
The National Library of Wales

Independent external review

July 2015

FINAL

STRICTLY PRIVATE
& CONFIDENTIAL



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Executive summary

Background

At its meeting on 13 March 2015 the Board of Trustees of the National Library of Wales (the Library) agreed to commission an independent external review in relation to the implementation of the Library's disciplinary policy which led to an Employment Tribunal hearing and to the unfair dismissal of two members of staff.

The purpose of the review was to critically assess the processes and decisions made by staff and Library representatives that led to the tribunal judgement which found in favour of both claimants. Specifically, the objectives of the review were to:

- Evaluate the verdict and opinion of the Tribunal giving specific regard to (1) the procedures of the Library and (2) the conduct of its paid officers.
- Assess the Library's investigations and the application and interpretation of its disciplinary policy by the HR function and the Chief Executive and Librarian.
- Examine the advice the Library received from its legal advisors in the light of the Employment Judge's comment and opinion.
- Make recommendation(s) on any issue(s) where the Library, as an employer, needs to review its current disciplinary policy and/or procedures.
- Assess the adequacy of the Library's internal audit performance and arrangements.
- Assess the adequacy of management skills and competencies in dealing with such matters.
- Critically assess the Library's performance management and staff appraisal procedures.

PricewaterhouseCoopers were appointed to undertake the review and this report sets out our findings. The Board of Trustees also appointed a working group to coordinate and facilitate the proposed review. Our methodology is described in Appendix 3.

Key findings

Our review has identified that the disciplinary process and the subsequent claims and Employment Tribunal could have been handled more effectively. There are matters identified in the review that relate to the governance and culture of the Library which, unless addressed, may inhibit the Library's ability to move forward.

The Library's policies and procedures did not facilitate the effective handling of the issues identified

The lack of up to date and clear policies and procedures was a contributory factor in the handling of the issues identified in respect of the two employees by the Library.

The Library's disciplinary policy and procedure is unclear in a number of ways. It does not provide a clear distinction between the processes to manage disciplinary issues relating to members of the senior management team and those relating to other members of staff. Consequently, in the case of the two employees, elements of the disciplinary policy relating to senior management were combined with elements relating to other staff. This mixed approach caused confusion particularly for the two employees and exposed the Library to challenge. It would have been preferable if this lack of clarity had been acknowledged and the approach that was adopted and the rationale for this clearly explained to the employees. This was not always the case.

The role of the disciplinary panel needs to be defined. The lack of clarity created significant difficulties and tensions in the process.

The Disciplinary Policy does not explicitly highlight the areas where the ACAS Code of Practice - Disciplinary and Grievance Procedures and the ACAS guide for Discipline and Grievances at work applies and how these should be considered during the process.

The Library does not have an up to date Fraud Policy. The Library has an Anti-Bribery policy and the Library's Financial Regulations outline the process to be undertaken where irregularities concerning cash, stores or other property of the Library has occurred or is thought to have occurred. However, there is no clear process to be followed where potential fraud is suspected.

Where staff members and management had concerns regarding the processes and actions being followed, they did not use the Library's whistleblowing policy to express their concerns. In fact, there has been no whistleblowing activity at the Library in the past five years. The use of the whistleblowing policy to express concerns may have resulted in further challenge to the actions being pursued.

The Library's policy was developed in November 2010 and was due to be updated in November 2013. This update did not happen. The current policy has not been updated to reflect legislative changes. We understand that the Library's whistleblowing policy is in the process of being revised.

Management skills and competencies need to be further developed

The Library is not yet governed and managed in a way that represents consistent application of best practice. The Library is a proud and cultural institution, which now needs to move forward in order to address the challenges it is facing. There is recognition amongst the Executive Team and the Board of Trustees about the necessary direction of travel as set out in its 'Knowledge for all' 2014-17 strategic plan, but our review has found that the Library needs to develop the management skills and competencies of its staff to ensure that it is able to deliver its plans for the future.

Our review found that consideration and assessment of alternative options available at each stage and the associated risks did not always take place. The senior management team was not always collectively consulted or engaged in this debate.

The normal Internal Audit reporting and de-brief process was not followed. The draft Internal Audit report could have been handled in a way that would have enabled quicker implementation of recommendations.

Given that the findings of the Internal Audit review were considered so significant to warrant an investigation and disciplinary process, it is concerning that the high risk recommendations were not addressed promptly in the best interests of the Library.

Advice was sought throughout the process from Geldards, the Library's legal advisors. However, the Chief Executive did not consult and seek advice from his management team and/or the Board of Trustees before taking key decisions.

The Chief Executive took a number of decisions and actions that left the Library open to challenge. These included:

- The suspension of the two employees shortly before the disciplinary panel and the way in which the suspension was communicated to them. Whilst the reasoning to suspend the two individuals after the disciplinary hearing was to apparently allow them time to prepare for the disciplinary panel, this was not conveyed in the letter to the individuals. Also, one of the employees was already absent from the Library on sick leave. The Chief Executive recognises that in hindsight, a leave of absence may have been more appropriate.
- There was no robust written identification and risk assessment of the range of sanctions which could be implemented following the decision of the disciplinary panel not to find in favour of a case for gross misconduct.
- Although the Chief Executive was confident that the Library had a strong case, there was also a lack of serious consideration and consultation on the potential options to settle the claim and to make counter offers to the individuals prior to the Employment Tribunal.
- There was a lack of a robust assessment of the risks and benefits of decisions and options in the best interests of the Library. Although some verbal updates were provided by the Chief Executive, there were no formal reports in private to the Board in between the Employment Tribunal claim and the Employment Tribunal judgement.

- The sole legal advice provided to the Library was through Geldards and, after the disciplinary investigation was complete, predominately one representative from Geldards. No separate legal advisor was consulted or appointed to represent the Library at the Employment Tribunal.

Performance management and staff appraisal processes are not being robustly and consistently applied to drive improvement

The quality and rigour of implementing the performance appraisal process has been inconsistent. Whilst the performance management system is good, it is not being used effectively throughout the organisation to address poor performance and development needs. The quality assessments undertaken by HR of performance appraisals need to be more robust.

It is evident from our review that concerns regarding performance of certain individuals have not been captured on the Library's performance management system or on individuals' personnel records. Action has not been taken to address these concerns.

The Library's performance standards procedure does not reflect the significant changes the Library has made to its performance management and staff appraisal arrangements. This procedure is not being used effectively to address concerns about performance.

The culture needs to change in order for the Library to move forward

The Library is a close-knit organisation. Whilst a close knit culture can create benefits, it is affecting its ability to implement a robust performance management culture. We understand that a number of concerns have been expressed about some behavioural matters but we could find no evidence of recording of these by HR or appropriate follow-up action being taken.

