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Cymru • Wales

Your ref:

Ask for: Michelle Morris

Our ref: MAM/mdm



Date: 29 October 2024



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Peredur Owen Griffiths MS  
Chair, Finance Committee

**By email only**  
seneddfinance@senedd.wales

Dear Peredur

### **Review into operations, processes and investigations - Councillor Code of Conduct Complaints**

I refer to the recent report by Dr Melissa McCullough following her independent review of my office's work on Councillor Code of Conduct complaints.

When the report was published, I welcomed the report and the confirmation that my office's decision making, in respect of Code of Conduct complaints, is free from political bias. The report on the review recognised the excellent work done by the Code of Conduct Team and it was pleasing that the Independent Reviewer stated that the review findings should provide reassurance that there can be trust and confidence in the work of the Public Services Ombudsman for Wales. I immediately accepted all the recommendations, and confirmed that the lessons learned would be used to further strengthen internal policies and practices, recruitment, and training.

Following its publication, it was good to have the opportunity to discuss the report, its findings and its recommendations with the Committee on 10 October. I confirmed, at that meeting, that I accepted all the recommendations and lessons learned, and that I would be preparing an action plan that I would share with the Committee following discussion with my Advisory Panel.

I have now had those discussions and I am pleased to provide a copy of the action plan to the Committee. The action plan shows how each recommendation and each lesson learned will be taken forward, together with the associated timescales.

ombwdsmon.cymru  
holwch@ombwdsmon.cymru  
0300 790 0203  
1 Ffordd yr Hen Gae, CF 35 5LJ  
Rydym yn hapus i dderbyn ac  
ymateb i ohebiaeth yn y Gymraeg.

ombudsman.wales  
ask@ombudsman.wales  
0300 790 0203  
1 Ffordd yr Hen Gae, CF 35 5LJ  
We are happy to accept and respond  
to correspondence in Welsh.

As I indicated to your Committee, the PSOW Audit & Risk Assurance Committee will monitor the implementation of the action plan and I will include an update in my next Annual Report and Accounts.

I trust that this information is helpful. I would, of course, be happy to provide any further information or clarification you may need.

Yours sincerely

A handwritten signature in black ink that reads "MMA Morris". The letters are cursive and somewhat stylized.

**Michelle Morris**  
Public Services Ombudsman

## Independent Review of investigations into code of conduct complaints

### Recommendations and Lessons Learned

#### Recommendations

	Recommendation	Action to be taken	Target Date for Completion	Decision/ Completion Date
1	<b>Documenting the political affiliation of the Accused Member</b>			
	In order to mitigate the risk of unconscious bias on the part of the Investigation Officer 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 Pre-assessment and Assessment Form ('PAAF'). The process manual will need to be amended accordingly, with updated instructions for the Intake Team.	Agreed. The Complaints Process will be updated to clarify that a member's political affiliation must not be included on the case file when the case record & PAAF form is being created and this change will be implemented in practice.	30 September 2024	26 September 2024
2	<b>Accused Member not informed of complaint until after assessment</b>			
	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.	Agreed. PSOW will undertake a consultation on this aspect of its procedure to seek the views of Monitoring Officers, One Voice Wales, the WLGA and members of public authorities in Wales via these representative groups. The practice of other regulatory bodies who undertake work of a similar nature to PSOW's Code of Conduct work and any resource implications for PSOW will also be considered.  PSOW will carefully consider the responses and other information gathered when deciding whether to revert to its previous practice. It will	31 January 2025	

	Recommendation	Action to be taken	Target Date for Completion	Decision/ Completion Date
		publish its decision on this recommendation and implement any changes to its process.	31 March 2025	
3	<b>Investigation Officer decisions not to investigate</b>			
	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 Investigation Officer 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 Investigation Officer. 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 Investigation Officer decisions.	<p>Agreed.</p> <p>PSOW will introduce an additional review/check mechanism to quality assure Investigation Officer decisions, particularly around the public interest test.</p> <p>This will be undertaken on an at least annual basis and achieved by way of random sampling of Investigation Officer decisions.</p>	31 March 2025	

