

The investigation of a complaint
by Mr Z
against Llansannan Community Council

A report by the
Public Services Ombudsman for Wales
Case: 201304436

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as "Mr Z", to Llansannan Community Council as "the Council" and to members or any officer by post designation or numerically where appropriate.

Summary

Mr Z complained that he had been wrongly prevented from attending monthly meetings of the Llansannan Community Council (“the Council”). He further complained that before he was told he could no longer attend, the Council had stopped providing any translation facility for those meetings. The Council transacts its business in Welsh and Mr Z does not understand Welsh.

The investigation found that there had been maladministration in the manner in which the Council reached its decision to prevent Mr Z attending meetings. There were no minutes or any record of the appeal Panel meeting at which the decision was said to have been taken. The Ombudsman also considered there were no evidenced grounds for its decision given the statutory enshrined right of members of the public to attend meetings of elected councils so long as no disruption was caused at meetings (when attendees could be asked to leave or that right withdrawn). There was no evidence of any disruption when Mr Z had attended; the decision had been solely based on his conduct in daily life outside meetings. Whilst not condoning that conduct, there was no basis to prevent Mr Z from attending.

The Ombudsman was satisfied that the Council could, as it had done, elect to transact its business in Welsh but she was not persuaded that it had demonstrated how it might ensure the non Welsh speaking public could engage in its democratic business (as noted by guidance issued by the Welsh Government). Furthermore, the Council’s own adopted Welsh Language Scheme stated that it would treat both languages equally. It could not therefore objectively be doing so if it failed to make some provision for those attending meetings who did not understand Welsh. Otherwise those members of the electorate could not understand what was being discussed.

The Ombudsman made the following recommendations to the Council:

- (i) To apologise to Mr Z for the maladministration resulting in the injustice to him of not being able to attend monthly meetings.
- (ii) To review a number of its policies including its Standing Orders and Welsh Language Scheme to ensure greater clarity as to its position on translation at business meetings.
- (iii) To ensure it recorded decisions taken pursuant to its policies and procedures.

The complaint

1. Mr Z complained that Llansannan Community Council (the Council) had:
 - (a) Since 17 March 2013, wrongly prevented him from attending Council meetings;
 - (b) Implicitly prevented him from attending prior to that date by not arranging for simultaneous translation provision into English so he might understand what the meeting discussed in Welsh; and
 - (c) Failed in that respect to make a reasonable adjustment for him as a disabled person pursuant to relevant legislative requirements.

Investigation

2. My investigator obtained comments and copies of relevant documents from the Council and considered those in conjunction with the evidence provided by Mr Z. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked.

3. Both Mr Z and the Council were also given the opportunity to see and comment on a draft of this report and their comments have been taken into account in finalising its conclusions.

Relevant legislation, policies and procedures

4. The following are referred to in this report although it is not an exhaustive list of the provisions and procedures I considered in investigating this complaint. I also considered certain case law. There is a brief summary of each set out below and more substantive extracts from some in the Appendix to this report.

- Public Bodies (Admission to Meetings) Act 1960
- Harassment Act 1970
- Local Government Act 1972
- Equality Act 2010
- Welsh Language Act 1993
- Welsh Language (Wales) Measure 2011
- "The Good Councillor's Guide 2012 – for Community and Town Councillors" – Welsh Government

- The Council's Standing Orders (dated 9 March 2011)
- The Council's Welsh Language Scheme (copy supplied was undated)
- The Council's Policy on Unacceptable Actions by Individuals (dated 14 November 2012)

5. The Public Bodies (Admission to Meetings) Act 1960 ("the PBA") sets out the principle of admission to meetings of certain bodies, including parish and community councils, by members of the public. There are certain exceptions as set out and a court case has considered the extent to which a body could exercise them¹(see Appendix). There are mirror provisions for larger councils (County Councils) set out in the Local Government Act 1972 ("the LGA"). The Good Councillor's Guide 2012 was produced by the Welsh Government ("the Guide") and, inter alia, states that council meetings "must be open to the public" and that "electors have a right to attend". It further states that councils should "be inclusive by ensuring that no-one feels disadvantaged".² (see also Appendix)

6. The Harassment Act 1970 ("the HA") includes provisions whereby an individual can be prosecuted for conduct which they ought to have known would amount to harassment of another person, so causing that person alarm or distress. Conduct includes that engaged through the use of social media. There must be such conduct on at least two occasions to amount to a "course of conduct" under the HA. If proven a restraining order can be made against the perpetrator to prevent such further conduct.

7. The Equality Act 2010 ("the EA") provides for a number of categories of persons (known as those with a "protected characteristic" – e.g. a disabled person) for whom reasonable adjustment must be made in the provision of public services.³ It is to ensure that an individual is not at a disadvantage in the receipt of the service as compared with someone who does not share that protected characteristic. Examples of adjustments might, in the case of a disabled person, include modifying a physical means of access to premises from where the service is delivered or the provision of certain aids and equipment.

