

Review into the operations, processes and investigations carried out by the Public Services Ombudsman for Wales

November 2024



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November 2024



About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddFinance

Current Committee membership:



Committee Chair:
Peredur Owen Griffiths MS
Plaid Cymru



Peter Fox MS
Welsh Conservatives



Mike Hedges MS
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1. Introduction

1. The Finance Committee (the Committee) is the responsible committee with oversight of the Public Services Ombudsman for Wales (PSOW) under Standing Order 18A.¹ This includes:

- reviewing the operation and effect of the Public Services Ombudsman (Wales) Act 2019²;
- determining the terms that apply to an appointment of a PSOW;
- exercising functions in relation to disqualification from holding certain offices for a relevant period once a person has ceased to hold office as PSOW;
- examining the estimate of income and expenses for the PSOW's office (the Estimate) for each financial year;
- considering any supplementary budget motions that seek to amend amounts previously authorised by a budget resolution or supplementary budget resolution in respect of the PSOW; and
- advising the Senedd on the appointment and removal from office of the PSOW or an Acting PSOW.

2. The Committee generally undertakes one annual session³ with the Ombudsman relating to the financial estimate for the forthcoming financial year. During the Sixth Senedd this session has included scrutiny of the relevant Annual Report and Accounts. The Committee also conducts ad-hoc scrutiny as and when required, including of the PSOW's supplementary budgets.

¹ Standing Orders of the Senedd, page 79

² [Public Services Ombudsman \(Wales\) Act 2019](#)

³ Finance Committee, [Public Services Ombudsman for Wales estimate of income and expenses](#)

2. Background

Initial complaint

3. On 26 March 2024, the PSOW received a substantiated complaint setting out allegations that a team leader in the Code of Conduct Team had expressed personal political opinions which included offensive language on social media.⁴ As widely reported in the media, the team leader was initially suspended and subsequently resigned.⁵

4. In a letter to the Committee, the Ombudsman confirmed:

“The team leader⁶ managed the Councillor Code of Conduct team from February 2019 until August 2023, when a rotation of team leaders took place and she moved out of the team. From April 2021 onwards this team was responsible for assessing complaints against councillors and making decisions on which complaints should not be investigated. Prior to this date these assessments were made in a different team that was not managed by the team leader in question.”⁷

5. Officials from the PSOW met with the Former Code Team Manager (FCTM) on 29 March 2024 to discuss the allegations. The Ombudsman confirmed that none of the allegations were denied by the FCTM:

“She didn't deny that those social media posts had been made by her, and she didn't deny that the social media addresses were hers. The important point being here that she hadn't attached her name to them; they were under a sort of pseudonym, so it wasn't obvious immediately that they were hers. But she didn't deny any of that. So, because of that, she was suspended immediately, pending an internal disciplinary investigation.”⁸

⁴ Finance Committee, RoP 9 May 2024, paragraph 10

⁵ BBC News, Wales Ombudsman official resigns after Tory abuse row, 4 April 2024

⁶ The team leader will be referred to as the Former Code Team Manager (FCTM) throughout this report as is consistent with the Independent Review.

⁷ Letter from the Public Ombudsman for Wales to the Chair of the Finance Committee, 15 April 2024

⁸ Finance Committee, RoP 9 May 2024 paragraph 11

- 6.** The Ombudsman confirmed that this approach was in line with their disciplinary process following a breach of the staff standards of conduct.⁹
- 7.** The Ombudsman confirmed that the FCTM's line manager would not have taken part in any disciplinary procedure as their role was to support the FCTM and therefore had to be independent from disciplinary procedures. The Ombudsman went on to say that the FCTM also had access "to services such as counselling if they need them as well".¹⁰
- 8.** The Ombudsman's official went on to say that, at the request of the FCTM, contact was made through their trade union representative following the Easter weekend.¹¹
- 9.** The FCTM resigned on 3 April 2024.¹² The Ombudsman confirmed that the FCTM received pay in lieu of the contractual notice period but that no severance payment above contractual payments was made.¹³
- 10.** The Ombudsman explained how the incident impacted the office and the "really difficult period of time for the organisation and for the staff in the organisation", she went on to say:

"The impact of the actions of one individual has really sent ripples—shockwaves, really—through the organisation, so that's what we've been dealing with. But I think it's important that I put on the record from the outset that the conduct of that member of staff fell well short of the standards of conduct expected from our staff, and that's why we took swift action, which I'll go on to talk about. Neither I nor my staff condone any of the comments that she made and they were totally unacceptable."¹⁴

- 11.** When asked whether the office had provided any support to the FCTM during this period, the Ombudsman informed the Committee:

"... all of that information that had been provided to me in that letter had been provided to the press as well, so we knew it was going to get press coverage over the Easter weekend, and her

⁹ Finance Committee, RoP 9 May 2024 paragraph 12

¹⁰ Finance Committee, RoP 9 May 2024, paragraph 32

¹¹ [Finance Committee, RoP 10 October 2024, paragraph 49](#)

¹² Finance Committee, RoP 9 May 2024, paragraph 14

¹³ [Letter from the Public Ombudsman for Wales to the Chair of the Finance Committee, 15 April 2024](#)

¹⁴ Finance Committee, RoP 9 May 2024, paragraph 9

name was put into the public domain very quickly, not by us—we've never published her name—but it came from whoever passed that information to the press. So, we were mindful we had to support her through that, and we did so through that weekend, with her line manager providing support.”¹⁵

12. In the wake of the incident, the Ombudsman explained that staff were supported by in-person or online briefings and directly within their teams:

“Any announcements we’re making publicly, the staff hear about first. They’ve seen the terms of reference et cetera. So, I think at the moment, it’s about keeping them informed about what’s happening, offering them support, encouraging them, if they’ve got real personal concerns, to come forward and either talk to their manager or to another employee. We’ve got mental health first-aiders in the office—named people who are there to provide that sort of support and they can be used in this situation if people feel it’s really affecting them from a stress and mental health perspective.”¹⁶

Independent Review

13. Following allegations of political bias, the Ombudsman announced on 9 April 2024 that “an Independent Review will be conducted to provide assurance that its code of conduct processes are sound, free from political bias”.¹⁷

14. The report of the Independent Review was published on 27 September 2024.¹⁸ The Ombudsman welcomed the report “and the confirmation that decision making, in respect of Code of Conduct complaints, is free from political bias”. She added:

“This review recognises the excellent work done by the Code of Conduct Team and we are pleased that the Independent Reviewer has stated that it should provide reassurance, to the public and elected members, that they can trust and have confidence in the work of PSOW.”¹⁹

