

<b>SUBJECT:</b>	<b>Public Services Ombudsman For Wales – Independent Review &amp; Consultation Response</b>
<b>MEETING:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>16<sup>th</sup> December 2024</b>
<b>DIVISION/WARDS AFFECTED:</b>	<b>All</b>

## **1. PURPOSE**

- 1.1 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 (attached at Appendix 1).
- 1.2 To provide the Committee with the consultation document from the PSOW on its practice of not informing an accused member of a complaint until after it has been assessed (attached at Appendix 2).

## **2. RECOMMENDATIONS**

- 2.1 It is recommended that the Committee:
  - a) notes the report of the independent review of investigations by the Public Services Ombudsman for Wales into Code of Conduct Complaints;
  - b) instructs the Monitoring Officer to prepare and submit a response to the PSOW consultation on behalf of the Committee.

## **3. BACKGROUND**

- 3.1 The Public Services Ombudsman for Wales (PSOW), commissioned an independent review in May 2024, following receipt of a complaint that a member of staff had been making inappropriate social media posts of a political nature (“the Review”).
- 3.2 The aim of the Review was to assess whether the processes, delegations and decision making in relation to the assessment and investigation of complaints by the code of conduct team and the member of staff concerned have been sound and free from political bias.
- 3.3 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.

## 4. KEY ISSUES

4.1 The report has now been published in full on the PSOW's website, a copy of which is attached to this report as Appendix 1. A copy of the covering letter from the PSOW is also attached at Appendix 2.

4.2 The report made the following recommendations:

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 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 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.

#### 4.3 The report concluded that the findings of the Review:

*‘...should provide reassurance to the public that they can trust and have confidence in the work of the PSOW and its Code Team.’*

#### 4.4 The Ombudsman attended the meeting of the Wales Monitoring Officers group on the 4<sup>th</sup> October and advised the group that they accepted all recommendations. The Ombudsman is now consulting on the second recommendation of the review (see above). A copy of the consultation document is attached at Appendix 3 of this report

#### 4.5 The Ombudsman’s response to this recommendation is set out in the consultation document but is reproduced for ease of reference:

*‘This issue was considered in terms of the fairness of the process. The PSOW’s current practice is that a member who is complained about (“Accused Member”) is not informed about the complaint until after the assessment process has been completed and the complaint is either rejected or is deemed to have met the 2-stage test for an investigation to commence. 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 when they are informed of the PSOW's decision to investigate the complaint.*

*Previous to the process referred to above, the PSOW would have notified the Accused Member of the complaint once it was received. Prior to taking the decision to change the process, the PSOW consulted with Monitoring Officers via the Local Government Monitoring Officers' Group network to explain the reasons for the change. The chief reason was to reduce unnecessary worry for members on complaints which are not ultimately investigated. Another reason was that notification to the member of the full complaint on receipt of the complaint sometimes prompted the member to begin gathering their own evidence to defend their position and this also led to some "tit for tat" complaints being made and involved pre-assessment discussions with the Accused Member. PSOW were of the view that changing the approach to the current one was a more efficient use of resources. After trialling this new approach for a few months, no concerns were raised by Monitoring Officers, and this process was adopted.'*

4.6 The consultation seeks responses to the following:

1. *Do you consider that the PSOW should continue its current practice of notifying the Accused Member of a complaint once it has been closed at the assessment stage of its process or when notifying an Accused Member of a decision to start an investigation?*
  - a. *If so, please outline your reasons for holding this view.*
  - b. *What effects do you think there would be of continuing this practice?*
  
2. *Do you consider that the PSOW should revert back to its previous practice of notifying the Accused Member of a complaint once it has been received?*
  - a. *If so, please outline your reasons for holding this view.*
  - b. *What effects do you think there would be of adopting this practice?*
  
3. *We have asked these specific questions to help us respond to Recommendation 2 of the Independent Review. If you have other comments to make about this specific Recommendation, please outline them for us.*

## **5. RESOURCE IMPLICATIONS**

None.

## **6. CONSULTEES**

Chair of Standards Committee – Peter Easy

**7. AUTHOR**

James Williams, Chief Officer Law & Governance (Monitoring Officer)

**8. BACKGROUND PAPERS**

Appendix 1 - Report of the Independent Review of Investigations by the Public Services Ombudsman for Wales into Code of Conduct Complaints

Appendix 2 – Covering Letter from the PSOW

Appendix 3 - PSOW Consultation on its practice of not informing an Accused member of a complaint until after it has been assessed