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**Response by the Public Services Ombudsman for Wales
to the Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021.

Our role

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

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

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

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

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

General Comments

The draft regulations for the most part appear clear and clarify some of the questions we raised in our response to the Corporate Joint Committees (CJC) Establishment Regulations consultation in December. We note that CJsCs have been added to the Schedule 3 of the PSOW Act 2019, so our concerns regarding jurisdiction for maladministration and service failure complaints have been resolved.

Ethical Framework and Model Code of Conduct

We note that Regulation 7 allows for a monitoring officer from a relevant authority to be designated as the CJC's Monitoring Officer. Rather than establish new standards committees for each CJC, we suggest that the relevant Standards Committee of the designated Monitoring Officer's "home authority" could perform any standards committee functions under the Local Government Act 2000 in relation to ethical standards matters relating to CJsCs. This would make good use of the expertise which has now developed across existing standards committees in Wales and ensure that high ethical standards are applied.

We understand that a third tranche of related regulations will include amending the Local Government Act 2000 to include CJsCs and, as a result, some co-opted members that are not already members of another local authority or national park authority will not be subject to a Code of Conduct for a short period. For the reasons we outlined in our previous response and above, to ensure that all members of CJsCs who are not at present bound by the ethical standards regime, we consider that the amendment to the definition of "relevant authority" in s49 of the 2000 Act to include CJsCs in Wales (and their sub-committees), should be introduced as soon as possible

We think it is important that, once the amendments have been made, all members of the CJsCs and their sub committees are subject to the ethical standards regime. However, we have some concerns about the clarity in the Regulations regarding some aspects of the application of the Code of Conduct.

Regulation 15(2) allows sub-committees to include or be wholly comprised of people who are **not** members of the CJC. It does not state that these people will be designated as co-opted participants or staff who would be bound by a relevant code of conduct.

S9 of the Establishment Regulations 2021 states that CJsCs may co-opt people to act on a sub-committee or participate in other activities, but it is not clear that the people referred to in S15(2) in the General Regulations are being appointed under this provision and are to be considered 'co-opted-participants'.

This could mean that individuals may be discharging functions of the CJsCs who will not be subject to the Code of Conduct. Whilst standards in public life in Wales are generally good, we consider that the Nolan principles and the Model Code of Conduct should apply to any person who is a member of a sub-committee.

As such, we suggest that provision should be made to ensure that any person who is a member or participant of a sub-committee should be required to comply with the Model Code of Conduct and fall within the ethical standards framework.

Clarity also on the application of the Adjudication Panel for Wales and standards committees' powers of suspension/disqualification following a referral of a member for breaches of the Code of Conduct by the PSOW would also be welcomed.

Meetings

We welcome the approach to apply the usual local government requirements on the conduct of meetings and proceedings to the CJsCs and note that this includes the provisions in Regulation 17 which allow CJsCs to exclude the public from meetings if confidential information would be disclosed to them in breach of the obligation of confidence. The Model Code of Conduct's requirement on members not to disclose information which should reasonably be regarded as being confidential (para 5) will apply to all members of the CJC and their sub-committees when the amendments to the Local Government Act places obligations in this regard on individual members. We also welcome the fact that all of the regulations governing the conduct of meetings and access to information apply to any sub committees of a CJC.

We would welcome clarity on the status of "other persons" in Regulation 24 on who may be entitled to speak at CJC meetings and whether they would be excluded from meetings considering "exempt" business. If this includes persons other than members of staff who are not "members" of the CJC, there may be a potential for third parties who are not subject to the Model Code to unfairly influence decisions on matters in which they may have an interest if they are permitted to attend meetings which members of the public are excluded from.

Regulatory Impact Assessment (RIA): Assessment of Costs

We note that the Welsh Government has chosen not to conduct an RIA of the General Regulations stating:

"The costs associated with the application to CJsCs of the aspects of the regulatory framework contained within the draft Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021 was considered therefore as part of the regulatory impact assessment on the CJC Establishment Regulations themselves."

However, we highlighted in [our response in December](#) that the RIA for the Establishment Regulations 2021 did not assess any additional financial implications for PSOW, with our assumption that these would be considered in the RIA of the General Regulations.

As the new CJsCs will be dealing with strategic issues of a sensitive nature, that will have significant impact, we are concerned about the potential for an increase in the numbers of complaints alleging breaches of the Code of Conduct we receive, generated by the decisions and behaviour of CJC members and co-opted participants. We saw a significant increase (47%) in Code related complaints in the

last year, including complaints involving leaders and cabinet members and an increase in those referred to the Adjudication Panel for Wales. Indications from our data this year are that this is a continuing trend. We are also concerned that the potential for the scope of complaints may also increase, as CJsCs may take on additional local government duties and functions in the future.

The costs associated with these complaints can be significant and we would reiterate our request that the financial implications of having additional bodies in our jurisdiction are considered alongside the third tranche of CJC regulations in the Spring.

Closing remarks

I trust that you will find my comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Tanya Nash, my acting Head of Policy (tanya.nash@ombudsman.wales).



Nick Bennett

Public Services Ombudsman for Wales

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