



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

STANDARDS COMMITTEE

REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – MR CRAIG GRIFFITHS

13th January 2025

Matter for Information

Wards Affected: All Wards

Independent Review of Investigations by the Public Services Ombudsman for Wales into Code of Conduct Complaints

Purpose of the Report:

To enable the Committee to consider the Report of the Independent Review of Investigations by the Public Services Ombudsman for Wales into Code of Conduct Complaints published on 27 September 2024.

Background:

As part of its 2022/2023 Annual Reports, members of the Standards Committee wished to embark on further engagement with elected members in order to dispel the myths of the Standards Committee and it was felt arranging a meeting with a cross section of elected members would be beneficial for members to understand more about their work programme.

The Public Services Ombudsman for Wales (PSOW), Michelle Morris, commissioned an Independent Review in May 2024 following receipt of a substantiated complaint that a member of staff (referred to as the “Former Code Team Manager” or “FCTM”) had been making inappropriate and unacceptable social media posts of a political nature.

The aim of this review was to provide assurance as to whether the PSOW’s Code of Conduct Team processes, delegations and decisions in relation to the assessment and investigation of complaints by the Code Team and FCTM have been sound, free from political bias and that lessons are learned from what has happened.

The powers granted to PSOW, in relation to this work, are set out in the Local Government Act 2000. The Review was led by Dr Melissa McCullough who is the Commissioner for Standards for the Northern Ireland Assembly and also Commissioner for Standards for the Jersey and Guernsey States Assemblies.

The Report has now been published in full on the PSOW's website, following a period of time during which the report was embargoed from publication.

The Report is provided in full at Appendix A; together with the covering letter from the PSOW at Appendix B, confirming 'I welcome this report and accept the recommendation and lessons to be learnt', and the press release issued via email from the PSOW at Appendix C.

The following recommendations were made:

(1) Documenting the political affiliation of the Accused Member: in order to mitigate the risk of unconscious bias on the part of the IO and to underpin the fairness of the complaint assessment process, it is recommended that steps are taken to ensure that the political affiliation of the Accused Member is not recorded on the PAAF. The process manual will need to be amended accordingly, with updated instructions for the Intake Team.

(2) Accused Member not informed of complaint until after assessment: in the interests of fairness and transparency, it is recommended that the PSOW considers reverting to the previous practice of notifying the Accused Member of the complaint once it is received. This would also protect the PSOW from criticism in that regard, which might arise from circumstances in which the Accused Member is unsuspected of the complaint and learns of its existence via a third party or the media. If the PSOW decides to revert to the previous practice, the process manual will need to be amended accordingly.

(3) IO decisions not to investigate: notwithstanding the applicable provisions in the process manual and in the Decision Review Process, it is recommended that an additional review/ check mechanism is put place for the purpose of quality assuring the IO decisions in this regard, particularly around the public interest test, and as a further safeguard against the potential for unconscious bias on the part of the IO. This recommendation is supported by findings from the staff interviews. Given the volume of complaints, however, the proposed measure needs to be proportionate and it is suggested that this could be achieved by way of occasional random sampling of IO decisions.

(4) CTM's delegated authority to overrule IO proposals to investigate and IO proposals to extend the investigation or commence a new investigation against another member: notwithstanding the applicable 30 provision in the Decision Review Process, it is recommended that an additional review/check mechanism is introduced in respect of these delegated decisions, in order to mitigate the risk of unconscious bias on the part of the CTM when deciding not to agree IO proposals. It is suggested that this measure

could also be achieved by way of random sampling of CTM decisions. Also, the Scheme of Delegation should be updated to include these CTM decision-making powers.

(5) Opportunity for the Accused Member to provide comment: the review recognises that, as part of the combined PSOW and APW/standards committee process, the Accused Member has a number of opportunities to comment on the facts of the case. The review therefore found the 31 process to be demonstrably fair. That said, the PSOW may wish to consider whether there are any additional points in the process in which there would be a benefit in providing the Accused Member with the opportunity to comment further on relevant facts, particularly in advance of reaching draft conclusions/findings on whether the evidence is suggestive of a breach.

(6) Public interest factors and considerations: the review recognises the factors and considerations listed are non-exhaustive but recommends the PSOW gives consideration to developing more detailed guidance on assessing the public interest test. Additionally, the public interest factors and considerations should be reviewed regularly.

(7) Clarificatory amendments: with a view to clarifying the guidance, the review also recommends that: I. The process manual is amended to address the apparent contradiction in terminology whereby “direct evidence that a breach of the Code took place” is a requirement for a complaint to pass assessment stage (paragraphs 5.4 and 5.5) whereas an investigation can be concluded based on the finding that there is “no evidence of a breach of the Code” (paragraph 13.1(a)); II. The process manual is amended to reflect the existing practice that, when the LRO upholds a complaint review request, the reassessment/ reconsideration is undertaken by a different IO to the IO who undertook the original assessment/investigation; and III. The Scheme of Delegation is updated in light of the retitling of the LRO post to make clear that the LRO has delegated authority in respect of decisions on whether to uphold a review request that the complaint should be reassessed/reconsidered.

The Report concluded that: - “As stated in The Venice Principles, “Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms”. The PSOW is built on the principles of independence, impartiality, fairness and inclusivity. These principles must be reflected in the important work carried out by the PSOW in order to maintain public trust in its operations. This necessarily means that the assessments carried out by investigation officers who work for the PSOW should demonstrate a consistent application of a well-defined and fair process as well as excellent analysis and reasoning to ensure that their decision-making is patently impartial and non-biased. The findings of this review point towards such excellence, in both processing and complaint assessment. This should provide reassurance to the public that they can trust and have confidence in the work of the PSOW and its Code Team.”

Financial Impacts:

No implications.

Integrated Impact Assessment:

An Integrated Impact Assessment is not required for this report.

Valleys Communities Impacts:

No implications

Workforce Impacts:

No implications

Legal Impacts:

There are no legal impacts associated with this report.

Consultation:

There is no requirement for external consultation on this item

Recommendations:

That members of the Standards Committee note the Independent Review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints

Appendices:

Appendix A – Independent Review of Investigations

Appendix B – Letter from the Public Service Ombudsman for Wales

Appendix C – Press Release from the Public Service Ombudsman for Wales

List of Background Papers:

None

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