¹ R v Brent Health Authority ex p Francis [1984 3 WLR 1317

² The Guide at pages 15 & 27 and at page 35 – see Appendix 1

³ s149

8. The Welsh Language (Wales) Measure 2011 (“the WLM”) makes provision for promoting and facilitating the use of the Welsh language. It confirms the principle that the Welsh language has official status in Wales. The Welsh Language Act 1993 (“the WLA”) confirms that the Welsh language should be treated no less favourably than the English language.⁴ It states that public bodies should prepare a Welsh Language Scheme setting out what services it will provide, and outlining how those will be provided in Welsh in compliance.⁵

9. The Council’s Standing Orders (“the SOs”) open with the statement that “the Official Language of all meetings is Welsh”. The SOs then go on to describe routine matters such as the interval and necessary quorum for meetings. There is also a section dealing with attendance at meetings by the public, opening with a statement broadly in line with the PBA and Guide noted above. The relevant extract is set out in full at the Appendix.

10. The Council’s Welsh Language Scheme (“the WLS”) similarly opens with the statement that it has adopted the principle that it will treat the Welsh and English languages on the basis they are equal. The WLS then goes on to set out how its services will be delivered, such as in correspondence or telephone contacts with the public. There are also two sections dealing with attendance at meetings with differences in provision depending on whether it is a public meeting convened by the Council, as opposed to business meetings of the Council itself. The relevant extracts are set out in full at the Appendix.

11. The Council’s Policy on Unacceptable Actions by Individuals (“the UAP”) sets out the Council’s approach in dealing with individuals whose actions or behaviour it considers to be unacceptable. This is where persons are either aggressive or abusive to Council members/staff, are unreasonably persistent and/or make unreasonable demands on the Council. The UAP provides that where this applies the Council will restrict contact from those persons. In some instances the UAP says that action could include “the withdrawal of permission for the individual to address the Council during open parts of its meetings.” A fuller extract of this part can be found at the Appendix.

⁴ The WLA at s5(2) gives the effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.

⁵ The Welsh Language Commissioner (established by the WLM) has since become responsible for the approval of any Schemes drawn up.

12. The Council's Agenda and Minutes of Meetings were also examined, as shown on its website. The Minutes for the Council's meeting held on 14 November 2012 noted the adoption of the Council's Complaints Policy (including its UAP). However, there were no Minutes (only the Agenda) available for meetings on 12 December 2012 and 13 March 2013. These were subsequently requested by my investigator and relevant information from them is discussed below. The Clerk assured her he would place them on the website that evening, apologising for their omission.

The background events

Background

13. Mr Z has lived in the Council's area for many years but does not understand much Welsh. The Council has resolved to transact its business in Welsh so Council meetings, and routine business discussed at them, are conducted in Welsh. It provides an English translation of public documents and items on its website. Minutes of Council meetings for some time showed Mr Z attending Council meetings. He was, for example, noted as being present at the Council's meeting on 14 November 2012 (see above) and also on 12 December 2012 (see below).

14. There is a history between Mr Z and a number of Council members. At an earlier Council meeting Mr Z had raised an issue of concern about acts he felt to be antisocial behaviour in the locality, and he was unhappy that the minutes of that meeting did not refer to this. Mr Z had also made a number of accusations about the Council's accounting processes and a failure to publish its annual accounts (a finding subsequently confirmed by an independent Auditor). As a result of communications from Mr Z (mostly by e-mail and other social media – such as a blog), three members took matters to the police. This resulted in Mr Z's prosecution for harassment, culminating in a restraining order in favour of two of those members in October 2013, the third member having passed away before the hearing took place (see below).

15. For some time Mr Z had also contacted third parties about individual members and the Council's Clerk including in some instances contacting their daytime employers or professional bodies – e.g. evidence seen included an e-mail from Mr Z to the Council's Clerk's employer questioning his actions in relation to Council matters. In **November 2012**, the Council resolved to

adopt its formal Complaints Policy and the UAP (see above and Appendix). The minutes produced for the Council's meeting on 12 December 2012, showed that Mr Z was present (as was his wife) – he was recorded as having "wished everyone a Merry Christmas". They also recorded that the Council had a larger than expected bill for auditing and accounting services that year, said to be because of Mr Z's questioning of its accounts (see paragraph 14 above). The minutes also stated that the Council had passed a letter it intended to send to Mr Z for advance approval to the County Council's Legal Department (the letter referred to below). Finally, they recorded that the Clerk intended seeking advice about whether it was possible "not to arrange simultaneous translation for vexatious persons".

