001 and became aware of noise and ASB associated with the same council tenant during 2002. He was involved in a correspondence with Council officers and other parties and in meetings over the problems until 2007. Despite living some 150 metres

away, he was personally disturbed by the noise and was involved in giving support to Mr T throughout the period. He complained that with the weight of evidence available to the Council, matters should have been resolved much earlier than 2007.

The Council submitted that the level and severity of complaints it had received was not that which was being alleged by the complainants and said that it had acted reasonably in response to the complaints it had received given that the tenant and her children were receiving statutory services.

In August 2006 I reported on the handling of ASB within Conwy County Borough Council and discovered that the Housing Department had no proper procedures in place for dealing with ASB until November 2005 and no specific guidance for its staff until April 2006.

My investigation into the complaints of Mr T and Mr D identified new areas of concern and doubts as to whether lessons had been fully learned from my report. I found that it had failed to comply with the requirements of its new ASB procedures and that that there had been maladministration in a number of areas including an absence of inter agency working on the case between late 2002 and late 2006. I found that had the information being held by the relevant staff been shared and that had there been regular inter agency reviews of the case, there could have been much earlier resolution of the nuisance suffered by the complainants and other residents.

It was conceded by the Council that there had been no consideration by the Council under Article 8 of the Human Rights Act 1998 in relation to Mr T or his family, although their rights had been engaged. I concluded that there had been maladministration in this regard and also that the Council had failed to deal appropriately with direct requests for assistance for support for his children from Mr T himself and from his health visitor. It had also failed to evaluate whether the support package it had put in place in 2002 for the tenant was effective.

I recommended that the Council should evidence to me within three months of the date of issue of this report, protocols in respect of the provision of support to witnesses involved in court proceedings, improved working with the police, communication within the Social Services department and communication between departments. I further recommended that it should apologise to Mr and Mrs T and make a payment to Mr T and his family in the sum of £2,750 per annum for the period between January 2003 and January 2007.

I further recommended that it should apologise to Mr D and make a payment in the sum of £500 for the lesser, though not insignificant nuisance, to which he was subjected and also for his

time and trouble in repeatedly raising matters with the Council and corresponding with different agencies with a view to getting problems resolved.

Housing: Bro Myrddin Housing Association & Carmarthenshire County Council (Public Interest report 200500800 and 200701013 issued August 2007)

Mr J lived in a Housing Association flat. In 2000 he complained of damp; the Housing Association investigated but did not follow through. In 2004 he became very ill and asked Social Services for help. A Social Services officer visited him and found him living in squalid conditions. She instituted measures to support him but within a few days he was admitted to hospital. Social Services and the Housing Association agreed that his flat, which was very damp and mould-infested, was unfit for him to return to. He was placed in a care home as a short-term measure. He remained there, inappropriately, for eighteen months. During this time the Council and the Housing Association attempted to arrange for his flat to be cleaned but the cleaning contractor began work prematurely and Mr J's furniture and personal possessions were lost. He claimed compensation from the Council who referred the matter to their insurers. No compensation had been forthcoming at the date of the report.

In 2005 a survey showed that the flat had structural problems including lack of ventilation, rising damp and penetrating damp. Mr J was eventually moved to a decent property while his flat was cleaned and extensive structural repairs carried out. He moved back into the flat in late 2006. The Housing Association sought to charge him arrears of rent, and declined to consider his request for a transfer to a different property until he had cleared these and shown he was capable of conducting his tenancy satisfactorily.

Following my investigation, I concluded that there had been maladministration both by the Housing Association and by the Council. The Housing Association, from early in Mr J's tenancy, was in possession of information about him which should have led its officers to realise that he might be a vulnerable individual. It seemed clear however that the Association's officers had throughout failed to see Mr J as someone who might need support in managing his tenancy, and at no point did the way in which they dealt with him reflect his vulnerability.