¹⁵ Finance Committee, RoP 9 May 2024, paragraph 13

¹⁶ Finance Committee, RoP 9 May 2024, paragraph 35

¹⁷ Statement by the Public Services Ombudsman Wales, 9 April 2024

¹⁸ Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints, September 2024

¹⁹ Statement by the Public Services Ombudsman for Wales, 27 September 2024

15. The report notes the purpose of the Independent Review was to:

“... look at the PSOW’s processes for the assessment and investigation of complaints that members of local authorities, fire and rescue authorities, national park authorities and police and crime panels in Wales have breached their Code of Conduct.”²⁰

16. In discussion with the Committee²¹, the Ombudsman confirmed the “Review was not to determine whether individuals were satisfied with the outcomes of their complaints or investigations, and their interactions with our office”. She explained that the purpose of the Review was to “determine whether there was any evidence of political bias in our decision making”.²²

17. The report states the aim of the 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.”²³

18. The Independent Review notes its remit did not include investigating the incident or the FCTM.²⁴ The Ombudsman’s official told the Committee the Review “was about the casework and the reliance that people can have on the work of the office”.²⁵

Senedd motion

19. On Wednesday 17 April 2024²⁶, the Senedd considered and agreed a motion tabled by the Welsh Conservatives relating to the PSOW. That motion included an instruction to the Finance Committee under Standing Order 17.2²⁷, proposing that the Senedd:

²⁰ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 7

²¹ [Finance Committee, 1 May 2024, agenda item 7](#)

²² Finance Committee, RoP 10 October 2024, paragraph 64

²³ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 7

²⁴ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 6

²⁵ Finance Committee, RoP 10 October 2024, paragraph 53

²⁶ [Plenary, RoP 17 April 2024, paragraphs 395-449](#)

²⁷ [Standing Orders of the Welsh Parliament, September 2024, Standing Order 17.2, page 64](#)

“5. In accordance with Standing Order 17.2, instructs the Finance Committee to urgently review the operations, processes and investigations carried out by the Public Services Ombudsman for Wales to ensure:

a) that impartiality and fairness are present throughout the employment of the former Head of Investigations; and

b) that the Senedd can have confidence that the office is able to undertake future investigations with impartiality and fairness.”²⁸

The Committee’s Terms of Reference

20. The Committee noted the motion on 24 April 2024²⁹ and subsequently agreed the terms of reference for its own inquiry at its meeting on 1 May 2024.³⁰ The Committee agreed that it would consider:

- the events leading to the resignation of a team leader at the Public Services Ombudsman for Wales and the processes followed;
- the operations and processes associated with Code of Conduct investigations, including monitoring and quality assurance arrangements;
- whether the mechanisms in place at the Public Services Ombudsman for Wales adequately ensure that its staff operate (and have operated) with impartiality and fairness; and
- the scope, extent and findings of the independent external review commissioned by the Ombudsman.

21. As part of its initial consideration, the Committee took evidence from the Ombudsman on 9 May 2024 to discuss the incident, disciplinary procedures that were followed regarding the FCTM and the proposed Independent Review of processes at the PSOW. Regarding the reasoning for commissioning an independent external review, the Ombudsman said:

“I think I felt it really needed to be someone independent of the organisation that understood this world, understood this work,

²⁸ Plenary, RoP 17 April 2024, paragraph 394

²⁹ Finance Committee, Agenda, 24 April 2024

³⁰ Finance Committee, Agenda, 1 May 2024

coming in to look at how we do things, to look at our processes and our procedures and our scheme of delegations around how the work is done, and, as I said, to look for a specific period of time at the cases where there was delegation to individual officers who were under the management of that team leader for the defined period of time. It just felt like we needed to do that in order to be able to rebuild that trust and confidence in the work that we do.”³¹

22. The Committee also received a letter from the Ombudsman on 2 July 2024 providing an update on progress which confirmed that the Independent Review started at the end of May.³²

Committee View

23. The Committee found this episode shocking and deeply regrettable.

24. Independence, impartiality, fairness and openness are fundamental principles underpinning the role of the Ombudsman. Delivering on these principles is essential to ensure that the work of the office has integrity and public confidence. We believe that this incident has negatively impacted the Ombudsman’s reputation and had the potential to undermine public confidence in its work going forward.

25. As such it was necessary and correct that the Ombudsman initiate a review of relevant arrangements, with the aim of providing assurances to stakeholder and members of the public who engage with the PSOW.

26. We welcome the swift actions taken by the Ombudsman to proactively deal with this matter and believe that this approach ensured that further reputational damage to the institution was avoided.

27. The Committee supports the action taken by the Ombudsman to commission an Independent Review following the incident. We agree that commissioning an Independent Review, and not conducting an in-house review, provides the public with the assurances that the PSOW has appropriate processes in place to protect against political bias.

28. We also support the appointment of Dr Melissa McCullough and her team to lead the Review and welcome the detailed report. Their experience and expertise

³¹ Finance Committee, RoP 9 May 2024, paragraph 50

³² [Letter from the Public Services Ombudsman for Wales to the Chair of the Finance Committee, 2 July 2024](#)

in this field, and familiarity with the software used at the PSOW's office, ensured the review could be carried out at pace and deliver on the Ombudsman's requirements.

29. The Committee believes that the report, along with the evidence sessions conducted, provides assurance that impartiality and fairness were present in the decisions made throughout the employment of the FCTM and the wider Code of Conduct team. In light of the Ombudsman's commitment to implement all recommendations and lessons learned, we believe the Senedd can have confidence that the office is able to undertake future investigations with impartiality and fairness. We are also satisfied that the scope and thoroughness of the Independent Review enables us to concur with its conclusions.

30. The Committee notes that this has been a particularly difficult period for the Ombudsman and her staff, particularly those working in the Code of Conduct Team. We welcome the support that has been provided to staff within that team and others within the PSOW's office, as well as the support offered to the FCTM.

Conclusion 1. The Committee has confidence that the Public Services Ombudsman for Wales is able to undertake its work with impartiality and fairness.

Conclusion 2. The Committee believes that the comments made by the Former Code Team Manager were deeply regrettable and that the prompt actions taken by the Ombudsman to commission an Independent Review into the processes for the assessments and investigation of complaints was an appropriate response to the incident that mitigated any further damage to the integrity of the office.

Conclusion 3. The Committee welcomes the transparent way in which the Ombudsman has conducted the Review and engaged with the Finance Committee before, during and on completion of the Review.

Conclusion 4. The Committee notes that this has been a particularly difficult episode for the Ombudsman's office, especially the staff affected, and welcomes the approach undertaken by the Ombudsman to ensure that staff are supported and that well-being has been prioritised during this period.