16. On **7 January 2013**, the Clerk (on behalf of the Council) wrote to Mr Z, invoking the UAP, stating that the Council had decided to place his name on a "no personal contact" list. The letter said that any future correspondence from Mr Z should be sent to the Clerk only and it would be simply filed. An acknowledgement or response would only be sent if his letter raised an issue the Council considered significant enough to warrant a response. The letter afforded Mr Z a right of appeal, such request to be made in writing within seven days to the Clerk. It set out how the appeal would be managed in line with what is set out in the Appendix (a panel of three members).

17. Mr Z appealed via e-mail on **8 January**. He argued that the Council's action and "draconian ban would in effect frustrate any member of the public's legal right to inspect public documents". He felt it should be postponed pending the result of the Auditor's investigation into his complaint about the failure to publish Council accounts. He also argued that by singling him out for the ban (and not his wife who had also been present at some meetings) the Council was discriminating against him as a disabled person. Mr Z argued that it was failing to make reasonable adjustment for him contrary to the EA (see above). Moreover, he argued that the EA (by section 149) stipulated that:

"[The Council] has a duty to provide more favourable treatment to persons who find themselves confronting a Public Body in a situation whereby they are a 'Minority'. I believe that this legal duty is legally binding on two counts. Firstly because I do not speak Welsh, secondly because I am partially recovered from a 'Severe Mental Illness'... "

18. On **9 January**, the Council held its usual monthly meeting. The minutes show Mr Z was not present. They do not refer to any discussion about the above matters. On **17 January**, the Council held an Extraordinary Meeting the minutes of which refer to it being called to discuss the Auditor's accounting investigation findings. It was resolved to accept the findings and recommendations including "taking steps to ensure that proper procedures would be followed in future". No other matters were noted.

19. On **21 January**, the Clerk wrote to Mr Z to say that a convened sub-committee had met to consider his appeal. It had decided that the original decision to restrict contact would be upheld. It went on to say that "whilst you will continue to be able to attend meetings of the council you will no longer be allowed to speak at the meetings." This restriction had not been included in the original letter. The letter added the following:

"This decision has been taken as it is considered that your behaviour towards the Community Council has adversely affected its ability to do its work and provide a service to others in the Community."

20. In the interim further exchanges followed between Mr Z and the Clerk and third parties by e-mail. Another Council meeting took place on **13 February**. The minutes refer to the Council's accounts and audit documents now being available for public inspection locally. No members of the public were present at the meeting and nothing was recorded save routine business.

21. The Council's Chair wrote to Mr Z on **1 March**, stating that "In light of the fact that you are harassing the Clerk via e-mail" the Council had decided to invoke clause 4.2 of its UAP (see Appendix). It said Mr Z should not make any further contact with the Clerk. Again a right of appeal within seven days was afforded. Mr Z again appealed in the same vein as before and on **17 March**, the Chair wrote to Mr Z setting out the outcome of his appeal. The letter again said that a convened sub-committee had met to consider his appeal. It had decided that the original decision to restrict contact would be upheld and his appeal rejected. In addition to the identical paragraph about the decision in the earlier letter (set out above), the following was added:

"In addition you will no longer be able to attend Council meetings."

22. The minutes produced for the Council's meeting on 13 March 2013 (convened four days before the above letter was sent), simply recorded routine business as dealt with. No member of the public was present at the meeting. The minutes of the next Council meeting on **10 April** showed that another member of the public was present, but Mr Z was not. Routine business was discussed. Mr Z did not attend further meetings and in the meantime had been prosecuted under the provisions of the HA (see above).

23. On **9 October**, the hearing of Mr Z's prosecution concluded. The judgment transcript referred to the origins of Mr Z's "sour relationship" with the Council following a meeting where, his having addressed the Council in English, it then resumed to discuss all matters in Welsh notwithstanding Mr Z's inability to understand. The minutes then failed to record both his presence and his contribution. The judge commented that thereafter, "On any view, [Mr Z] then subjected the business of [the Council] and the interests of its officer and members to close scrutiny." Considering the evidence of conduct presented, he made a restraining order against Mr Z (for a three year term) in favour of two named Council members (the third member involved in the proceedings had passed away sometime earlier). The order also included the following preamble:

"Otherwise than whilst attending any lawful public meeting you are prohibited from..."

24. Mr Z complained to my office about his exclusion from Council meetings, citing the above order's wording as evidence that his exclusion was unlawful. He further made a number of allegations of various legislative breaches (including the EA).