The existing culture at the Library should be considered carefully to see whether it supports the continued sustainability of the Library. The culture is driven by the tone at the top of the organisation and our review of the disciplinary process has found there was a lack of consultation of the Executive Team, formerly the Senior Management Team. The team was not encouraged to come together and consider the issues in a collective way.

The way forward

There is a determination amongst Trustees of the Board and Executive Team to ensure that the Library learns lessons from the disciplinary process that led to the judgement of unfair dismissal of two members of staff. They are keen to ensure that the governance arrangements are being improved. In response to this report the Library is developing an action plan to address the recommendations. It is positive that the Library is taking a proactive approach to do this. It must ensure that effective mechanisms and resource are put in place to facilitate the monitoring and implementation of this action plan. Developing the improvements as recommended will require effort and commitment from all Trustees and staff.

Findings

The Library's policies and procedures did not facilitate the effective handling of the issues identified

The Disciplinary Policy and Procedure is unclear and does not sufficiently reflect the principles of the ACAS Code of Practice and guidance

The Library's disciplinary policy and procedure is unclear in a number of ways. It does not provide a clear distinction between the processes to manage disciplinary issues relating to members of the senior management team and those relating to other members of staff. Consequently, in the case of the two employees, elements of the disciplinary policy relating to senior management were combined with elements relating to other staff. For example, a disciplinary hearing was held. This is not specifically identified as an option in relation to senior management, but it is identified within the disciplinary policy as part of the process for other members of staff.

The wording of the policy is open to interpretation. This is particularly evident in the Chief Executive's decision to hold a disciplinary hearing rather than to make a decision based on an assessment of the findings of the investigation report, and then to also convene a disciplinary panel. Although we understand the Chief Executive's reasoning to hold a disciplinary hearing was to enable the employees with another opportunity to argue their case, this mixed approach caused confusion particularly for the two employees and exposed the Library to challenge. Arguably, it also duplicated the disciplinary investigation process, which had already given the employees the opportunity to argue their case. It would have been preferable if the lack of clarity in the disciplinary policy had been acknowledged and the approach that was adopted and the rationale for this clearly explained to the employees. This was not always the case.

The paragraphs (paragraph 5.5) relating to Senior Management Team members do not mention disciplinary hearing, but the disciplinary policy does include a separate section (paragraph 5.2) explicitly about disciplinary hearing. It is not evident if paragraph 5.2 can be applied to both senior management and other members of staff. The options and process to be followed by the Designated Officer, which in the case of disciplinary matters relating to a member of the senior management team would be the Librarian/Chief Executive, need to be clearly set out. It would be helpful if the Disciplinary Policy included separate flow diagrams showing the process for senior management and other members of staff.

The Disciplinary Policy states that when a potential disciplinary matter arises regarding a member of the Senior Management Team, another member of the Senior Management Team will act as Investigating Officer. Given the small size of the Senior Management Team and the sense of community of the organisation, this is quite restrictive and raises issues of capacity and independence. This was a particular issue with the disciplinary investigations of the two members of staff. The disciplinary investigations were carried out by the Director of Collections, who is responsible for the largest department in the Library and who had worked with the Director of Public Services for a long time.

The advice provided by Geldards suggested alternative options as to who the investigating officer could be in this case. They questioned whether another member of Senior Management Team should undertake the investigation. There had also been discussions between the Chief Executive and Geldards about the capacity and skill set of the Director of Collections to undertake the investigation. Any departure from the Disciplinary Policy to use someone outside of the SMT to undertake the investigation would have required discussion with and potentially agreement with the two employees. Neither the Director of Collections or the Secretary and Head of Governance were aware of the legal advice provided to the Library which included matters relating to the appointment of an investigating officer until the investigations were well underway.

The disciplinary investigations undertaken by the Director of Collections were comprehensive and thorough. However, they took two months to complete. The Director of Collections undertook the investigations on top of her normal roles and responsibilities. A disciplinary investigation should be processed as swiftly and effectively as possible. We suggest, therefore, that the Disciplinary Policy should be amended to allow for other people to undertake the investigation where they relate to members of the senior management team. This would also minimise the challenge of independence and facilitate an investigation to be undertaken without unreasonable delay.

Moreover, the disciplinary process does not specify the terms of reference and conduct of the disciplinary panel. The lack of clarity about the role and powers of the disciplinary panel created significant difficulties and tensions in the process.

Effectively, the primary purpose of the disciplinary panel is to determine if dismissal is appropriate. This is in line with the role of the dismissal panel outlined in paragraph 5.3.4 of the disciplinary policy, which relates to other members of staff. The title of disciplinary panel is, therefore, misleading (and in the case of other staff, the panel is referred to as a dismissal panel). Whilst the disciplinary policy sets out a range of possible actions or sanctions that can be considered in a disciplinary case, it is not clear who or which body has the power to make the decision about sanctions. The role, remit and conduct of the disciplinary panel should be set out clearly in the Disciplinary Policy.

The Disciplinary Policy rightly makes reference to Employment legislation and the expectation of employers to comply with the ACAS Statutory Code of Practice on disciplinary and grievance. However, the policy does not explicitly highlight the areas where the Code of Practice and ACAS guidance applies and how these should be considered during the process. For instance, the disciplinary policy identifies that demotion is a possible sanction. However, it does not explain that the Library does not have a unilateral power to demote and that in line with case law, customer practice and the ACAS guidance on discipline and grievances at work sanctions, such as demotion *'may only be applied if allowed for in the employee's contract or with the employee's agreement'*. The disciplinary policy needs to be reviewed and updated to reflect case law and the principles set out in the ACAS code and guidance, particularly with regard to the appropriateness of sanctions and the factors that need to be considered in implementing these sanctions.

It is encouraging that the Library has already started to review its disciplinary policy.

The Library does not have an up-to-date and agreed Fraud Policy

The Library does not have an up to date Fraud Policy. It has an Anti-Bribery policy and the Library's Financial Regulations outline the process to be undertaken where irregularities concerning cash, stores or other property of the Library has occurred or is thought to have occurred. However, it is good practice for an organisation to have a specific Fraud Policy and Procedure.

A specific fraud policy would facilitate the development of controls that will aid in the detection and prevention of fraud against the Library. It would also provide clear guidelines and assign responsibility for the development of controls and conduct of investigations, including investigating responsibilities, confidentiality, authorisation for investigating suspected fraud, reporting arrangements and termination.

The Library's current whistleblowing policy does not reflect the most recent legislative changes and is not being used by staff

The Library's current whistle blowing policy does not address recent changes in legislation. The Public Interest Disclosure Act 1998 (PIDA) is the key piece of whistleblowing legislation. This has been amended by other legislation, including the Enterprise and Regulatory Reform Act 2013. As an example, the Library's policy still makes reference to disclosures in good faith rather than disclosures in the public interest. The Library's policy was developed in November 2010 and was due to be updated in November 2013. This update did not happen. We understand that the Library's whistleblowing policy is now in the process of being revised.