The Association failed to investigate properly Mr J's complaint of damp in 2000. Through its continued inaction it allowed the condition of the flat to deteriorate to the point that it was unfit for human habitation by the time that Mr J went into hospital in 2004. The Association's

officers sought to portray Mr J as solely responsible for conditions in the flat. In 2004 Mr J sought help from the Council's Social Services Department and they responded positively. I had criticisms to make about some of Social Services' actions or omissions – notably the failure to make an holistic assessment of Mr J's potential vulnerability – but said it was only fair to recognise the caring and committed approach taken by the social workers dealing with Mr J. Unfortunately when Social Services tried to find appropriate accommodation for Mr J on leaving hospital, they had been in his view grossly hampered by a lack of co-operation and support from the Council's Housing Department and from the Housing Association. Consequently, Mr J was deprived of a normal home life in the community by being inappropriately left in a care home for some fifteen months and then being moved around on a series of short-term placements. These arrangements were not only ill-suited to Mr J's needs, they were unnecessarily expensive for the public purse. There was undue delay in tackling the condition of the flat. Eventually the Council appointed cleaning contractors in March 2005. Unfortunately they turned up a day before the date by which the Council had told Mr J he had to collect any possessions he wished to keep. Valued possessions were lost or damaged. The Council has still not acknowledged its evident responsibility for his loss. This episode led to yet further delay in clearing the flat. A survey in 2005 showed that there were significant structural problems for which Mr J could not have been responsible. In my view the Housing Association was not entitled to levy rent arrears in respect of a period when Mr J's flat was unfit for human habitation, due in large part to the Association's failure to ensure proper maintenance. It was also unfair to refuse to consider him for transfer.

I recommended that to remedy the injustice to Mr J, the Council should within one month of the date of this report:

- apologise to Mr J for the shortcomings on its part
- through its Social Services Department should offer to undertake a comprehensive assessment of Mr J's needs and eligibility for support including in particular, but not limited to, support in managing his tenancy.

The Housing Association should within one month of the date of this report:

- apologise to Mr J for the shortcomings on its part.
- cancel any supposed rent arrears or other charges in respect of any period before 1 January 2007.
- lift the precondition imposed on Mr J's transfer request and accord that request a high priority.

I also recommended that the Council ensure that its Social Services Department, its Housing Department, its Housing Benefit section and the Housing Associations with which it works enter into dialogue with a view to improving information-sharing on cases and establishing a culture of co-operation and close working relationships between officers at all levels.

I also recommended that the Committee of Management of the Housing Association should review the performance of its maintenance function, especially with regard to its older properties, and more generally should consider what training and/or guidance its staff might require to ensure a more caring and supportive approach to its tenants in future.

I asked the Council to encourage closer working between its own departments, and also with its partner housing associations. I also asked it to review its system for dealing with complaints about losses caused by the actions or inaction of its staff or its contractors.

Housing: Conwy County Borough Council (Public Interest Report 200502285 issued June 2007)

A housing law caseworker from Shelter Cymru put a complaint to me on behalf of a client, Ms F, about the Council's response when she sought assistance regarding housing for her and her family.

Detailed legislation governs the responsibilities of Councils in relation to housing and homelessness. Should the Council have reason to believe that an applicant may be homeless or threatened with homelessness, it must make enquiries to satisfy itself as to whether the applicant is eligible for assistance. An applicant may be homeless even where she has accommodation, if it would not be reasonable for her to remain in the property, including where continued occupation may lead to violence against the applicant or family member. Furthermore, if the applicant is in 'priority need' - which includes where the applicant has children - the Council must ensure that interim accommodation is made available pending the conclusion of the enquiries. The legislation states that enquiries should be undertaken 'quickly'; also that the Council should notify the applicant of its decisions in writing.

Ms F lived in a privately rented property with three young children. She experienced harassment, including threats of violence and damage to the property from others living locally. She reported each incident to the police and agreed to give evidence in court against the perpetrators.

In November 2005, Ms F spoke to a Council officer explaining that she felt afraid and unable to remain in the property. He advised her that she could approach the Council's homelessness section, but was likely to be moved to temporary accommodation, such as bed and breakfast accommodation. In January 2006, Ms F went to the local housing office and again said she felt unable to stay in her home. A record of that attendance shows she was told that the Council would not consider re-housing her as she had rent arrears of £600 from a previous Council tenancy.

