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Lisa James
Deputy Director
Local Government Democracy Division
Department for Local Government
Welsh Government
(By Email)

25 March 2022

Dear Lisa,

Initial response to the Penn Report dated July 2021 - Three key issues

At the Standards Conference on 9 February 2022 you said that you would welcome feedback from Standards Committees on the Penn Report on the Ethical Standards Framework, prior to full public consultation on any proposed changes to the Framework.

Monmouthshire County Council's Standards Committee met on 21 March 2022 and resolved to contact you with their views accordingly. A recording of that meeting is available on MCC's website¹.

The committee agreed with the overarching conclusion in the Report that the "*the current framework is 'fit for purpose', works well in practice and [is] viewed by many as far superior to that currently used in English local government*"².

There were some initial points that the Committee wanted to raise with you and I would be more than happy to engage with any follow up consultation or additional work on the report.

The 3 key areas the Committee wanted to raise are:

Limited consultation

The consultation was heavily slanted towards Welsh Government and local government officers, and only a minority of Standards Committees were involved³.

Despite "public confidence" in the Framework being one of the terms of reference of the review⁴; there was no consultation of the public, nor were any elected Members spoken to either (as councillor confidence is also critical).

It is the opinion of the Committee that any changes to the ESF as a result of the Report would be fatally undermined by the lack of engagement with the 2 most important stakeholder groups – complainants (especially among the public) and those who have been subject to complaints (Councillors).

¹ <https://democracy.monmouthshire.gov.uk/ie/ListDocuments.aspx?CId=145&MId=4798>

² Para 1.5 of the report

³ para 2.14

⁴ para 1.2

A subsequent consultation that would be available to these two groups would not be sufficient in itself to reassure the Committee that the formulation of the recommendations themselves had a basis in a balanced set of contributions. The risk is the recommendations are flawed, and subsequent consultation cannot redress this.

Community Councillor Behaviour

The Report repeatedly raises concerns about Community Councillor conduct, for example: *“there is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils⁵”*.

On reading the latest Public Services Ombudsman’s (PSOW) Annual report⁶ the Committee notes that there were 167 and 135 code of conduct complaints relating to Town and Community Councils in the years 20/21 and 19/20, compare with 138 and 96 for Principal Councils.

In consideration of the relative number of Councillors in Wales for each type of Council, the figures do not suggest that there such a problem; indeed, it suggest that proportionately complaints about Principal Council Members are far higher.

It is accepted that the numbers alone are insufficient to determine where issues may lie, but the Report did not explain why the current Framework is not dealing with such behaviour which breaches the Code. Effective sanctions are available to APW and Standards Committees, and subsequent publicity should deter future breaches. If the current Framework is failing to deal with particular sorts of behaviour, we need to understand why.

Local Resolution of Complaints

The Committee does not support the proposal to remove the right of the public to complain directly to the PSOW⁷, specifically the recommendation that:

“The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman.”

In the first instance, this is a Framework redefining change that is completely disproportionate to the overarching conclusion that the ESF is fit for purpose, and concerningly seems to draw in part upon the point raised above about Town and Community Councillor behaviour that is not fully evidenced or expanded in the Report.

It must be recognised that to introduce what on the face of it sounds like a reasonable escalation measure is to fundamentally undermine the single most important element of the ESF in Wales – that it is built upon the foundation of an independent PSOW to which everyone has direct, unfettered access should they wish it - this is critical to both public and member confidence.

The Committee is concerned that the obvious hosting of any local resolution would lie with the Monitoring Officer or associated element of a Principal Council. One of the frequent issues cited with the system in England, and the Committee enjoys a membership that includes experience of that system, is that code of conduct matters dealt with by Monitoring Officers there are not perceived as independent, and so biased towards Councillors, by complainants, while at the same time undermining the relationship between the Monitoring

⁵ Page 8

⁶ [Annual-Report-and-Accounts-2020-21-Delivering-Justice-FINAL.pdf \(ombudsman.wales\)](#)

⁷ para 1.6

Officer and staff and the elected Members of a Council. It is a move that would only weaken and not strengthen what is already a good system in Wales.

There are a host of relevant resourcing issues associated with this recommendation as well and it is felt that it misses a fundamental point. The independence of the PSOW enables the crucial application of the public interest test. If local resolution was required, detached from this critical test, it will increase demand and resource requirements not only with those required to investigate local resolution but at the PSOW as well, not only through the inevitability of appeals, but because the ability Monitoring Officers currently have to triage and treat complaints currently through non-binding advice and an explanation of elements such as the public interest test will be restricted, resulting in greater numbers of complaints needing resourcing.

In a letter to Jayne Bryant MS dated 21st January 2021, Lord Evans the Chair of the Committee on Standards in Public Life stated:

“... it is vital that the investigative process for complaints is sufficiently independent, so that it is perceived as fair by potential complainants and respondents. An investigatory process that is not perceived as fair will deter complainants from coming forward and will lead to respondents challenging the legitimacy of the process and its outcomes. The former is a particular problem for those who are victims of bullying or harassment, for whom confidence that their complaint will be taken seriously and processed fairly will often determine whether or not they complain at all.”

Informal local resolution of conduct complaints works well now, it does not require a new process. Removal of the public's right to complain directly to the PSOW would be an unjustified and damaging move towards the English ethical standards framework.

[sent electronically]

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