Mr Z's evidence

25. In addition to the background evidence set out above, Mr Z also supplied a number of documents. He has since submitted copious e-mails regarding a number of complaints he has made to other regulatory bodies about specific matters. [The majority of these are not relevant to this complaint or matters within my jurisdiction.] Mr Z also sent in a copy of an anonymous letter he said he received not long after the above court hearing; he considered the Council was linked to it. The envelope it arrived in bore a postmark of 14 October 2013 (five days after the hearing's conclusion). The

letter included various comments about "English colonials" concluding that "your position is now untenable. The best thing you can do is to leave the community - the Welsh English border is only 45 minutes away for a quick exit..." Mr Z said the letter was racist and threatening, so he had reported it to the police for investigation. He claimed this was not the only "hate crime incident" he had been subjected to. In commenting on the draft report Mr Z also supplied a picture he had taken of a sign displayed outside a public house in the village on the date of the outcome of his prosecution (see above). It simply denoted the word "Guilty" in both Welsh and English. This he claimed was aimed at him and further evidence of racism against him.

26. During this investigation Mr Z said that he e-mailed the Council's Clerk seven days before a Council meeting to take place on **12 March 2014**; both to indicate his intention to attend that meeting and request that simultaneous translation facilities be available for him. He relied on the wording of the above order and that seven days notice of the need for translation services had been mentioned in court as required under the Council's SOs.⁶ Mr Z said he attended the meeting but found no translation facility available. Mrs Z on his behalf e-mailed my investigator saying that no one answered when her husband had asked why none was provided. She added that Mr Z was quite upset and so left. Both she and Mr Z said they felt the Council had "once again managed to create a hostile, intimidating and degrading atmosphere for [Mr Z] who has a protected characteristic" (a reference to the EA).

27. On **9 April**, another Council meeting was held and Mr Z said he had also e-mailed in advance of this meeting (on 2 April) asking for translation facilities as he was intent on attending. The following day Mr Z e-mailed my office to say that no translation facilities were available when he arrived at the meeting with his wife. He further said that he was told to leave as "my 'ban' was still in force" albeit that Mrs Z was told she could stay. Neither did, as Mr Z said he felt "very degraded and humiliated" and so they walked home. He suggested that the Council had "deliberately decided to completely ignore the terms...of my restraining order" (the preamble above).

⁶ The judgment refers to a seven day notice apparently required under SOs but does not stipulate who said so and in what context. The SOs do not refer to a need for a seven day notice period in any context. There is therefore a lack of clarity.

Llansannan Community Council's evidence

28. In commenting on the complaint the Council was of the initial view that there was nothing by way of statutory provision that granted a right to members of the public to attend meetings of the Council (as opposed to public meetings it arranged). It later conceded the provisions of the PBA (see above). However, the Council said it felt it could rely both on the LGA's paragraph about exclusion and on its UAP. This policy, it said, was specifically designed to cover instances when someone acted as Mr Z had. It said it had modelled it on a similar policy adopted by my office. It invited me to take into account a number of documents and e-mails provided by way of evidence as to Mr Z's conduct. It referred to the harassment proceedings taken against him as further evidence saying that members felt threatened by Mr Z; it was concerned that people would resign from the Council. It added that this had already happened and a previous Clerk had resigned.

29. The Council said that there was nothing to say that simultaneous translation facilities had to be provided at meetings as Mr Z requested. It pointed to its WLS stating that these were arranged for public meetings as opposed to routine Council meetings. Such facilities were an expensive commodity for the Council and so a distinction was made. At a routine Council meeting business was conducted in Welsh only. When asked by my investigator (during a telephone conference with a number of members and the Clerk speaking on behalf of the Council), it said that this would remain the case even if an English only speaking member were elected. It claimed assistance would be provided for non-Welsh speakers during meetings (including members of the public attending). This consisted of someone sitting with them to offer some translation when needed. However, when asked, the Council said no one would be very happy to do so for Mr Z because of his conduct. In commenting on the draft report, the Council said members did not recollect saying that members of the public attending would be offered a "translation friend". This would only be the adopted practice for an elected member if and when this was needed.

30. In relation to the letters restricting Mr Z's contacts with the Council, it said that it had sent the first letter of 7 January 2013 to the legal section of the County Council for consideration before sending it. Thereafter, the Council said that Mr Z had continued "to act in a disorderly, unacceptable, vexatious and untruthful manner". This behaviour had caused "considerable

upset and stress for both members of the Council and its Clerks past and present". Members felt unable to contribute at meetings because of Mr Z's "untruthful re-interpretation of individuals' comments in e-mails, Facebook and other communications and social media". At the December 2012 meeting, it felt compelled to take action under its UAP because of Mr Z's actions and so later informed him he could not contact anyone except the Clerk. However, the Council said, Mr Z then made unreasonable demands and sent unacceptable e-mails to the Clerk's employers so it felt he should no longer be allowed to contact the Clerk either. It said it took advice from the police before doing so. After informing Mr Z, and considering his appeal, the Council resolved that he could no longer attend meetings either. It said it relied on paragraphs 4.2 and 4.5 of the UAP (see Appendix).

