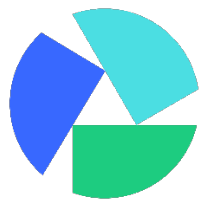


Agreement between
the
Public Services Ombudsman for Wales



Ombwdsmon
Ombudsman
Cymru • Wales

and

South Wales Police



Agreement between the Public Services Ombudsman for Wales and South Wales Police

1. Introduction

- 1.1 The Public Services Ombudsman for Wales (PSOW) may, under the Public Services Ombudsman (Wales) Act 2019 investigate complaints by members of the public that they have suffered injustice as a result of maladministration or service failure by public service providers in Wales.
- 1.2 PSOW may also investigate complaints that elected members of a local authority have, or may have, failed to comply with that authority's code of conduct. Under Part III Local Government Act 2000 all County, County Borough and Community Councils, and all National Park and Fire Authorities in Wales must have a code of conduct as to how their elected members should behave. All members must agree to abide by this code.

2. Purpose

- 2.1 The Ombudsman and South Wales Police recognise the need to assist the investigation process and to ensure mutual understanding between both organisations. This allows for the following:
 - 2.1.1 Information can be shared in confidence prior to formal investigation in order to identify issues which are for the relevant police force and issues for PSOW.
 - 2.1.2 Referral from PSOW to police allegations of crime together with supporting evidence of complainant.
 - 2.1.3 Information can be shared with PSOW where a complaint about maladministration or service failure by public service providers in Wales involves alleged or apparent criminal activity on the part of the service provider or its staff.
 - 2.1.4 Provision to PSOW of copy statements and other police evidence, where appropriate, when a member has been convicted of an offence, if that conviction is subject of an allegation of misconduct, or when a decision is made not to prosecute but the Ombudsman has received an allegation of a breach of the code of conduct relating to the same fact.

2.1.5 Provision to PSOW, where appropriate, of any other information the police may have in relation to an investigation undertaken by PSOW.

2.2 The purpose of this document is to:

2.2.1 Provide a mechanism and process for the Ombudsman to seek information held by South Wales Police, and information from police officers who may be witnesses, relating to a matter relevant to an ombudsman investigation.

2.2.2 Provide a mechanism and process, and detail any limitations, for provision of updates by one party to the other.

2.3 This document sets out the principles of cooperation and also the process to be followed.

3. Benefits of sharing

3.1 By sharing personal information under this Agreement, it is envisaged that the following benefits will be achieved:

3.1.1 PSOW obtains all available material evidence relating to an allegation of misconduct (information will be considered on a case-by-case basis as identified within Section 11 of this MoU);

3.1.2 Any allegation of criminal conduct or evidence suggesting criminal conduct in a code of conduct complaint is referred to the police or other appropriate agency.

3.2 Co-operation will be beneficial in the following circumstances:

3.2.1 Complaints received by PSOW about maladministration or service failure by public service providers in Wales where it is alleged that, or it appears that, there has been criminal activity on the part of the service provider or its staff.

3.2.2 Complaints received by PSOW that a member of a local authority has breached the Code of Conduct which concern conduct which may already have been investigated by the police or should be investigated by the police because the conduct complained about could potentially amount to criminal activity.

3.2.3 Complaints received by police forces regarding the conduct of members which are not criminal but are potential breaches of an

authority's code of conduct;

- 3.2.4 Investigations by the police into a member's dealings, where it is thought that there may be criminal activity but where none is found, but where the member has behaved unethically;
- 3.2.5 Investigations undertaken by the police into a member's dealings where criminal activity has been identified, but it is decided that prosecution is not in the public interest; and
- 3.2.6 Complaints/information, directed to PSOW and a police force simultaneously, in regard to the activities of a member of a relevant authority.