The importance of having effective whistleblowing arrangements has been underlined through a number of notable events in the past few years, including the NHS Mid Staffordshire inquiry.

There has been no whistleblowing activity at the Library in the past five years. We are aware that concerns did exist regarding the way in which the disciplinary case was being handled however these concerns were not expressed using whistleblowing procedures.

The Library's whistle-blowing policy is available on the Library's intranet. New members of staff are made aware of the existence of the policy as part of the induction process. Nothing has been done to raise awareness of the existence of the policy with other members of staff.

The Library's performance standards procedure needs to be revised and there needs to be a greater distinction between this and the disciplinary policy

The Library has a performance standards procedure which was developed in October 2008. The Library has made significant changes to its performance management arrangements since this procedure was written, including implementing a competency based on-line performance management system. The procedure does not reflect these arrangements. We have been informed that the procedure will be reviewed during 2015/16.

It is positive that the Library has a performance standards procedure in which it sets out the commitment and responsibilities of staff to deliver high standards of performance. However, the review has highlighted that this procedure is not being used effectively to address concerns about performance. The review has also highlighted the need to reinforce the role and importance of this procedure and how it relates and indeed, differs from the Library's disciplinary policy.

Management skills and competencies need to be further developed

The passion and commitment of the staff at the Library has been highlighted by many of the people interviewed as part of the review. However, the view has also been expressed that there is a need to develop the broader management skills of staff in order to help drive the future of the Library. Our review of the process and events that led to the unfair dismissal of two staff supports this view. We understand the Library is putting in place plans to improve the management skills of its staff and to provide opportunities to more junior members of staff to gain experience relevant to a management role. The Library would benefit from identifying the most significant areas and to make this training mandatory. This would help to set out the expectations of managers in line with the competencies already developed. The completion and impact of this training should be monitored as part of the Library's performance management procedure. Our review has also identified the need to further develop the management skills and competencies of some members of the Executive team.

It is evident that the Library is not yet governed and managed in a way that represents consistent application of best practice. The Library is a proud and cultural institution, which now needs to move forward in order to address the challenges it is facing. There is recognition amongst the Executive Team and the Board of Trustees about the necessary direction of travel, but our review has found that the Library needs to develop the management skills and competencies of its staff to ensure that it is able to deliver its plans for the future. The review found that consideration and assessment of alternative options available at each stage and the associated risks did not always take place. The senior management team was not always collectively consulted or engaged in this debate. Advice offered was not always appropriately considered or acted upon. The review found a number of instances where leadership did not consult other members of senior management before taking decisions. For example, in relation to decisions to undertake a disciplinary hearing and disciplinary panel. The risks to the organisation were not always robustly assessed.

Our review suggests that the whole issue following the receipt of the draft Internal Audit report could have been handled differently to help avoid confusion and enable earlier implementation of recommendations and formal reporting to Audit Committee. Following concerns about the lack of controls in the authorisation of an invoice which upon investigation related to a scam involving the Blue Line police magazine, the Acting Accounting Officer requested that Internal Audit undertake a review of procurement in the marketing department. The review was requested as part of the 2013-14 Internal Audit Plan. However, the contract with Internal Audit had finished at the end of 2012-13 and the internal auditors for the period of 2013-14 had not been appointed.

Although a standard system based audit focusing on controls and compliance with these controls was undertaken by Internal Audit, the timing and circumstances of the commissioning of the review suggests there was a sense of urgency.

Following the concerns identified by Internal Audit in their first draft report, the Acting Accounting Officer was concerned that fraudulent activity may have taken place. He rightly requested Internal Audit to undertake additional checks. This is consistent with the Library's Financial Regulations which state '*whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Library....the Director of Corporate Services ...shall take such steps as he considers necessary by way of investigation and report, and is most likely to call upon the services of the Internal Auditors.*'

The Acting Accounting Officer's actions on receipt of the first draft internal audit report were akin to a preliminary fraud investigation. However, the Library does not have an up-to-date Fraud Policy which sets out the procedures that would be followed for such an investigation. The additional work undertaken by Internal Audit was not outlined in the final internal audit report.

A fact finding investigation was commenced in July 2013 following discussion of the draft Internal Audit report with the Audit Committee on 8 July 2013. There was a significant time lapse between the receipt of the draft internal audit report in early May to the fact finding investigation meetings in July 2013. It was not until the fact finding investigation commenced did the two employees see the draft version of the internal audit report that existed at that time.

The Internal Audit report contained a number of findings and recommendations that did not relate specifically to the conduct of the two employees. Once the fact finding investigation had been concluded, the Internal Audit recommendations that did not relate to conduct matters could have been concluded, actioned and reported to Audit Committee.

The implementation date of the seven high risk recommendations identified in the final Internal Audit Report varied from between January to April 2014; just under a year after the first draft Internal Audit report was shared with the Acting Accounting Officer. If these findings were so significant to warrant an investigation and disciplinary process, it is surprising that they are not addressed much earlier in the best interests of the Library.

The final Internal Audit report dated 30 January 2014 was not actually reported to the Audit Committee until April 2015.

The current Chief Executive took up his post in August 2013, having previously served on the Board as a Trustee and more recently, Vice-President. It was during his first week in post that he had to address the concerns raised about two members of staff, one of whom was a member of his senior management team. It was the Chief Executive's first role as a Chief Executive. Whilst he had experience of being involved with disciplinary investigations in his previous employment including those that had been taken to an Employment Tribunal, the Chief Executive took a number of decisions and actions that left the Library open to challenge.

Although advice was often sought from Geldards, the Chief Executive did not maximise the skills and experience of his own team and did not consult and seek their advice or the advice of his Trustees before taking key decisions, specifically after the disciplinary investigation. For example, the Library's Secretary and Head of Governance, who is a chartered and qualified HR practitioner, advised the Chief Executive about the legal necessity to obtain mutual agreement of a demotion in keeping with ACAS guidance and current employment law. We understand that the Chief Executive discussed this with Geldards but it was advised that the sanctions of the Disciplinary Procedure were 'allowed for' in the Library's contract of employment. The Employment Tribunal judge, however, disagreed with this.

There were no formal reports to the Board of Trustees and to the Executive Team about the Employment Tribunal, the risks associated with this and the options to settle the case.

Although the Library's disciplinary policy is not clear, the Chief Executive did not clearly document and communicate his rationale for making the decisions that he did. This is notable in his decision to hold a

disciplinary hearing. The Chief Executive's interpretation of the Disciplinary Policy was that it was within his powers to hold a disciplinary hearing.