In February, Ms F was given a notice to quit the property by the private landlord. She went back to the housing office and was given a housing application form which she quickly completed and returned. She was interviewed by a housing advisory officer a month later on 9 March.

On 10 March Ms F said that she would be prepared to move to temporary accommodation. However, the Council advised the Shelter caseworker that it would not provide interim accommodation.

The investigation found that there was maladministration throughout the Council's handling of Ms F's case, the effect of which was to deny her proper consideration for allocation of Council accommodation from November 2005 to April 2006. On the first two occasions when Ms F contacted housing services, she would have been left with the impression that she was neither homeless nor eligible to apply for Council accommodation. Consideration of her application in February was delayed, and the need for interim accommodation was not properly considered. Ms F was not advised of the Council's decisions in writing.

To address the problems I identified and to comply with the provisions of the legislation, I recommended that the Council undertake a number of specified actions. I also recommended that it make a payment to Ms F in recognition of the distress caused to her, and the Council also agreed to backdate her housing application to November 2005.

Housing: Gwynedd Council (Public Interest Report 200501995 issued May 2007)

Miss O is a council tenant who complained to me about the manner in which the Council had dealt with a planning application submitted by her neighbour (Mr X). She said she had not been

told about the extent of the work and that Mr X was demolishing his property. She claimed that the Council had not believed her when she first complained and eventually her home became dangerous such that the Council had to move her. The events had been distressing as she had not been in the best of health. Miss O claimed that the Council had failed in its duty to her as her landlord. It had also, she said, not replied to her formal written complaint.

I found that the Council had misled Miss O, and others consulted, in the description of works proposed by Mr X's planning application. The consultation information gave no hint of the extent of the work which would have caused Miss O to object to it had she known. The Council's housing section (Miss O's landlords) gave specific consent to the work on the mistaken assumption that the extent of it was as described. Had it considered all the documents in its possession (including a detailed plan not sent to Miss O) it would have realised the true extent or, should have consulted with the planning section to clarify matters. The investigation uncovered a lack of collaborative working between the three different sections of the Council involved in Miss O's case. Systemic recording failings were uncovered in particular in the building control section. The Council also had not replied to Miss O's formal complaint.

I made a finding of maladministration in that the failings uncovered had caused Miss O injustice as she had lost the opportunity of objecting to the work; furthermore, the works had not been properly monitored by the Council resulting in her emergency move and consequent distress. I recommended that the Council offer Miss O an apology and the sum of £1250 by way of redress. I also recommended that a review of the Council's recording systems be undertaken and that departments within the Council be reminded of the importance of working corporately.

Planning: Rhondda Cynon Taff County Borough Council (Public Interest Report 200602435 and 200700768 issued February 2008)

Mr H and Mrs J complained about the way in which Rhondda Cynon Taf County Borough Council ("the Council") handled a planning application and matters concerning the subsequent development.

In March 2004 two developers, one of whom worked as an enforcement officer in the Council's Planning Department, submitted a proposal to develop land and erect two new dwellings. The Council approved the application in July 2004. It imposed a condition on the approval which

stated that a drainage plan had to be submitted to the Council before building work began; and that the plan should be implemented before the dwellings were occupied.

The drainage plan was not submitted before building work began or prior to the dwellings being occupied. There was no approved plan in place until April 2007. The work to implement a suitable drainage plan has yet to be undertaken. Enforcement action did not begin until June 2006 and is ongoing.

Mr H and Mrs J said that the failure to implement a suitable drainage plan has caused damage to their property and caused much stress and frustration. They said that the Council has been remiss in its failure to ensure that the condition was acted upon by the developers. They suggested that the developers were being treated too leniently because one of them was a planning officer who worked for the Council.

Mr H and Mrs J also complained that the applicants had included in their application a parcel of land that was not within their ownership. They claimed that the development also blocked a much used pathway which runs through the disputed land. This had caused them further inconvenience and stress, made worse because the Council had ignored their representations on the matter.