3. Methodology and approach to the Independent Review

The Independent Review's Terms of Reference

31. The PSOW shared a draft terms of reference and shortlisted candidates for leading the Independent Review with the Committee, which was considered on 1 May 2024.³³ The Ombudsman published the Independent Review's final terms of reference on 20 May 2024, following an initial evidence session with the Committee on 9 May 2024. The terms of reference focused on five deliverable outcomes:

"1. Review of the PSOW's Code of Conduct processes and delegations to ensure that they are appropriate, fair and impartial and free from political bias.

2. Review of decisions taken by the former team leader and her Team not to investigate Code of Conduct complaints from 1 April 2021 to 22 October 2023, to ensure that the PSOW's two-stage test was applied properly and decisions were free from political bias (673 cases).

3. Review of the cases where the former team leader was the 'case owner' which were investigated and closed without a referral to a standards committee or the Adjudication Panel for Wales from 1 April 2019 to 22 October 2023, to ensure that there is no evidence of political bias in the handling of these cases (11 cases).

4. Establish whether there is evidence that the team leader expressed her personal views on political matters akin to her social media posts in the office and/or inappropriately influenced other staff members, in the performance of their duties under the Local Government Act 2000.

³³ Finance Committee, [Agenda](#), 1 May 2024, item 7

*5. Make any recommendations which the Lead Reviewer considers appropriate and issue a final report which the PSOW will share with the Senedd's Finance Committee.*³⁴

32. In terms of how political bias was defined for the purposes of the Independent Review, the Ombudsman recognised that this was “really important”³⁵ and that a definition had been included in the report for that reason. It states that:

*“Political bias will be found where there is evidence that the decision on a case was influenced by the political affiliation of the person who made the complaint and/or the member who was complained about.”*³⁶

33. When asked what thresholds were applied for something to be considered as having been influenced by bias, the Ombudsman clarified “it isn't the case that a little bit of political bias is okay; actually, there should be no political bias whatsoever”.³⁷

Lead reviewer

34. On 9 April 2024 the Ombudsman announced that she had appointed James Goudie KC to lead the Review.³⁸ The Ombudsman later reconsidered the appointment in light of concerns raised in relation to historic political activity of James Goudie KC.³⁹

35. On 9 May 2024 it was announced that Dr Melissa McCullough, the Commissioner for Standards for the Northern Ireland Assembly and also the Commissioner for Standards for the Jersey and Guernsey States Assemblies, would lead the Independent Review.⁴⁰ The Ombudsman informed the Committee why she was of the view Dr McCullough was the appropriate person to lead the Independent Review:

“The credibility of the person who does it. Dr McCullough, I believe, was well placed to do this work. I've heard no criticism

³⁴ [Statement – Terms of Reference: Independent Review of PSOW's Investigation of Code of Conduct Complaints](#), Public Services Ombudsman for Wales, 20 May 2024

³⁵ Finance Committee, RoP 10 October 2024, paragraph 32

³⁶ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), page 29

³⁷ Finance Committee, RoP 10 October 2024, paragraph 37

³⁸ [Statement by the Public Services Ombudsman Wales, 9 April 2024](#)

³⁹ [Statement by the Public Services Ombudsman Wales, 15 April 2024](#)

⁴⁰ [Statement by the Public Services Ombudsman Wales, 9 May 2024](#)

of her appointment. I think people felt she had the right background to do this work. She's very experienced in it, and she brought her academic and professional experience of ethical standards working in this field in Northern Ireland and other jurisdictions.”⁴¹

36. With regards to the independence of the review team, the Ombudsman confirmed that Dr McCullough nor her team had previously worked with the PSOW.⁴²

37. The Ombudsman confirmed that Dr McCullough was asked to review the draft terms of reference ahead of them being agreed:

“She had the opportunity to look at them and discuss them with us, and the opportunity to ensure that she was satisfied that the terms of reference were right to try and achieve what it is we wanted to achieve from this. That was important. She was leading the review, she's put her name to it, and it was important that she had that input.”⁴³

38. The Ombudsman informed the Committee that she was given monthly updates from Dr McCullough to discuss the progress of the Review and to raise any issues. She went on to say that these meetings could have been used to discuss widening the scope of the Review if Dr McCullough had any concerns but that no such request was made.⁴⁴

Review methodology

39. To inform the Review, a combination of documentary reviews, case reviews and staff interviews were undertaken.⁴⁵ The Ombudsman confirmed that she was content with this approach:

“... I think there was a robust methodology. I know that Dr McCullough said several times that she's a scientist by background, so the methodology was really important to her; the terms of reference and getting the methodology right were really important. I think that's why she spent some time in the

⁴¹ Finance Committee, RoP 10 October 2024, paragraph 22

⁴² Finance Committee, RoP 10 October 2024, paragraph 50

⁴³ Finance Committee, RoP 10 October 2024, paragraph 15

⁴⁴ Finance Committee, RoP 10 October 2024, paragraph 26

⁴⁵ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraphs 9-18

report talking about that and confirming the methodology she followed.”⁴⁶

Documentary reviews

40. The Review team examined a number of documents including:

- the Code of Conduct Complaints Process (the process manual);
- the Code of Conduct Complaints Process Internal guidance note – Scheme of Delegation;
- the Decision Review Process;
- the Code of Conduct – Assessing the Public Interest Factsheet;
- the Local Resolution Procedure; and
- the PSOW Staff Standards of Conduct Policy.⁴⁷

41. The Ombudsman confirmed that the “normal procedure” would be for all documents to be “reviewed or amended at least every two years” and that having an independent team review these documents in detail has been “incredibly helpful”.⁴⁸ She went on to say:

“We actually reviewed that in April of this year, so, on that cycle, it would be due to be reviewed again in April 2026, but, in light of this report, we will now go back and make adjustments, as the recommendations recommend. So, we'll update that now; we won't wait until 2026 to do that, obviously. I don't think we'll change our review cycle, because it's on a two-year cycle anyway, but I think the value of this has been that that external team has come in and looked so closely at what we do, and we take on board fully their recommendations and the lessons that we learn from it.”⁴⁹

⁴⁶ Finance Committee, RoP 10 October 2024, paragraph 18

⁴⁷ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 10

⁴⁸ Finance Committee, RoP 10 October 2024, paragraph 69

⁴⁹ Finance Committee, RoP 10 October 2024, paragraph 70

Case review

42. The Review states 673 cases were examined. These were the cases in which a decision was made not to investigate by the Code of Conduct Team, during the period in which its members were led by the FCTM. A further 11 cases, which the FCTM investigated when responsible for the oversight of Code of Conduct work and which were subsequently discontinued by the Director of Investigations and Chief Legal Advisor (DOI/CLA), were also reviewed.⁵⁰