In addition, the decision to suspend the two individuals after the disciplinary hearing was to apparently allow the individuals time to prepare for the disciplinary panel. This reasoning was not conveyed in the letter to the individuals. The Chief Executive recognises that in hindsight, a leave of absence may have been more appropriate. The ACAS code underlines that a suspension should be as brief as possible and be kept under review. The Library's Disciplinary Policy also states that suspension should be kept under review. A letter to the individuals' solicitors in December 2013 highlighted that although there had been delays in arranging the meetings of the disciplinary panel, it remained the view of the Library that the suspension should continue as it was felt that the individuals' ability to work normally would be impacted.

Following the disciplinary hearing, the Chief Executive took the decision to refer the issue to a disciplinary panel because he felt that dismissal of the two individuals was appropriate. We have already highlighted that the Library's disciplinary policy does not specify the role, remit and conduct of this panel. The letters to the individuals outline that a disciplinary panel is being convened because the Chief Executive was of the view that dismissal may be appropriate. However, the letter did not mention specifically that he felt there were potential allegations of gross misconduct. This was mentioned explicitly for the first time during his verbal presentation to the disciplinary panel.

The Chief Executive's verbal presentation to the disciplinary panel was brief. Our understanding is that panel members felt that he did not present a comprehensive case or go through the allegations in detail to explain why these represented gross misconduct. An allegation of gross misconduct is very serious and the reasons for this should be identified clearly to all parties including the individuals against whom the allegations are made. This was not the case.

There was no robust written identification and assessment of the sanctions provided to the disciplinary panel. It is unclear why final written warnings were not considered to be sufficient. There was a lack of full consideration of the potential severity of this sanction and the option to couple this with performance management procedures was also not considered fully.

There was also a lack of serious consideration to settle the claim and to make counter offers to the individuals prior to the Employment Tribunal. Although it was considered that the Library had a strong case, no risk and cost benefit analysis was undertaken, for example to consider the reputational risks to the organisation.

It would have been expected that the Library would have needed to obtain the approval of Welsh Government before an offer to settle could be put forward. However, whilst there was initial discussion with Welsh Government about the case and the Library was advised that discussing a possible settlement with the Trade Union representative would be pragmatic, there was no formal consultation with Welsh Government about settling the case until after the Employment Tribunal judgement.

The Library's performance management and staff appraisal processes are not being robustly and consistently applied to drive improvement

It is evident from our review that concerns regarding performance of certain individuals have not been captured on the Library's performance management system or on individuals' personnel records. Action has not been taken to address these concerns. It is also evident that the performance appraisal process was not completed properly for everyone last year. This was primarily as a result of the fire, restructuring and the involvement of senior management in the disciplinary process of the two former members of staff. We have been reassured that the process is now being re-established.

Overall, this suggests that the Library is unable to deal with concerns about performance effectively. There are greater expectations from the Welsh Government about the role of the Library and it has set challenging targets for the Library to meet. Developing a robust performance management culture will be key to do this

successfully. Trustees and management need to be prepared and able to hold difficult conversations with staff when necessary. Training and development needs also need to be discussed, identified and addressed. The disciplinary process relating to the two former members of staff highlighted the importance of doing this.

The Library implemented a competency based framework in 2012 and a software package, *TalentLab*, has also been introduced. This electronic system does facilitate tracking and monitoring the completion of performance appraisals and identification of training needs. Six monthly performance reviews are built into the system and reminders are issued to managers to undertake these reviews. Reports identifying those staff that have not completed their performance appraisals are submitted to Senior Management Team.

Training on competencies, target setting and *TalentLab* has been provided to staff. The Human Resources team has undertaken spot checks and reviewed a sample of appraisals to determine how staff are coping with the system. We understand this review did also include checks to see if issues previously brought to the attention of the HR team had been recorded through the appraisal process. Despite this, the common view expressed to us during our fieldwork was that the quality and robustness of implementation of the performance appraisal process has been mixed. The quality assessments undertaken by HR need to be more robust. Lessons learnt and areas for improvement as well as good practice need to be shared in order to ensure the system is actually having an impact to drive improvement. We understand that plans are being developed to provide additional training to managers and to target and tailor training in order to harness talent in the organisation as a means of succession planning.

We recognise that the capacity of the HR team has been significantly reduced in the past 18 months. HR expertise is brought in through an external consultant and legal advisors as and when required. We understand that strategic aspects of HR are now falling within the remit of the Secretary and Head of Governance.

The culture needs to change in order for the Library to move forward

The Library is a small, friendly organisation. The close-knit sense of community at the Library is affecting its ability to implement a robust performance management culture. The performance management and staff appraisal system in place at the Library is good but it is not being used effectively for all members of staff, thereby undermining the whole purpose of the system. Difficult conversations about poor performance and development needs are not readily taking place.

It is imperative that steps are taken to develop a culture where honest conversations about performance are encouraged and managers are equipped and supported to address poor performance and to promote good performance. Such a performance management culture is vital to enable the organisation to meet the targets set by the Board of Trustees and the Welsh Government. We understand that a programme of training is being put in place but senior management need to set the tone from the top and to lead by example, applying the performance appraisal system rigorously and consistently.

Our review has found that the culture at the organisation is not currently appropriate to meet the challenges and changes facing the Library. The culture is driven by the tone at the top of the organisation but our review of the disciplinary process has shown that the Executive Team was not collectively engaged in the process.

Throughout our review, concerns have been expressed about governance, behaviour, decisions and performance. Members of staff have expressed concerns about behavioural matters which have not been properly recorded by HR and appropriate action has not been taken to address these issues. Moreover, given the number of concerns expressed, it is surprising that no one has sought to whistle blow. The Library's whistleblowing policy is currently out of date and is not well advertised throughout the organisation to facilitate whistleblowing. Although the Library is clearly a proud and close organisation, a culture of openness does not exist.

There are weaknesses in key aspects of the governance of the organisation

The Library's governance arrangements are primarily set out in its supplemental Royal Charter in 2006. The Charter makes references to the role of the Officers and Board of the Library together with membership and the powers of the Library. This is supplemented by a Corporate Governance Framework approved by the Board in September 2013, which provides greater definition of the role of the Officers, President, Vice-President and Treasurer. A generic role description of Board members is also in place.

Declarations of interest are not clearly articulated in minutes of Board meetings

Trustees are required to sign a declaration of interest at the beginning of each year and to declare any interests at the start of Board and Audit Committee meetings where relevant to items on the agenda. Whilst incidences where Board members have declared an interest have been noted in the minutes of the meeting, the nature of the interest is not always specified. The term 'the usual interest' is often given. Individuals outside the Library may not know what this interest is. In order to improve transparency and to minimise any risk of challenge, it would be good practice to actually specify the nature of the interest in the minutes of the meeting. In addition, for all declared interests, there should be a documented risk assessment and mitigation plan in place to ensure that interests are handled effectively.

