

# **Independent review** of investigations by the Public Services Ombudsman for Wales into Code of Conduct complaints

Review panel

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# Review summary

On 26<sup>th</sup> March 2024, the Public Services Ombudsman for Wales ("PSOW") received a substantiated complaint about social media posts made by the then Code Team Manager. A number of the social media posts were political in nature. The media became aware of the social media posts and concerns were raised about the PSOW's guiding principles of impartiality and independence, with some calling for the PSOW to be abolished.

The PSOW suspended the Code Team Manager on 29 March 2024 and she resigned on 3 April 2024. In May 2024, the Ombudsman commissioned this independent review to establish whether the PSOW's Code Team processes, delegations and decisions in relation to the assessment and investigation of complaints by the Code Team and former Code Team Manager ("FCTM") had been sound, free from political bias and to ensure that lessons are learned from what had happened. The review did not include an investigation of the FCTM or the incident itself.

The review examined the Code Team processes and delegations. The scope of the review also examined 673 cases where decisions not to investigate were taken plus 11 discontinued investigations, which in total accounted for the Code Team decision-making either directly by the FCTM or decision-making for which the FCTM had oversight. As part of the review, interviews were carried out with the Code Team investigation officers ("IOs"), the Director of Investigations ("DOI/CLA") and the FCTM to

establish whether the FCTM expressed her personal views on political matters in the office and/or inappropriately influenced other staff members.

The review found the PSOW's Code of Conduct processes and delegations to be appropriate, fair and impartial and free from political bias. In relation to the cases reviewed, the review found no evidence of politically biased decision-making. The cases reviewed were thoroughly analysed and the decision-making was well-reasoned, consistent, sound and fully documented for each case reviewed. The checks and balances within the process were apparent, providing further assurance of quality, non-biased decision-making. The review found the processes were impeccably followed by the IOs, including the FCTM. The review found no evidence that the FCTM expressed her personal views on political matters akin to her social media posts in the office and/or inappropriately influenced other staff members.

In order to maintain public trust in its operations, the PSOW's work, especially on standards relating to Welsh local government, should follow a well-defined and fair process and should exhibit excellent analysis and reasoning to ensure decision-making is demonstrably impartial. The findings of this review point towards such excellence, in both complaint assessments and processes. This should provide much reassurance to the public that they can trust and have confidence in the work of the PSOW and its Code Team.

# Abbreviations & Acronyms

<b>PSOW</b>	Public Services Ombudsman for Wales
<b>DOI/COO</b>	Director of Improvement & Chief Operating Officer
<b>DOI/CLA</b>	Director of Investigations & Chief Legal Advisor
<b>LRO</b>	Lead Review Officer
<b>CTM</b>	Code Team Manager
<b>FCTM</b>	Former Code Team Manager [1st April 2021 to 31 August 2023]
<b>IO</b>	Investigation Officer
<b>PAAF</b>	Pre-assessment and Assessment Form
<b>SC</b>	Standards Committee
<b>APW</b>	Adjudication Panel for Wales

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# Independent review of the PSOW's investigation of Code of Conduct complaints

## Introduction

1. The office of the Public Services Ombudsman for Wales ("PSOW") was established in April 2006 by the PSOW Act 2005. This Act was repealed and replaced in 2019 to become the Public Services Ombudsman (Wales) 2019 Act<sup>1</sup> ("The 2019 Act").
2. The role of the PSOW is to 1) look into complaints that something has gone wrong with Welsh public services; 2) look into complaints that Welsh councillors have breached their Code of Conduct; and 3) work with public bodies to improve public services and standards of conduct within local government across Wales.

complaints that local councillors had breached the Code of Conduct for councillors in accordance with the Local Government Act 2000<sup>2</sup> ("LGA 2000").

5. There were a number of social media posts of a political nature made by the FCTM, including a reply post which said "F\*\*\* the Tories". Media coverage followed, as did questions and concerns about the impartiality and independence of the PSOW.
6. This independent review was commissioned by the PSOW. Its remit did not include investigating the incident or the FCTM. Rather, the review had the following scope and purpose.

## Incident leading to this review

3. On 26 March 2024, the PSOW received a substantiated complaint that a member of staff (herein referred to as the "Former Code Team Manager" or "FCTM") had been making inappropriate and unacceptable social media posts of a political nature.
4. The FCTM was suspended on 29 March 2024 and resigned from her role with the PSOW on 3 April 2024. The FCTM had been, until the end of August 2023, leading the Code Team assessing and investigating

## Scope and Purpose of the Review<sup>3</sup>

7. The purpose of this 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. The aim of this review was to provide assurance as to whether the PSOW's Code of Conduct Team processes, delegations and decisions in relation to the assessment and investigation of complaints by the Code Team and FCTM

<sup>1</sup> <https://www.legislation.gov.uk/anaw/2019/3/contents>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2000/22/part/III/chapter/III>

<sup>3</sup> Appendix 1

have been sound, free from political bias<sup>4</sup> and that lessons are learned from what has happened.

8. This review's terms of reference were focussed on the following deliverables. (attached at Appendix 1)

(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.

(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.

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<sup>4</sup> For the purposes of this review, 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.

# Review methodology

9. The following outlines how the various parts of this review were carried out.

## Documentary review

10. Documentation examined included: 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.

## Case review

11. There were 673 cases reviewed in which decisions were made not to investigate by the Code Team whose members were led by the FCTM. A further 11 cases, which the FCTM investigated, and which were subsequently discontinued by the DOI/CLA, were also reviewed.
12. Two members of the review team conducted the case review. We sought to calibrate our approach by reviewing thirty cases together at the start 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. Once calibrated, cases were randomly split and allocated by even and odd case numbers. 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.

13. The PSOW does not purposely keep information relating to the political affiliation of members subject to the complaint. The review initially collated known political affiliations for the purpose of cross-referencing, if required, at the case review stage.
14. After all cases were reviewed, a 5% dip-sampling (n=34) was carried out by the third review team member who was not involved with the substantive case review. These represented 24 Code Team cases and 10 FCTM cases which included 5 PSOW case review decisions.