43. Two of the three-member review team conducted the case review. Their approach was calibrated by reviewing thirty cases jointly at the start of the review to:

“... ensure alignment in terms of the review of the documentation including key parts of the process, evidence, the two-stage test and overall review parameters for each case.”⁵¹

44. The Review states:

“Regular meetings were held throughout the review to update and discuss the cases, identify any anomalies or questions arising, and to document any themes emerging.”⁵²

45. The report states that 5 per cent “dip-sampling” was carried out by the third review team member once all cases were reviewed. This involved 24 Code Team cases, 10 FCTM cases, which included 5 PSOW case review decisions.⁵³ The Ombudsman told the Committee that the dip-sampling was undertaken:

“... to see whether they agreed with the decisions they'd both reached. So, it was like a triangulation exercise, if you like, to make sure everyone in the team was applying the same approach.”⁵⁴

⁵⁰ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 11

⁵¹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 12

⁵² [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 12

⁵³ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 14

⁵⁴ Finance Committee, RoP 10 October 2024, paragraph 39

46. The Ombudsman added:

“... the dip sampling was to do that: it was to satisfy her, I think, about the robustness of the approach they were using and that the whole team was using the same approach. And they applied that. We weren't involved in the dip sampling. They made the decision as to how they allocated the cases; they made the decision about the dip sampling. It was all part of them ... and Dr McCullough in particular ... being certain that the methodology she was using was the right one. But it's important to say that they looked at all of the cases. They didn't do a dip sample, they looked at every single case.”⁵⁵

Staff interviews

47. The Review states, prior to the substantive review, 10 members of the Code of Conduct Team relating to the 673 cases being reviewed were interviewed, along with the FCTM and DOI/CLA once the case review was completed.⁵⁶ The Ombudsman told the Committee that all interviews were conducted remotely via Teams.⁵⁷

48. The Ombudsman's official clarified that any staff member who previously worked within the Code of Conduct Team during the Review period but had since moved to a different team within the PSOW were also interviewed.⁵⁸

49. Interviews were undertaken to establish whether the FCTM expressed her personal view on political matters and/or inappropriately influenced other staff members on the Code of Conduct Team.⁵⁹

50. The Ombudsman provided further information about how the interviews were conducted:

“... they also interviewed relevant staff who undertook this work, and importantly the staff whose work was being reviewed as part of this process. I think there was an important element of

⁵⁵ Finance Committee, RoP 10 October 2024, paragraph 41

⁵⁶ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 15

⁵⁷ Finance Committee, RoP 10 October 2024, paragraph 21

⁵⁸ Finance Committee, RoP 10 October 2024, paragraph 57

⁵⁹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 16

fairness there, that staff had the opportunity to participate in the review and put their views forward.”⁶⁰

51. The FCTM was also interviewed as part of the Review. When asked why the FCTM was interviewed when the remit of the Review did not include investigating the initial incident, or the FCTM individually, the Ombudsman explained that Dr McCullough thought it was fair they had the opportunity to take part. The Ombudsman went on to say:

“We couldn't compel her to, we couldn't force her to, she wasn't working for us anymore, but we felt it was important she had that opportunity, and she—Chris can talk a bit more about this—was contacted on a couple of occasions. The first occasion she declined, but I think, on the second occasion, she took up the opportunity to talk to Dr McCullough and have her views put forward and on the record that way. So, it was Dr McCullough's call. I don't necessarily disagree with it, to be honest, in terms of fairness.”⁶¹

Committee view

52. The Committee agrees with the terms of reference used to inform the Review and welcomed the opportunity to consider the draft terms of reference as well as a list of candidates to lead the Review ahead of them being formally agreed. We also note that the review team was provided with an opportunity to comment on the terms of reference before they were finalised, as well as an opportunity to expand on the terms of reference as the Review progressed. We welcome the transparent manner in which the Ombudsman engaged with the Committee on these issues and believe that the inclusive approach adopted provided a solid basis on which the Independent Review team was able to conduct its work.

53. We welcomed the opportunity from the Ombudsman to consider who would be best placed to lead the Independent Review. We concur with the Ombudsman's statement that Dr McCullough has the relevant background and expertise to conduct the Review with integrity and welcomed the appointment of her and her team to lead the Independent Review.

54. The Committee supports the methodology used during the Independent Review and notes that each part of the methodology was relevant to the terms of

⁶⁰ Finance Committee, RoP 10 October 2024, paragraph 18

⁶¹ Finance Committee, RoP 10 October 2024, paragraph 46

reference. In our opinion this combined approach preserves the integrity, robustness and independence of the Review.

55. We welcome the Ombudsman’s assurance that due consideration was given in defining political bias as part of the Review. The Committee fully recognises the importance of ensuring that the PSOW’s processes around code of conduct complaints “are appropriate, fair and impartial and free from political bias” and believe that the reports demonstrates this to be the case.

Conclusion 5. The Committee believes that the terms of reference and methodology of the Independent Review were robust and provided sufficient scope to ensure that the issues relating to the Former Code Team Manager and the wider practices within the PSOW have been investigated fully and independently.

Conclusion 6. The Committee believes that the Independent Review was led effectively by Dr Melissa McCullough and that she had the necessary professional background, breadth of experience and expertise to conduct this work with integrity and credibility.

4. Outcomes, recommendations and lessons learned of the Independent Review

56. The report of the Independent Review was published on 27 September 2024⁶², and the report's recommendations can be viewed in full in Annex 1 of this report.

Outcomes

57. The outcomes of the Independent Review were grouped into four parts as summarised below.

Processes and delegations

58. This part of the Review examined the documents outlined in the 'Documentary Review' (see paragraph 40) ensuring that they are appropriate, fair and impartial and free from political bias.

Documenting the political affiliation of the Accused Member

59. As outlined in the Independent Review, in the context of a Code of Conduct complaint, the political affiliation of the Accused Member is sometimes recorded on the Pre-assessment and Assessment Form (PAAF), at the beginning of a complaint process.⁶³

60. The Ombudsman's official outlined how Code of Conduct complaints are initially dealt with:

"What happens when we first receive a complaint is that the case file is set up on our case management system. As an administrative task, we search to find out what the accused member's contact details are. The practice we did adopt was that our staff would screenshot the details on their council's website. Sometimes that includes political affiliation, sometimes it doesn't. Particularly in relation to town and community council complaints, that information isn't there.