I found that the Council had not acted with sufficient speed or decisiveness in relation to the failure of the developer to devise and implement an appropriate drainage plan. I noted that, despite contact from Mr H and Mrs J's representatives, the Council effectively did nothing about the matter for about eighteen months. Further unreasonable delays were identified once action had commenced. I concluded that, because one of the developers was a planning enforcement officer employed by the Council, the Council should have been vigilant in ensuring that accusations of favouritism could not be plausibly made. Whilst not finding that the developers were treated favourably I concluded that the Council had failed to take the steps necessary to ensure that this was seen to be so, and as a result compromised the integrity of the planning system and the Council. I also found that Mr H and Mrs J had suffered an injustice as a result of the lack of Council action in the form of damage to their properties and having to endure the stress of living with the threat of flooding.

In relation to the land dispute I found that, once it was obvious that there was a concern about whether the applicants did own the entire application site, the Council should have investigated. The fact that one of the developers was a Council employee made the lack of action more noteworthy. Again I found that Mr H and Mrs J had suffered an injustice concerning the frustration

and uncertainty that they suffered as a result of an inadequate response by the Council to their concerns.

I upheld these two complaints. I made recommendations to the Council which included making an apology and a compensatory payment to Mr H and Mrs J and to further investigate the land ownership issue. The Council agreed to implement my recommendations in full.

Planning: Isle of Anglesey County Council (Public Interest Report 20070051 issued January 2008)

Mrs W complained that the Council wrongly granted outline planning permission for a two-storey dwelling immediately to the rear of, and very close to, her bungalow.

The Council's planning officers recommended that the application be refused on the grounds that it would unacceptably affect the privacy and amenity of existing occupiers. There was also an objection on highway safety grounds by the Council's Highways Department to the proposed access. The determining committee voted by a narrow majority to approve the application contrary to officer recommendation.

My professional planning adviser visited the site and advised that use of the proposed access would constitute a serious danger and add unacceptably to the risks encountered by road users. In his view the proposal should have been refused planning permission for that reason alone.

I found that members of the Council's Planning Committee had not given adequate reasons for their decision and had failed to address their minds to relevant considerations as required by law, even though their attention had been drawn to them by Council officers. I concluded that their decision to grant unconditional planning permission was perverse. The decision incorrectly taken by the Committee had caused injustice to Mrs W. I recommended, bearing in mind the highway safety considerations that the Council revoke the outline planning permission granted for the proposed dwelling, and pay Mrs W the sum of £500 to compensate for the worry and distress which she had suffered.

Planning: Powys County Council
(Public Interest report 200601481 issued September 2007)

Mrs J owns her home which is situated near a secondary school in the Council's area. The school itself is adjacent to a Council managed leisure centre, open to the general public, and which shares some of the school's sport facilities. Mrs J complained to me about the manner in which the Council had dealt with the change of use of the school's "red gravel" sports pitch adjacent to her home to an all weather floodlit sports pitch. She complained that there had been no consultation about the installation of floodlights. The glare from the floodlights was intrusive and their installation had led to increased noise in the evening from the centre users of the pitch which was a nuisance.

I found that the Council had consulted nearby residents on the application by its Education Department for planning consent to redevelop the pitch. It did not appear to be the Council's fault that Mrs J had not received her letter. Crucially, however, the application for planning consent did not make any reference to the provision of floodlighting. Despite the fact that the Education Department had not applied for planning permission for floodlighting, the Council's Planning Department attached a condition purporting to permit floodlighting subject to the Planning Department approving the details at a later date. The Planning Department did subsequently approve a scheme for provision of floodlighting, without any public consultation.

I said that the erection of eight 15m high columns surmounted by floodlights i.e. 4 along each side of the enlarged pitch, amounted to an engineering operation which comprised development and needed to be the subject of an express planning permission. I found that the way in which the Council had dealt with the question of floodlighting had shown a clear bias in favour of the planning applicant, which was maladministration. I commented that if the public is to have confidence in the planning system, it is vital that Council Planning Departments should be seen to act even-handedly when the Council itself is the applicant for planning permission.