## Staff interviews

15. Prior to the substantive case review, 10 members of the Code Team relating to the 673 cases being reviewed were interviewed. Once the case review was complete, the FCTM and the DOI/CLA were interviewed.
16. Interviews were undertaken on the basis of confidentiality and with the purpose of establishing whether the FCTM expressed her personal views on political matters and/or inappropriately influenced other staff members on the Code Team.
17. All interviews were recorded and transcribed for the purposes of the review. Transcripts were provided to interviewees to ensure that each interviewee was satisfied that the transcript was a true record of what they said.
18. Manual thematic analysis was carried out to identify patterns or themes emerging from the interview data. Any excerpts used in this report were approved by the maker of the statement.

# Review Outcomes

## Processes and Delegations Review

### Introduction

19. This element of the review (i.e. the first element of the terms of reference) included an examination of the PSOW's Code of Conduct processes and delegations, specifically in terms of ensuring that they are appropriate, fair and impartial and free from political bias. In particular, this involved consideration of the 'Code of Conduct Complaints Process' document (the process manual) which 'is used to manage the intake, assessment, investigation and reporting of complaints made to the Ombudsman that there may have been a breach of the Local Authorities Model Code of Conduct' and which acts as 'a directive to staff on case management'.<sup>5</sup>
20. Other documentation examined included: 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. Arising from this exercise, various points for clarification were raised and responded to via correspondence with the Director of Investigations & Chief Legal Adviser (DOI/CLA).

### Issues examined

21. As part of this element of the review, the following issues were examined and findings noted:

#### **Documenting the political affiliation of the Accused Member**

22. From the case review exercise, it was noted that the political affiliation of the Accused Member is sometimes recorded on the Pre-assessment and Assessment Form (PAAF) at the beginning of the complaint assessment process. The recording of political affiliation appears to be a consequence of the requirement in the process manual which states: 'The Accused Member's details should be added to the PAAF by linking to the relevant Council website page and taking a screenshot of the details.'<sup>6</sup>

This issue was discussed during the staff interviews and it was noted that the screenshot from the Council website may include details of political affiliation and this information is then captured on the PAAF as a by-product of that administrative action. There was consensus that such information is not required and should not be recorded at the assessment stage. It was also noted that, in individual cases where political affiliation is relevant to the narrative of the complaint, the position would be apparent from the case evidence or could be checked by the investigator if necessary.

<sup>5</sup> Page 6 of the process manual.

<sup>6</sup> Paragraph 4.2 of the process manual.

### Accused Member not informed of complaint until after assessment

23. This issue was considered in terms of the fairness of the process. It was noted that the 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 two-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.<sup>7</sup> 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).<sup>8</sup>

24. Previous to the process referred to above at paragraph 23, 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. 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.

25. Regarding this process change, the staff interviewed expressed the following views as regards to the previous approach: that such pre-assessment communications are unnecessary and can cause the Accused Member undue worry in terms of complaints which are ultimately not investigated; that it was more resource intensive for PSOW when it involved pre-assessment discussions with the Accused Member; and that notifying the Accused Member of a complaint at an early stage can give rise to 'tit for tat' complaints. Staff noted that the old approach had benefits in terms of fairness and transparency.

### Decisions not to investigate

26. The review sought clarification on whether (notwithstanding the provision in paragraph 5.15 of the process manual and the Decision Review Process) there is any review/check mechanism in place in relation to IO decisions not to investigate (e.g. random sampling as part of an audit process). In that regard, from the staff interviews, it was noted that there may be merit in having a quality assurance mechanism in respect of IO decisions not to investigate on the basis of the public interest test. It was subsequently confirmed that, other than cases where there is a specific "review request" from the complainant, no random sampling takes place of the quality of IO decisions, either generally to review decisions taken or specifically in relation to the application of the public interest test. It was noted, however, that the Service Quality

<sup>7</sup> Paragraphs 5.12 and 5.13 of the process manual.

<sup>8</sup> A "minded to" letter is the letter sent to the complainant seeking any additional evidential material and information to support the complaint Paragraphs 7.1 of the process manual.

Officer randomly samples cases from a “service standard” perspective but this does not consider the quality of decision making.<sup>9</sup>

### **Proposals to investigate, to extend investigations and to commence Own Initiative investigations**

27. The review obtained clarification on various issues in this regard. From the process manual it is apparent that the Code Team Manager (CTM) has delegated authority to overrule IO proposals to investigate and IO proposals to extend the investigation or commence a new investigation against another member.<sup>10</sup> While this is not specifically referred to in the Scheme of Delegation, it was confirmed that, in practice, in view of the seniority of the CTM role, the CTM may overrule an IO’s proposal to investigate. The review was also advised that, if there is strong disagreement between the IO and the CTM or if the CTM considers the decision not to investigate may be a contentious one, they will refer a case up to the DOI/CLA for a view, though this practice is not outlined in the process manual/Scheme of Delegation. Further, it was confirmed that, aside from the Decision Review Process, there is no review/check mechanism in place in relation to the CTM’s decisions.

28. The review also sought clarification: on whether the IO has discretion or is required to propose an extension/OI investigation if, during the course of an investigation, other potential breaches of the Code are identified, either involving the Accused Member under investigation or another member; on what basis the CTM might not agree to the IO proposal to extend the investigation or commence a new investigation against another member; and on whether the CTM

has delegated decision-making authority in this regard (as this is not included in the Scheme of Delegation).

29. It was confirmed that, when analysing evidence gathered, it is a matter for the IO to apply their discretion/judgement on cases as to whether to recommend, on the basis of the two-stage test having been met, that an investigation should be extended to consider other possible breaches by the Member being investigated or to recommend that another Member be investigated. The review was advised that, if the CTM or the DOI/CLA disagree which such a recommendation, it will be on the grounds that the two-stage test is not met (e.g. the matter is not serious enough and/or the breach appears to be a minor/technical one). It was also confirmed that, although not specified in the Scheme of Delegation, in practice the CTM has delegated authority not to extend the investigation.

30. In terms of a partial safeguard, however, it was noted that ultimately all the investigation cases are reviewed by either the Ombudsman or the DOI/CLA before they are closed (by the Ombudsman personally if a case is referred to the APW/standards committee or by the DOI/CLA if discontinued and/or no further action/no breach is appropriate). Therefore, as part of that review exercise, other possible breaches, which meet the two-stage test, may be identified or a contrary view may be taken on any earlier decision regarding extensions, in which case the IO is instructed to include the additional matters.<sup>11</sup>

<sup>9</sup> Correspondence with the DOI/CLA, dated 7 August 2024.