31. When asked by my investigator, the Council said that there were no minutes of any appeal/panel meeting that considered Mr Z's appeals (of January and March 2013). It said that at each meeting "three independent members had met and they had unanimously rejected" Mr Z's appeals. When commenting on the draft report, the Council said that the panel had met immediately after the monthly Council meeting in each case. It further argued that the letters themselves were the record of the meetings, adding:

"Given the size of the Community Council no minute taker was available for the meetings and therefore no meeting minutes are available."

32. Finally, the Council said that it considered well managed complaints can benefit organisations and "are an opportunity to build strong effective relationships with members of the community" providing valuable information about how the Council might need to improve. However in the case of Mr Z, it said that much of what he raised was not based on factual information. It had a duty to protect its staff from actions causing them to feel "oppressed, afraid, threatened or abused because ... [of] derogatory remarks and rudeness including inflammatory statements and unsubstantiated allegations" made by him. For that reason, it considered the actions taken were aimed to address this duty on the part of the Council effectively and in line with relevant policies. In commenting on the draft report it also requested that I ask Mr Z to modify his behaviour.

Analysis and conclusions

33. I initially debated whether there were issues of wider public interest raised in this case albeit it represents, in my view, a dispute which has escalated out of hand. Whilst not for me to arbitrate per se on linguistic differences in bilingual communities there are some important points to consider; not least the democratic right of the public to attend the meetings of those elected to represent them.

34. At the outset I should say that I have criticisms of the actions of both parties to this complaint. I make it clear that despite what I say below, I do not condone the actions of Mr Z. To any impartial observer reading his correspondence objectively the language used is inflammatory and could be perceived by a recipient as threatening and intimidating. That has also been proven in court proceedings leading to a restraining order being made against him. In many instances Mr Z has made statements about legislative requirements that are wrong or misleading and then made demands as a result (see below). Such correspondence, mostly through social media, is unhelpful to everybody and led the Council to say to take the actions it did. I also take the view that it is right and proper for me to take Mr Z's conduct into account when dealing with any remedy in this case. Having said that, the Council has not acted properly in seeking to do what it did, or, indeed in my view, lawfully. There is also evidence of maladministration.

35. I have set out in some detail the evidence and extracts from pertinent legislation and policies. Having done so I need not analyse them further in any detail here. In commenting on the draft report, it is fair to say both parties argued for other details to be included. I have, however, made it clear at the outset that it is not practical or possible (or indeed necessary) to include each and every detail in this report. Furthermore, in some instances I have no objective evidence regarding some assertions made and in others they are simply matters beyond the scope of this investigation. The following points are key and form my view on the legal position:

- The PBA gives the public a statutory right to attend Council meetings.
- The PBA right cannot be usurped by any working policy document adopted by the Council.

- The right to attend can be restricted if there is misconduct at the meeting; someone can be asked to leave or (following case law) asked not to attend future meetings.
- S1(8) of the PBA does not provide for a sanction excluding someone from a meeting as a result of conduct outside the meeting.
- The HA provides recourse for such conduct or any other amounting to harassment against members/officers of the Council.
- The WLA does not provide any recourse for English provision in public life or meetings of the Council; simply that Welsh must not be treated less favourably than English.
- The WLA does not provide that Welsh should be treated more favourably than English; simply that it should not be treated less favourably than English.
- The Council's WLS states that in conducting its public business it will treat the Welsh and English languages on the basis that they are equal.
- The EA does not provide that persons with a protected characteristic have to be treated more favourably in the provision of public services; simply that they must not be treated less favourably than those not having a protected characteristic– i.e. they must be afforded equal treatment.
- The EA says that reasonable adjustment in service provision must be made for those with such a characteristic, to ensure they are not at a disadvantage compared with those not having the characteristic.
- Not being able to speak or understand Welsh sufficiently is not a protected characteristic under the EA so does not warrant reasonable adjustment for that individual. A disabled person who is not a Welsh speaker is at no greater disadvantage than any other person who is a non-Welsh speaker.

36. In dealing with Mr Z's complaint about exclusion from Council meetings, on the basis of the above, the Council could legitimately restrict Mr Z's attendance if his conduct at meetings permitted it to invoke the PBA's provision. Further, the Council could prevent his attendance at future

meetings on the same basis (see case law at Appendix). I do not share the view advanced on behalf of the Council that s1(8) extends beyond that. There are remedies for unacceptable conduct outside a meeting – criminal sanctions are available if severe and indeed some members took such action last year. The Council’s UAP does not usurp the statutory right of attendance afforded under the PBA. Even if it did, the UAP actually only refers to withdrawing a person’s ability to address the Council’s meeting. It says nothing about preventing attendance altogether. Communication with members or the Clerk can be restricted under the UAP, such as was invoked in the Council’s letters of 7 January and 1 March 2013. Those letters gave Mr Z a right to appeal, which he exercised. However, **I find** maladministration in how those appeals were dealt with, as I shall explain below.