I also found that the Planning Department had failed to heed the relevant Planning Circular on the conditions which could properly be attached to the grant of planning permission, and that the condition purporting to authorise the provision of floodlighting was invalid. It followed that the Council in erecting the floodlighting towers had done so without valid planning permission and that was maladministration.

I found that Mrs J and other residents had been unfairly treated in that they had been deprived

of the opportunity they should have had to object to the grant of planning permission for floodlighting. I felt it likely that the Council would have done more to meet residents' legitimate concerns had consultation taken place and objections been received. I considered, in the light of a recent report by one of the Council's Environmental Health Officers, that the current impact of light and noise from the pitch on Mrs J's and other nearby homes was unacceptable.

I recommended that the Council should apologise to Mrs J and offer her redress in the sum of £500. Other affected residents should also be offered redress. I recommended that effective measures should be taken to reduce the impact on neighbours of the floodlights and noise from the pitch to an acceptable level and that the floodlights should not be used in the interim.

I also recommended that a retrospective application for planning permission (with due consultation) should be submitted to regularise the development. I further recommended that the Council's planning officers should be reminded about the appropriate use of planning conditions, and of the need to make adequate records of significant information, and the reasons for decisions, on planning case files by undertaking relevant training.

Planning: Caerphilly County Borough Council (Public Interest Report 200601212 issued February 2008)

Caerphilly County Borough Council invited tenders to purchase a piece of land that had become surplus to requirements. Following an administrative error the original tender exercise was declared null and void. The Council said that the effect of the error was enough to compromise the integrity of the tender exercise.

A second tender exercise commenced in August 2006, when the highest submission was by a housing association. However contrary to the Council's Conditions of Tender and Conditions of Sale the bid submitted by the housing association was conditional. Under the Council's Tender Policy a conditional bid should have been disregarded. The bid submitted by the complainant's company was the highest compliant bid submitted in this exercise.

Against the initial advice of its Legal Department, the Council gave the housing association the opportunity to amend its conditional tender. The housing association agreed to remove the conditions and as a result was successful.

I considered that the Council's deliberate non-compliance with its Tender Policy was a clear-cut act of maladministration which had caused injustice to the complainant. I commented that it was of the highest importance that public authorities should be seen to adhere scrupulously to proper tender procedures.

I recommended that the Council apologise to the complainant for its maladministration and pay him £1600 in recognition of the wasted time and cost in preparing a tender plus an additional £100 in recognition of the time and trouble which the complainant had been put to in pursuing his complaint.

Social Services: Flintshire County Council (Public Interest report B2004/0743 issued July 2007)

I investigated a complaint by Mrs G and her daughter, H, about the actions of Flintshire County Council's Children's Services Department in investigating child protection concerns raised about H and her siblings, L, T (who had learning difficulties) and E, the way in which the Council decided to place the children on the Child Protection Register in July 2003, and related events.

The Council had considered that Mrs G's children were at risk of significant harm, as a result of enquiries undertaken following concerns that the children were at risk from a man, Mr W, who was Mrs G's lodger, and who was suspected of 'grooming' the children for possible sexual abuse. Mr G had moved into the family home in April 2002, but had been known to Council officers since 1996, when his activities in relation to a group of young people (including his own son) had caused concern. Council officers had continued to monitor his activities until 2000, when they understood that he had moved out of the area.

By the end of 2002, the Council had received a number of concerns about Mr W and his actions in relation to the children; these included a number of allegations of inappropriate sexual behaviour towards them. Council officers began to investigate under Child Protection Procedures. In July 2003, following several further referrals, the children were placed on the at risk register. However, Mrs G and the children had always denied that any form of inappropriate conduct had taken place; instead they felt that Mr W had been a great support to them, and that he was being victimised by Children's Services. Mr W moved out of the family home in August 2003, albeit he remained in contact with the family. Mrs G and H made a number of complaints about the conduct of

Children's Services staff, which they felt were dismissed and as a result of which they requested a change of social worker. The Council refused to reallocate the case, but then reached a stalemate as it then, effectively, withdrew from working with the family. The children remained on the register until January 2005, with no effective work undertaken by Children's Services.