The effectiveness of the Board is in part dependent upon the good will of members of the Board, their skills and experiences. The existence of conflicts of interest can also impact upon this. Many of the key issues facing the Library over the past two years, such as the fire and the disciplinary process, have required a significant amount of external legal advice, which has been provided by Geldards. One of the Board of Trustees is a partner at Geldards. The Board has not considered its skill mix at a time when having additional legal insight and expertise may have been helpful. The Board should regularly assess the skills of the Board as new issues arise to determine if additional or particular expertise is required. We understand that the Board has now implemented an appraisal process for the Board and that the last interviews for Board members took the skills mix of the Board into account.

The principles of risk management are not embedded in the organisation

The Library has a risk register and an Internal Review of the governance of the organisation found that this was regularly reviewed by the Audit Committee. The Library's risk registers dated 31 May 2014 and 31 March 2015 include the Employment Tribunal as a reputational risk. However, given the events which led to the Employment Tribunal judgement, it is questionable whether risk management is truly embedded in the organisation. Our review found that there was a lack of a robust assessment of the risks and benefits of decisions and options in the best interests of the Library. Although some verbal updates were provided by the Chief Executive, there were no formal reports to the Board in between the Employment Tribunal claim and the Employment Tribunal judgement.

The Library may have benefitted from seeking additional legal advice as a means of bringing in greater independence and a new perspective to the disciplinary process

Geldards are the Library's advisors. They were successfully re-appointed through an open and joint procurement exercise with the National Museum in 2011. Advice was sought from them by the Acting Accounting Officer upon receipt of the draft internal audit report and then subsequently throughout the process. The Chief Executive in particular was heavily dependent upon their advice.

After the disciplinary investigation, a decision was taken to change the person representing Geldards in the process, in order to effect a separation between the investigative stage and the disciplinary stage. Legal advice to the Library about the disciplinary hearing, disciplinary panel, appeal panel and employment tribunal was subsequently provided by a Geldards partner. The Library was represented at the Employment Tribunal by this

same partner from Geldards. We have been advised that the prospect of the Library being represented at the Employment Tribunal by external counsel was raised with the Library by Geldards but the Chief Executive and Librarian considered it appropriate to continue with representation by the same Geldards partner; a very experienced tribunal advocate. No additional independent legal advice or challenge was sought to consider the merits of the case prior to the Employment Tribunal. The opportunity to have a fresh pair of eyes and to bring in an element of independence at this point in the process was not considered fully.

The merits letter provided by Geldards to the Chief Executive about the risks and likelihood of success at the Employment Tribunal was consistent with the approach they had taken throughout the process. Individuals who gave evidence on behalf of the Library at the Employment Tribunal felt they were well-briefed by Geldards.

The Employment Tribunal judge took a different view than some of the legal advice offered to the Library. One example is that although the sanction of demotion is an option contained within the disciplinary policy, there is no clear contractual power to demote. Demotion is generally offered as an alternative to dismissal but case law has highlighted that mutual agreement is necessary in order for this to be considered. This is also reflected in the ACAS guidance on Discipline and Grievances at work. This point was also raised during the disciplinary process in communications to the Chief Executive and Librarian from the Secretary and Head of Governance .

The arrangements for internal audit could be strengthened further

RSM Tenon, now Baker Tilly, are the internal auditors at the Library. They were recently reappointed as the internal auditors with effect from April 2013 through a joint tender with the National Museum.

An internal audit review of procurement by the marketing section was requested by the Acting Accounting Officer at the Library following concerns about the authorisation of an invoice for an advertisement in the Blue Light police magazine and an apparent lack of awareness of controls.

After undertaking their initial work and producing their first draft report, Internal Audit was asked to undertake further investigatory work due to concerns about potential fraudulent activity relating to the award of a contract within the Marketing section. This additional work performed, which included employment checks and relationship checks with the entity that were awarded the contract, was not documented within the final version of the Internal Audit report. We would have expected all Internal Audit work to be reported in the reports that were produced, even where the work resulted from a change to the original scope.

The changes between the versions of the draft report were significant. The second draft of the Internal Audit included a recommendation for consideration of disciplinary action for breach of financial regulations. In our view, it is unusual for Internal Audit to recommend such action within an Internal Audit report. A verbal update of the findings of the draft Internal Audit report was provided to a closed session of the Audit Committee by Internal Audit in early July 2013. This was prior to the draft report being shared with the two employees and which had not accounted for any comments those employees may have had on the factual accuracy of the draft report. From a wider governance perspective, the Library has not set any formal key performance indicators (KPI) to formally monitor the performance of Internal Audit. Such KPIs could include matters such as: prompt agreement of terms of reference; percentage of audits with an exit meeting; percentage of recommendations agreed; draft reports issued promptly; attendance at audit committee; and average individual satisfaction score from audit sponsors. However, there is an Internal Audit Charter in place which sets out a series of standards. In 2012-13, Internal Audit reviewed its processes to ensure that they conform to the Public Sector Internal Audit Standards in anticipation of these standards being introduced in 2013-14. The next effectiveness review is due to be undertaken in 2016.

As part of a restructuring exercise, plans are underway for all Internal Audit communications and Internal Audit reports to now go through the Secretary and Head of Governance rather than the Director of Corporate Services. We consider that this is appropriate.

Recommendations

To assist the Library in making the required improvements as a result of our findings, we have set out some recommendations in the table below. We understand that the Library intends to prepare a statement of action that it proposes to take as a result of this report, and its proposed timetable for taking that action.

We recommend that the Library:

R1	Reviews and improves its Disciplinary Policy and procedure to: <ul style="list-style-type: none"> Clearly set out the processes that should be followed for matters relating to senior management. Outline the remit, conduct and powers of the disciplinary panel. Ensure that its processes and sanctions are in accordance with principles of the ACAS Code of Practice and guidance on discipline and grievances at work. Incorporate the ability for a wider range of people to undertake disciplinary investigations relating to senior management. Specify the need for allegations to be clearly articulated within all correspondence to individuals. The outcome of decisions should also be articulated with explanations as to which allegations are being upheld and which are not.
R2	Develops an up-to-date Fraud Policy. This should be available to all members of staff.
R3	Updates its whistleblowing policy to reflect changes in legislation. The Library should also take steps to raise awareness of the existence of this policy.
R4	Updates its performance standards procedure to accurately reflect its current staff appraisal process. The Library should also remind staff of the existence and significance of this procedure.
R5	Reminds staff of the importance and benefit of using the Library's staff appraisal process and to formally document areas of development. Additional training should also be provided to equip staff with the necessary skills and confidence to hold difficult discussions.
R6	Records clearly the nature of a declared interest in the minutes of Board and Audit Committee meetings. A risk assessment of these interests should also be undertaken in order to consider how these interests can be managed and mitigated in practice.
R7	Ensures that procedures relating to the performance appraisal of the Chief Executive are in line with those of other members of staff.
R8	Reviews the capacity of the HR function to ensure that it is appropriate to meet the future direction and challenges upon the organisation.
R9	Considers how it can strengthen the effectiveness between the Board of Trustees and senior management. A formal Board and senior management development programme should be implemented to improve the governance of the organisation.
R10	Puts in place arrangements and performance indicators to monitor the performance of Internal Audit.
R11	Develops a core programme of training and development for its managers. This should include specific training on procurement and governance. Important areas of training should be made mandatory.