<sup>10</sup> See paragraphs 6.1 and 8.1 of the process manual.

<sup>11</sup> Correspondence with the DOI/CLA, dated 7 August 2024.

## Opportunity for the Accused Member to provide comment

31. In assessing the fairness of the process, consideration has also been given to the opportunities which the Accused Member has to comment on the allegations against them, in particular as the facts are established during the investigation process. It was noted from the process manual that: the Accused Member is provided with all relevant evidence gathered in advance of interview and then has the opportunity to comment on this at interview; where the case is referred to the APW/standards committee, a draft report is sent to the Accused Member for comment before it is finalised; and, any comments made by the Accused Member in response to the draft report will be summarised in the final report, given due consideration and also usually included in the report appendices.<sup>12</sup>
32. The review was 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 the resultant information is used to decide what facts are/are not disputed; following interview, the evidence is analysed and disputed facts are decided on the balance of probability; 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 takes a final

decision; and that the PSOW role is to refer cases where its “findings on fact” are *suggestive* of a breach (whereas, as a part of the hearing process, the APW/standards committee makes final findings on fact as to whether there has been a breach of the Code).<sup>13</sup>

## Reassessment/reconsideration of complaints

33. The review also sought clarification on the division of responsibilities in this regard, including: whether the Lead Review Officer (“LRO”) has delegated decision-making authority on review requests that complaints be reassessed/reconsidered (as this is not clear in the Scheme of Delegation); and whether a different IO undertakes the reassessment/reconsideration when the LRO upholds a complaint review request.<sup>14</sup> It was confirmed that the LRO has delegated decision-making authority in this area and that a different IO considers the complaint afresh when a review request is upheld.<sup>15</sup>

## Other safeguards existing

34. In addition to the procedural checks and balances alluded to above, the review has noted a range of other safeguards and good practices which underpin the appropriateness, fairness and impartiality of the process. For example:
- The complainant is required to complete a disclosure declaration, including to confirm: that they agree to the details of the complaint, including their identity, being shared with the Accused Member and others as appropriate;

<sup>12</sup> Paragraphs 12.4, 13.8 and 13.10 of the process manual. It was also noted that, for transparency purposes, comments provided by the Accused Member which are irrelevant to the issues being investigated and therefore not included in the report appendices, are listed in a ‘Schedule of Unused Material’ which is issued with the final report.

<sup>13</sup> Correspondence with the DOI/CLA, dated 7 and 9 August 2024.

<sup>14</sup> Paragraphs 15.5 and 15.11 of the process manual.

<sup>15</sup> Correspondence with the DOI/CLA, dated 7 August 2024.

and that they are prepared to give spoken evidence in support of their complaint (and, where the complainant provides information relating to a third party, consideration is given to the need to obtain a declaration from that third party to share this information)<sup>16</sup>;

- The PSOW's decision on whether to investigate a complaint should be reached within 6 weeks from the date on which satisfactory information is received ("DSIR")<sup>17</sup>;
- All applicable actions and decisions leading up to the decision on whether to investigate the complaint are recorded systematically on the PAAF;
- The process manual includes detailed guidance on Article 10, freedom of expression considerations;
- The reasoning behind decisions is recorded and explained throughout the process – e.g. the requirements on the IO to provide on the PAAF an explanation of each aspect of the two-stage test and to provide the complainant with a written statement of reasons for the decision not to undertake an investigation or to discontinue an investigation<sup>18</sup>;
- Investigations are conducted in private and there is an emphasis on taking care when sharing information during the investigation to maintain confidentiality where appropriate<sup>19</sup>;
- The IO is required to keep the Accused Member and the complainant updated of the

progress of the investigation at least every 6-8 weeks<sup>20</sup>;

- A decision to discontinue an investigation for any reason must be approved by the DOI/ Ombudsman<sup>21</sup>;
- The review process is managed by the LRO who acts independently of the PSOW's Assessment and Investigation Teams in providing a "fresh pair of eyes" review and who is directly accountable to the Ombudsman<sup>22</sup>;
- The PSOW Staff Standards of Conduct Policy includes requirements relating to fairness and impartiality including, for example, the "paramount importance that PSOW staff should be, and be seen to be, impartial and non-partisan"<sup>23</sup>; and
- The PSOW induction for staff and training programme covers unconscious bias and training on taking decisions fairly.

<sup>16</sup> See section 3 of the process manual.

<sup>17</sup> Paragraph 5.2 of the process manual.

<sup>18</sup> Paragraphs 5.7, 5.11 and 11.4 of the process manual.

<sup>19</sup> See, for example, paragraphs 5.12 and 7.8 of the process manual.

<sup>20</sup> Paragraph 7.11 of the process manual.

<sup>21</sup> Paragraph 11.2 of the process manual.

<sup>22</sup> Paragraph 7 of the Decision Review Process.

<sup>23</sup> Paragraph 7.1 of the PSOW Staff Standards of Conduct Policy, October 2022 (v. 3.0).

## Conclusion

- 35. The review has found that, 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.**
36. The documentary review also identified some aspects of the guidance which could benefit from clarificatory amendments and the suggestions in this regard are outlined in the recommendations at the end of this report.

# Results of the Code Team Case Review

## Introduction

37. This element of the review relates to terms of reference 2 and 3, and examined the decisions taken by the FCTM and her 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.
38. Of the 673 cases reviewed, 584 were owned by 11 members of the Code Team with FCTM oversight and 89 were owned by the FCTM.<sup>24</sup>
39. The review considered a diverse range of cases<sup>25</sup>, and the vast majority (98%) of cases reviewed were against councillors from either Local Authorities or Community Councils.
40. For all of the 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.

