

The investigation of a complaint
by Mrs X
against Cynwyd Community Council

A report by the
Public Services Ombudsman for Wales
Case: 201403092

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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 may cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as “Mrs X”, to Cynwyd Community Council as “the Council” and members or any officer by post designation.

Summary

Mrs X complained about poor communications that the Council had with local residents. Mrs X said that it posted some notices in Welsh only and she was aggrieved that this excluded her from becoming involved with the Council as she does not speak Welsh. She said that, when the Council posted agendas in Welsh only, non-Welsh speakers were being disadvantaged because they did not know what would be discussed at those meetings.

Mrs X considered that the Council's meetings being held solely through the medium of Welsh also excluded her, because she would not understand what was being discussed. She felt that the way that the Council conducted its business detrimentally affected her ability to properly take part in local democracy.

Mrs X considered that the Council should ensure that all of its notices and meetings should be bilingual so that everyone could be involved and made to feel that their views and concerns were equally valid.

Whilst I fully accept and support the principle that the Council has a right to conduct its business through the medium of Welsh, I found that by posting agendas in Welsh only the Council had failed to make adequate written bilingual provision for Mrs X as a person who understands English, but not Welsh. That amounted to maladministration which caused Mrs X to suffer an injustice. I therefore **upheld** Mrs X's complaint. I recommended that:

(a) The Council apologise to Mrs X in writing for failing to make adequate written bilingual provision for her.

(b) The Council undertake to publish all agendas bilingually and to make other documents available bilingually (including meeting minutes if they were not already available bilingually) where reasonably practicable to do so.

The Council did not accept the findings of the report and refused to implement the recommendations made.

I had also recommended in an earlier draft of this report that the Council should make a payment of £100 to Mrs X in recognition of the time and trouble she had expended pursuing her complaint. Mrs X, having seen the draft, said that she was disinclined to accept the money. I therefore did not ask the Council to make such a payment to Mrs X, although I considered it would be merited.

The complaint

1. Mrs X complained about the poor communications that the Council had with local residents. Mrs X said that it posted some notices in Welsh only and she was aggrieved that this excluded her from becoming involved with the Council as she does not speak Welsh. She said that, when the Council posted its agendas in Welsh only, non-Welsh speakers were being disadvantaged because they did not know what would be discussed at those meetings.
2. Mrs X considered that the Council's meetings being held solely through the medium of Welsh also excluded her, because she would not understand what was being discussed.
3. Mrs X said that she would like to become involved in the local community council, but she felt that placing notices in Welsh only was off-putting. She also felt this was why people were being co-opted onto the Council, as the people who may be interested in standing for Council did not feel involved and believe that, as they could not understand the agendas and some other notices, their views/concerns were of no interest. Mrs X was of the view that the Council did not appear to feel that this was an issue which needed remedying. She felt that the way the Council conducted its business detrimentally affected her ability to properly take part in local democracy.
4. Mrs X considered that the Council should ensure that all of its notices and meetings should be bilingual so that everyone could be involved and be made to feel that their views and concerns (relating to Council business and local matters) were equally valid.

Investigation

5. My investigator obtained comments from the Council and considered those in conjunction with the evidence provided by Mrs X. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.
6. Both Mrs X and the Council were given the opportunity to see and comment on a draft of this report before the final version was issued.

Relevant legislation and guidance

7. The Welsh Government published the guidance “The Good Councillor’s Guide 2012: For Community and Town Councillors”, which states that:

“[T]he 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 with either Welsh or English as their first language (or speakers of other languages) are not excluded.”

8. My predecessor published statutory guidance in 2008, “Principles of Good Administration”. That guidance states that listed authorities, of which the Council is one, should:

“...communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.”

“...give people information...that is clear, accurate, complete, relevant and timely.”

“...always deal with people fairly and with respect.”

“...treat people equally and impartially. They should understand and respect the diversity of their customers and ensure fair access to services and treatment regardless of background and circumstance.”

9. The Welsh Language Board (which has been abolished and replaced by the Welsh Language Commissioner) published a guide for Welsh town and community councils to follow when drafting Welsh Language Schemes (i.e. “Standard Welsh Language Schemes for Welsh town and community councils”). It sets out what should be included in such a scheme. While the Council does not have a Welsh Language Scheme (and it is not legally obliged to have one), the guidance is, nonetheless, indicative of the standards expected of community councils and is useful in determining what can reasonably be expected of such bodies as regards, among other things, the availability of bilingual published material.

10. Section 5(2) of the Welsh Language Act 1993 gives 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.

11. The Welsh Language Measure (Wales) 2011, among other things, states that the Welsh language has official status in Wales, but the measure does not affect the status of the English language in Wales.

