

Jennifer Brown [REDACTED] contribution to The Finance Committee National Assembly for Wales for the Consultation into the consideration of powers of PSOW

1. PREAMBLE

1.1 As a care worker in a Carmarthenshire County Council (CCC) run care home I raised concerns about institutional abuse and criminal abuse against a service user without capacity. POVA did not handle the disclosures properly and the service user without capacity was left unprotected. Eight months after first raising the matter with the POVA manager her health was deteriorating to such an extent and knowing without her GP being made aware of the abuse she had suffered nothing would change. I disclosed to him her situation; her medical treatment was adjusted and staff were told not to force her against her will to do anything she was not ready to do. Others had also whistleblown. Because of the way our disclosures were acted on, as a group, we complained about POVA to the Public Services Ombudsman for Wales (PSOW) but he would not become involved explaining it was an employment matter. The previous year he published a report of his investigation into another whistleblower's complaint against the CCC for failures by POVA and maladministration after an abusive criminal act perpetrated on a vulnerable adult was not acted on and she continued to be left unprotected.

1.2 The Care and Social Services Inspectorate (CSSIW) told me to complain to the POVA manager as it concerned the handling of a POVA matter. The manager put the complaint into the hands of the Statutory Social Services Complaints Policy (SSSCP) manager who was advised by the internal legal department to investigate the complaint against POVA and to look into the way us whistleblowers had suffered detriment. She completed a draft report to be sent to me as I was the point of contact; I was never told of this and never received it because the Head of Service (who had been involved after our disclosures) refused to allow her to send it to me.

1.3 We whistleblowers continued to try and have our complaint investigated; I was then suspended which allowed the CCC to put the complaint into abeyance. This did not stop us trying to have the complaint looked at under the SSSCP. The CCC's own Whistleblowing Policy (WP) states a whistleblower should complain/disclose wrong doing to the manager of the SSSCP. The Welsh Assembly Government (WAG)'s guideline "Listening & Learning" (L&L) on which the SSSCP is based states complaints against POVA must first be put to the POVA manager and if complainant is not satisfied it is passed on to be investigated at stage 2 under the SSSCP; if the Local Authority is investigating itself it has to be overseen by the CSSIW (this is why I believe the CCC did not want to follow procedure as they did not want an independent body becoming involved). L&L also states that the guidelines must not conflict with the WP.

1.4 I involved the Health and Social Services Minister Lesley Griffiths who sent my letter down the ranks to the CSSIW to deal with. The CSSIW seemed to believe the CCC were investigating the complaint and they would wait to be contacted by the CCC. I had already tried to persuade the Chief Executive Officer (CEO) to use his influence and persuade the SSSCP manager to investigate giving him and the complaints manager documentation supporting the need to investigate. He did not communicate with me and seems only to have asked the Corporate Complaints manager to find out what the issue was all about. A defaming statement about me was repeated and a deliberate lie was stated to him which would have damaged my reputation and given him an excuse to do nothing even though he would have been aware I was a whistleblower. When I could see the CCC had no intention of investigating their own failures and learning lessons I sent evidence and the letter from the CSSIW to the Older Peoples Commissioner for Wales (OPCW); I don't believe any evidence was looked at as I was told, because the CCC were already investigating our complaint against

POVA they did not want to double up on the investigation. I was also told that should the SSSCP not be followed properly then I could complain to the PSOW. I did contact them again after my dismissal, just before my internal appeal against my unfair dismissal. This time they contacted the CCC and were more than happy with the response received from the POVA Manager but they did mention to me the CSSIW had become aware that the CCC seemed to have problems in relation to their handling of whistleblowers.