Appendix 1: Timeline of events

Date	03/13	05/13	07/13	07/13 - 09/13	09/13 – 11/13	11/13	01/14	02/14	08/14 & 10/14
Event	Initial concerns	IA Report	Audit Committee	Fact Finding Investigation	Disciplinary Investigation	Disciplinary Hearing	Disciplinary Panel	Appeal Panel	Employment Tribunal
NLW	AAO	AAO	AAO	AAO	DCS HR Adv	CE&L HR Adv	CE&L HR Adv DP	CE&L HR Adv AP	CE&L HR Adv DP (C) AP (C)
External advisor	IA	IA	IA	FHHR LA: Dir IA	LA: Dir	LA: Ptr	LA: Ptr	LA: Ptr	LA: Ptr
Claimants				Claimants	Claimants TU	Claimants TU	Claimants TU	Claimants TU	Claimants TU Counsel
Key:									
AAO	Acting Accounting Officer			IA	Internal Audit				
DCS	Director of Collection Services			FHHR	Former Head of HR				
HR Adv	HR Advisor			LA Dir	Legal Advisors - Director				
CE&L	Chief Executive and Librarian			LA Ptr	Legal Advisors - Partner				
DP	Disciplinary Panel Members			TU	Trade Union Representative				
AP	Appeal Panel Members			Claimants	The two former members of staff/claimants				
DP (C)	Disciplinary Panel Chair			Counsel	Claimants' representative at the Employment Tribunal				
AP (C)	Appeal Panel Chair								

Appendix 2: Detailed timeline of events

Draft internal audit report

- An Internal Audit (IA) review was requested by the Acting Accounting Officer at the Library, at the start of April 2013 to be incorporated into the 2013/14 IA Plan following concerns about the authorisation of an invoice for an advertisement in the Blue Light police magazine scam and an apparent lack of controls. IA were asked to undertake the review as soon as possible despite the fact that the IA Plan had not yet been approved by the Audit Committee. The 2013/14 IA plan was not approved until October 2013 due to delays in the IA appointment process which involved a joint tender arrangement with the National Museum. The 2013/14 IA plan was being drafted at the time the IA review was requested.
- The terms of reference, detailing the scope of the review, was approved by the Acting Accounting Officer on 23 April 2013. The objective of the review was to evaluate the Marketing section's process for procuring goods and services ensuring that there is appropriate risk management and control within the system and the extent to which controls have been applied. Although a standard system based audit focusing on controls and compliance with these controls was undertaken by Internal Audit, the timing and circumstances of the commissioning of the review suggests there was a sense of urgency. The review was requested as part of the 2013-14 Internal Audit Plan. However, their contract had finished at the end of 2012-13 and the internal auditors for the period of 2013-14 had not been appointed.
- The fieldwork was performed during the week commencing 6 May 2013. IA held a debrief meeting on 10 May 2013 with the Assistant Accountant at the Library in the absence of the Acting Accounting Officer that day. The Assistant Accountant provided a summary of the findings to the Acting Accounting Officer on the same day.
- The draft IA report was issued to the Acting Accounting Officer on 23 May 2013. IA had identified a number of significant concerns which they also shared verbally with the Chair of the Audit Committee.
- The Acting Accounting Officer felt it was quickly apparent that serious issues had been identified which warranted further action. It was his view that no report had been received previously in the Library which was so critical.
- In his role as Acting Accounting Officer, he asked IA to undertake further investigatory work due to concerns about potential fraudulent activity relating to the award of a contract within the Marketing section. This additional work performed, for example, employment checks and relationship checks with the entity that were awarded the contract, was not documented within the final version of IA report.
- The changes between versions of the report were significant. We note that the second draft of the IA report included a recommendation for management to consider disciplinary action. It is unusual for IA to recommend such action within an IA report
- The receipt of the first draft internal audit could have triggered a preliminary fraud investigation but the Library's policies and procedures on such an investigation are unclear. There is also a lack of an up to date Fraud Policy.
- A verbal update of the findings of the draft Internal Audit report was provided to a closed session of the Audit Committee by Internal Audit on 8 July 2013. This was prior to the draft report being shared with the two employees and which had not accounted for any comments those employees may have had on the factual accuracy of the draft report.
- The IA report was not finalised until January 2014, despite the factual accuracy of the findings being agreed as part of the fact finding investigation below in July 2013. The final version of the IA report did not reflect all of the additional work which IA had undertaken.
- The Internal Audit report contained a number of findings and recommendations that did not relate specifically to the conduct of the two employees. Once the fact finding investigation had been concluded, the Internal Audit recommendations that did not relate to conduct matters could have been concluded, actioned and reported to Audit Committee.
- The final report was subsequently not presented to the Audit Committee for approval until April 2015, nearly two years after the fieldwork was undertaken. The IA report should have been finalised much earlier.

