



Our ref: NB/MM

Ask for: Nick Bennett

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Dear John

Thank you for your letter dated 16 October in which you request some further information following the Committee's scrutiny of my Annual Report and Accounts 2019/20. I am pleased to provide my responses below.

Firstly, you asked that I provide more information on our outreach and engagement work, particularly among under-represented groups, to increase awareness and confidence in the office. You also ask how the pandemic may impact upon this work.

In November 2019, we published our [Equality Plan 2019-22](#), accompanied by detailed actions for 2019/20. The Plan was designed to better embed equality work across all our activities. The first set of objectives focuses on reinvigorating how we ensure the accessibility and inclusivity of our service.

We undertake regular equality monitoring to analyse the profile of our service users and identify under-represented groups. In 2018/19, these groups included children and young people as well as older complainants (over 65). Other groups that appeared to be under-represented included individuals from minority national backgrounds, Welsh speakers, and the LGB+ community. Also, the representation of

people from diverse ethnic backgrounds was in line only with the lower estimates of the proportion of this group in the Welsh population overall.

Much of the equality work during the year involved steps to improve how we collect and analyse this equality data, to help us build our evidence base and better target our outreach. However, we also commissioned a segment in the national Wales Omnibus Survey undertaken by Beaufort Research to gauge awareness of our role and attitudes towards us. Positively,

- 48% of respondents to the survey were aware of us – compared to 35% in 2012, when we last commissioned similar research
- 70% agreed that they would have confidence in our work; 79% agreed we were impartial; and 88% believed that they could approach us if they needed to
- 77% were aware that we can accept complaints orally.

Importantly, we were also able to analyse these results by some equality characteristics, such as age, disability, ethnicity and ability to speak Welsh. Findings included:

- that awareness of the office was higher among people over the age of 55, people who identified as disabled and Welsh speakers. However, it was slightly lower among people who identified as BAME; and
- that awareness of our power to accept oral complaints was higher among people who identified as disabled.

During 2019/20, we undertook actions to respond to some of the trends indicated by this data. In August, we held a joint event with the Children's Commissioner for Wales at the National Eisteddfod, seeking to raise awareness of young people of routes to administrative justice. In February 2020, we arranged an 'equality focus group' with the Age Cymru Consultative Forum to discuss awareness of our office and experience of submitting complaints. Finally, we also developed an outreach strategy to maintain and increase awareness of our new power to accept oral complaints, targeting in particular older complainants and people who identify as disabled.

Whilst we were not able to undertake during 2019/20 actions to target all the groups which appeared to be under-represented among our complainants or had lower awareness of our work, the evidence collected during the year informed our planning of some future activities. In July, we published our equality actions for 2020/21. We have continued to place particular emphasis on raising awareness of our power to accept oral complaints. However, we also developed actions targeting BAME communities and people identifying with nationalities other than Welsh, English or British.

To this end, we originally intended to organise a series of focus groups with members of these communities. These plans had to be revisited given the ongoing restrictions related to Covid-19. To overcome this challenge, we are currently undertaking engagement with a number of organisations working with these communities to arrange virtual sessions, as well as to develop some awareness-raising resources

that could be shared with their stakeholders. It is, however, doubtful that the 2020/21 national survey, which could help us track broader trends in awareness and perceptions of the office by different groups, will be undertaken. This is because the Wales Omnibus Survey involves face-to-face interviews, which could not be conducted in the current circumstances.

Secondly, you requested more detail on the measures that we have put in place to support staff with their mental and physical wellbeing, particularly in the context of the increased sickness rate.

We recognise that our sickness absence figures for 2019/20 were disappointing, with staff absence averaging 3.4% - compared to 1.2% in the previous year. This increase was strongly related to long-term absence, with several staff receiving planned medical treatment requiring recuperation time. However, we also recognise that anxiety and stress accounted for 43% of days lost to sickness during 2019/20 and this led us to develop more actions to support our staff's mental and physical wellbeing, as well as continuing existing support arrangements.

During the year, we continued to:

- offer subsidised yoga classes to staff during lunchbreaks
- provide annual health checks to staff
- support staff to access counselling and to self-refer to our Occupational Health advisers

We also:

- developed and launched a new Wellbeing Strategy
- trained a number of staff as Mental Health First Aiders who can provide support to staff and signpost to other support services
- responded to staff experiencing discomfort and musculoskeletal problems by providing standing desks
- launched lunchtime mindfulness sessions and walks
- set up a reflection and prayer room
- offered stress management and resilience training to all staff, as well as training on mental health to the Management Team

Our internal staff Wellbeing Group has been instrumental in the implementation of these actions. In tribute to the work of the Group, 96% of respondents to our staff survey in 2019/20 agreed that they were kept well informed about the work undertaken in the office to support wellbeing.

