





Our ref: 202206003

Ask for: Michelle Morris

Our ref:

 01656 641152

Date: 28 March 2024

 Marilyn.Morgan@ombudsm
an.wales

PRIVATE & CONFIDENTIAL

Mr John Griffiths MS
Senedd Member for Newport East
7th Floor, Clarence House
Clarence Place
Newport
NP19 7AA

By e-mail only
john.griffiths@senedd.wales

Dear John,

I enclose a copy of an investigation report that I have issued in respect of a complaint against Welsh Government. The complaint, made by 2 members of the Gypsy and Traveller community, concerns the action taken by Welsh Government to ensure that local authorities are providing sufficient accommodation for Gypsies and Travellers. I am sending this to you in your capacity as Chair of the Local Government and Housing Committee as I reference the work of the Committee in my report and wanted to bring my findings and recommendations to the attention of yourself and the Committee. I do not propose to provide a hard copy version unless you wish to have one.

Please note that whilst it is our intention to make this report public, I will not do so until 4 April 2024. I would, therefore, ask that you to bear in mind that the report is issued under embargo until that date.

Please do not hesitate to contact me if you would wish to discuss the matter further.

Yours sincerely

Michelle Morris
Ombwdsmon Gwasanaethau Cyhoeddus/Public Services Ombudsman

Enc. Public Interest Report



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The investigation of a complaint
against
Welsh Government

A report by the
Public Services Ombudsman for Wales
Case: 202206003

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Introduction

This report is issued under s23 of the Public Services Ombudsman (Wales) Act 2019.

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 complainants as Mr A and Mr B.

Summary

Mr A and Mr B complained that Welsh Government had failed to use its powers to ensure that Conwy County Borough Council and Denbighshire County Council were taking action to meet the need for accommodation for Gypsies and Travellers as required by the Housing (Wales) Act 2014. Mr A and Mr B also complained that Welsh Government had failed to deal properly with a complaint they had made about this matter.

Local authorities have a duty to meet the need for accommodation for Gypsies and Travellers. They are required to identify and assess the need in their area and submit a plan to Welsh Government for its approval. Welsh Government therefore has a critical leadership role in ensuring that local authorities carry out their duties for the provision of accommodation.

The investigation found that Welsh Government had failed to carry out this role and that its failure to respond to Conwy & Denbighshire Councils had constrained the ability of Conwy and Denbighshire to meet the need for accommodation for Gypsies and Travellers. This has caused frustration and distress to both Mr A and Mr B, whose accommodation needs remain unmet. It is also likely that others in the community have been affected, or could be affected, by this failure.

Mr A and Mr B's complaint was not dealt with in accordance with Welsh Government policy. Their complaint was wrongly classified as one that could not be considered under the policy. The time taken to inform them that their complaint was not being considered was excessive.

I recommended that the Welsh Government should apologise to Mr A and Mr B for the failings identified in this report and offer them a payment of £1,000 each in recognition of the injustice caused to them because of these failings. I also recommended that Welsh Government should inform local authorities of the requirement to continue to take steps to meet need in approved Gypsy and Traveller Accommodation Assessments whilst updated Gypsy and Traveller Accommodation Assessments are being assessed, determine whether to approve the revised Gypsy and Traveller Accommodation Assessments submitted by local authorities and set out a

plan for how they will review the Gypsy and Traveller Accommodation Assessment process and monitoring arrangements. In respect of complaint handling, I recommended that Welsh Government should remind staff who deal with complaints of the importance of responding in a timely manner and ensure that all staff who deal with complaints receive training on its complaints policy and how it should be applied. Welsh Government agreed to carry out these recommendations.