Fact finding investigation

- At an extraordinary closed session of its meeting on 8 July 2013, Internal Audit provided a verbal briefing on the findings of their internal audit review. The Audit Committee members agreed to observe the arm's length principle whilst the Acting Accounting Officer, and those assisting him, investigated the matter further and considered the implications of the report's contents.
- The IA report was to be viewed as a working document; a starting point to be discussed with the individuals involved to enable them to comment and correct / clarify the findings identified. There were a number of areas within it which needed to be understood and clarified through a fact finding process.
- The purpose of the investigation was to determine
 - What, if any, issues raised in the draft internal audit report require further action
 - If further action was required, whether these were to be addressed on an informal or formal basis; and
 - If so, whether the Library's Disciplinary Policy and Procedure and/or the Performance Standards Procedure should be used.
- The disciplinary route would be followed if negligent performance of duties was suspected, which the Library's disciplinary policy provided for. The final draft IA report, along with the fact finding investigation report would act as a basis for determining any disciplinary allegations and form the scope and terms of reference for a disciplinary investigation.
- The Acting Accounting Officer was right to confirm the facts with the individuals but there could have been a distinction made following the fact finding investigation (FFI) between the issues in the internal audit report that could be finalised and reported as part of a normal internal audit clearance and reporting process and those issues that were subject to further disciplinary action.
- The FFI exercise was undertaken by the Acting Accounting Officer, assisted by the external HR consultant (formerly the Head of HR at the Library) and IA. Alternative options as to who should undertake the FFI were suggested by Geldards and should have been considered more explicitly. There was a perceived conflict of interest with the Acting Accounting Officer undertaking the FFI given that the first draft of the IA report included findings relating to a department within his remit. IA could have been commissioned to do this investigation or alternatively the Library's Secretary and Head of Governance could have carried out the investigation.
- At this time, the Library no longer had a Head of HR and appropriate HR resource. The Library's Head of HR role had not been replaced and the Library commissioned external HR advice from consultants as and when needed. Having HR representation in the FFI was appropriate but the formality of the process was not portrayed to the individuals until the start of the fact finding investigation meetings. Although the fact finding investigation did not form part of the Library's Disciplinary Procedure, the option for the individuals to have representation should have been offered given the severity of the concerns raised in the IA report. We have been advised that a request for representation by the individuals would have been granted.
- The FFI was a key point at which a decision to suspend was considered. The Disciplinary Policy states that an employee may be suspended on full pay whilst an alleged offence is investigated. However, it was deemed that the grounds for suspension under the Disciplinary Policy were largely not met in this case:
 - neither IA nor the Acting Accounting Officer felt that any investigation would be inhibited by the presence in work;
 - there was no doubt at that time that the two individuals would be able or willing to work normally;
 - there were no criminal proceedings; and
 - their presence was unlikely to be unacceptable to others.
- Having said that, it is positive that actions had been put in place to mitigate further alleged misconduct with the individuals' agreement, that is removal of invoice authorisation and involvement relating to the Elfen contract.
- Interviews were held with the two individuals during July 2013, the notes of which were reviewed and confirmed as factually accurate by each involved. Furthermore, on 1 August 2013, IA issued an amended version of the draft audit report, dated 25 July 2013, which incorporated the facts provided during these interviews. Although the two individuals provided comments on the report and corrected and clarified

areas within it, they agreed that the content and findings included within the report were accurate on the whole.

- The fact finding investigation report was handed over by the Acting Accounting Officer to the new Chief Executive and Librarian in September 2013 with the recommendation that formal disciplinary investigation should be instigated. It makes clear that the performance standards procedure should not be used to deal with performance issues that are due to negligent performance of duties. The performance standards procedure further states that these and other actions against the rules of the Library should be considered to be conduct issues and dealt with under the Disciplinary Procedure.

Disciplinary investigation

- The Chief Executive and Librarian read the fact finding investigation report and concluded that the circumstances merited a further disciplinary investigation in line with the Library's Disciplinary Policy. The terms of reference for the disciplinary investigation were the allegations listed within the FFI report.
- The Disciplinary policy states that another member of the Senior Management Team should undertake the investigation. The disciplinary investigation was carried out by the remaining member of the Senior Management team, the Director of Collection Services. The Director of Corporate Services had been involved in the Fact Finding Investigation when he was the Acting Accounting Officer. The Director of Public Services was one of the two individuals being investigated and the Chief Executive and Librarian would need to be the Designated Officer should the disciplinary process require further action. Geldards raised questions about the capacity of another member of Senior Management team to undertake the investigation. There would be a need to balance her role as a Director of the largest department within the Library with the role as an Investigating Officer where disciplinary investigations are by their nature time consuming.
- Geldards suggested alternative options, including external third parties, and questioned whether another member of the Senior Management team should undertake the investigation and whether they would have the appropriate skill set to undertake this task. The Director of Collections was not made aware of this legal advice note until the disciplinary investigations were well underway. The disciplinary policy should be changed to allow for other people to undertake the investigation.
- We understand from the Chief Executive that the primary driver behind his decision to appoint the Director of Collection Services as the Investigating Officer was her professionalism to undertake the investigations. Any departure from the Disciplinary Policy to use someone outside of the Senior Management Team to undertake the investigation would have required discussion with and potentially agreement with the two employees. The disciplinary investigations took too long although they were comprehensive and thorough. It took two months to complete the processes. The reasons for the delay included additional interviews that were needed, obtaining additional information and evidence, and the Investigating Officer undertaking the review on top of her normal roles and responsibilities.
- The disciplinary investigation reports concluded that there is a case to answer and that, in both cases, formal disciplinary action should be taken in line with the Library's Disciplinary Policy for all the allegations apart from the failure to implement an appropriate marketing strategy for the Library.

Disciplinary hearing

- The disciplinary investigation reports were given to the Chief Executive and Librarian.
- The next stage of the disciplinary process for other members of staff, following the disciplinary investigation, is a disciplinary hearing and, in the case of gross misconduct, a dismissal panel consisting of two members of the Senior Management team and one member of Band 6. For Senior Management team members, the Chief Executive and Librarian is the Designated Officer in the disciplinary investigation and may invoke disciplinary punishment up to and including a final written warning and will refer the matter to a Disciplinary Panel, if he feels dismissal could be appropriate.
- The disciplinary policy does not provide a clear distinction between the treatment of Senior Management team and other members of staff in terms of the processes that need to be undertaken.
- The Chief Executive and Librarian followed a mixed approach and did not clearly document and communicate his rationale for undertaking a disciplinary hearing.
- The Chief Executive and Librarian should have made a decision based on the disciplinary investigation report to either issue the highest sanction in his power, a final written warning, or to convene a disciplinary panel to consider dismissal.

- The reasoning behind the decision to hold a disciplinary hearing was to give the individuals a second opportunity to answer the allegations. However, this duplicated the disciplinary investigation.
- The Chief Executive and Librarian felt that, on the basis of the individuals' admissions in relation to the allegations, there was a case to support gross misconduct and decides to refer the decision to the disciplinary panel to consider dismissal.
- The outcome of the disciplinary hearing should have been made clearer to the individuals in terms of the allegations being upheld. It is not clear on what basis gross misconduct and dismissal were being considered.