I upheld the complaint and found that there had been repeated and prolonged maladministration in the way in which the Council had dealt with Mrs G and her children. I was particularly critical of failures in recordkeeping and recording of decisions, and in particular, that there was no record of interviews with the children on the Council's files. I also found that one particular alleged incident involving H had not occurred and concluded that it was probable that its reporting had arisen as a result of some miscommunication. I regarded as maladministration the absence of any recorded details of the allegation, which the Council had persisted in treating as fact, and a subsequent failure to respond to H's complaints about the incident.

I also found it incomprehensible, given the long standing concerns held about Mr W, that the investigation and assessment of referrals relating to the children had been so poor. I found numerous examples of poor practice, delay and poor communications with Mrs G and the family. While I found that the decision of the Conference to place the children on the register was not inappropriate I was of the firm view that had the Council dealt with the matter appropriately and in line with Child Protection procedures from the outset, many of the issues which had caused Mrs G and the children concern could have either been avoided or at least addressed at a much earlier stage. I also felt it likely that the children's names could have been removed from the register at a much earlier stage. I also found that the Council had handled Mrs G's and H's complaints poorly, and that there had been delay, unwillingness and on occasion obstruction by Council staff in responding to their correspondence.

I recommended that the Council should apologise to Mrs G and the children and that it pay Mrs G (on behalf of the family as a whole) the sum of £4,000, and a further £1,000 to H, in recognition of the distress caused to them by the council's maladministration. I also recommended that the Council should pay to Mrs G and H the sum of £300 each in respect of its poor handling of their complaints.

I also recommended that the Council urgently review their case recording and file management systems, and the way in which child protection work is allocated to ensure that staff working with child protection cases have appropriate training and experience and that they are properly

supervised. Finally, I recommended that the Local Safeguarding Board develop a local protocol covering how Section 47 enquiries and associated police investigations should be conducted.

Various (Community Safety): Torfaen County Borough Council (Public Interest report: 200501251 issued May 2007)

The J family members have lived in their present property for many years. Several years ago friction arose between them and the Y family over parking issues and this escalated to the point where a member of the Y family physically assaulted Mr J and his son. The J family complained to the Council. The complaint was dealt with by the Council's Community Safety Unit. The Unit did not, at the time, consider that the evidence was sufficiently fresh to enable action to be taken against the Ys, interview the J family or consider video and witness evidence they said they had. The Unit informed them that they could not help them. My investigator was told that comments by other agencies and Council departments had been sought and considered in reaching this conclusion. However I found no evidence of any investigation apart from one comment by a police officer.

The Community Safety Unit worked to no agreed procedure and its record-keeping was inadequate to track the progress of action on complaints. I found that there was maladministration in the way in which the Js' complaint had been handled and that the maladministration had led to injustice for the Js. I recommended that the Council pay the Js £500 for the distress they had suffered.

I concluded that some aspects of the way in which the Community Safety Unit has been operating flout basic principles of good administrative practice. I recommended accordingly that the Council should review the functioning of the Community Safety Unit as a matter of urgency, to ensure that it operated in a defensible and accountable manner within a framework of policy and procedure approved by the Council.