4. Legislative / statutory powers

- 4.1 Disclosure of information will be conducted within the legal framework of Data Protection legislation (including the UK General Data Protection Regulation (UK-GDPR) and the Data Protection Act 2018 (DPA)), the Human Rights Act 1998 and in compliance with the common law duty of confidence.
- 4.2 Consent is only one of the lawful bases for processing found in the UK-GDPR, and only one of the conditions for processing Special Categories of personal data or Criminal Conviction data under UK-GDPR and the DPA. As the sharing covered by this Agreement does not rely on consent, partner organisations will need to be able to satisfy one of the other lawful bases for processing personal data under UK-GDPR, and one of the conditions under UK-GDPR and DPA for processing special category or criminal conviction data.
- 4.3 For the purposes of this Agreement the following lawful bases contained within Article 6 of the UK-GDPR will be appropriate for processing personal data:
 - 6(1)(c) The processing is necessary for compliance with a legal obligation to which the Controller is subject;
 - 6(1)(e) The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller.
- 4.3.1 The Ombudsman has the same powers as the High Court in respect of the production of documents:

S.19 of the Public Services Ombudsman (Wales) Act 2019 provides that, for the purposes of an investigation, the Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to do so.

S.53 provides a similar condition as S.19 but specifically relates to investigations in respect of investigations of complaints that do not fall under Part 3 of the Act, relating to social care and palliative care, including information relating to actions taken by a care home providers in connection with the provision of accommodation, nursing or personal care in a care home in Wales; actions taken by a domiciliary care providers in connection with the provision of domiciliary care in Wales; and actions taken by independent palliative care providers in connection with the provision of palliative care services in Wales.

4.4 For the purpose of this agreement the following Article 9 condition of the UK-GDPR will be appropriate for processing special category:

9(2)(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

4.5 Article 10 of UK-GDPR also applies in respect of criminal convictions and offences data.

4.6 In respect of 4.4 and 4.5, above, the relevant conditions of DPA Schedule 1, Part 2, are Paragraphs:

6 (1) This condition is met if the processing -

- (a) is necessary for a purpose listed in sub-paragraph (2), and
- (b) is necessary for reasons of substantial public interest.

(2) Those purposes are -

- (a) the exercise of a function conferred on a person by an enactment or rule of law;
- (b) the exercise of a function of the Crown, a Minister of the Crown

or a government department.

7 This condition is met if the processing is necessary –

(a) for the administration of justice, or

(b) for the exercise of a function of either House of Parliament.

4.7 In line with the requirements of Schedule 1, Part 2, Paragraph 5 of the DPA, the above conditions are met only if, when the processing is carried out, the organisation has an appropriate policy document in place.

4.8 Additional legislative powers (see Appendix A):

- The Public Services Ombudsman (Wales) Act 2019
- Local Government Act 2000

5. Details of personal information being shared

5.1 Personal information shared for the purpose of this Agreement includes a range of information and might therefore include:

- Full Names
- Address and other contact details
- Where relevant, information relating to individuals' behaviour or conduct including statements, written and audio records, CCTV and other images
- Where relevant, any other personal information contained in the material referred to at Section 2 of this Agreement, and which either party considers necessary to share in order for PSOW to properly discharge the statutory functions set out in the PSOW Act and Local Government Act.

6. Aim of these arrangements

6.1 To ensure effective liaison so that:

- a) PSOW obtains all available material evidence relating to an allegation of misconduct;
- b) Any allegation of criminal conduct or evidence suggesting criminal

conduct is referred to the police or other appropriate agency if permissible under the relevant legislation governing the PSOW's investigations;

- c) PSOW investigations do not inadvertently conflict with police investigations; and
- d) There is timely communication between South Wales Police and PSOW

6.2 See Section 11 of this MoU for detailed outline of the process in which information is to be provided to PSOW.

7. Agreement

7.1 This document forms an agreement to:

- a) Share information in confidence prior to formal investigation in order to identify issues which are for police and issues for PSOW.
- b) Where appropriate, provide to PSOW copy statements and other police evidence when a member has been convicted of an offence, if that conviction is subject of an allegation of misconduct, or when a decision is made not to prosecute but the Ombudsman has received an allegation of a breach of the code of conduct relating to the same facts.
- c) Provide any other information the police may have in relation to an investigation undertaken by PSOW.