1.5 The CCC's WP states that if a whistleblower is not happy with the handling of their disclosures they have every right to complain to the CEO or Chair of the Standards Committee (who also oversees that the WP and SSSCP are fit for purpose). The WP also explains that instead of the former two being contacted the whistleblower could contact the PSOW or regulatory bodies if unhappy with the handling of their concerns. Before I was dismissed the internal legal advice to the SSSCP manager changed and she was told that as a whistleblower and not representing an individual service user I could not make a complaint ( I was told this at my disciplinary hearing when I was unfairly dismissed). In fact before my dismissal one of the other whistleblowers had disclosed wrongdoing and neglect to management again and not being happy with the actions taken had complained to the CSSIW. They following L&L and passed the complaint on to the SSSCP manager who by then felt safe not investigating as whistleblower was not representing a service user. This is counter to the WP and the L&L. Every one of us four whistleblowers received letters to this effect several months after the complaints manager had been given this new legal advice, in fact, the day before my appeal. Of course the one whistleblower had two letters as one had to cover her latest disclosure to the CSSIW. Remembering the advice of the OPCW and having already discussed with the PSOW the situation regarding our complaint and being told I could complain to him (same time being told that this may not get me what I want; what the PSOW investigator meant by that I don't know). I filled in the PSOW's complaint form already provided to me before my dismissal by the PSOW and was given a CASE number. The same investigator was in charge of the investigation as had refused our original complaint regarding POVA. Only this time the complaint was against the CCC refusing to follow procedure and investigate our complaint against the handling of POVA.

1.6 The PSOW sent to the CCC for a response to my complaint and once again the POVA manager composed the response that was to go out from the Administration and Law Department. This response contained evidence that our disclosures of the institutional abuse etc. had been given under the WP. He also made it plain to the PSOW that I must not see that response. The PSOW was also told that I had requested a Subject Access Request under the Data Protection Act 1998 and was pursuing the dismissal via an Employment Tribunal (ET). The PSOW did not show me this response and I knew nothing about it until I was months into my ET hearings and had questioned a large portion of the CCC witnesses including the POVA Manager and was being told that the CCC had not considered me to be a whistleblower which is their excuse for not following the WP; had I had that response disclosed to me, by the CCC, it would have added weight to my witnesses statements in which they said they were told they were protected under the whistleblowing policy when interviewed in regard to the disciplinary investigation of a Night Officer.

1.7 The response explains about the Information sharing form (ISF) made by a social worker regarding my concern for the service user without capacity. I had not discussed the institutional abuse or any of the other matters I had disclosed to the POVA Manager approximately two months earlier. I had not described the full extent of the abuse she was suffering over the telephone to the same extent as I had told the POVA manager. She wrote up the ISF based on the scant information I had given her. It was this ISF that was used throughout and shown to police etc. even though two weeks later I had put all my concerns down in a statement in much more detail as I disclosed to the

POVA manager. I decided against mentioning one concern disclosed to the POVA manager as it was, at the time of that conversation, being investigated. This ISF was not altered or updated with the new criminal element inserted so the police were unaware and felt the problem was just a care management issue and not a POVA or criminal matter. I was told none of this and was only aware that the service user was left unprotected and her health continued to decline. This response contains untruths and inaccuracies; had I had a copy, with the documentary evidence I had managed to put into my bundle for the ET, I could have proved that the actions taken by the CCC against me was to cover up the fact that they had failed to follow the recommendations in the PSOW's report published in September 2009. POVA, whistleblowing and complaints policies are still not followed; all this could have been proved.

1.8 The CCC had no intention of disclosing documentation that would give credence to my claim of unfair dismissal under the Public Interest Disclosure Act (PIDA). Ordering the PSOW not to reveal the response letter and the willingness of some of their witnesses to perjure themselves showed that when that response letter was written they had already decided on the strategy to defend themselves against my claim. What I find heartening is that they did not put my disciplinary investigation officer up as a witness, instead putting the Human Resources (HR) person who had assisted her in the investigation. On two occasions I found, in the documentation I received under Access Request, she suggests there is a need to investigate the complaint against POVA but is completely ignored. She had been given a copy of the complaint manager's draft letter that was never sent to me on the orders of the Head of Service. It was the Head of Service who chose her as investigating officer after promoting her to a post of assistant manager under the manager who was later chosen to chair my disciplinary hearing. It was also the Head of Service who'd had me suspended after realising that I intended to continue to call for the complaint against POVA be investigated. Had the investigating officer been a witness at the ET I could have used the documentary evidence which showed how she was being misled and coerced part of which was leaving out of the disciplinary investigation file (DIF) evidence which would have supported me at the disciplinary hearing. The original complaints officer, who had written the draft letter which acknowledged our complaint as being against POVA and that we were whistleblowers, assisted her in putting together the DIF. This draft letter was left out as it contradicted my being told at my disciplinary investigation meeting, by HR, the complaints team were unaware that the complaint was against POVA.