⁶² [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), September 2024

⁶³ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 22

To ensure that those details were transferred correctly and that there were no inaccuracies in putting the details on our system, the screenshot was copied over. The inclusion of the political affiliation was very much, as Dr McCullough says, a by-product of that administrative task.”⁶⁴

61. However, the Review notes that:

“There was consensus [from the interviews] that such information is not required and should not be recorded at the assessment stage.”⁶⁵

62. The Ombudsman’s official informed the Committee that changes have already been made to this process so that no mention of political affiliation is made within the case management system. The only political affiliation appearing in case files going forward would be if it was noted within the narrative of the complaint that was submitted.⁶⁶

Accused Member not informed of complaint until after assessment

63. Regarding the issue of fairness, the Review notes the Accused Member is not informed about the complaint until after the assessment process is completed and the complaint is either rejected or deemed to have met the two-stage test for an investigation to commence.⁶⁷

64. The report states:

“If it is decided not to investigate, the Accused Member is provided with a redacted copy of the statement of reasons but generally does not receive a copy of the complaint. If it is decided to investigate, the Accused Member is provided with a redacted copy of the complaint (and any response to a ‘minded to’ letter).”⁶⁸

⁶⁴ Finance Committee, RoP 10 October 2024, paragraphs 87-88

⁶⁵ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 22

⁶⁶ Finance Committee, RoP 10 October 2024, paragraph 89

⁶⁷ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 23

⁶⁸ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 23

65. This process is a change to previous practice, in which the PSOW would have notified the Accused Member of the complaint once it was received.⁶⁹

66. The report notes the chief reason for the change was to “reduce unnecessary worry for members on complaints which are not ultimately investigated”. The change was also implemented as notifying a member of the complaint when it was received by the PSOW sometimes prompted the member to begin gathering their own evidence to defend their position and make a retaliatory complaint.⁷⁰

67. Whilst staff noted, during interviews with the review team, that the previous process had benefits in terms of fairness and transparency, they said the previous process could cause undue worry, was more resource intensive for the PSOW and that notifying a member of a complaint at an early stage could lead to ‘tit for tat’ complaints.⁷¹

68. The Ombudsman’s official informed the Committee that discussions were ongoing as whether the change in practice should be reverted or not:

“In relation to notification of complaints to accused members, we have already discussed this with the monitoring officers group for all local authorities in Wales that we engage with quite closely and regularly. When we consider whether to revert back to our previous practice, what we intend doing is consulting with the key stakeholders: the monitoring officers, chairs of standards committees, members of local authorities via their monitoring officers and One Voice Wales, for example, and also the Adjudication Panel for Wales, given their experience and expertise on what we do. I think we’ll also look at what other regulatory bodies that undertake work of a similar nature to us do. And then, we’ll carefully consider the responses that we receive and see what the benefits and disadvantages are of reverting back when we take that decision.”⁷²

⁶⁹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 24

⁷⁰ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 24

⁷¹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 25

⁷² Finance Committee, RoP 10 October 2024, paragraph 90

Decisions not to investigate and proposals to investigate, to extend investigations and to commence Own Initiative investigations

69. The report states clarification was sought as to whether there is any review/check mechanism in place in relation to Investigating Officer (IO) decisions not to investigate. For example through random sampling as part of an audit process. The Review found from staff interviews there may be merit in having a quality assurance mechanism in respect of decisions not to investigate by the IO on the basis of the public interest test.⁷³

70. The report also notes, that in practice, given their seniority, the Code of Conduct Team Manager role may overrule an IO's proposal to investigate. If there is disagreement or the decision not to investigate is considered contentious by the Code of Conduct Team Manager, it may be referred to the Director of Investigations/Chief Legal Advisor. Aside from the Decision Review Process, the Review states there is no review/check mechanism in place in relation to the Code of Conduct Team Manager's decision.⁷⁴

71. The Review states the Code of Conduct Team Manager has delegated authority not to extend an investigation, however this is not specified in the Scheme of Delegation.⁷⁵

72. As a result of these findings, the Ombudsman's official confirmed they are in discussions as to how to implement recommendations three and four of the Review. The official added that:

"... an additional quality check on those decisions taken by investigating officers not to investigate complaints, and, as recommended in recommendation 3, the code team manager decisions in terms of her oversight of the team. We will randomly sample those decisions and, importantly, those checks will be undertaken by someone who is not working in the code of conduct team, so independent of that work."⁷⁶

73. When questioned on the proposals to implement the further checks the official indicated that the checks may not necessarily be undertaken by a

⁷³ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 26

⁷⁴ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 27

⁷⁵ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 28

⁷⁶ Finance Committee, RoP 10 October 2024. paragraph 94

manager but would be “somebody of experience and standing in the office”. The official went on to say:

“... that should be around 5 per cent of a dip sampling, random sample approach, across the piece and across the cases closed under these decisions. As I say, it's important, and it's akin to our review process, really, where, when somebody is unhappy and they ask for a review of the decision, for example a complainant or a party to a complaint, they can ask for a review now if they are unhappy and that decision is taken outside the team.”⁷⁷

Opportunity for the Accused Member to provide comment

74. The report notes the Accused Member is provided with all relevant evidence ahead of interview and can comment on this at interview. A draft report is sent to the Accused Member if the case is referred to the Adjudication Panel for Wales/standards committee, and any comments made in response by the Accused Member will be summarised in a final report, given due consideration and included in report appendices.⁷⁸

75. The report states reviewers were advised that all relevant facts, which are key to whether there has been a breach of the Code, will be explored with the member at interview and used to decide what facts are/are not disputed. The evidence is analysed and disputed facts are decided on the balance of probability.⁷⁹

76. The report goes on to say:

“... the “findings on fact” are not shared with the Accused Member prior to them being issued with the draft report as applicable; the purpose of sharing the draft report, which includes an outline of the “disputed” and “non disputed” facts, is to provide the member with an opportunity to comment, including on the “facts” and the “conclusions”, before the PSOW

⁷⁷ Finance Committee, RoP 10 October 2024. paragraph 96

⁷⁸ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 31

⁷⁹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 32

takes a final decision; and that the PSOW role is to refer cases where its “findings on fact” are suggestive of a breach ...”⁸⁰

77. The Ombudsman’s official indicated that they are looking at how they can strengthen and develop the processes surrounding the Accused Member being given an opportunity to provide further comment.⁸¹

Reassessment and reconsideration of complaints

78. The Review also sought clarification regarding the division of responsibilities relating to Code of Conduct complaints. It confirms that a Lead Review Officer has delegated decision-making authority on review requests that complaints be reassessed/reconsidered and a different IO considers the complaints when a review request is upheld.⁸²

79. In addition to the procedures checked above, the Review details a range of safeguards and good practices “which underpin the appropriateness, fairness and impartiality of the process”.⁸³

Conclusion

80. The Review of the process and delegations concluded:

“... in general terms, the PSOW’s Code of Conduct processes and delegations are robust in terms of safeguarding fairness and impartiality. They are systematic, well documented and supplemented with appropriate guidance and the reasoning for decisions is required to be recorded and explained as applicable.”⁸⁴