	Recommendation	Action to be taken	Target Date for Completion	Decision/ Completion Date
4	<b>Code Team Manager's delegated authority to overrule Investigation Officer proposals to investigate and Investigation Officer proposals to extend the investigation or commence a new investigation against another member</b>			
	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 Code Team Manager when deciding not to agree Investigation Officer proposals. It is suggested that this measure could also be achieved by way of random sampling of Code Team Manager decisions. Also, the Scheme of Delegation should be updated to include these Code Team Manager decision-making powers.	<p>Agreed.</p> <p>PSOW will introduce an additional review/check mechanism to quality assure decisions taken by the Code Team Manager to overrule Investigation Officer proposals to investigate; to extend an investigation or to commence a new investigation against another member. This will be undertaken on an at least annual basis and achieved by way of random sampling of decisions.</p> <p>PSOW will update its Scheme of Delegation to include the Code Team Manager's decision-making powers.</p>	<p>31 March 2025</p> <p>30 November 2024</p>	
5	<b>Opportunity for the Accused Member to provide comment</b>			
	The review recognises that, as part of the combined PSOW and Adjudication Panel for Wales/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	<p>Agreed.</p> <p>Members have the opportunity to comment on the facts of the case on three occasions under the current Code process. PSOW will consider whether there are any additional points in the process in which there would be a benefit in providing the Accused Member with further opportunity to comment on the facts of the case</p> <p>PSOW will seek views from the President of the Adjudication Panel for Wales on this issue in light of the Tribunal's expertise and</p>		

	Recommendation	Action to be taken	Target Date for Completion	Decision/ Completion Date
	conclusions/findings on whether the evidence is suggestive of a breach.	experience of adjudicating cases which the PSOW refers to it for hearing.  PSOW will publish its decision on this recommendation and implement any changes to its process.	31 January 2025  31 March 2025	
6	<b>Public interest factors and considerations</b>			
	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.	Agreed.  PSOW will introduce more detailed internal guidance for staff on assessing the public interest test and provide training for staff on this.  PSOW will review its public interest factors and considerations on an annual basis.	31 March 2025  31 March 2025	

	Recommendation	Action to be taken	Target Date for Completion	Decision/ Completion Date
7	<b>Clarificatory amendments</b>			
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))	Agreed.  Paragraph 5.4 and 5.5 of the process manual will be amended to ‘direct evidence that a breach of the Code may have taken place’.	30 November 2024	
II	The process manual is amended to reflect the existing practice that, when the Lead Review Officer upholds a complaint review request, the reassessment/ reconsideration is undertaken by a different Investigation Officer to the Investigation Officer who undertook the original assessment/investigation	Agreed.  The process manual will be amended to reflect existing practice that when the Lead Review Officer upholds a complaint review request, the reassessment/ reconsideration is undertaken by a different Investigation Officer to the Investigation Officer who undertook the original assessment/investigation	30 November 2024	
III	The Scheme of Delegation is updated in light of the retitling of the Lead Review Officer post to make clear that the Lead Review Officer has delegated authority in respect of decisions on whether to uphold a review request that the complaint should be reassessed/reconsidered.	Agreed.  The Scheme of Delegation will be amended to make it clear that the Lead Review Officer has delegated authority in respect of decisions on whether to uphold a review request that the complaint should be reassessed/reconsidered.	30 November 2024	

## Lessons Learned

	Lesson Learned	Action to be taken	Target Date for Completion	Decision/ Completion Date
1	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.	Staff Standards of Conduct Policy will be reviewed and Social Media requirements will be expanded and clarified. This will be subject to staff and trade union consultation: <ul style="list-style-type: none"> <li>• Review existing policies by:</li> <li>• Revised policies drafted by:</li> <li>• Management Team and Advisory Panel consideration by:</li> <li>• Consultation with staff and TU – responses by:</li> <li>• Management Team approval of new policies by:</li> <li>• Implementation</li> </ul>	31 August 2024 30 September 2024 30 October 2024 20 December 2024 31 January 2025 1 February 2025	
2	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.	Information in recruitment packs will be revised by:.	31 January 2025	
3	Whether bias/unconscious bias assessments should be a mandatory part of the recruitment process.	Consideration will be given to this, available assessments, value and costs to inform decision on future approach by:.	31 January 2025	
4	Whether mandatory refresher training on unconscious bias and on social media usage should be implemented on an annual basis.	Unconscious bias annual training arranged for all staff by:	30 September 2024	

	Lesson Learned	Action to be taken	Target Date for Completion	Decision/ Completion Date
		Social media usage training and unconscious bias training will be included in each annual training plan	31 March 2025	
5	Whether, should similar exceptional circumstances arise, the PSOW requires any further policies or processes to be in place to support its staff.	We will engage with staff to understand the scope for additional measures, policies or procedures to support staff by:  Review of policies and support arrangements for staff by:	31 December 2024  31 March 2025	
6	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.	We will engage with staff to review resilience training and identify need for additional training for staff by:  Review of policies and support arrangements for applicable staff by:	31 December 2024  31 March 2025	