

13 DECEMBER 2021

REFRAMING THE APPROACH TO DEVELOPING THE SOUTH EAST WALES CORPORATE JOINT COMMITTEE

REPORT OF CARDIFF CAPITAL REGION DIRECTOR

AGENDA ITEM 4

Appendix 1 to this report is exempt from publication because it contains information of the kind described in paragraph 16 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of part 4 of Schedule 12A to the Local Government Act 1972

Reason for this Report

1. To appraise Regional Cabinet of the realisation of a number of issues that require a re-defining and re-directing of the approach CCR has proposed to take to the establishment of the South East Wales Corporate Joint Committee (CJC) along with a number of risks which remain live.
2. To set out an interim way forward that recognises in a pragmatic way, the need to make progress with initial implementation steps on a 'bare minimum' basis, in so far as they ensure compliance with the legislation and that CCR incurs no worsening of its position in relation to the unresolved issues.
3. To re-set the critical path towards the statutory budget setting date of on/before 31 January 2022, establishing all resource and sequential reporting requirements; and, in the interim period, standing down the Transition Board, until such time, the new path to 'lift and shift' is resolved, understood and resurrected.
4. To appraise Regional Cabinet of the work that continues to be undertaken with Welsh Government (WG), Audit Wales (AW) and other bodies, with a view to supporting resolution of the issues that currently prevent full transition to the 'lift and shift' model agreed by Regional Cabinet, which is predicated on ensuring a 'no worse-off' position.

Background

The Issues

5. At its meeting of the 20 September 2021, Regional Cabinet approved a report that established Governance and Delivery Option 3 'Lift and Shift' as the preferred model for CCR's transition to one integrated model of regional public investment

and economic governance under the CJC. The report further set out a comprehensive Transition Plan and Transition Board model to oversee the process of evolution and a critical path for achieving key milestone dates.

6. The report described a number of live risks and issues, relating to a series of unresolved matters concerning the implications of CJsCs' financial status for tax purposes and borrowing and their impacts. It was stated that work would continue to be undertaken with CCR's advisory team and WG to resolve the issues sufficiently in allowing for Lift and Shift model to be implemented from 28 February 2022 – the date on which the functions exercised by the CJC (Regional Transport Plan, Strategic Development Plan and economic wellbeing power) commence. A letter was also provided from the WG Minister for Finance and Local Government to reiterate this intent and the report sought to commit to a 'no worse off' principle, on this basis as at the point of transition.
7. In the intervening period, it is clear that the risks and issues highlighted at this time, cannot be resolved to comply with the timescales set out and allow for Lift and Shift. This is mainly because the issues that require resolution, need the approval of bodies such as HMRC and HM Treasury (HMT) and these clearly sit outside the sphere of direct influence and control of WG. In addition, further issues have arisen in respect of Corporation Tax. This is a complex matter not addressed so far in the Regulations; and could have significant implications to the CCR operating model unless similarly addressed through an application to HMT for relevant dispensations. Work is underway on addressing this, with CCR supporting WG's business case application to HMRC for the relevant dispensations.
8. In other words, there remain a number of substantially unresolved matters, that unless addressed and resolved prior to full 'lift and shift' implementation and are understood and mitigated against ahead of 'bare minimum' implementation – could have a significant impact. On the latter point, even basic activities under a 'bare minimum' CJC may still incur a level of irrecoverable VAT and as such an initial scaled back approach which reduces such a potential risk is proposed.
9. The impacts of all these issues are not standalone and consideration will need to be given to the matter of seeking UKG support to transfer the existing CCRCD Funding Agreement to the CJC. In addition, it must be understood that these are complex and inter-connected issues and there are no 100% guarantees of success. Wider financial status issues are bound up within making the case for s33 status and in essence, the need to demonstrate the intent and effect of the CJC legislation, which is for them to be 'creatures of LAs' and 'part of the LG family'.
10. CCR has made representations to WG on these issues, including seeking a re-setting of the statutory budget timeframe. WG has advised that this is not possible due to timescales and the need to carry out statutory consultation on any proposed changes. However, the issues raised are recognised and understood and implementation on the basis of a pragmatic and proportionate provisional approach is supported. Additionally, legal advice has been taken on the risks and challenges posed to CCR of 'doing nothing'. This report is thus, framed in this context and of being minimally compliant.
11. The 'bare bones' implementation of the CJC legislation will therefore need to be 'twin-tracked' with continuation of the current Joint Committee/Accountable Body-

led model for delivering the CCR City Deal for the time being. This dual approach is unavoidable and will provide business continuity for City Deal delivery.

12. WG has also set out that the date of commencement of immediate duties around preparation of the Regional Transport Plan, Strategic Development Plan and economic wellbeing powers, can be changed from the original date set for SE Wales of 28 February 2022 to 30 June 2022 – thus, falling in line with other CJC regions. This report recommends that this later date is accepted in order to better align with the proposed bare minimum approach.

