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**Response by the Public Services Ombudsman for Wales
to the Standards of Conduct Committee's consultation
'Procedure for Dealing with Complaints against Members of the Senedd'**

We are pleased to have the opportunity to respond to this consultation.

Our role

As Public Services Ombudsman for Wales (PSOW), we investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in our jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

We can consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

We also investigate complaints that elected members of local authorities have breached their Codes of Conduct, which set out the recognised principles of behaviour that members should follow in public life.

The 'own initiative' powers we have been granted under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019) allow us to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also established the Complaints Standards Authority (CSA) to drive improvement in public services by supporting effective complaint handling through model procedures, training and collecting and publishing complaints data.

General remarks

We broadly support the proposals in the consultation document. Our comments below relate only to aspects of the proposals on which we can offer more detailed advice or feedback.

The admissibility criteria for complaints

On a general note, we think that the procedure could be strengthened if the Committee formulated and adopted some form of a public interest test to decide which complaints should be investigated by the Commissioner.

The proposed procedure states that, for a complaint to be considered by the Commissioner, it should 'have enough substance to justify further investigation – i.e., there is enough evidence to suggest that the conduct complained about may have taken place'.

In cases involving allegations of a breach of the Code of Conduct for elected members of local authorities, we apply a two-stage process to decide which cases to investigate. We consider the direct evidence submitted to us, but we also apply our [public interest test](#).

Our role is to support the Standards Committees of local authorities to help councillors achieve the standards of conduct that meet public expectations. However, we believe that our limited resources should not be used to investigate matters which are trivial, or which have little or no impact on the public.

Therefore, we consider whether it is in the public interest for us to investigate. Relevant factors could include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public's expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to another
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity.

We think that such a test would help to manage expectations about the Commissioner's and the Committee's work. It would also help them dedicate resources to more serious cases of real importance to the quality of standards of conduct and political debate in Wales.

The timescale for complaints admissibility

We believe that the proposed timescale of 6 months is appropriate, as long as there is discretion to extend that timescale, if needed.

There is no time limit on complaints about breaches of Code of Conduct that can be submitted to our office. However, when we decide how to consider such complaints, we always apply our public interest test. It is unlikely that a historic case would pass that test. In practice, we would say that we consider most of the Code cases within the 6 month timescale suggested by the Committee.

The two reasons for delay stated in the consultation document (illness or family or work issues) seem appropriate, though perhaps it would be better to refer to 'caring duties' as well to make this point more inclusive. The third 'good reason' for delay ('a reaction to the circumstances of the complaint prevented engagement with the complaints process any earlier') is a little unclear and perhaps could be rephrased.

Provision to deal with some complaints on a group basis

The proposals in this section align with our practice. When we have a lot of complaints on the same matter, we will take on one as a lead complaint (usually it is the first complaint on that matter that we've received). We will then inform other complainants of our approach and update them at the end of the process. Ultimately, the most important consideration is that the investigation is timely and efficient - and that, if something has gone wrong, things can be put right as soon as possible.

Provision allowing the Committee to bring a complaint to an end before reaching a final conclusion

We fully support this provision, as well as the related proposals emphasising early resolution measures. There is no point in pursuing a long investigation into the conduct of a Senedd member if it is not in public interest to do so.

Removing the independent appeals process

We generally agree that this process can be removed in this instance. The Commissioner for Standards is appointed based on their expertise to deal with the complaints within their remit. The Commissioner's findings are then considered by the Standards Committee, which provides a check and balance step. We therefore agree that an independent appeals process in this instance could be used merely to prolong the process but would be unlikely to lead to substantial change in the final decision.

We also want to note that there is no sanction for making a complaint without merit about Code of Conduct breaches. We would welcome such sanctions, as they would hopefully reduce the volume of vexatious and trivial complaints reaching our office.

Closing remarks

We trust that you will find these comments useful. If you would like to discuss our comments further, please do not hesitate to contact Ania Rolewska, our Head of Policy (ania.rolewska@ombudsman.wales).



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