8. Terms of agreement

- a) All formal requests will be in writing, albeit that a preliminary approach may be oral and informal.
- b) All communications will be via the nominated point of contact for South Wales Police and the PSOW Director of Investigations or Director of Improvement.
- c) Any criminal investigation will take priority.
- d) The existence of this document does not prevent agreement on different arrangements in a particular case.

9. Information security

- 9.1 Each organisation will be responsible for the information it holds or processes under this agreement and will do so in line with its obligations as a data controller under the UK-GDPR and DPA.
- 9.2 The organisation sending information under this agreement will be responsible for ensuring it is sent in an appropriate and, where required, secure manner. The organisation receiving information under this agreement will be responsible for ensuring that any information received is stored and processed in an appropriate manner, once it has been received.
- 9.3 If the recipient organisation suspects that material it holds which has been provided by the sending organisation under this agreement has been lost, or inadvertently disclosed to a third party, the recipient organisation should notify the sending organisation as soon as possible and in line with any timescales set out under Data Protection legislation.
- 9.4 Parties undertake that information shared under the agreement will only be used for the specific purpose for which it was disclosed in line with this agreement. It must not be shared for any other purpose outside of this agreement. Information may be released to a third party without obtaining the express written authority of the party who provided the information provided it is disclosed lawfully in accordance with the provisions of the Public Services Ombudsman (Wales) Act 2019 or the Local Government Act 2000 (see Appendix A). In any other instance the recipient will not release the information to any third party without obtaining the express written authority of the party who provided the information. The information shall be destroyed when the information is no longer required.

10. Confidentiality

- 10.1 Each party (PSOW and South Wales Police) shall at all times keep confidential all personal data disclosed pursuant to this agreement. This clause shall survive termination or withdrawal from the agreement. This means that no publication of data supplied pursuant to this agreement will identify any individual, except as set out in this agreement.

11. Process for the provision of information from South Wales Police

- 11.1 Any requests for information made by PSOW must be sent to the South Wales Police Data Protection Department: Data.Protection@south-wales.police.uk

11.2 Upon receipt of request for information from PSOW, the following process will be applied:

11.2.1 Staff within the Data Protection Department will review all requests on a case by case basis and consider all relevant legislation (as outlined in Section 4 & Appendix A).

11.2.2 Data Protection Staff will consider disclosure of information having regard to all the circumstances of the matter.

11.2.3 Any further requests for the information will be considered by the Senior Information Risk Owner (SIRO) prior to further disclosure.

11.2.4 All information must be transferred using secure means i.e. secure email, Varonis etc.

12. Review

12.1 This document will be reviewed by South Wales Police and the Public Services Ombudsman for Wales every three years or sooner if there are circumstances making this appropriate.

12.2 For the purposes of review of this document the appropriate contact details will be:

12.2.1 PSOW: policycontrol@ombudsman.wales

12.2.2 South Wales Police: infogov@south-wales.police.uk

Appendix A- PSOW Legislation



Public Services Ombudsman for Wales Act 2019 (“the PSOW Act 2019”)

Complaints of maladministration or service failure against public bodies

The Public Services Ombudsman for Wales may, under the PSOW Act investigate complaints by members of the public that they have suffered injustice as a result of maladministration or service failure by public service providers in Wales.

The Ombudsman has wide powers to require any person he thinks is able to supply information or produce documents or other evidence for the purposes of his investigations under [section 19](#) of the PSOW Act. This means that information provided to the Ombudsman in response to such a request for evidence is not subject to information sharing protocols. Information should be provided in full without redaction (information will be considered on a case-by-case basis as identified in section 11 of this MoU) and without the need for the relevant police force to obtain consent from any of the parties who may be involved in any matter or named in any document.