## Results

41. The case review examined whether the overall process was adhered to in line with the process manual. Through the documents examined, it was clear that the process was followed in each case reviewed.
42. The PAAF was present in all cases reviewed and contained initial input from the Intake Team including the address of the member complained about and any linked or previous cases on the system relating either to the complaint, complainant or the Member complained about and any precedent cases that might be applicable to it. Once received, evidence showed that the FCTM often entered relevant information on the PAAF, including her initial thoughts to provide a steer to the member of the Code Team who would be assessing the complaint. Once the FCTM completed the PAAF, she allocated the case to a member of the Code Team to carry out their assessment.
43. There was also evidence of conflicts being declared by the FCTM at this early stage (e.g. "Assessment will be overseen by [senior manager] if required, rather than [the FCTM] as there is a potential conflict of interest – [FCTM] has knowledge of/ acquainted with the Councillor").
44. The overall assessment by the allocated member of the Code Team (the IO) could be readily viewed in the documentation and included their input into the PAAF, application

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<sup>24</sup> Appendix 2

<sup>25</sup> Appendix 3

of the two-stage test, decision notices (the letters sent to the complainant once the assessment is complete) and various other correspondence and meeting notes including evidence where any advice and/or guidance was sought from line management.

45. Evidence of the two-stage test being applied was found in all cases reviewed, and was articulated within the PAAF and the decision notices. The quality and content of decision notices were reviewed in detail to ensure that the outcome, decision-making and application of the two-stage test was evidentially sound and clearly reasoned.
46. The review found the application of the first part of the two-stage test, which relates to assessing whether there was direct evidence that a breach of the Code took place, was consistently carried out, documented and clearly stated in the PAAF and all decision notices reviewed. In a number of cases, where it was unclear from the complainant's submission exactly which element of the Code was alleged to have been breached or where evidence may have been missing, additional evidential material and information was requested to support the complaint in the form of a "minded to" letter sent to the complainant. On the occasions where a "minded to" letter was sent, all relevant processes including timeframes were adhered to in accordance with the existing process manual. Where the IO decided that the complaint did not meet the first stage of the test, a thorough explanation was provided to the complainant as to why, including a clear explanation that the second stage of the test was not considered due to the first not being met and, on occasions, additionally explaining why, even had it been met, it would not have been in the public interest to investigate.
47. Where the first stage of the test was met, the IO went on to apply the second stage of the test; this is where the public interest element is considered. Many factors and relevant considerations can be considered by the IO at this stage of the test. There was evidence of consistent, thorough, substantial and sound reasoning, including evidence of careful consideration and analysis in all cases reviewed when taking the various public interest factors into consideration. The review found the following public interest factors considered and evidenced by the IOs: the seriousness of the breach; whether the member deliberately sought material gain for themselves or another person at the public expense; whether the circumstances of the breach were such that a member had misused a position of trust or authority and caused harm to another; and whether the breach was motivated by any form of discrimination against any of the victim's protected characteristics. Other relevant considerations<sup>26</sup> that were taken into account in some of the cases reviewed included: the circumstances of the complaint; the extent to which the councillor was responsible for, or was to blame for, the alleged breach; evidence of previous similar behaviour by the member; whether they had been the subject of previous complaints or investigations; whether the alleged conduct was ongoing, repeated or escalating behaviour; whether the alleged conduct had caused harm or impacted on another person, group or body; and consideration of the views expressed by the complainant, or any other person affected by the alleged conduct, relating to the impact and effect.
48. The review found that where complainants sought and were granted a review, these were considered by the LRO. In every review considered, great care was taken in

<sup>26</sup> <https://www.ombudsman.wales/fact-sheets/code-of-conduct-assessing-public-interest/#Considerations>

examining the decision and explaining the process, rationale and outcome in the review decision notice.

## Decision notice excerpts

49. The review highlighted many examples of excellent practice in relation to decision-making which was evident in the decision notices. A few samples are included below. For reasons of confidentiality, these examples do not include details of the complaint, and therefore, cannot be fully illustrative of the reasoning provided within the decision notices. Nonetheless, though limited in detail, they are an important inclusion.

50. Each decision notice explained the process to the complainant:

*“To decide whether to investigate a breach of the Code, we apply a 2-stage test. First, we consider whether there is evidence to suggest that a breach of the Code may have occurred. Second, we consider whether it is in the public interest to investigate the matters complained about. We take into account a number of public interest factors such as:*

- *the seriousness of the alleged behaviour*
- *whether the member misused a position of trust or has sought to gain, for themselves or others, at public expense*
- *whether an investigation is required to maintain public confidence in elected members*
- *whether an investigation is proportionate in the circumstances or whether, if proven, a referral to a Standards Committee or the Adjudication Panel for Wales would be appropriate.”*

51. Many decisions taken not to investigate related to the member’s right to freedom of expression (Article 10, Human Rights Act 1998). The review found this was well explained in all decisions where Article 10 was engaged.

*“The Member’s comment relates to a political matter and therefore the Member would have enhanced protection under Article 10. In this case it is unlikely that the post and comment made by the Member would be considered so serious that a sanction would be considered a proportionate interference with the Member’s right to freedom of expression. It is also the case that the comment relates to political opponents, who are also expected to have a ‘thicker skin’ approach to political comments and debate.*

*That is not to say that the Member does not need to be mindful of the language [he/she] uses. The more egregious the language used and the less political the person is (that the comments are made about), the more likely it is that a sanction would be proportionate. Therefore, the Member may wish to discuss with their Monitoring Officer, or the leader of their political group, the type and appropriateness of the comments they make on a public forum.*

*As it is unlikely that a sanction would be considered a proportionate interference with the Member’s right to freedom of expression, even if a breach of the Code were proven, it is highly unlikely a sanction would be imposed on the member. In view of this an investigation would not be proportionate or in the public interest.” CT8*

*“It is not uncommon for elected members to say things about political opponents which others may consider to be rude or offensive. However, it is not the purpose of the Code*

*to inhibit free speech and the robust expression of political differences. I have also previously explained that Councillors have a wide freedom of expression both in a personal and professional capacity. Article 10 of the European Convention on Human Rights, which affords Councillor X the right to free speech, means that he can say things which may be shocking or offensive to some people. Whilst I fully appreciate that you consider Councillor X's comments to be bullying in nature, I do not consider on the evidence provided that they are sufficiently offensive, egregious<sup>27</sup> or insulting to amount to bullying behaviour towards fellow members or a breach of the Code." CT6*

52. All decision notices explained the rationale in relation to the application of the two-stage test. Where complainants did not provide sufficient evidence to meet the first stage of the test, the decision notice explained this in full. Additionally, where the first stage wasn't met, the decision notices often explained why, even had it been met, it would not have been in the public interest to investigate. The review also noted the reminder often provided in these types of complaints, that the Ombudsman does not condone the language or behaviour in question, and that the Councillor be mindful of their obligations under the Code.