Annex B

BREAKDOWN BY LISTED AUTHORITY OF THE OUTCOMES OF COMPLAINTS INVESTIGATED

COMPLAINTS CONCERNING LOCAL AUTHORITIES

County/County Borough Council	Out of Jurisdiction	Premature	Investigation Not Merited	Rejected Other Reasons	Discontinued	Quick Fix	PSOW Public Interest Report	PSOW Report (Other) – Complaint Upheld	PSOW Report (Other) - Not Upheld	Withdrawn	Total Cases Closed
Blaenau Gwent	3	2	5	7	1	1		2	4		**25**
Bridgend	6	10	5	6	1			2	2	1	**33**
Caerphilly	5	8	16	15	6	2	1	4	12	1	**70**
Cardiff	7	23	23	26	2	6		12	15		**114**
Carmarthenshire	2	17	13	15	7	3	1	7	6	1	**72**
Conwy	3	8	7	10	5		4	3	6	1	**47**
Ceredigion	3	3	10	5	9	1		3	8		**42**
Denbighshire	2	8	5	4	2			2	4		**27**
Flintshire	5	7	13	9	7	1	1	9	3	1	**56**
Gwynedd	4	10	9	10	8		1	3	3		**48**
Isle of Anglesey	3	8	3	12	3	2	1	2	2	3	**39**
Merthyr Tydfil		2	3	2	4	3		3	3		**20**
Monmouthshire	6	7	6	6	2	1		1	5	2	**36**
Neath Port Talbot	5	13	5	12	6	1		4	5	1	**52**
Newport	5	5	6	6	3	1		1	3		**30**
Pembrokeshire	2	9	10	17	5	1		6	12	3	**65**
Powys	3	12	11	11	4	1	1	1	4	2	**50**
Rhondda Cynon Taf	4	10	8	15	4	2	2	10	9	2	**66**
The City and County of Swansea	3	9	12	12	5			5	6		**52**
The Vale of Glamorgan	4	6	10	10	3	2	1	3	3	2	**44**
Torfaen	8	11	14	6	3	1	1	3	4	3	**54**
Wrexham	1	8	3	12		1		1	3	1	**30**
Total	**84**	**196**	**197**	**228**	**90**	**30**	**14**	**87**	**122**	**24**	**1,072**

In addition to the above, I also closed the following cases:

- 19 complaints against Community Councils: 1 upheld (Section 21) in respect Llanfairfechan Town Council
- 9 complaints against Police Authorities: none upheld
- 20 complaints against National Park Authorities: 2 upheld (Section 21) in respect of Brecon Beacons
- 12 complaints in respect of Schools Appeals Panels: 2 upheld (Section 21) in respect of Radyr Comprehensive and Newton School Panels

COMPLAINTS CONCERNING NHS BODIES

Local Health Boards

Local Health Board	Out of Jurisdiction	Premature	Investigation Not Merited	Rejected Other Reasons	Discontinued	Quick Fix	PSOW Public Interest Report	PSOW Report (Other) - Complaint Upheld	PSOW Report (Other) - Not Upheld	HSCW- Upheld	HSCW - Not Upheld	Withdrawn	Total Cases Closed 2006/07
Bridgend			1		1								**2**
Cardiff	1		1	2						1			**5**
Carmarthen		1		1						1			**3**
Ceredigion	1												**1**
Conwy				1									**1**
Flintshire						2							**2**
Gwynedd	1		1										**2**
Monmouthshire		1		2									**3**
Newport									1		1		**2**
Pembrokeshire		1											**1**
Powys				3				1		1			**5**
Rhondda Cynon Taff			1										**1**
Swansea	1	1	2					1					**5**
Torfaen	1			2									**3**
Vale of Glamorgan							1						**1**
Wrexham				1									**1**
TOTAL	**5**	**4**	**6**	**12**	**1**	**2**	**1**	**2**	**1**	**3**	**1**		**38**

NHS Trusts

NHS Trust	Out of Jurisdiction	Premature	Investigation Not Merited	Rejected Other Reasons	Discontinued	Quick Fix	PSOW Public Interest Report	PSOW Report (Other) - Complaint Upheld	PSOW Report (Other) - Not Upheld`	HSCW - Upheld	HSCW - Not Upheld	Withdrawn	Total Cases Closed
Bro Morgannwg	5	1	3	3	1	1	1			1			**16**
Cardiff & Vale	3	6	5	5	2		1	1		4	1	1	**29**
Carmarthenshire			1	1				1					**3**
Ceredigion & Mid Wales			1									1	**2**
Complaint outside Jurisdiction (Shrewsbury & Telford NHS Trust)								1					**1**
Conwy & Denbighshire	2		3	2									**7**
Gwent Healthcare	3	6		2	1					6	1		**19**
North East Wales			2	2	1			1	2	1	1		**10**
North Glamorgan			1						1				**2**
North West Wales	2		2		1						1		**6**
Pembrokeshire & Derwen	1		1		1			1			2		**6**
Pontypridd & Rhondda	1				1			2		2			**6**
Swansea	1	2		4				1		2			**10**
Welsh Ambulance Services			1							1			**2**
TOTAL	**18**	**15**	**20**	**19**	**8**	**1**	**2**	**8**	**3**	**17**	**6**	**2**	**119**