81. The Review also concludes:

“The documentary review also identified some aspects of the guidance which could benefit from clarificatory amendments

⁸⁰ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 32

⁸¹ Finance Committee, RoP 10 October 2024, paragraph 104

⁸² [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 33

⁸³ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 34

⁸⁴ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 35

and the suggestions in this regard are outlined in the recommendations at the end of this report.”⁸⁵

Code Team case review

82. The Code Team case review examined decisions taken by the FCTM and their Team not to investigate Code of Conduct complaints, to ensure that the PSOW’s two-stage test was applied properly and decisions were free from political bias.⁸⁶

83. The Review states that, for all cases reviewed, it was unnecessary to cross-reference the case with the political affiliation of the member subject to the complaint. This was because:

“... the review found no evidence that any of the case decisions were made on the basis of anything other than the evidence available, the facts established and the resultant reasoned conclusions.”⁸⁷

84. The review of Code Team cases concluded:

“... all decision-making was based solely on evidence, facts and solid, well-articulated reasoning, and as such, there was no evidence of political bias. The case review found no evidence that the decision-making on any of the cases reviewed was influenced by the political affiliation of the person who made the complaint and/or the member who was complained about.”⁸⁸

Review of the discontinued investigation cases where the FCTM was “case owner”

85. This review examined 11 cases which the FCTM investigated, and which were subsequently discontinued by the Director of Investigations/Chief Legal Advisor

⁸⁵ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 36

⁸⁶ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 37

⁸⁷ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 40

⁸⁸ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 57

(DOI/CLA) without referral to a standards committee or Adjudication Panel for Wales. This was to ensure no evidence of political bias in handling of these cases.⁸⁹

86. The report confirms that all cases reviewed were against councillors from either Local Authorities or Community Councils and that all discontinuation decisions made by the FCTM were signed off by the DOI/CLA and the PSOW, as per the process manual.⁹⁰

87. The report concludes:

“The discontinuation decisions review found all decision-making was based solely on evidence, facts and solid, well-articulated reasoning, and as such, there was no evidence of political bias. There was no evidence that the decision-making in relation to these discontinuation cases was influenced by the political affiliation of the person who made the complaint and/or the member who was complained about.”⁹¹

Staff interviews

88. The report notes that all Code of Conduct Team staff interviewed were shocked at first hearing about the incident, with many expressing that they respected the FCTM for the professionalism, work and support they provided. Some of those interviewed were friends with the FCTM but none of them recalled seeing the posts. Staff interviews confirmed discussions about politics did not occur between colleagues, either in-person or remotely.⁹²

89. The review team also interviewed the DOI/CLA. They expressed “shock and disbelief” at the incident, and noted the FCTM was a “professional and valued member of the organisation”.⁹³

⁸⁹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 58

⁹⁰ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraphs 59 - 60

⁹¹ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 62

⁹² [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraphs 64 -66

⁹³ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 69

90. The report notes the Lead Reviewer interviewed the FCTM after the case review was complete, with the FCTM invited to provide any information she felt was relevant to the Review.⁹⁴

91. The Independent Review notes that the Lead Reviewer's interview with the FCTM was the first time the FCTM had formally spoken about the details of the incident to anyone. The Ombudsman's official clarified:

"At the point of the resignation, that really ended the formal relationship between the organisation and the former code team manager. So, that was the end of the formal relationship and the formal process."⁹⁵

92. However, the Ombudsman's official stated that "there was some limited contact after that", adding:

"I was in contact with the former code team manager a number of times by phone and e-mail, firstly to pass on an offer from the reviewer to be interviewed as part of the investigation, secondly, to update on progress and pass on a second offer for the former code team manager to speak to the reviewer—that was at a later stage of the review work—and then, finally, to advise that the work had been completed and that the report was going to be published, and I told her about the publication arrangements. So, I think, overall, we think that the contact was appropriate. It was formal at the early stage of the process, and we tried to keep them informed as the process developed."⁹⁶

93. The FCTM told the Dr McCullough that they implemented unconscious bias training for the PSOW and further delivered the decision-making induction module to staff, which included topics of confirmation bias, conscious/unconscious bias and personal bias, all endorsed by the PSOW.⁹⁷

94. When asked if the practice of internal staff delivering unconscious bias training would continue going forward the Ombudsman's official clarified how the training was delivered at the office:

⁹⁴ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 70

⁹⁵ Finance Committee, RoP 10 October 2024, paragraph 51

⁹⁶ Finance Committee, RoP 10 October 2024, paragraph 51

⁹⁷ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 70

“The general unconscious bias training that we delivered in 2020 was arranged by the former code team manager, but actually delivered by an external provider.”⁹⁸

95. The official added that training on “evaluation of evidence” had been developed in-house, going on to explain:

“That included an element of unconscious bias and the need for staff to be alert to that, together with other biases such as confirmation bias, when we are reviewing evidence on a file. It's a general package of how to assess evidence.”⁹⁹

96. The official also explained how the training was delivered to staff:

“That formed the basis of a module that exists on our hub for staff, and that was delivered by team managers to their teams, and the former code team manager to her team and other staff.”¹⁰⁰

97. The official confirmed that this training continues to be used as “it's a rounded, comprehensive guide as a reminder for staff on how to deal with different types of evidence” and that it is also reviewed.¹⁰¹

98. The Ombudsman also shared other procedures they have in place to prevent any conflicts or unconscious bias impacting the work of the office:

“... the declaration of interest policy is quite clear about people stepping back. What we also do as well, if it presents a conflict for the organisation or perhaps a senior member of staff, is we would ask another ombudsman to take on that investigation, and we have a reciprocal arrangement where we do that for them if they're in a similar situation.”¹⁰²

99. The Ombudsman went on to say:

“... we're very, very conscious. We hold very dear our independence and that impartiality and fairness, and that's why this whole incident has been so difficult for the

⁹⁸ Finance Committee, RoP 10 October 2024, paragraph 100

⁹⁹ Finance Committee, RoP 10 October 2024, paragraph 100

¹⁰⁰ Finance Committee, RoP 10 October 2024, paragraph 100

¹⁰¹ Finance Committee, RoP 10 October 2024, paragraph 100

¹⁰² Finance Committee, RoP 10 October 2024, paragraph 162

organisation. But everything we do is about maintaining that independence and impartiality.”¹⁰³

100. Having considered the evidence gathered during the interviews, the report concludes:

“The review found no evidence that the FCTM expressed her personal views on political matters to “akin to her social media posts” in the office and/or inappropriately influenced other staff members, in the performance of their duties under the Local Government Act 2000.”¹⁰⁴

Recommendations arising from the Independent Review

101. The Independent Review makes seven recommendations in relation to current processes which would “augment the existing safeguards for ensuring the fairness and impartiality of the processes”.¹⁰⁵ The recommendations are summarised below and can be found in full in Annex 1:

1. To mitigate the risk of unconscious bias on the part of the IO and underpin fairness of the complaint assessment process, “it is recommended that steps are taken to ensure the political affiliation of the Accused Member is not recorded on the PAAF”.
2. 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”. The review states this would also protect the PSOW from criticism should the Accused Member learn of the complaint through a third party or the media.
3. “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 in 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”. The review states this could be achieved through random sampling of IO decisions.