The Council's evidence

12. The Council's Clerk, in a response to Mrs X dated 30 July 2014, wrote that:

“[He] was very saddened by the tone of [her] email and [he feels] that there are many problems that should be sorted out. For many years, [the Clerk] has been a Counsellor to both young and old in Wales and England, and if there is anything [he] could do, please ask and [he would] do [his] best to help [her].”

13. In that letter, the Clerk also stated that he hoped he had managed to answer her “anxieties” and that if she had problems, he would be “prepared to listen”.

14. The Clerk provided my investigator with a copy of a letter dated 7 August 2014 which he had received from the Welsh Language Commissioner's Office and which he considered gave approval for the approach the Council took regarding the use of language when conducting its business. That letter acknowledged the importance (with reference to the Welsh Government's guidance) of being inclusive and ensuring that persons who used English or Welsh as their first language (or speakers of other languages) should not be excluded. It also acknowledged that the Clerk had said that that he was willing to support non-Welsh speakers to understand the Council's discussions undertaken in Welsh through, for example, providing an oral English summary of those discussions. The letter stated that the Clerk had also expressed a readiness to provide information on specific matters in English on request from non-Welsh speaking individuals.

15. The Clerk told my investigator, in an e-mail dated 1 September 2014, that all notices were bilingual, except for Council meeting agendas. That e-mail stated that the Council tried to encourage members of the community to attend meetings, but nobody did. The Clerk indicated that, if a person who did not speak Welsh attended a Council meeting, then s/he would have to sit by him, so that he could translate for them.

16. In a letter dated 28 October 2014 (sent in response to my investigator's attempt to resolve this complaint), the Clerk indicated that the Council was currently developing a website, with funding from the National Assembly for Wales, on which it was intended to publish all Council related information bilingually. He also repeated that members of the public did not attend community council meetings, despite being encouraged to do so.

17. In that letter, the Clerk told my investigator that:

“...[the] only bilingual communications are the Agendas, letters. E-mails and conversations as common sense dictates.”

18. In response to my investigator's letter commencing the investigation (which, again, offered the Council an opportunity to settle the complaint if it agreed to certain changes in its practice), the Clerk informed my investigator that the language of the Council was Welsh and most of its notices were bilingual. It stated that the agendas were in Welsh only at the time. The Clerk stated that the Council's in-house translation was “fairly good”. He said that their tier of government was the only one which did not benefit from funds allocated for professional translators. He said that if members of the public actually attended a meeting, they could bring their own translator if they wished. The Clerk said that he, the Chair and eight Councillors were easily available for discussions in Welsh and/or English.

19. The Clerk said that the Council was “looking at the communication” it has with the whole of the Cynwyd area, through both English and Welsh, to ensure they were being inclusive.

20. The Clerk said that Mrs X did not live in the Cynwyd area, which raised a point about whether the Council was responsible for the people of Cynwyd or the wider community.

21. The Clerk said that four years ago, when Mrs X complained about another matter, she was given the details of all of the Council's meetings and invited to attend. The Clerk said that she did not do so and did not contact him. The Clerk said that since the turn of the century, when he became the Clerk, the Council has had two complaints from the public. He said that both of these were from Mrs X. He suggested therefore that she was "the one out of tune".

22. The Clerk said that the Council was serving the community as they wished and that good communications would allow this to continue and improve in the future.

Comments made by Mrs X in response to an earlier draft of this report

23. Mrs X acknowledged that a proportion of her Council Tax was paid to a neighbouring community council rather than to Cynwyd. She said, however, that she lived halfway between both councils and considered Cynwyd as her nearest village and community.

24. Mrs X said that she did not know what other complaint she was said to have made four years ago. She said that she thought that she asked in the past for details to be given of who the community councillors were. They were now pinned on the noticeboard. Mrs X stated that she viewed that as a request, rather than a complaint.

25. Mrs X is concerned that the Council may not adhere to its undertaking to provide oral translation during meetings.

Analysis and conclusions

26. I should firstly say that I fully accept and support the principle that the Council has a right to conduct its business through the medium of Welsh. However, the Council should also ensure that adequate provision is made for those members of the public who do not understand Welsh.

27. With respect to the documents that the Council publishes in Welsh only, one should be mindful of the guidance referred to in paragraphs 7 to 9 above. I appreciate that the Clerk has said that he and the Councillors have always been prepared to assist anyone, should they not understand the content of

any of the Council's documentation (thus potentially limiting any detriment caused to a non-Welsh speaker). However, in my view, it is likely that by publishing agendas, in particular, in Welsh only, the Council can be considered to be excluding and disadvantaging those who understand English, but not Welsh, by making it significantly less likely that they would attend meetings. It is, in my view, unreasonable to expect non-Welsh speaking members of the public to have to approach the Clerk or a member of the Council every time an agenda is published in order to establish what the items on the agenda are and hence what was to be considered at the next meeting.