Making Progress

13. Whilst the above issues are complex and require the re-doubling of efforts across WG with support from CCR and its technical and legal advisory team, it is recognised that where progress can be made, then it should be made.
14. The minimalist model proposed in this report, thus offers a pragmatic way of enabling CCR to begin implementing the CJC requirements and adopting statutory duties – whilst at the same time – supporting WG to progress the resolution of issues, which are preventing a transition to Lift and Shift at this time.
15. This means putting in place a series of steps that will redefine the critical path between now and 31 January 2022 (the date by which the CJC must approve its budget), in order to ensure compliance with the legislation, but in ways which protects CCR's short and long-term position and wherever possible, safeguards against any detriment.
16. On the basis of external advice and technical support, the proposed 'bare minimum' model will enable CCR to demonstrate it has commenced transition, ensuring compliance with the legislation and regulations. It is essentially creating the outline of the CJC as an absolute statutory minimum and as an interim holding position only. It will include:
 - setting minimal nominal budgets for the operation of the CJC no later than 31 January 2022;
 - agreeing with the Auditor General for Wales the CJC audit scope and fee, which is proportionate and reflects the CJC's bare minimum operations;
 - adopting model Standing Orders and any basic supplements – i.e. scheme of delegations (draft attached at Appendix 1);
 - arrangements to place any staff at disposal of CJC – again this will be on the basis of proportionality;
 - establish statutory sub-committees e.g. Audit and Governance Committee etc.;
 - appoint Chair/ Vice Chair/s – which can mirror existing CCR arrangements; and,
 - establish practical arrangements in respect of the CJC's basic infrastructure as a separate legal entity – accounting & reporting requirements, bank account, VAT registration, minimum insurances, proportionate records scheme etc.

17. The minimalist model will operate on the expectation that the absolute minimal operational activity required will be undertaken. Therefore, any extraneous activity such as production of a business plan; meetings of the CJC beyond initial budget setting/ 'establishment'; meetings of the Audit and Governance Committee; and staffing arrangements beyond those linked to the above – is unlikely to take place.
18. In order to provide a level of certainty to all CJC stakeholders and constituent councils, the bare minimum model, will be predicated on being in place until the 31 March 2023. However, should the issues be resolved sooner, there is provision for the budget requirement to be re-visited in-year and as 'lift and shift' becomes do-able and is supported through the relevant financial status issues being resolved. This means that for the initial operating period - a nominal budget is set – with the clear expectation of minimal expenditure against it. This is an important principle. If even low-level expenditure can be justified, the advice is there is a strong case to avoid incurring such expenditure if it can be demonstrated that it would "prejudice the CJC's position or suffer any detriment".
19. Therefore, whilst a provisional budget can be set, and actions taken to set-up and 'ready' the CJC – it does not follow that enactment beyond this is necessary – at least until such time the CJC is ready to be operable and lift and shift can occur. The timeframe outlined above will be kept under constant review throughout the year as the outstanding matters are progressed. An update report will be brought back Regional Cabinet for further consideration, as soon as sufficient information is available to do so.
20. The CJC will be required to comply with all necessary regulations and legal requirements. The principle of 'proportionality' will be adopted in assessing bare minimum compliance, along with the requirement to minimise any adverse budgetary impacts. It should be noted that the two duties to begin preparation of both a Regional Transport Plan and Strategic Development Plan will commence in 2022/23. As per paragraph 12 above, it is now proposed this date is re-set as 30 June 2022 and this has been communicated with Welsh Government. Whilst there are no immediate actions required in relation to the commencement duties, some progress will need to be demonstrated from July 2022 and plans for such will be presented to the CJC during the year.
21. This pragmatic, proportionate and reasonable approach will require key stakeholders to adopt a shared endeavour approach. As a result, this report has been shared with Audit Wales and Welsh Government, both of which have been consultees to this report and understand the scope and provisions of the 'bare minimum' model.
22. Given the process to put this new set of actions and revised critical path in train, will be fairly clear, time-limited (until the end of January 2022) and require no reference to the Transition Plan for lift and shift – it is proposed that the Transition Board is stood down. The Transition Board and Plan for lift and shift can be resurrected at such time as clarity on timeframes for resolving the issues around VAT, means that this substantive work can be re-started.
23. It should also be noted that in setting this process in plan, the clear milestone to work towards is budget setting for the CJC on or before 31 January 2022. Approval of the budget requires unanimous support of CJC constituent councils. Brecon Beacons National Park Authority will feature as part of this in relation to

the estimated budget for preparing an SDP and as such, ongoing communication and engagement is taking place.