1.9 The result of the disciplinary was predetermined as before my dismissal they were discussing using the DIF as evidence against me to obtain an injunction preventing me contacting them. So much evidence I could have questioned my investigation officer on as deep down, I felt, she was an honest person but because of the culture in the CCC of cover up and denial no one would dare question what was taking place. To do so could easily cost them their positions or even their job. I believe she was not trusted by the CCC to actually perjure herself. No doubt the CCC, knowing the evidence I had on which she could have been questioned, felt the safest thing was not to follow the usual policy where the investigating officer is the main witness for the defence of a claim.

1.10 I provided the PSOW with a lot of the evidence I put in my ET bundle but whether the investigator even looked at it is not certain because about 6 months after the CCC's response letter I was told that they could not separate my complaint from my disciplinary and would discontinue investigating. It was at this time I was told about the response letter and to see it I had to fill in an undertaking not to divulge the contents. I tried to have the POVA manager recalled for questioning about this new evidence which they should have disclosed before the ET hearings. The judge refused to recall him and it was of no help with the witnesses that were left to be questioned. I appealed the PSOW's decision and as happened the last time they refused to reconsider. I was later being told by them that as a whistleblower I could not complain to the PSOW as I was not

representing a service user. I mentioned the PSOW's Report Reference Number 1999\200600720 as that arose after a complaint by a whistleblower. This time I received an answer from Peter Tyndall who explained that he had looked again at that and he now realises he should not have investigated the matter. It is strange as not long before, on television, he was saying the whistleblower in that case had been right to make the complaint to him. Like me this whistleblower was well aware that the CCC had not learnt any lessons and as our complaint would have proved the PSOW's recommendations though accepted had not being put into practice.

1.11 Recently I tweeted to @SeneddFinance @Nick\_Bennett1 & @OmbudsmanWales this spread over 4 replys :- “ I believe the Ombudsman lost an opportunity to force a culture change in @CarmsCouncil & it's failure to follow POVA complaints & whistleblowing policies Peter Tyndall refused to reconsider my whistleblowing complaint as not in remit!! Our W/B policy states complain to Ombudsman if disclosures not handled properly!!! IS WAG happy to allow my council to continue to act against the Public Interest???” I have put my tweets into whole words for your understanding. On March 5<sup>th</sup> same day as above @ OmbudsmanWales replied “ New own initiative powers being sought by Ombudsman would have allowed us to look into this.” I then tweeted 5 replies to this mentioning the above Ombudsman report which was damning to the CCC and their maladministration. I am still whistleblowing and asking the CEO to look into the matter. The Administration and Law/Monitoring officer, CEO and Chair of the Standards Committee refuse to have a meeting with me to discuss the way policies are not being followed and how there is a culture of cover up. They prefer to hide behind the fact that I lost my ET claim which in their eyes prove they followed procedures and protect the vulnerable. I sent them documentation that proved the head of Administration and Law had told the Chair of the Standards Committee in 2010 there had been no whistleblowing disclosures this contradicted evidence put in the CCC's response letter to the PSOW. “What a tangled web we weave when we practice to deceive!” .

1.12 One important piece of information left out of the CCC response letter of 25<sup>th</sup> May 2012 to the PSOW was how us whistleblowers had been told we could not complain because we were not representing a service user. I had put a copy of the letter, stating this, with the documents sent with my complaint form to the PSOW in March 2012. This response made no suggestion that as a whistleblower I could not complain and even though I had informed the PSOW of this he did not use this excuse for not investigating until I had appealed his decision. I believe the CCC and the PSOW have misused the L&L guidance to silence whistleblowers. The L&L states it must not conflict with the WP in which we are told to complain to the SSSCP manager and to complain to the PSOW if we are not happy with the handling of our disclosures. The PSOW remit is to look into the wrongful actions concerning the SSSCP. Whistleblowers are genuine complainants under the WP. Though whistleblowers are employees the PSOW would only need to investigate whatever the disclosure/complaint was about and not involve himself in the employment issue of any hardship being suffered by whistleblowers as that is dealt with under the PIDA and by the ET. ET does not look into the disclosures/complaints made by the whistleblower which caused the detriment or unfair dismissal, that is the remit of the regulators or PSOW.