28. With regard to the meeting minutes, they should also, ideally, be published bilingually. The information provided by the Council relating to whether they are, in fact, published bilingually, is conflicting.

29. My office has given the Council a number of opportunities to resolve the complaint by asking it to agree to change its practice and publish relevant material bilingually, so that non-Welsh speakers can better understand what the Council is doing. I am disappointed that the Council has been unwilling to engage positively with the investigation and has failed to resolve this complaint at an earlier stage. I am also disappointed that the Council has been unwilling to resolve this matter by undertaking to publish all agendas bilingually and to give an assurance that those who understand English, but not Welsh, would not be disadvantaged.

30. It appears to be significant in this case that the Clerk seems to have resented the complaints made by Mrs X about how the Council operates. The extracts set out above suggest that this is the case, but it is unclear where that resentment stems from. I have considered the content and tone of Mrs X's written complaints to the Council and they do not appear to me to have been unreasonable in any way. In any case, the issues Mrs X raised should have been responded to professionally and objectively.

31. With regard to the letter from the Welsh Language Commissioner's Office, it clearly related to the (spoken) language used during Council meetings. It is entirely reasonable for a Council to conduct its business in Welsh. A non-Welsh speaker attending a meeting would benefit from the translation that the Clerk has said he is prepared to offer (and no significant disadvantage would therefore be caused to a non-Welsh speaker). However,

it is important to note that the content of the Welsh Language Commissioner's letter does not deal in any way with the language used in written publications and notices.

32. I welcome the Clerk's statement that he will provide translation support, to anyone who does not speak Welsh, at meetings. This is an important arrangement to prevent exclusion of non-Welsh speakers and I therefore urge the Council to publicise the availability of this service and ensure that it is made available.

33. While developing a website which allows the automatic translation (if that is what is eventually achieved) of agendas, meeting minutes, etc. is a positive development, it would not address the issue of making the agenda available bilingually to those who do not have ready access to the internet, or who may rely on the village notice board for their information about the upcoming business of the community council. Therefore, even when the website is operational, a hard copy of the bilingual agenda would still need to be posted in the usual place.

34. While I note that Mrs X does not live in the Council's area or contribute taxes towards it, she has chosen to be a part of the community of Cynwyd. I do not consider that the Council can reasonably say that no bilingual provision should therefore be made for her (or others in a similar position to her, in terms of linguistic ability).

35. As I have indicated above, I consider it unreasonable for the Council not to publish its agendas bilingually. One of the main purposes of publishing agendas is to give notice to the public of what is to be considered and discussed at forthcoming meetings and it is important that the public understands their content. Producing bilingual agendas should not be an onerous undertaking for any community council.

36. In view of the above, I consider that the Council has failed to make adequate written bilingual provision for Mrs X as a person who understands English, but not Welsh. That amounts to maladministration which has caused Mrs X to suffer an injustice. I therefore **uphold** Mrs X's complaint against the Council.

37. The Council does not accept my findings and has refused to accept the recommendations. I have been disappointed by the Council's stance throughout this investigation, but I was particularly concerned by the tone and content of its response to the latest draft of this report, which was contemptuous of both the complainant and of my office.

38. As the Council has refused to accept my recommendations, I am issuing this report as a public interest report under section 16 of the Public Services Ombudsman (Wales) Act 2005. My recommendations in this matter are entirely reasonable. It is concerning that the Council, which represents all of the residents of the area, has taken such an intransigent position throughout this investigation, which has resulted in the Council now being put to the expense of publicising my report. This matter will be of concern to residents of the area. I will be sharing this report with Welsh Government and the Monitoring Officer of Denbighshire County Council.

Recommendations

39. I **recommend** that:

a) The Council apologises to Mrs X in writing for failing to make adequate written bilingual provision for her.

b) The Council undertakes to publish, from now on, **all** agendas bilingually and to make other documents available bilingually (including meeting minutes if they are not already available bilingually) where reasonably practicable to do so.


40. In accordance with section 19 of the Public Services Ombudsman (Wales) Act 2005, the Council must consider my report and notify me before 14 December 2015 about the action it proposes to take, or has taken, in compliance with my recommendations.

41. A recommendation was made in an earlier draft of this report that the Council should make a payment to Mrs X of £100 in recognition of the time and trouble she had expended pursuing her complaint. Mrs X, having seen the draft, said that she was disinclined to accept the money as it would "be depriving some part of our local community of this money". She also

indicated that it was never her intention to seek compensation. I therefore do not ask the Council to make such a payment to Mrs X, although I consider it would be merited.

Nick Bennett
Ombudsman

10 November 2015



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