Other Health Bodies

Health Body	Out of Jurisdiction	Premature	Investigation Not Merited	Rejected Other Reasons	Discontinued	Quick Fix	PSOW Public Interest Report	PSOW Report (Other) – Complaint Upheld	PSOW Report (Other) - Not Upheld	HSCW - Upheld	HSCW - Not Upheld	Withdrawn	Total Cases Closed
Dentist			1	4						1			**6**
GP	1	4	3	7					6	1	2		**24**
Optician				1									**1**
Independent Health Provider										1			**1**
Community Health Council		1		1									**2**
TOTAL	**1**	**5**	**4**	**13**					**6**	**3**	**2**		**34**

COMPLAINTS CONCERNING REGISTERED SOCIAL LANDLORDS (HOUSING ASSOCIATIONS)

Registered Social Landlord	Out of Jurisdiction	Premature	Investigation Not Merited	Rejected Other Reasons	Discontinued	Quick Fix	PSOW Public Interest Report - Upheld	PSOW Report (Other) - Upheld	PSOW Report (Other) - Not Upheld	Withdrawn	Total Cases Closed
Bro Myrddin							1				**1**
Cadwyn									1		**1**
Cantref			1								**1**
Cardiff Community		1		1					2		**4**
Charter Housing	1	1	1	2	1						**6**
Clwyd Alyn Ltd				1	1			2	1		**5**
Cymdeithas Tai Clwyd Cyf		1	1					1			**3**
Cynon Taf Community Housing Group									1		**1**
Dewi Sant Cyf		1									**1**
Family Housing Association (Wales) Ltd		2				2					**4**
First Choice Ltd				1							**1**
Grwp Gwalia Cyf/Group Gwalia	1		1	1		2			2		**7**
Gwerin (Cymru)		1									**1**
Hafod				1					1		**2**
Linc-Cymru		3	1	1	1						**6**
Merthyr Tydfil				1							**1**
Mid Wales		1									**1**
Newport Housing Trust									1		**1**
Newydd 1974				1					1		**2**
North Wales	1	1	2	2		1			1		**8**
Pembrokeshire	1			1	1						**3**
Pennaf								1			**1**
Rhondda				1							**1**
Swansea	1										**1**
United Welsh	1		3	2	1	1			1		**9**
Valleys to Coast		1	2		1						**4**
Wales and West	1	1	3		4	1		3	1	1	**15**
TOTAL	**7**	**14**	**15**	**16**	**10**	**7**	**1**	**7**	**13**	**1**	**91**

COMPLAINTS CONCERNING THE NATIONAL ASSEMBLY FOR WALES AND ASSEMBLY SPONSORED PUBLIC BODIES

Welsh Administration Body	Out of Jurisdiction	Premature	Investigation Not Merited	Rejected Other reasons	Discontinued	Quick Fix	PSOW Public Interest Report - Upheld	PSOW Report (Other) - Upheld	PSOW Report (Other) - Not Upheld	WAO - Upheld	WAO – Not Upheld	Withdrawn	Total Cases Closed
Welsh Assembly Government													
CAFCASS			1	3									**4**
Care Standards Inspectorate Wales		1		1									**2**
Health Commission Wales							1						**1**
Independent Complaints Secretariat			1	1				1	1	1			**5**
Welsh Assembly Government	4	5	7	10	3			1	1	3	1		**35**
Planning Inspectorate		1	2	2									**5**
Assembly Sponsored Public Body													
Arts Council for Wales												1	**1**
Countryside Council for Wales			1	1									**2**
Environment Agency	2	2	1	4					1	1			**11**
National Clinical Assessment Service	1												**1**
North Western & North Wales Sea Fisheries Committee				1									**1**
The Forestry Commissioners (matters relating to Wales)		1											**1**
Welsh Development Agency	1			1									**2**
TOTAL	**8**	**10**	**13**	**24**	**3**		**1**	**2**	**3**	**5**	**1**	**1**	**71**

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