*"In light of all of the above, I find that you have not provided sufficient evidence to substantiate your complaints and demonstrate a breach of the Code. The Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code. Accordingly, I have decided that your complaint does not meet*

*the first stage of the 2-stage test and, therefore, it should not be investigated." CT2*

*"As set out above. I am not persuaded that there is evidence of a breach of the Code of Conduct. Therefore, an investigation is not necessary. But for the avoidance of doubt, I should set out that even if I was satisfied there was a breach of the Code of Conduct, I do not think that an investigation would be proportionate and in the public interest. Even if a breach were proven, I do not consider that a likely sanction would be so significant as to mean that an investigation would be necessary or proportionate in the public interest." FCTM*

*"The conduct of which you complain may amount to a breach of the Code. However, in these circumstances, I am not persuaded that it would be proportionate and in the public interest to investigate your complaint. In deciding proportionality, one consideration is whether, if a breach of the code were proven, a sanction would be likely to be imposed.*

*Having very carefully considered the matter, I am not persuaded that it is likely that a sanction would be imposed on the member even if a breach were proven. I say this because..... While this does not excuse the behaviour, this would provide some mitigation.*

*That said, the Ombudsman would not condone this type of language, which is disrespectful and unprofessional, and I would take this opportunity, on the Ombudsman's behalf, to remind Councillor X of [his/her] obligations under the Code, which in respect of paragraph 6(1)(a) apply at all times. Councillor X should also bear in*

<sup>27</sup> R (on the application of Calver) v Adjudication Panel for Wales [2012] EWHC 1172 (Admin)

*mind that, in the event of any further complaints of this nature, the conclusions reached in respect of this complaint are likely to be considered.” CT5*

53. There were examples of complainants being signposted to local resolution and provided with other useful advice.

*“If you feel that there is evidence of maladministration in the Council’s handling of the matters you have raised, you may wish to complain directly. If, when you have done so, you consider that there is evidence of maladministration which has caused you personal injustice, you may contact the Ombudsman. Further information can be found here:*

<https://www.ombudsman.wales/fact-sheets/complaints-against-public-bodies-our-procedure/>” CT5

54. In cases where a review of the decision not to investigate was granted, the LRO and the Code Team followed the Decision Review Process. Decision letters issued by the LRO were extremely thorough, clear and showed evidence of sound decision-making. They also set out the LRO’s role and the factors taken into account when deciding whether a case should be looked at again.

*“As Lead Review Officer, I am not involved in the assessment or investigation of cases carried out by this office. Instead, I act on the Ombudsman’s behalf, and with her delegated authority, to determine whether there are grounds for her to overturn a decision previously taken on a case, and to carry out further assessment of it.*

*However, I must make clear that I cannot decide that a case should be looked at again simply because you may disagree with the decision made. Therefore, for me to*

*consider a review request, a complainant **must** be able to demonstrate either:*

- that new and significant information has come to light which affects the decision; or,*
- that in reaching the decision we did not have proper regard to the information that was available to us.*

*I must also emphasise that my role is not to re-assess your complaint about Councillor [X], but is, instead, to consider whether [the IO] properly considered your complaint, and if the decision made was reasonable, and in accordance with our statutory jurisdiction and practice when considering Code of Conduct complaints.*

*I have approached my review on that basis.” LRO*

*“I can understand why it is difficult for you to accept the decision reached by this office not to investigate your complaint. However, I have seen no evidence of service failure in the decision itself or in how our two-stage test was applied to it. I therefore do not uphold your review request or your complaint.*

*The Ombudsman has a set of service standards. I have considered whether they have been met in relation to the service provided to you by this office.*

*Our service was clearly accessible for you to use. I consider that [the IO] communicated with you clearly, to explain how we apply the two-stage test to our assessment of Code of Conduct complaints and that he was professional in his correspondence with you. I am of the view that the decision reached in your case was both fair and transparent.” LRO*

55. As well as the robust processes and sound, well-reasoned decision-making, the tone and structure of all correspondence, especially the decision notices and the review decision notices, was in compliance with the Ombudsman Guidance on House Style Requirements. For example, the service standard to provide accurate information in plain and clear language was evident in each case reviewed, as was ensuring that their communication reflects the “standards and values we hold ourselves to” which include: being respectful, demonstrating enthusiasm and pride in their job, taking responsibility, and being supportive and diverse. This consistent communication style was evidenced throughout all of the cases reviewed.

### Dip sampling outcome

56. A total of 5% of the cases were reviewed as an additional check, and included 24 Code Team cases and 10 FCTM cases. This sampling exercise concurred with the findings of the substantive case review, and found no evidence that decision-making was influenced by the political affiliation of the person who made the complaint and/or the member who was complained about.

### Conclusion

**57. The 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. 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.<sup>28</sup>**

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<sup>28</sup> For the purposes of this review, 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.

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

58. The review examined eleven cases which the FCTM investigated, and which were subsequently discontinued by the DOI/CLA, without a referral to a standards committee or the APW to ensure that there was no evidence of political bias in the handling of these cases.
59. All of the cases reviewed were against councillors from either Local Authorities or Community Councils.
60. All of the discontinuation decisions made by the FCTM were signed off by the DOI/CLA and the Ombudsman, in line with the process manual.
61. The review of these cases was carried out using a similar process as the 673 cases reviewed above, including careful consideration of the evidence, application of the two-stage test, and assessing the reasoning for discontinuation.

### Conclusion

- 62. 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.**

## Staff interviews relating to the expression of personal views on political matters

63. This part of the review relates to term of reference 4, and examined 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. The themes emerging from interviews with the Code Team, the DOI and the FCTM provide further context, and include additional themes that have fed into the “lessons learned” section later in this report.