37. The Council’s UAP properly provides a right of appeal for decisions taken in accordance with it (see Appendix). However, despite requesting, I have been provided with no evidence as to when the panel of three members (not involved in the original decisions above) met, let alone what was considered or discussed to reach, in fact, a decision different from the original both times. I say this as Mr Z was made subject to an additional restriction after each appeal – after the first he was prevented from speaking at meetings (not a restriction in the original decision letter) and then, the main thrust of his complaint to me, told he could no longer attend Council meetings after the second (again not in the original decision he was appealing).

38. I do not accept the Council’s resources argument here given any one of the three members who, I am told, met to consider those appeals could have taken some note of that discussion. Those minutes are not for the public domain but they nevertheless need to be kept – not just for reasons of good administrative practice but because the Council’s own UAP explicitly says it will (see paragraphs at Appendix). In commenting on my draft report, the Council said that the panel met after a full Council meeting in each case. That being so, I am even less inclined to accept its position as there were others at that meeting who might have performed the note taking function. In any event, in both cases additional decisions were taken on appeal. Although it has not said so, it may consider it can do this given what the UAP says about deciding on a different course of action (see Appendix). That said, in the interests of fairness and natural justice it is, in my view, a different decision to which Mr Z ought to have been given a further right of

appeal to the Council. The letter does not provide that. Instead it states Mr Z could appeal to my office. I am not an appellate body in such a situation. This is notwithstanding what I consider to be the case – Mr Z, absent any misconduct at meetings (and there is no evidence from any Council minutes I have seen that this happened), could not lawfully have been restricted from attending Council meetings. It follows that I must **uphold** complaint (a) above.

39. Having been denied a right to attend meetings which he clearly wished to do, this is an injustice to Mr Z and has been a continuing one since March 2013. He says he felt upset and humiliated by being more recently refused in early April 2014. Only he knows how he felt, and I must accept what he says. However, I offer the thought that he must equally therefore accept it to be the case, as I do, when members of the Council say they have felt distress at the nature and language of his communications to and about them (see paragraph 32 above). That is the extent of what I can say as, despite the Council's request to, I cannot make any direction about Mr Z's future behaviour. I can simply request that he reflect on his conduct and some of the difficulties that have arisen (to the impartial observer) largely as a result of it. For completeness, I would also note here that there is no evidence that the Council knew about or instigated the anonymous letter sent to Mr Z, or that it instigated the "Guilty" notice about which Mr Z has further complained (see paragraph 25).

40. In relation to translation provision, there is a clear distinction made in the WLS regarding what are public meetings (organised by the Council to discuss any manner of things of importance to the whole community) and routine Council meetings. The Council has in law every right to decide to transact its business in Welsh (subject to what I say below). It also can make the distinction it does about meetings for budgetary reasons. In my view, it would be wholly disproportionate to expect a small council with more limited funds to spend money on (what for it would be) an expensive provision (inevitably from an external provider) for a small number of people attending routine Council meetings. I do not accept Mr Z's argument that his inability to speak Welsh and his disability requires reasonable adjustment under the EA by provision of simultaneous translation facilities at Council meetings. It does not for the reasons I set out above.

41. This then brings me to consider what must the Council do when someone who has a right, such as Mr Z, to attend routine Council meetings cannot understand what is going on. Indeed the logical question posed by my investigator was what would happen if at some point a non-Welsh speaker was elected to serve on the Council? How would such a person be able to function as a member? The answer given by the Council was that (what I shall call) a "translation friend" would be provided – someone already attending the meeting would sit and provide translation or the gist of what was going on as needed to that person. My investigator says that the Council members she spoke with also said it had already done this in the past for a non-Welsh speaking member of the public who attended (not Mr Z). It indicated however that no one would probably be prepared to do so in Mr Z's case. In commenting on the draft report, the Council denied it had said this and stated the "translation friend" facility would only be available to an elected member if needed.

42. As it happens, in his comments Mr Z noted that he knew someone to whom the "translation friend" had been provided, arguing that it had not proved effective. He argued that only a proper translator would suffice in his case and that I should make such a direction. The Council's own evidence is, in my view, key here. In December 2012, its own minutes discussed the Clerk's intention to seek advice about withdrawing translation facilities for what it called "vexatious" persons (see paragraph 15 above). The Council had just adopted its UAP and was about to implement it in Mr Z's case. I simply pose the question: if no translation at all was provided to members of the public at routine meetings (as it now claims) what was there to withdraw if they were vexatious? It is interesting that those minutes also refer to "simultaneous translation" a phrase usually reserved for more formal translation, albeit that is also what a "translation friend" can perform. I conclude on balance that, as my investigator noted, the "translation friend" has indeed been offered to a non member in the past. The "translation friend" provision is not set out in the WLS (I shall return to that).