¹⁰³ Finance Committee, RoP 10 October 2024, paragraph 162

¹⁰⁴ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 71

¹⁰⁵ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 72

4. Regarding the Code Team Manager's delegated authority to overrule the IO proposal to investigate and to extend the investigation or commence a new investigation against another member, "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".
5. The review states it recognises that, as part of the combined PSOW and APW/standards committee process, the Accused Member has opportunities to comment on the facts of the case. The review states 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. The review recommends that "PSOW gives consideration to developing more detailed internal guidance on assessing the public interest test. Additionally, the public interest factors and considerations should be reviewed regularly".
7. The review recommends clarificatory amendments to be made to the process manual and Scheme of Delegation. The reports lists the suggested amendments.

Lessons learned and the Ombudsman's response to the Independent Review

102. The Independent Review concludes that the public and elected members should be reassured that the PSOW Code of Conduct processes are

"... robust, consistently applied, fair and fit-for-purpose. As the review found no evidence of political bias in the decision-making nor any material process concerns, the main lessons learned relate to measures that might lessen the risk of this type of thing occurring again."¹⁰⁶

¹⁰⁶ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 73

103. The Review recommends that the PSOW reflects on the following points as part of the lessons learned¹⁰⁷:

- Whether the PSOW's Staff Code of Conduct, policies and practices relating to social media usage could be more comprehensive in relation to setting out the circumstances in which social media activity by an employee amounts to misconduct, both in their work and private lives, with consideration of current case law in relation to freedom of expression (Article 10) and other relevant precedent cases;
- Whether steps need to be taken to ensure clear information is provided as part of any PSOW recruitment processes to ensure candidates are made aware of any necessary curtailment of PSOW employees' right to freedom of expression, including activity on social media;
- Whether bias/unconscious bias assessments should be a mandatory part of the recruitment process;
- Whether mandatory refresher training on unconscious bias and on social media usage should be implemented on an annual basis;
- Whether, should similar exceptional circumstances arise, the PSOW requires any further policies or processes to be in place to support its staff; and
- Whether, due to the particular challenges arising from investigating the conduct of elected members, appropriate training is in place for applicable PSOW staff in relation to resilience in managing the pressures and vulnerabilities which come with this role.

104. In its response to the report, the PSOW said:

*"All the recommendations are accepted, and the lessons learned will be used to further strengthen internal policies and practices, recruitment, and training."*¹⁰⁸

105. The Ombudsman told the Committee that her office is in the process of drafting a "more detailed management response, which says exactly what we'll do against each of those recommendations and lessons learned".¹⁰⁹ She continued:

¹⁰⁷ [Independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints](#), paragraph 73

¹⁰⁸ [Statement by the Public Services Ombudsman for Wales](#), 27 September 2024

¹⁰⁹ Finance Committee, RoP 10 October 2024, paragraph 72

“Our commitment is that we want to complete all of the actions necessary to implement the recommendations and the lessons learned by the end of the financial year, and we feel that we can achieve that. What we will then do is that, once we've got that detailed management response and published it, our audit and risk assurance committee will oversee the delivery of that, monitor that and seek assurance that we're doing that properly and in line with what we committed to do, and that it is having the right impact—not just that we're ticking the box but that it's having the right impact on the work that we do.”¹¹⁰

106. When asked how the Committee would be kept informed of any updates against the actions the PSOW are carrying out, the Ombudsman indicated that she would be happy to provide updates directly to the Committee or for such updates to feature in her annual reports.¹¹¹

107. The Ombudsman has subsequently written to the Committee to share the action plan which outlines “how each recommendation and each lesson learned will be taken forward, together with the associated timescales”.¹¹²

108. The Ombudsman went on to clarify that while the focus of their immediate work would be to deliver on the recommendations and lessons learned they might consider undertaking follow-up work. She went on to indicate:

“... something, I would suggest, perhaps, that's light touch, given that this was quite a resource-intensive, particularly financially, piece of work. But it was absolutely valuable to have that external focus, and I think that's something for us to reflect on as well.”¹¹³

109. During the Committee's annual scrutiny of the PSOW's Annual Reports and Accounts 2023-24 and Estimate 2025-26, the PSOW confirmed the cost of the Independent Review was just over £66,000.¹¹⁴

¹¹⁰ Finance Committee, RoP 10 October 2024, paragraph 73

¹¹¹ Finance Committee, RoP 10 October 2024, paragraph 77

¹¹² [Letter from the Public Services Ombudsman for Wales to the Finance Committee, 29 October 2024](#)

¹¹³ Finance Committee, RoP 10 October 2024, paragraph 81

¹¹⁴ [Finance Committee, RoP 16 October 2024, paragraph 156](#)

110. The Committee questioned whether key performance indicators should be adjusted to monitor the quality of their decision making and absence of political bias. The Ombudsman responded:

“That’s a good point and something we can reflect on and talk through with our advisory panel. Just thinking about some of the recommendations, for instance, there’s a recommendation there that we introduce an additional quality check by doing a dip sample of delegated decisions. We could well build that in to our performance framework as well so that there’s an assurance that that’s happened, and also what was the result of that dip sample and quality check—were we still satisfied about the quality of our decision making and the absence of political bias. So, I think that’s a good point, Chair, and where we can it would make sense to do that.”¹¹⁵

111. The Ombudsman’s official discussed how changes could be implemented to safe guard against a similar situation arising again on social media, particularly regarding the recruitment and appointment stage:

“The principle is that we want to be absolutely clear with people before they are appointed what they are signing up to. In other words, that they acknowledge there are restrictions on political activity and they are restricted in how they use social media and what they post. So, at that point we will be doing additional research, prior to appointment as well, so that we have a better understanding. And if there are problematic posts in the past, then we’re at least aware of those, and we’ve got the opportunity to discuss those with the candidate. So, that’s prior to appointment. Once people are appointed, our emphasis is on training and awareness and understanding of the policy, and making sure that that policy and the guidance is clear.”¹¹⁶