### Code Team

64. Shock was the sentiment expressed by all Code Team staff interviewed in relation to when they first heard about the incident. Every Code Team member said that they were “shocked” or “surprised” with a few stating they were “devastated” when they heard of the incident involving the social media posts by the FCTM. At least four of the Code Team were friends with the FCTM on Facebook; none of them recalled seeing the posts in question. Many were not active on Twitter.

65. The staff interviews confirmed that discussions about politics did not occur between colleagues, either in-office or remotely. Every Code Team member said they did not socialise with the FCTM outside of work and had never had a discussion with the FCTM about politics, never shared any personal political views with colleagues and had never been influenced in any way by the FCTM or anyone’s political views in the office.

*“We’re just very much looking at the case and seeing what the evidence is and looking at our two-stage test and deciding whether it meets with that or not.....My experience is that nobody would think it was appropriate anyway to have those types of conversations.” CT4*

*“I haven’t seen anything that would lead me to give any cause for concern about her work or her demeanour in the office, or as you say I haven’t seen anything around political views in the office. From my perspective she was always very professional, and she did take the role very seriously within the office.” CT5*

*“I can honestly say I don’t know which way my colleagues vote. We don’t talk about politics. I don’t know what their views are and that’s how it should be.” CT7*

*“I remember feeling really impressed about how professional she was, and not once did she mention her political views or opinions; not once. Actually, none of us in the team have discussed that either.” CT10*

*“With work, it was always about the evidence and the two-stage test and whether there was direct evidence, and then whether it was in the public interest. The political parties of the members complained about, or the complainants, never really featured in any of the decision-making or even not really commented upon unless the complainant had made it specific - had expressed that it was a political spat, so to speak.” CT11*

66. Another theme emerging was the respect Code Team members had for the FCTM, the work that she did, her professionalism and the support she provided to those she managed.

*"We'd often have chats about cases if I was finding it difficult, and she was always I thought really professional and full of knowledge, so it was always really helpful to chat through things with her. I never thought anything other than she's assessing this against the code of conduct and our two-stage test, ever." CT3*

*"Yes, I mean, she took such pride in what she did. She loved her job. She was exemplary in terms of being a manager, and supportive and promoting the work we do. She clearly took a lot of pride in it and working for the organisation." CT8*

*"If she felt that there was an exchange worth a discussion, she would welcome that discussion. She wasn't seeking to impose her view on you. She wanted to understand your opinion, and for us to reach the right decision based on that, so I think that's an important point worth making." CT9*

*"She felt passionately about doing it the right way, and so I'd be very surprised if any evidence does come to light of political bias.....she would've done anything to make sure that nothing within work could impact the integrity of the process, or the decisions that we make." CT9*

67. The impact on the PSOW and its staff was mentioned by many members of the Code Team. They spoke about the negative impact this incident has had on them, their work and on the reputation of the PSOW. While this theme does not relate to the FCTMs expression of any personal or political views

[ToR 4], it is included here as an important theme to provide context on the impact the incident has had which has informed the lessons learned section of the report.

*"We're a small team, we work closely together, really believe in what we do, and I think that the comments that have been made about us as a team and an organisation have been unfair...and I think that's had a big impact on everyone. Scrutiny is fine when it's fair scrutiny, but it feels like some of the comments have been really unfair." CT6*

*"That's not nice to hear, really trashing your work, really, when you know that quite a lot of care goes into what we do." CT10*

*"It's a shame, because I have no doubt that the work that everybody puts in is completely impartial and is of a really good standard, so I just think it's unfortunate that it's being called into question because of the actions of one individual in that respect." CT5*

*"It's a specialist role, and we have specialist staff that have done it and done it well for many years, and we know how to do it. So it wouldn't be appropriate for anybody else to do that. So I think it is really important that we keep that work, and we keep doing what we're doing, and we keep upholding standards, which is what we do." CT5*

68. The staff views about the Code of Conduct process were sought in order to help inform the review of processes and delegations which have been discussed above in this report. Overall, it was evident that each Code Team member was very proud to work for the PSOW, took pride in their work, and felt the processes were robust, with many

mentioning the checks and balances that are in place.

*"I think it's a very thorough - lots of checks and balances. It's a real quality product at the end of it." CT10*

*"I think our processes are - it's quite a rigorous process. There are lots of checks and balances and I think that's largely to make sure that inappropriate decisions aren't made and that we're considering things appropriately - that we're not biased in our decision-making, that we're treating cases fairly, that we're looking to make consistent decisions - and that sort of thing. It does mean that the process is a lengthy one and that our investigations do take an awful long time. There's a reason why those checks are in place. I think it would be dangerous for us to cut those corners to have a shorter investigation and possibly open ourselves up to other risks." CT7*

*"I think you have to, because if you do something that's ill-thought through or poorly thought through and you get challenged, as in a review, you've got to be able to justify why you came to that decision or what you based that decision on so that it can be considered properly by the person who needs to review, if you know what I mean. You always bear that in mind - well, I have anyway - when you're putting your PAAF and your decision notice together, because you need to be able to justify why you're thinking what you're thinking." CT8*

*"It's like they hand-picked people for the organisation that have the right attitude and mindset to the work, and it's clear that the team really care, are really thorough, really care about the work." CT10*

## DOI/CLA

69. The DOI/CLA was interviewed as part of the review. The DOI/CLA worked with the FCTM for fifteen years at the PSOW and, like the rest of the staff interviewed, expressed her disbelief and shock at the incident. She also expressed her view that the FCTM was a professional and valued member of the organisation.

*"As far as I was aware, and in my experience with her, always professional, objective in her application of what we do here, and that was my experience of her. As I say, I worked very closely with her over that long period, and I would add, as well, she was always really regarded as an effective, first of all, investigator, but a really good manager, as well, of our work. She really was one of our highly valued up and coming managers, really."*

*"We talk about cases, and as you'll have seen from the way we set out the context, if we think somebody's political allegiance is relevant to a case, there might be reference to it, but I really didn't know what her own personal political views are. I think it's a type of office, because we are very clear about issues of disrepute, because of what we do, and I think we all keep our personal views to one side, and we know we have to apply that objectively..... It's not the sort of conversations we have in the office, or I have with staff, anyway."*

## FCTM

70. The FCTM was interviewed after the case review was complete. As stated previously, it was not in the scope of this review to investigate the incident or the FCTM in relation to the posts she made. However, the review felt it would be entirely appropriate to

invite the FCTM to speak to the Lead Reviewer to provide any information she felt relevant to the review, if she wished to do so; we are grateful that she engaged with the review. The following points were noted.