43. I have no issue with the distinction set by the Council in the WLS and the difference in service provision. However, if that is the practice, the Council cannot, it seems to me, pick and choose who then to offer it to. I am

heavily persuaded by the Guide issued by the Welsh Government (see Appendix). It says in the clearest of terms that councils need to be inclusive and that this includes where someone does not share the primary language concerned – be it Welsh or English. As a matter of good practice, apart from needing it set out in either the Council’s WLS, or its SOs, it seems to me that the availability of a “translation friend” should be made known to the general public. The obvious step would be to include a standard sentence about it at the foot of every published Agenda for forthcoming meetings. That would promote inclusion as set out in the Guide and ensure no linguistic disadvantage to someone attending.

44. Therefore, I **in part only uphold** complaint 1(b). Mr Z has no right to the simultaneous translation facility at routine meetings as requested, so that cannot have by implication prevented him from attending. However, he has a right for some translation provision such as by a “translation friend”. I appreciate from what has been said that the Council will find this unpalatable – in which case it will need to consider how else provision can be made for Mr Z. It is possible, given the soured relationship between them, that Mr Z will find this unpalatable too – indeed when commenting to me he has already said so. However, that is the extent of what the Council can reasonably be expected to provide at routine meetings. If it finds this impossible to fulfil in Mr Z’s case it will need to consider an alternative resolution – even if ultimately it proves to be the more costly option. It follows from what I have already said above, that being a non-Welsh speaker and having a disability are not linked for the purposes of the EA as argued by Mr Z. I **do not uphold** complaint 1(c).

Recommendations

45. I have the following recommendations to make, all to be implemented within 28 days of the issue of this report unless otherwise stated:

- a) The Council should apologise in writing to Mr Z for the failings I have identified and their consequent injustice in his inability to attend meetings.

- b) The Council should review its Standing Orders and Welsh Language Scheme to ensure its translation practice is clear, as it has stated, and so reflected within them. (It may wish to also consider what I suggest about information on the published Agenda). The Council should provide me with a copy of the revised documents within three months.

- c) The Council should reflect on the administrative criticisms I have made above on its decision making and appeals process under the Unacceptable Actions Policy, ensuring adequate records are kept if any such decisions are taken in future.

Prof Margaret Griffiths
Acting Ombudsman

9 July 2014

Appendix 1

Extracts From Relevant Legislation, Policies and Procedures and Caselaw summary.

Public Bodies (Admission to Meetings) Act 1960

“

s1

(1) Subject to subsection (2) below any meeting of a local authority or other body exercising public functions, being an authority or other body to which this Act applies, shall be open to the public.

(2) A body may, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings: and where such a resolution is passed, this Act shall not require the meeting to be open to the public during proceedings to which the resolution applies.

...

(4) Where a meeting of a body is required by this Act to be open to the public during the proceedings or any part of them, the following provisions shall apply, that is to say,-

(a)...

(b)...

(c) while the meeting is open to the public, the body shall not have power to exclude members of the public from the meeting...

...

...

(8) The provisions of this section shall be without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting.

”

R v Brent Health Authority ex p Francis [1984 3 WLR 1317

The Health Authority seeking, to rely on s1(8) of the PBA (see above), had resolved to exclude the general public from a forthcoming meeting to discuss budget cuts proposed by the government that the Health Board was obliged to consider and implement. Three previous meetings had already taken place and each had to be abandoned because of the “unruly behaviour” of some members of the general public who had attended them. Health Authority Members were subjected variously to chants, stamping of feet and being shouted down each time they sought to speak and discuss the issues, causing significant disruption. Anticipating that the fourth meeting would follow a similar pattern, the Chair (exercising powers under standing orders) resolved to exclude the public from the meeting. A member of the public subsequently applied for a judicial review of that decision.

The court dismissed the application; the Chair was entitled to act to exclude the public in the circumstances. It held that there was a common law power to exclude either before or during a meeting anyone whose behaviour was disruptive **of the meeting**; that s1(8) of the PBA was a preserved power of expulsion of unruly members of the public in that respect. The public had a right to attend meetings to inform themselves of what was going on but they had no right to disrupt meetings so preventing a public body from performing its duties.

“The Good Councillor’s Guide 2012 – for Community and Town Councillors” – Welsh Government

“

4. The Rules

What can you do? What must you do? What must you not do?

...

Council meetings must be open to the public, and disability legislation requires the council to make its meetings accessible to anyone who wishes to attend...⁷

...

8. Meetings

Councils conduct their business through meetings...

⁷ Page 15

...

Public participation is encouraged. This does not mean that members of the public take part in debate, but it is good practice to encourage members of the public to express their views or ask questions under a specially designed slot (agenda item) during the meeting. The format for public participation should be set out in the council's standing orders (see below).⁸

...

Annual Meetings

If...elected ...your first meeting will be the Annual Meeting of the Council. This is where you elect a chair...and...appoint... representatives to other bodies....remember that it is a meeting of the council.

