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**Response by the Public Services Ombudsman for Wales
to the Welsh Government White Paper 'Rebalancing Care and Support'**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Welsh Government White Paper 'Rebalancing Care and Support' on improving social care arrangements and strengthening partnership working to better support people's well-being.

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 am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

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 objectives set out in the White Paper are both laudable and sensible. In terms of the increasing pressure on public services following the pandemic and long-term

projections for care, I believe they are also a necessity to ensure favourable outcomes for all service users is kept at the heart of quality social care. In this context, I agree that reviewing the core objectives for the provision of social care and re-structuring how it is commissioned should be a priority to allow for fair and proportionate service delivery and outcomes. However, in driving the need for better joined up delivery, formal regional partnerships must not make it harder for the citizens and patients to seek accountability and where necessary, redress.

PSOW Jurisdiction- PSOW Act 2019

The establishment of Regional Public Boards (RPBs) as corporate legal entities demonstrates a significant systemic shift in the way care services are commissioned. Effective and comprehensive complaints-handling plays a critical role in supporting public services to improve, by investigating and putting right injustices that members of the public have experienced because of failures in services or breaches of the relevant Codes of Conduct for members. Once established as corporate legal entities, the responsibility for consideration of complaints about RPBs will need to be clear and unambiguous. There is a logical and compelling argument that, due to the nature of their work and the organisations involved, RPBs should fall under the jurisdiction of my office.

There may need to be amendments to the PSOW Act 2019 to achieve this, depending on the legal instrument used to establish RPBs as corporate legal entities. Currently, Schedule 3 of the PSOW Act 2019 includes 'joint boards' and the newly established corporate joint committees in the register of listed authorities that I am able to investigate for maladministration. If the RPBs are established via the corporate joint committee regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021, they will automatically come under the jurisdiction of my office. However, the definition of 'joint boards' as set out in the PSOW Act 2019 would not be sufficient to include RPBs as listed authorities if they are established via different legal means, as the 'joint boards' definition would require constituent members of the RPBs to be solely made up of Welsh local authorities.

Code of Conduct

Section 69 of the Local Government Act 2000 (LGA 2000) provides me with powers to conduct investigations into alleged failures by members, former members and co-opted members to comply with a local authority's Code of Conduct. However, the legislation does not currently afford me powers to investigate members of RPBs who are not also members of local authorities.

Future regulations used to establish the RPBs as corporate legal entities should also introduce a requirement for a code of conduct for both members and staff. I believe it is important that members and staff of the newly constituted RPBs are required to act in accordance with the ethical standards regime for public servants. I would assume RPB board members would be subject to the same Code of Conduct and ethical standards regime as for all others performing a member role in Wales, and that members of the public will be able to complain to my office if they consider that

an RPB member has breached the Code of Conduct. Likewise, I consider that employees should be subject to the Code of Conduct similarly as those for local authority employees as per the LGA 2000 so that there is a consistency of approach across Wales.

Financial Impact

Having additional corporate bodies within my jurisdiction will have financial implications for my Office. As such, I would welcome a meeting with officials to discuss this impact and to share information that might be pertinent for any future Regulatory Impact Assessment (RIA) associated with any forthcoming regulations associated with the establishment of the RBPs as legal entities.

Themes from my Casework

To result in better outcomes for people, rebalancing the care and support market and strengthening partnership working will require effective communication that promotes collaborative and co-ordinated working. My thematic report "[Home Safe and Sound: Effective Hospital Discharge](#)" highlights some of the issues that could be faced by future partnership working that could impact on the quality of care provision. I can point to cases in my case books where communication between the hospital and community services was sometimes inadequate or non-existent and has resulted in hardship for people under the care of social and health services. Effective organisation and efficiently flowing communication at all levels and across all organisations is critical, so a new National Framework for Commissioning and the National Commissioning Office will need to support an open and transparent culture across the whole of the care system. I would like to highlight the following two examples where failures in communication by commissioned services and their respective commissioning councils have resulted in hardship and injustice.

Cardiff Council – Domiciliary care Case Number 201605593 - Report issued in March 2017

Mrs G complained about the way in which her concerns were investigated by a care provider whose services were commissioned by Cardiff Council ("the Council"). She complained that there was little communication with her during the investigation and the outcome of it and associated disciplinary proceedings had not been shared. Whilst recognising that matters relating to the complaint handling by the care provider were not within the Ombudsman's jurisdiction, as the commissioner of the care services, the Council's actions were considered. Enquiries identified that the investigation of the concerns was instigated at the Council's request following an Adult Protection enquiry and the outcome shared with them. The Ombudsman concluded that it would have been reasonable for the Council to have shared this outcome with Mrs G. The Council acknowledged this and accepted it as a learning point. In addition, the Council agreed to:

- a) write to Mrs G explaining actions taken and the outcome of the investigation completed
- b) apologise that the outcome of the investigation was not shared earlier, and

c) use its best endeavours to arrange for the care provider to write to Mrs G detailing the outcome of the disciplinary proceedings and to provide apologies for poor communication and complaint handling.

Wrexham County Borough Council - Care homes Case Number: 202000493 - Report issued in August 2020

The Council commissioned Mr X's father's ("Mr Y") care at a Care Home ("the Home"). Mr X was concerned about a number of incidents at the Home, the most serious one related to Mr Y's fall in April 2020. Mr Y was admitted to hospital; he had broken his hip. Due to the situation at the time with Coronavirus, Mr X was unable to visit Mr Y at the hospital or the Home which caused the family distress. Mr X indicated the distress was compounded by poor communication from the Home about Mr Y's condition and the lack of clear explanation by the Home about how Mr Y fell. Mr X disputes the explanation provided by the Home about the fall. While Mr X complained to the Home in the first instance about Mr Y's care, when he told the Council he was unhappy with the response and wished to escalate his complaint, the Council failed to provide him with the relevant complaints information. Had it done so, this would have identified that the next step would have been for the Council to commission a stage 2 independent investigation of Mr X's outstanding complaints (in accordance with the social services complaints procedure). The Council agreed to undertake the following action in settlement of Mr X's complaint:

- 1) Apologise in writing to Mr X that he did not receive the relevant complaints information and provide him with this material.
- 2) Appoint an Independent Investigator to carry out a stage 2 investigation of Mr X's complaint in accordance with the statutory social services complaints procedure.
- 3) That the Independent Investigator contacts Mr X to agree the investigation definition.

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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