- The FCTM stated that this was the first time she had formally spoken to anyone about the details of the incident.
- The FCTM said that she is not very political and doesn't lean towards any political party; rather, she has strong personal views about policy issues and the impact policies have on people.
- The review learned that the FCTM implemented unconscious bias training for the PSOW, and further delivered the decision-making induction module to staff which included the topics of confirmation bias, conscious and unconscious bias, and personal bias, all of which were endorsed by the PSOW. She also said that she discussed these topics with her team regularly, including the importance of applying the code and not personal biases about the members or their political parties. She also said she recognised the importance of the will of the electorate, regardless of her own views and would often remind her team of this.
- The FCTM said that she had declared interests, as required by PSOW relating to her personal relationships with friends who

had political affiliations. She said that if any complaints were received which related to those people, she declared an interest and did not deal in any detail with that casework.

- The FCTM said she was "heartbroken" that anything she could have done could have damaged the reputation of the office. She said she had worked very hard for the organisation for fifteen years and was good at her job. She said she was not concerned by PSOW's decision to commission an independent review, stating that "Anyone can look at any of my work. I document everything. I created the PAAF, the form to keep it all logical so that anyone can see it, anyone can access it. I kept all of my notes, everything in a place where it can all be accessed. There's clear oversight from top to bottom. I introduced the - put in the Article 10 considerations up front to make sure that we considered all that at the outset...We had bi-weekly discussions as a team, and we had monthly case meetings where we went through every single case with senior managers in the room."

## Conclusion

- 71. The review found no evidence that the FCTM 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.**

# Recommendations

72. The following recommended improvements, which relate to the current process, would augment the existing safeguards for ensuring the fairness and impartiality of the processes and would clarify the related guidance as applicable:

- (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<sup>29</sup> 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**<sup>30</sup>: 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

<sup>29</sup> See, for example, paragraph 5.15 of the process manual.

<sup>30</sup> See paragraphs 6.1 and 8.1 of the process manual.

opportunities to comment on the facts of the case.<sup>31</sup> 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.

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<sup>31</sup> See, for example, paragraphs 12.4, 13.8 and 13.10 of the process manual.

# Lessons Learned

73. The findings of this review should offer reassurance to the public and to elected members 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. The review recommends that the PSOW reflects on the following points:

- (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.
- (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.

- (3)** Whether bias/unconscious bias assessments should be a mandatory part of the recruitment process.
- (4)** Whether mandatory refresher training on unconscious bias and on social media usage should be implemented on an annual basis.
- (5)** Whether, should similar exceptional circumstances arise, the PSOW requires any further policies or processes to be in place to support its staff.
- (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.

## Report conclusion

74. As stated in The Venice Principles<sup>32</sup>, “Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms”. The PSOW is built on the principles of independence, impartiality, fairness and inclusivity. These principles must be reflected in the important work carried out by the PSOW in order to maintain public trust in its operations. This necessarily means that the assessments carried out by investigation officers who work for the PSOW should demonstrate a consistent application of a well-defined and fair process as well as excellent analysis and reasoning to ensure that their decision-making is patently impartial and non-biased. The findings of this review point towards such excellence, in both processing and complaint assessment. This should provide reassurance to the public that they can trust and have confidence in the work of the PSOW and its Code Team.

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<sup>32</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

# Appendix 1: Terms of Reference

## Independent Review of PSOW's Investigation of Code of Conduct Complaints

Final Version 16.05.24

### Background

The office of the Public Services Ombudsman for Wales was established in April 2006 by the Public Services Ombudsman (Wales) Act 2005. In 2019 this Act was repealed and replaced by the Public Services Ombudsman (Wales) 2019 Act ("The 2019 Act"). The appointment of 'Ombudsman' is made by the Crown and the current Ombudsman, Michelle Morris, has been in post since April 2022.

The role of the PSOW is to: 1) look into complaints that something has gone wrong with Welsh public services; 2) look into complaints that Welsh councillors have breached their Code of Conduct; and 3) work with public bodies to improve public services and standards of conduct within local government across Wales.

### Context

On 26 March 2024, the PSOW was informed by a member of the public that a member of staff (herein referred to as the "Former Team Leader") had been making inappropriate and unacceptable social media posts of a political nature.

The Former Team Leader was suspended on 29 March 2024 and resigned from her role with PSOW on 3 April 2024. The Former Team Leader had been, until the end of August 2023, leading

the Code Team assessing and investigating complaints that local councillors had breached the Code of Conduct for councillors in accordance with the Local Government Act 2000 ('LGA 2000').

### Scope and Purpose of the Review

The purpose of the independent review is 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. The aim of this review is to provide assurance as to whether the PSOW's code of conduct processes, delegations, and decisions in relation to the assessment and investigation of such complaints have been sound, free from political bias, and that lessons are learned from what has happened.

*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.

While there is currently no evidence that the Former Team Leader expressed her personal views or influenced others in the office, PSOW recognises that any review also needs to provide assurance on the Former Team Leader's decision-

making and potential influence on others. There is no intention for this review to reassess cases afresh or to reopen cases.

## **Code of Conduct complaints which are not investigated**

From 1 April 2021 onwards, the Code Team was responsible for the assessment of Code of Conduct complaints and making decisions on which complaints should not be investigated. Prior to this date these assessments were made in a different team, which was not managed by the Former Team Leader.

On 1 September 2023, as happens from time to time in accordance with the operational needs of the office, the PSOW rotated team leaders and the Former Team Leader moved to manage a different team in PSOW. On this occasion, the rotation occurred as a result of the retirement of a team leader who managed a Public Service Complaints Investigation Team.

From 1 September 2023 until 22 October 2023, the Code Team had no team leader, pending the new team leader taking up this role on 23 October. During the time when no team leader was in position, a more senior manager oversaw the work of the Code of Conduct Team. She was, from time to time, assisted by the Former Team Leader.

This review will consider assessment decisions taken by the Former Team Leader and the Code Team from 1 April 2021 until 22 October 2023.