All such investigations are conducted by PSOW in private and the information obtained during any investigation may not be disclosed by the Ombudsman except for one of the specific purposes outlined in section 69 Act which are:

- (a) for the purposes of deciding whether to begin an investigation;
- (b) for the purposes of an investigation;
- (c) for the purpose of any function of the Auditor General for Wales;
- (d) for the purposes of resolving a complaint under 6 or 46 of the PSOW Act;
- (e) for the purposes of a statement or report made in relation to a complaint or investigation;
- (f) for the purposes of any provision of section 65, 66, 67 or 68 of the PSOW Act;

- (g) for the purposes of proceedings for—
 - (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (ii) of perjury alleged to have been committed in the course of an investigation;
- (h) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (g);
- (i) for the purpose of proceedings under section 20 or 54 of the PSOW Act;
- (j) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
- (k) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (l) for the purposes of the Ombudsman's functions under Chapters 3 and 4 of Part 3 of the Local Government Act 2000 (c.22).

Local Government Act 2000

Complaints that members of a local authority have or may have breach their Code of Conduct

PSOW may also investigate complaints that elected members of a local authority have, or may have, failed to comply with that authority's code of conduct. Under Part III LGA 2000 all County, County Borough and Community Councils, and all National Park and Fire Authorities in Wales must have a code of conduct as to how their elected members should behave. All members must agree to abide by this code.

The Ombudsman has the power to require any person he thinks is able to supply information or produce documents or other evidence for the purposes of his investigations under sections 61 & 62 of the LGA 2000 (as applied in Wales by section 70 of the LGA 2000 and the PSOW (Standards Investigations) Order 2006 (SI2006/949).

Section 63(1) of the LGA 2000 provides that information obtained by the PSOW under section 61 or 62 must not be disclosed unless one or more of the following conditions is satisfied:

- (a) the disclosure is made for the purposes of enabling the Public Services Ombudsman for Wales or the president, deputy president or any tribunal of the Adjudication Panel for Wales to perform their functions under this Part,
- (b) the person to whom the information relates has consented to its disclosure,
- (c) the information has previously been disclosed to the public with lawful authority,
- (d) the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom and the information in question was not obtained under section 62(2),
- (e) the disclosure is made to the Audit Commission for the purposes of any functions of the Audit Commission or an auditor under the Audit Commission Act 1998,
- (f) the disclosure is made to the Auditor General for Wales for the purposes of any functions of the Auditor General for Wales or an auditor under Part 2 of the Public Audit (Wales) Act 2004,
- (g(i)) the disclosure is for the purposes of an investigation or report of an investigation under Part 3 or Part 5 of the Public Services Ombudsman (Wales) Act 2019
- (g(ii)) the disclosure is made for the purposes of enabling the monitoring officer of a

relevant authority to perform functions conferred on him by or under this Part,

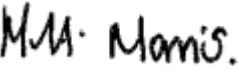
- (h) the disclosure is made to the Commission for Local Administration in England for the purposes of any of its functions,
- (i) the disclosure is made to the Electoral Commission for the purposes of any of its functions,
- (j) the disclosure is made to any person specified in an order made by the Secretary of State for the purposes of this paragraph, for purposes so specified.

If the Ombudsman considers that there is a case for the member he is investigating to answer or, having concluded the investigation consider that there are grounds to refer the member to the Adjudication Panel for Wales or a standards committee, any evidence obtained may be included in the Ombudsman's report and disclosed to the member and the relevant body.

The Adjudication Panel for Wales and standards committees may also require persons to give evidence or provide information to in accordance with the Adjudication by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and the Local Government Investigations (Function of Monitoring Officer and Standards Committees) (Wales) Regulations 2001.

Agreement Signatures:

South Wales Police	
Name	M U Hussain
Position	Chief Financial Officer
Date	15 th December 2023
Signature	
Witnessed by	M Russell (Information Governance Lead)
Signature	

Public Services Ombudsman for Wales	
Name	Michelle Morris
Position	Public Services Ombudsman
Date	12/01/2024
Signature	
Witnessed by	Katrin Shaw (Chief Legal Adviser & Director of Investigations)
Signature	