Disciplinary Panel

- At this point, the Chief Executive took the decision to suspend the individuals. The reasoning was apparently to allow them time to prepare for the disciplinary panel. However, this was not conveyed in the letter to the individuals. The letter notifying the individuals of the decision to refer the case to the disciplinary panel explained that suspension was on the basis that, because dismissal could be an appropriate sanction, this could impact on their ability to work normally. This is one of the circumstances for suspension listed in the disciplinary policy. A leave of absence was not considered.
- The disciplinary panel was rescheduled following repeated requests by the individuals' representative to hold the panel meeting at a date which allowed the individuals to have a member from their union present to represent their interests. There was also difficulties in arranging times convenient to all parties as many lived away from Aberystwyth.
- The disciplinary process does not specify the terms of reference and conduct of the disciplinary panel. Consequently, its remit is open to challenge.
- The disciplinary panel ultimately is a dismissal panel akin to that referred to in the disciplinary policy for non-SMT members and as explained above.
- There was a brief verbal statement by the Chief Executive and Librarian. Our understanding is that the Panel members felt he did not present a comprehensive case or go through the allegations in detail to explain why these represented gross misconduct.
- The disciplinary panel did not agree that it was a case of gross misconduct and therefore dismissal was not appropriate. They did, however, feel that the allegations were of a very serious nature and final written warnings were not considered sufficient. The Panel did not refer the decision back to the Chief Executive. In the absence of clear terms of reference, the Panel took the decision about the sanctions to be employed themselves in light of the HR and legal advice available to them
- The Panel found that demotion of one grade was the appropriate sanction. This is an option within the disciplinary policy but there is no clear contractual power to demote. Demotion is generally offered as an alternative to dismissal but case law has highlighted that mutual agreement is advised in order for this to be considered. The ACAS guidance on Discipline and grievances at work also outlines when discussing sanctions such as demotion, loss of seniority and loss of increment that 'These sanctions may only be applied if allowed for in the employee's contract or with the employee's agreement.' This was flagged by the Head of Governance to the Chief Executive and Librarian and HR advisor. That the Panel had the authority to reach this conclusion is uncertain, given the absence of terms of reference and remit in the disciplinary process.
- It is unclear why final written warnings were not considered to be sufficient sanctions. There was a lack of appreciation of the severity of this sanction with an option to include performance management actions. This is also consistent with the ACAS guidance.
- Due to the fact that the role of the disciplinary panel is silent within the disciplinary policy, it is not clear if the disciplinary panel has the remit to make the decisions regarding sanctions. This blurred the role of the Board members who therefore got involved in decisions that related to the management of the Library. If they did not agree with the proposal presented to them then the case could be returned to the Chief Executive and Librarian to reconsider. We have been informed that this was not the advice given to the panel at the time.
- We understand there was lengthy discussion about the various possible sanctions. However, there was no robust written identification and assessment of the sanctions available which were listed in the disciplinary policy. Furthermore, there was no clear documented rationale for the level of demotion considered.
- There are inconsistent references to disciplinary hearing both within the title of the disciplinary panel meeting notes and the letters provided to the individuals following the disciplinary panel.

- Similar to the disciplinary hearing letter, the outcome of the disciplinary panel in terms of which allegations were upheld is not explicit. It is not clear on what basis a verdict of serious misconduct had been reached.

Appeal Panel

- The terms of reference of the appeals panel were based on the grounds of appeal lodged by the individuals' Trade Union representative.
- It was clear that the Appeal Panel could not re-run the disciplinary hearing or the disciplinary panel but had to focus on the grounds of appeal.
- The only outcomes available to the Appeal Panel were either to affirm the disciplinary panel's decision or to reject it. In the latter case, the penalty proposed by the disciplinary panel could be reduced or set aside, but not increased.
- The Appeal Panel considered the gravity of the allegations. They took into account the findings of the 2005 IA procurement report.
- The Appeal Panel, having considered the arguments offered at the hearing and following professional advice, did not accept that the disciplinary process had been inappropriately applied or that it was fundamentally flawed.
- The Appeal Panel found that the level of demotion was harsh and the positions offered appeared to be less appropriate to the individuals' skills and experience. The Appeal Panel, therefore, requested management to find more suitable posts and also offer a degree of salary protection.
- The Appeal Panel was not advised of the risks of demotion given the lack of mutual agreement. No reference was made to the ACAS Code of Practice or ACAS guidance.

Employment Tribunal

- The whole process was managed, arranged and coordinated by the Chief Executive and Geldards.
- There were no formal reports to either the Board or SMT about the Employment Tribunal and the associated risks. We understand that only verbal updates on the matter were provided. The Chief Executive and Librarian took all the decisions alone in consultation with the legal advisors.
- The individuals, who represented the Library at the Employment Tribunal, felt that they were well-briefed and prepared for the hearing. The Chairs of the two main decision-making panels: the disciplinary panel and appeal panel were called to give evidence as witnesses. The Chief Executive was also called to give evidence given his extensive role in the process. However, it is not clear why certain members of the senior management team who had been involved in the disciplinary process were not requested as witnesses for the Library.
- The merits letter prepared by Geldards to the Chief Executive and Librarian is consistent with the approach they had taken and advice given throughout the disciplinary process.
- The Library was represented by the same individual from Geldards at the Employment Tribunal. We have been advised that the prospect of the Library being represented at the hearing by external counsel was raised by Geldards with the Chief Executive but it was considered appropriate to continue with representation by the same Geldards partner; a very experienced tribunal advocate. The opportunity to have a fresh pair of eyes and to introduce an element of independence was not considered fully.
- The Employment Tribunal judge's ruling took a different view than the legal advice offered to the Library. This led Geldards to conclude that even if an appeal had been successful on the technical aspects, it would not have led to a successful outcome overall given the strength of the judgment against the Library. Geldards advised not to appeal the decision given that the Judge had also decided against the Library in relation to the underlying assessment of fairness.
- There was a lack of serious consideration to settle the claim and to make counter offers to the individuals out of court before the Employment Tribunal took place. No risk and cost benefit analysis was undertaken, for example consideration of the reputational damage that is associated with losing a high profile case.
- It would have been expected that the Library would have needed to obtain the approval of Welsh Government before an offer to settle could be put forward. However, whilst there was initial discussion with Welsh Government about the case and the Library was advised that discussing a possible settlement with the Trade Union representative would be pragmatic, there was no formal consultation with Welsh Government about settling the case until after the Employment Tribunal judgement.

Appendix 3: Methodology

Our approach to the review has been as follows:

- Project initiation – immediate set up, getting to know the Library team, and set up of project management and governance arrangements.
- Team mobilisation – a workshop between PwC and the Library teams to finalise the approach to be adopted.
- Data gathering and analysis – to create evidence base for our recommendations. This will include evaluating the documentary evidence from the Tribunal verdict and opinion, from the internal Library investigations and disciplinary processes and from the legal advice received by the Library.
- Interview and challenge – to gain further insight and challenge the emerging findings from the data gathering and analysis to assess the adequacy of governance and other arrangements and to formulate recommendations for the future. Key stakeholders from within the Library will be interviewed as part of this phase.
- Drawing initial conclusions – we will draw conclusions from the evidence to make recommendations for change. We will present these initial conclusions at a workshop with key stakeholders from the Library.
- Refinement – following feedback from key stakeholders we will work with the Library team to refine our recommendations.
- Presentation of final report – a final suite of findings and recommendations will be presented to Library at the end of our programme of work.

We also provided all Board Members with the opportunity to share any information or views relevant to the scope of the review.

Interviews

The following is a list of interviews held as part of the review:

Chief Executive and Librarian
Director of Collection Services
Director of Corporate Services
President of the Board of Trustees/Chair of Appeals Panel
Internal Audit
Legal representatives
HR advisor
Former Head of HR
Chair of Disciplinary Panel
The Trade Union Representative and the two former members of staff/claimants
Chair of the Audit Committee
External Audit*
The two other members of the Disciplinary Panel*

* Additional interviews held at the request of the Library.



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