This work has become arguably even more important since, under the Covid-19 public health guidance, all our staff have moved to work from home. We recognise that these arrangements, as well as the broader impact of the pandemic, may affect people's wellbeing differently and that different levels of support may be needed.

Some of the measures we have introduced were quite simple. We have promoted regular contact with managers and within teams through different platforms. We have made sure to issue regular updates to staff and organised two all-staff meetings, with

some further informal social events – for instance, quizzes and walks - also held virtually. We have also been much more flexible in terms of working hours, particularly to help our staff accommodate caring duties.

Our counselling service remained available, and the Mental Health First Aiders have been very active in keeping in regular contact with their cohorts of staff. Home working has also been supported magnificently by our IT Team who have ensured alternative working arrangements for all staff. We have completed display screen equipment assessments at home to make sure that health and safety standards are maintained.

Since March, we have conducted a couple of staff surveys – partly to gauge the attitudes towards returning to the office as and when Government guidance allows, and partly to capture the staff mood more generally. We were quite pleased at the positive responses that people gave about their own wellbeing and about the support that we'd provided to them.

Thirdly, you note in relation to Code of Conduct complaints that the Committee members were aware in the past of a pattern of complaints being made against Members by officers. You wanted me to clarify whether this is still a pattern in Code of Conduct complaints.

In recent years, we have seen a lower number of complaints being made against Members by officers of Local Authorities. We consider that this, at least in part, is due to the availability of local resolution within such authorities and improved standards of conduct being shown by Members. However, we continue to see a significant number of complaints from officers, usually Clerks, against Members of Town and Community Councils in Wales.

Few of these complaints tend to meet our two-stage test for investigation. This is often because the behaviour complained about is not suggestive of a breach of the Code of Conduct, when considered in the context of the evidence provided, recent caselaw and previous decisions of Standards Committees and/or the Adjudication Panel for Wales.

Of those complaints which merit investigation, the majority do not result in referrals to either the Standards Committee or Adjudication Panel for Wales for similar reasons or because they are not considered to be in the public interest. Complaints to us suggest that there continues to be a pattern of Member / officer conflict in Town and Community Councils, but that this occurs much less in Local Authorities.

Fourthly, in relation to the Public Interest reports, you asked me to provide more information on the four reports which were published in this reporting period, including the responses to any recommendations made in these reports.

- Joint public interest report relating to Gwynedd Council (the Council), Betsi Cadwaladr UHB (the Health Board) & Cartrefi Cymru (the Care Provider).

Mrs M's son, Mr N suffered from drug induced psychosis and acquired brain injury. He received a package of care, funded jointly by the Council and the

Health Board which was provided by the Care Provider, a registered domiciliary care provider. Mrs M complained about the care given to Mr N by the Care Provider and failings in communications between the Council, the Health Board and the Care Provider, resulting in the Care Provider not receiving comprehensive documentation, including risk assessments and care plans for Mr N.

The Council and the Health Board jointly funded Mr N's care, with the Council being the lead commissioner. However, despite there being an overarching, general contract with the Care Provider for the provision of care, there was no documentation showing the awarding of the contract and the specific terms relating to Mr N, and the respective responsibilities of the parties. This amounted to maladministration on the part of both the Council and the Health Board. In addition, there was no documentation to show that the Council, as lead commissioner, had monitored the delivery of the service under the contract.

The complaint against all three bodies was upheld. Failings were identified in the commissioning and contracting of the care for Mr N. The investigation did not conclude that any of the failings by the public bodies caused or contributed to Mr N's death. However, Mrs N was left with the uncertainty that, but for the failings, things might have been different. We found that the Care Provider did not appropriately risk assess Mr N's care or produce an acceptable plan for Mr N's care.

In response to our recommendations, all of the public bodies have apologised to Mrs M for the failings identified in my Report.

The Care Provider has also provided training for staff members to remind them of the importance of carrying out assessments and of reviewing care packages, and it has prepared a new procedure on this.

In view of the commissioning and contracting failures, we also recommended that Gwynedd Council and Betsi Cadwaladr University Health Board review their respective contract governance arrangements. We are seeking information from both bodies on the steps they have taken to comply with this recommendation.