Unlike in England there is no requirement to hold an Annual Community or Town Meeting but a community or town meeting can be called at any time. This is **not** a council meeting. It is a meeting of the community or town electors called to discuss community or town affairs...

Standing orders

The rules for the Annual Meeting of the Council will be contained in the council's standing orders. These include rules of procedure laid down in law and additional regulations chosen by your council...⁹

...

10. At the Meeting

...

The council must advertise the meetings by putting up public notices; electors have a right to attend. The council should offer members of the public an opportunity to have their say in a short, defined period early in the meeting.¹⁰

...

15. The Active Community Council

...

The best community or town council represents all parts of its community and creates a sense of belonging. It aims to be inclusive by ensuring that no-one feels disadvantaged. In particular, it must make sure that people

⁸ Page 23

⁹ Page 24

¹⁰ Page 27

with either Welsh or English as their first language (or speakers of other languages) are not excluded.¹¹

... ”

The Council’s Standing Orders (9 March 2011)

“Standing Orders

...

21. Attendance at meetings by the public

21.1 Members of the public have the right to attend all Council, Committee and Sub-committee meetings. They can be excluded from meetings temporarily under the following circumstances: when confidential matters are being discussed.

21.2 Should a member of the public interrupt a discussion during a Council or committee meeting, he or she is to be warned that interruption can lead to them being excluded from the meeting. Should the member of the public persist with his or her interruptions, the Chair has the right to ask them to leave.

21.3 Up to twenty minutes of any meeting can be set aside for the public to present statements, and each individual is allowed a maximum of three minutes to present his or her statement. The Council or committee will only hear statements about matters presented to the Clerk beforehand (no less than 48 hours before the meeting).

... ”

The Council’s Welsh Language Scheme

“

3.3 Public Meetings organised by or on behalf of the Council [that is, meetings which the Council organises with the public e.g. road diversions, improving facilities or annual general meeting. They do not include the Council’s regular meetings which members of the public can attend and listen, but cannot contribute unless they have received an invitation beforehand – see 3.4]

¹¹ Page 35

3.3.1 Contributions in Welsh or English are welcomed in public meetings held by the Council. This will be made clear in the papers which convene or advertise the meeting.

3.3.2 All publicity regarding such public meetings shall be bilingual, and will invite attendees to give the Clerk prior notice of their language of choice in order that appropriate translation arrangements can be made.

3.3.3 If it is known at the beginning of the meeting that all those who are present can speak Welsh, the meeting shall be held in Welsh.

3.3.4 The Council shall provide translation equipment, as required, in public meetings which are organised by or on behalf of the Council.

...

3.4 Council Meetings

[that is, the Council's regular meetings, which are open to the public, but where members of the public are not part of the meeting.]

3.4.1 All notifications and the Agenda of Council meetings shall be in Welsh or bilingual.

3.4.2 The minutes shall be either in Welsh or bilingual.

3.4.3 The Council shall respond in the language of choice of the questioner to requests for information which arise from the minutes or any part of the minutes."

The Council's Policy on Unacceptable Actions by Individuals (14 November 2012)

"

4. Managing Unacceptable Actions by Individuals

...

4.5 Where an individual repeatedly phones, visits the officer, sends irrelevant documents or raises the same issues, [the Council] may decide to:

...

Take other action that we consider appropriate including the withdrawal or permission for the individuals to address the Council during open parts of its meetings. [The Council] will, however, always tell the individuals what action is being taken and why.

5. Deciding to Restrict Contact

5.1 Members of [the Council]...who directly experience aggressive or abusive behaviour from an individual have the authority to deal immediately with that behaviour...[as] appropriate to the situation...they should also report the action to the Chairman at the earliest opportunity.

5.2 With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with [the Council] are only taken after careful consideration of the situation by a more senior member of staff or by the Chair of the Council plus one Council Member. This decision will be minuted at the next full Council meeting without discussion. Wherever possible, we give an individual the opportunity to modify their behaviour or action before a decision is taken. Individuals are told in writing why a decision has been made to restrict future contact, the restricted contact arrangements and, if relevant, the length of time that the restrictions will be in place.

6. Appealing a Decision to Restrict Contact

6.1 An individual can appeal a decision to restrict contact. Three (3) Councillors not involved in the original decision will meet to consider the appeal. They will advise the individual in writing that either the restricted contact arrangements still apply or a different course of action has been agreed.

7. Recording and Reviewing a Decision to Restrict Contact

7.1 [The Council] records all incidents of unacceptable actions by individuals. Where it is decided to restrict individual contact, an entry noting this is made in the relevant file and on any appropriate computer record.

7.2

A decision to restrict individual contact may be reconsidered if the individual demonstrates a more acceptable approach. The Clerk reviews the status of all individuals with restricted contact arrangements on a regular basis. ”



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