The PSOW applies a two-stage test when deciding whether a complaint should be investigated. Firstly, whether the evidence provided suggests that a breach of the Code of

Conduct has occurred, and, secondly, whether an investigation is required in the public interest.

As the Former Team Leader did not manage the Team which took assessment decisions on Code of Conduct cases before 1 April 2021, this review will not consider assessment decisions taken before 1 April 2021.

## **Code of Conduct complaints – cases which are investigated**

Decisions to start an investigation under section 69 of the LGA 2000 are taken by the Director of Investigations/Chief Legal Adviser.

Decisions to discontinue an investigation before its completion are taken by the Director of Investigations/Chief Legal Adviser.

On completion of an investigation, the PSOW's role is to decide which of the following findings under s69(4) of the LGA 2000 is appropriate:

- (a) that there is no evidence of any failure to comply with the code of conduct;
- (b) that no action needs to be taken in respect of the matters which are the subject of the investigation;
- (c) that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned for consideration by its standards committee, or;
- (d) that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a tribunal.

Decisions that there is no evidence of a breach of the Code (as outlined in (a) above) or that no action needs to be taken in respect of the matters investigated (as outlined in (b) above) are taken by the Director of Investigations/Chief Legal Adviser.

Cases which the Former Team Leader investigated during the period from 1 April 2019 (when the Former Team Leader became responsible for the oversight of Code of Conduct work) until 23 October 2023 and which the Former Team Leader either decided to discontinue or close because there was no evidence of a failure to comply with the code or no action needed to be taken, will be considered as part of this review. Although the Former Team Leader did not make the final decision on these cases, all cases which the Former Team Leader investigated whilst in a management role overseeing Code of Conduct casework for PSOW, will be considered as part of this review.

Decisions to refer a matter for hearing to a standards committee or the Adjudication Panel for Wales under (c) or (d) above, are taken by the Ombudsman.

These cases are then subject to an independent hearing, in which the investigation may be challenged and scrutinised and witnesses may be called before the relevant standards committee or Adjudication Panel for Wales reaches a decision on whether the councillor complained about has breached the Code of Conduct, and if so, whether a sanction should be imposed.

A councillor may appeal against decisions taken by a standards committee to the Adjudication Panel for Wales.

A councillor may appeal against decisions taken by the Adjudication Panel for Wales to the High Court.

The Adjudication Panel for Wales and standards committees are independent of the Ombudsman and take decisions on cases independently of the Ombudsman. Cases referred to either a standards committee or the Adjudication Panel for Wales have already been reviewed by those bodies. Decisions of those bodies are appealable: that is, there is a statutory mechanism in place which allows a councillor subject to a decision of those bodies to seek a further review of those decisions. The Ombudsman has no power to alter a decision of a standards committee or the Adjudication Panel for Wales. The only way in which such decisions can be challenged or altered is via the statutory appeal process. Accordingly, the review will not include these cases.

## Lead Reviewer

### Dr. Melissa McCullough

Melissa McCullough is the Commissioner for Standards for the Northern Ireland Assembly (since 2020) and also the Commissioner for Standards for the Jersey and Guernsey States Assemblies (since March 2023). Melissa moved to Belfast from the United States in 1994 and obtained a PhD from Queen's University Belfast, Faculty of Medicine in 1997. She has worked as an academic in law, ethics, and professionalism in the UK and Ireland since 2005. Melissa also holds the Advanced Professional Certificate in Investigative Practice, a Master's degree in Bioethics and Applied Ethics and a Bachelor of Laws degree. Melissa served as a ministerial appointed non-executive director on the Health and Social Care Board in Northern Ireland from 2009 until 2020 and is currently a member of the BMJ Ethics Committee.

## Review Team

### Mr. John Devitt

John Devitt is a Senior Policing Oversight Specialist & Independent Professional Investigator. John is a former Scotland Yard Detective and Senior Investigator for the Office of the Police Ombudsman for Northern Ireland. John has extensive major crime investigation knowledge and experience. He has, over his long career, undertaken some of the most challenging, complex, and sensitive investigations nationally and internationally. John currently sits as an Advisory Panel Member for the charity Inside Justice which reviews and investigates alleged miscarriages of justice. John also supports the Northern Ireland Assembly Commissioner for Standards with her ethics and standards current case work. He has been a member of the Institute of Professional Investigators since 1992.

### Mr. Shane McAteer

Shane McAteer is the Clerk of Standards at the Northern Ireland Assembly and has worked as a senior public official for over 20 years, with experience in supporting the development and scrutiny of public policy and legislation and in providing procedural advice, policy analysis, and professional support to elected representatives. Shane has particular experience in advising elected representatives on Code of Conduct requirements and in supporting the adjudication of complaints against elected representatives. He has expertise in conduct/workplace investigation and holds the Advanced Professional Certificate in Investigative Practice. In addition, Shane has prior experience as a Third Sector CEO.

## Evidence Gathering

The Review Team will each be provided access to the case management database. Aside from what is available on the case management database, the Review Team will also gather any and all written correspondence, documentation, and communications relating and relevant to the scope and purpose of the review including email, telephone, digital and hard copy information. The Review team may deem it necessary to interview team members and staff and other relevant third parties as may become apparent throughout the review.

## Deliverables

The Ombudsman has appointed Melissa McCullough to lead this independent review and report on their findings.

The PSOW considers that Dr. McCullough should have a wide scope for comment and should seek to:

1. Review the PSOW's Code of Conduct processes and delegations to ensure that they are appropriate, fair, impartial, and free from political bias.
2. Review the 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 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.
5. Make any recommendations which Dr. McCullough considers appropriate and issue a final report which the PSOW will share with the Senedd's Finance Committee. In the event that Dr. McCullough considers it necessary to widen the scope of this review, she will inform and agree this with the Ombudsman.

## Appendix 2: Number of cases reviewed by case owner

Code Assessment Team	Number of Cases Reviewed
CT 1	11
CT 2	15
CT 3	91
CT 4	6
CT 5	30
CT 6	116
CT 7	68
CT 8	95
CT 9	49
CT 10	19
CT 11	84
FCTM	89
<b>Total</b>	<b>673</b>

## Appendix 3: Percentage of cases reviewed by subject