- Swansea Bay University Health Board (the Health Board)

Mrs R complained about the care her late mother, Mrs T, received from Abertawe Bro Morgannwg Health Board during her admission to hospital (now Swansea Bay HB).

The investigation found that the Health Board failed to assess Mrs T's risk of stroke, despite her family raising concerns that she appeared to have a left-sided weakness, facial droop and slurred speech. Furthermore, when two separate clinicians reviewed Mrs T in light of those concerns, they failed to

document their attendance, their assessment or their findings and a third clinician failed to make any reference as to whether any symptoms of potential stroke was considered. By the time Mrs T's stroke was diagnosed, it was too late to administer thrombolytic medication, although it was not possible to say for certain whether this would have limited the damage caused by the stroke or reduced Mrs T's resulting disabilities.

Further shortcomings were found in record keeping throughout Mrs T's period of care which made it impossible to determine what food and drink Mrs T consumed and suggested that her fluid balance was unregulated. Given Mrs T's significant weight loss during her admission, Mrs T was probably malnourished; this was not appreciated or addressed by the Health Board and there was a 3-week delay in referring her to a dietician. Concerns relating to the treatment of Mrs T's anxiety and distended abdomen were partially upheld.

The Health Board has apologised to Mrs R for the failings identified in our report.

Our other recommendations were that the staff member involved should reflect on our findings; and that the Health Board should audit nursing records, feed back learning to other staff members, review its process for referrals to other departments within the hospitals, adopt a recognised stroke scoring system and provide training for staff to ensure that all staff members are up to date on good clinical practice.

As a result of Covid-19, we have agreed further time for the Health Board to complete the nursing records audit until November. Further information on the remaining recommendations is due to be submitted to us by the end of this month.

- Flintshire County Council (the Council)

Despite the Council identifying in 2014 that a car wash neighbouring a Landlord's property was causing a Statutory Nuisance, the Council did not open a case file for 18 months and did not serve an Abatement notice for a further 13 months. When the Car Wash continued to operate, the Council took no further action.

The Tenant occupying the neighbouring property endured significant persistent, disruptive and intrusive noise levels and water spray for a number of years.

The investigation also found that the Council was aware from at least 2012 that the Car Wash did not have appropriate planning consent.

Failures in inter-departmental communications resulted in the Council failing to fully consider whether it should have taken enforcement action. Despite

complaints being made by the Landlord, a lack of ownership at a senior level within the Council led to a failure to investigate the complaint appropriately.

In compliance with our recommendations, the Council has apologised to the Landlord and tenant and provided financial redress to the Tenant.

The Council has also fed back learning from the complaint to staff through a workforce news publication to staff.

We will be liaising with the Council on the other recommendations in our report, which include reviewing and updating policies and procedures for enforcement, complaints, cooperation and communication between Council departments.

- Student Loans Company (SLC - performing functions on behalf of Welsh Government)

The investigation found that the SLC failed to inform Mr X that he was not eligible for a tuition fee loan for 2014-15. This was not properly communicated to Mr X until after he had incurred the fees for the full academic year, leaving him in considerable debt. Despite the SLC knowing that Mr X would never be entitled to additional funding due to his personal circumstances, it continued to ask for information from him and wrongly granted his application for additional funding almost 18 months later. This, on top of the significant debt he had already incurred, caused him considerable stress. We also found that the SLC's complaint handling process was confusing and had taken almost 2 years to complete.

My staff met with the SLC in September to discuss its new Complaints Handling procedure in response to our recommendation. The new shortened 2-stage procedure is due to be provided to my office by 31 December.

We are actively chasing compliance with our recommendations to provide Mr X with financial redress and to liaise with the relevant University to satisfy Mr X's debt, to ensure that he is left in no worse a position than he would have been had the failings not occurred.

Finally, you noted that some of the Committee members were aware of individual cases where, although we found in favour of the complainant, the complainant continued to encounter the problems that led to the original complaint. You asked me to outline the processes in place for following up on complainants and outcomes once cases have been closed.

Our compliance work focuses on ensuring that our recommendations are met. However, when we sign off on compliance and close a case, we inform complainants that they should come back to us if problems persist or if a recommendation has not been complied with to their satisfaction.

I trust that you will find my responses useful. However, please do not hesitate to contact me if any further information is required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a large, sweeping flourish over the top.

Nick Bennett
Ombudsman