112. The Ombudsman clarified “there’s a difference between expressing a view on a policy, which affects everybody, and actually making very specific comments about a political party, which is the situation we were in.”¹¹⁷

¹¹⁵ Finance Committee, RoP 10 October 2024, paragraph 79

¹¹⁶ Finance Committee, RoP 10 October 2024, paragraph 138

¹¹⁷ Finance Committee, RoP 10 October 2024, paragraph 132

113. The Ombudsman went on to say:

*"I think this is a challenging area. People do have a right to a private life, and we don't want to interfere with that more than the job requirements actually require. So, we don't have a proposal to do close monitoring of staff social media accounts, but we do want to emphasise and make sure that staff understand the restrictions. It is always difficult, isn't it, getting that line right? But, ultimately, our staff are doing a really important job."*¹¹⁸

114. The Ombudsman's official confirmed that as with all changes to HR policies, any changes to the PSOW's social media policy would be subject to discussion with its advisory panel and a consultation with staff and trade unions.¹¹⁹ The official also confirmed that discussions have taken place with similar bodies and noted that policies on social media were varied "in terms of how explicit" they are. The official concluded:

*"What we've done is try to build on that best and good practice from elsewhere, but make sure that it does address the recommendations that Dr McCullough has made, so it is sufficiently clear to staff. I think that's one of the really important things. We want staff to be accountable for their actions that could impact on the office, but it's only fair, if we do that, for the policy to be very clear about what they can and cannot do."*¹²⁰

115. The Ombudsman also noted that some changes to practice have been implemented which were not identified in the Independent Review. She explained that "staff felt very exposed and very pressurised, and were getting a lot of unfair comments from individuals" and as a result has implemented regular meetings with the team to discuss how the office can help them.¹²¹ One change arising from these discussions was a change in the signatory in letters from the code team, which are no longer signed by the individual investigating the complaint to "make it clear that these are decisions of the office, of the ombudsman and staff supporting the ombudsman, rather than individual decisions made by individual investigators".¹²²

¹¹⁸ Finance Committee, RoP 10 October 2024, paragraph 123

¹¹⁹ Finance Committee, RoP 10 October 2024, paragraph 113

¹²⁰ Finance Committee, RoP 10 October 2024, paragraph 118

¹²¹ Finance Committee, RoP 10 October 2024, paragraphs 148-149

¹²² Finance Committee, RoP 10 October 2024, paragraph 146

Committee view

116. The Committee notes the Independent Review's report and believes that it provides clarity that there was no evidence of political impartiality. It indicates that decisions made by the Ombudsman and her staff were based purely on facts and evidence and they were not influenced by political affiliation. We welcome the report's recommendations and findings and believe it provides constructive ways in which current processes within the Ombudsman's office can be enhanced and improved further.

117. We recognise the proactive steps taken by the Ombudsman in her initial response to respond promptly and positively to the report's recommendations, and believe that these actions have been robust and in keeping with the Independent Review's views and conclusions.

118. The Committee welcomes the Ombudsman's commitment to accept all the recommendations and lessons learned arising from the Independent Review. The Committee notes that some of the recommendations have either already been fully implemented or that discussions have already begun as to how the recommendations could be implemented.

119. The Committee recognises the importance of the Ombudsman's Code of Conduct Team's role in investigating complaints against councillors. We also recognise that the incident was as a result of the actions of an individual and is not a reflection of the wider team. We note the report's findings do not point to cultural issues within the organisation that need to be addressed. Nonetheless, we agree that there are areas where the Committee would appreciate being informed of progress.

120. In particular, the Committee calls on the Ombudsman to provide updates to the Committee on how it is implementing changes as a result of the Review, be that as part of the key performance indicators included within the annual report or other mechanisms.

121. We welcome the Ombudsman's commitment to review the key performance indicators to ascertain whether it would be possible to introduce an indicator that measures the impact of the Review's recommendations. We suggest the Ombudsman considers introducing a key performance indicator which would require a 5 per cent sample of decisions made by Investigating Officers and Code Team Managers to undergo an additional review or check mechanism for a quality assurance perspective. However, we accept that it is for the Ombudsman to determine the parameters for key performance indicators.

122. We note that follow-up work conducted by the Ombudsman could provide additional assurance on the issues raised within the Review but that any follow-up work with the review team would incur financial and resource implications. As such, we agree that before engaging in follow-up work, the Ombudsman should consider whether the benefit of follow-up work outweighs the financial and resource implications. The Committee expects to be kept informed of developments and related costs in this area.

123. We note the Ombudsman's views that monitoring the social media use of staff is a "challenging area" and recognise that staff within the Ombudsman's office have a right to a private life. We welcome the Ombudsman's approach to looking outwards at how other similar bodies have approached this complex issue. However, we are interested in how personal social media accounts could be monitored to ensure staff are following any guidance provided by the Ombudsman and how this is balanced with the rights of staff to free speech. The Committee welcomes the consideration the Ombudsman has given to determining an appropriate balance in monitoring the social media accounts of its staff and ask for further updates in this area.

Conclusion 7. The Committee welcomes the conclusions and recommendations of the Independent Review and notes that the Review found all decision-making within the Ombudsman's office is based solely on evidence and facts, that there was no evidence of political bias, and that Code of Conduct processes are robust, consistently applied, fair and fit-for-purpose.

Conclusion 8. The Committee notes the Independent Review's conclusions that:

- the Former Code Team Manager acted with impartiality and fairness throughout the period covered by the Review;
- there was no evidence that the Former Code Team Manager expressed personal views on political matters in undertaking their statutory duties; and
- the office is able to undertake future investigations with impartiality and fairness.

Recommendation 1. The Committee recommends the Ombudsman provides a formal response to our report and recommendations as well as regular updates, including updates in its Annual Reports, to the Committee on progress thereafter in implementing the recommendations and lessons learned identified in the Independent Review.

Conclusion 9. We recognise the steps taken by the Ombudsman to respond positively to the report's recommendations, and that activity is underway to action recommendations and lessons learned.

Recommendation 2. The Committee recommends the Ombudsman considers introducing a new key performance indicator based on a sample of decisions made by Investigating Officers and Code Team Managers undergoing additional checks.

Recommendation 3. The Committee recommends that the Ombudsman provides an update as to whether any follow-up work would be conducted following the Independent Review, including any associated financial and resource implications.

Recommendation 4. The Committee recommends that the Ombudsman provides updates to the Committee on how it is monitoring staff compliance in respect of its social media policy.

Annex 1: Recommendations from the Independent Review of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints

Unless otherwise stated, references to paragraph number refer to the report published following the Independent Review.

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 unsighted 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 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 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 that PSOW gives consideration to developing more detailed internal 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.