2. I hope you have read my preamble and understand I am speaking from experience as a whistleblower and complainant and have had dealings with both the CCC and the PSOW. I followed the advice of the CSSIW, OPCW and the PSOW, made a complaint through SSSCP followed by complaining to the PSOW. There is no ambiguity in the L&L or in the WP. Both the CCC and the PSOW have deliberately misused the L&L to prevent an investigation that would prove the CCC has not put into practice the recommendations of the PSOW; maladministration still abounds.

### 3. Background Paper dated 21/01/15 from PSOW

3.1 Nowhere in this document is there any mention of complaints/disclosures received from whistleblowers (employees working in public services witness wrongdoing which members of the public are not aware of but may be detrimental to their safety and interest). Listening to employee concerns is the only way of stamping out wrongdoing, cover up and maladministration. Why does it not discuss the PSOW's new decision not to investigate whistleblowing complaints as they are not in the PSOW's remit?

#### 3.2 Own initiative investigations:-

This would no doubt be a useful tool but if it is only brought into action when a complaint has not been received it adds nothing to investigating a whistleblowers complaint as the PSOW could still fall back on his new found and wrong excuse of a whistleblower not being eligible to complain.

#### 3.3 Access- oral complaints:-

Agree it would be of help to service user & whistleblowing (eligible?) complaints.

#### 3.4 Complaints Standards Authority:-

The Social Services Complaints Policy & L&L WAG guidance is already statutory as he knows and to have the other complaints policies made statutory or at least his guidance would be helpful in forcing change in the handling of complaints if he really wants to hold public bodies to account.

#### 3.5 Extension and reform of jurisdiction- Healthcare:-

In (f) what is discussed is that no public service provider has refused to implement a recommendation. He is of the opinion that, because of this, his recommendations need not be made binding on these public bodies as they are with Ombudsmen in the private sector. He deals with public bodies who accept his recommendations, who document their changes as proof they have changed their ways and learnt lessons but as I and others have witnessed the CCC changes are not acted on in practice. If they were I would not have had to whistleblow to the PSOW who, had he investigated, found the CCC had not changed it's ways in regard to POVA, whistleblowing or complaints handling since the report of 2009. My preamble did not explain everything that went on after I made the complaint against POVA in October 2010 to the POVA Manager's Office. Recommendations made to public bodies must be made binding to force improvement and accountability.

4. This is from an email trail sent from Angela Williams(CSSIW) to Ken Redman (CSSIW)dated 17/10/11 which prove a reluctance on the part of the PSOW to find proof the CCC were ignoring his recommendations:-

“SUBJECT: Our Complaint made initially over the phone to Neil Edwards's Office 22/10/10 & 25/10/10 against a POVA investigation not following it's own policy and procedures :

Ken-I routinely get copied into Mrs Brown's correspondence and as you know last year undertook a detailed stage I investigation into her concerns about CSSIW's role. We met to discuss the lessons learned from that. Things have progressed from that point and Mrs B went to the Minister- see my response attached- and is now following the proper channels (not without difficulty it seems however).

I am copying you in for 2 reasons:

- 1)That we may be contacted by the investigating officer- my letter attached refers (stage 1 of the LA procedures I believe)
- 2)We need to be aware of this from the LA perspective and consider carefully how we link this into our forthcoming meeting with the council in Nov. My belief is that they should put this in the hands

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of a credible independent investigator and escalate to stage 2. The Ombudsman is trying not to be involved at this stage-rightly so- given that the LA side of things needs to be given a fair chance to progress. It seems not to have made much headway however and it may be this we need to discuss with them.” Why was the PSOW indicating a reluctance at that stage before my complaint of 2012?

5. If the CCC & PSOW are right no employee in social services would be able to whistleblow in the public interest. Their interpretation is counter to L&L & WP. Why does the PSOW want to silence us? I can understand defensive, unaccountable public bodies doing this but not Ombudsmen who are there to protect the public interest. The PSOW must not be allowed to refuse to accept whistleblowing complaints as has happened in my case. Was it to protect the CCC or itself?