Update on Work to Resolve Issues

24. Work led by WG on behalf of all regions/ constituent CJs in Wales, is underway with HMRC and HM Treasury on the outstanding issues named in this report. An update has been provided to clarify that CCR CJC is not a 'levying body' with workarounds being put in place with respect to access to LGPS as a 'connected body' instead. In relation to access to PWLB at the relevant future point, WG has had initial positive discussions with HMT that suggest borrowing capability through this medium, can be considered and potentially, developed.
25. On the s.33/ VAT front, WG has developed and submitted a business case application to HMRC to enable CJs to be able to re-claim non-business VAT in the same way that local authorities do. CCR has contributed to this process with input from technical financial and legal advisors. As yet, there is no emergent timeframe for full resolution of the issues, though the indicative timeline provided by HMRC for considering applications is 6 months (which would be May 2022) – further confirmation is awaited on timescale matters
26. Work continues to be put in place regarding arrangements for interim accounting systems, processes and relevant systems infrastructure for the CJC. This is being carried out in partnership with RCT Council, which will be providing basic 'transactional services' for the initial period of 'bare minimum' CJC operation. CCR City Deal will continue to be supported by the 'Lead Council/ Accountable Body' mechanism. This reflects the arrangements underpinning the twin-tracking approach which will be needed, at least initially and until the remaining issues are resolved.

Risks and Issues

27. There are several risks related to the proposed approach. However, if the bare minimum model principles set out above are adopted and risks continually mitigated against by the detailed technical work that is ongoing and continued liaison WG and Audit Wales, it is suggested that these can be kept in check, monitored and managed. This means that Value for Money issues can be responded to in as much, that the CJC keeps expenditure to the bare minimum during this interim period and on the basis of no significant detriment to its short or long-term operating model.
28. Other risks concern the resources now needed to implement 'bare minimum' which will be met from existing budgets, albeit there will be some effect given efforts that will need to now be fully channelled to getting work done in an ever-decreasing timeframe. Timeframes present a further risk in that at this time, there is no clear point at which lift and shift occurring can be estimated – however, this could be clarified via WG shortly. Arguably, the bigger issue is guaranteeing successful outcomes – although it is anticipated a strong case will be made to both HMRC and HMT and it remains the strong intent, and wider effect, of the WG legislation for CJs to be part of the LG landscape and treated as if a Local Authority.

29. It should also be noted that the identification of risks to date, has arisen through work 'on the job'. Further risks that only become apparent through the process of application and implementation cannot be ruled out.
30. Potential risks around potential for double taxation at the point of lift and shift are unpreventable, with work needed ongoing to develop the conversations, flexibilities where they exist and pragmatism to deal with such eventualities. The possibility of fragmented legacy accounts also requires analysis and conclusions to be presented at the relevant time.
31. It is also noted that Councils upon whom the duty to implement CJC legislation falls, also need to report progress, current status and next steps on this matter into their individual decision-making processes. This report and the approach suggested, now provides the means for constituent CCR Councils to do this.

Financial Implications

32. The report considers the approach to the transition of the Current Joint Committee to a new Corporate Joint Committee entity for the South East Wales Region. Enabling legislation is in place which has created the new Corporate Joint Committee with its associated powers and functions continuing to be the subject of detailed regulations determined by Welsh Government to support the operationalising of the entity.
33. The report recommends the implementation of a 'bare minimum' interim solution, until a lift and shift of existing CCR activities can take place and following resolution of issues identified in this report. Movement to a bare minimum will require the establishment of practical arrangements in respect of the CJC's basic infrastructure as a separate legal entity – accounting & reporting requirements, bank account, VAT registration, minimum insurances, etc. It will also include appointment of key officers such as Responsible Finance Officer with the approach to remuneration etc. being the subject of a future report. Corporate Joint Committees have the same financial reporting and disclosure requirements as existing local authorities, including compliance with relevant codes of practice where deemed to be relevant. A bare minimum approach to the CJC will need to consider and work with partners such as Welsh Government and Audit Wales at an early stage to determine approach to compliance in a proportionate way.
34. It should be noted that regulations require the CJC to determine a capital and revenue budget by 31 January 2022. This is for the 2021/22 and 2022/23 financial year. It is proposed that any budget set will be on a bare minimum basis and will be a minimal nominal budget.
35. This is to be the subject of a future report to CCRC Regional Cabinet and similar approval by the CJC in accordance with the deadlines.
36. Where activities are undertaken within the scope of the Corporate Joint Committee, the expenditure and income of these activities will need to be costed and identified as part of CJC budget proposals by 31 January 2022 and annually thereafter. This is to include:

- where there are increases or reductions in budgetary requirements from local authorities;
 - whether additional activities are to be paid for as part of grant support from Welsh Government and or other grant funding providers;
 - where additional costs are to be met from within existing budgets
 - where there are commitments to support credit arrangements or similar liabilities arising as part of approved investment plans
37. This should be considered for revenue costs as well as the approach in respect to the servicing costs of any liabilities undertaken for capital expenditure and the operating costs of any financial or physical assets. This will need to be considered as part of the annual budget setting process for the Corporate Joint Committee for inclusion in respective Local Authority budgets.
38. This report will also need to include the basis on which any budget requirement, not funded by external grant or similar, is to be met by CJC Constituent Councils and the Brecon Beacons National Park Authority where relevant.
39. It should be noted that in accordance with the regulations establishing CJCs, the budget must be agreed on a unanimous basis by constituent Councils of the CJC, with Welsh Government determining contributions in any scenario where a budget cannot be agreed. Any assets or liabilities entered into by the CJC are the liabilities of the constituent Councils and will need to be included as part of the budget setting processes of respective local authorities.
40. The current Joint Working Arrangement and the principles of the financial model in respect to delivery of City Deal activities set out Local Authority Contributions towards the Wider Investment Fund. The establishment of the bare minimum Corporate Joint Committee does not change the quantum of the already agreed financial obligations of each authority in respect to the Wider Investment Fund.

Legal Implications

41. The constituent local authorities are obliged to comply with the Regulations surrounding CJC's. Enacting the 'bare minimum' model which comprises the actions listed in paragraph 15 of this report is sufficient to ensure that members and their authorities comply with their statutory duty and are not acting unlawfully.

Well-being of Future Generations (Wales) Act 2015

42. In developing the Plan and in considering its endorsement regard should be had, amongst other matters, to:
- (a) the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards;
 - (b) Public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or

national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief, and.

(c) the Well Being of Future Generations (Wales) Act 2015. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') is about improving the social, economic, environmental and cultural well-being of Wales. The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language and is globally responsible. In discharging their respective duties under the Act, each public body listed in the Act (which includes the Councils comprising the CCRCD) must set and published wellbeing objectives. These objectives will show how each public body will work to achieve the vision for Wales set out in the national wellbeing goals. When exercising its functions, the Regional Cabinet should consider how the proposed decision will contribute towards meeting the wellbeing objectives set by each Council and in so doing achieve the national wellbeing goals. The wellbeing duty also requires the Councils to act in accordance with a 'sustainable development principle'. This principle requires the Councils to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Regional Cabinet must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, Regional Cabinet must:

- look to the long term.
- focus on prevention by understanding the root causes of problems.
- deliver an integrated approach to achieving the 7 national well-being goals.
- work in collaboration with others to find shared sustainable solutions.
- involve people from all sections of the community in the decisions which affect them.

43. Regional Cabinet must be satisfied that the proposed decision accords with the principles above. To assist Regional Cabinet to consider the duties under the Act in respect of the decision sought, an assessment has been undertaken, which is attached at Appendix 2.

Equality Act 2010

44. In considering this matter, regard should be had, amongst other matters, to the Councils' duties under the Equality Act 2010. Pursuant to these legal duties the Regional Cabinet must in making decisions have due regard to the need to (1) eliminate unlawful discrimination (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are:

- age;
- gender reassignment;
- sex;
- race – including ethnic or national origin, colour or nationality;

- disability;
- pregnancy and maternity;
- marriage and civil partnership;
- sexual orientation;
- religion or belief – including lack of belief.

RECOMMENDATIONS

45. It is recommended that the Cardiff Capital Region Joint Cabinet:

- (1) notes the contents of this report and the realisation of risks and issues that now prevent full implementation of the chosen Governance and Delivery option to 'Lift and Shift' on the previously proposed timescale; and the revised arrangements to be reported through CCR's ten constituent local authorities, along with draft CJC Standing Orders;
- (2) approves the re-direction and re-purposing of the principles contained in the report of 20 September 2022 and agrees the implementation of the 'bare minimum' interim solution set out in the report, allowing CCR to be compliant with the CJC legislation, until such time transition via 'lift and shift' can be resurrected and in tandem with outstanding issues being resolved.
- (3) approves re-setting of the critical path in relation the tasks and activities which will need to be undertaken in the run-up to budget setting before 31 January 2022 and resolves to stand down the Transition Board in this period;
- (4) agrees to ask the Welsh Government to amend the regulations to change the date on which immediate duties commence under the Regulations from 28 February 2022 to 30 June 2022; and,
- (5) notes the work ongoing to resolve the remaining issues and the position of WG and Audit Wales in supporting this approach, as well as being mindful of the risks and issues, which require constant attention and mitigation wherever possible.

Kellie Beirne
Director, Cardiff Capital Region
13 December 2021

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Appendices

EXEMPT Appendix 1 Draft CJC Standing Orders
Appendix 2 Well-being of Future Generations Assessment