The Complaint

1. Mr A and Mr B complained about the way Welsh Government dealt with a complaint they had made regarding Gypsy and Traveller Accommodation Assessments (“GTAAs”). The investigation considered whether:
 - a) Welsh Government had failed to use their powers to ensure that Conwy County Borough Council (“CCBC”) and Denbighshire County Council (“DCC”) were taking action to meet the need for accommodation for Gypsies and Travellers as required by the Housing (Wales) Act 2014.
 - b) Their complaint had been dealt with in accordance with Welsh Government policy.

Investigation

2. My Investigator obtained comments and copies of relevant documents from Welsh Government and considered those with the evidence provided by Mr A and Mr B. Evidence was also obtained from CCBC and DCC.
3. Both Mr A and Mr B and Welsh Government were given the opportunity to see and comment on a draft of this report before the final version was issued.

Relevant legislation

4. The Ombudsman’s [Principles of Good Administration](#), issued by my predecessor,¹ provides guidance for all public bodies in Wales to follow.
 - Principle 1 includes “Getting it Right” by acting in accordance with the law, with due regard for the rights of those concerned and taking reasonable decisions, based on all relevant considerations.

¹ Under section 34 of the PSOW Act 2019

- Principle 2 is “Being Customer Focused” by dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.
- Principle 3 is “Being Open and Accountable” by being open and clear about policies and procedures.

Public Bodies in Wales must have regard to this guidance when discharging their functions.

5. As the Complaints Standards Authority for Wales, I have also issued Principles of Effective Complaint Handling for public bodies in Wales. These state that complaint handling processes should be complainant focused, fair and objective (ensuring that complainants receive a complete and appropriate response to their concerns), timely and effective and accountable.

6. The Housing Act 1996 states that a Gypsy or Traveller is homeless if they do not have a lawful place where they can both place their mobile home and live in it. Unauthorised encampments, which lack the correct land use planning permission, would not be considered to be a lawful place.

7. All public bodies must comply with the Human Rights Act 1998, which incorporated the European Convention on Human Rights (“the Convention”) into UK law. Article 8 of the Convention provides individuals with the right to respect for private and family life.

8. It is not my function to make definitive findings about whether a public body has breached an individual’s human rights by its actions (or inaction). However, when considering whether there has been maladministration or service failure on the part of a public body, I may consider whether public bodies have regard for human rights while they are performing their functions when this is a relevant consideration. Accordingly, I will identify where human rights are engaged and comment when there is evidence that a public body has not had sufficient regard for them.

9. Gypsies and Irish Travellers are ethnic groups and are protected against discrimination by the Equality Act 2010 (“the Equality Act”). The Equality Act gives people with protected characteristics, such as their ethnic origin, general protection from discrimination. It requires public bodies, such as Welsh Government, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between different groups. Having due regard means considering these 3 requirements when making policy or delivering services.

10. It is not my function to make definitive findings about whether discrimination has occurred. However, I will comment on a public body’s regard for the protection that the Equality Act affords.

11. The Housing (Wales) Act 2014 (“the Housing Act”) introduced a duty on local authorities to produce a GTAA and submit it to Welsh Government for approval. Section 103 of the Housing Act requires a local authority to exercise its powers to meet any need for accommodation identified in its approved GTAA. Section 104 of the Housing Act gives Welsh Ministers the power to direct a local authority to exercise its powers, if they are satisfied a local authority has failed to comply with the duty imposed by section 103 of the Housing Act. These aspects of the Housing Act were commenced in February 2015, with local authorities given a deadline of 26 February 2016 to undertake GTAAs and submit them to Welsh Government.

12. To assist local authorities in complying with this legislation Welsh Government published guidance called “Undertaking Gypsy and Traveller Accommodation Assessments” in May 2015. It explained the importance of undertaking GTAAs in addressing the lack of understanding of the accommodation needs of Gypsies and Travellers and to ensure equality of opportunity for Gypsies and Travellers by allowing them to access culturally appropriate accommodation. It provided a framework, setting out how to undertake GTAAs, and reminded local authorities of their legal duties to meet identified need. Paragraph 255 states that “progress towards meeting the identified needs will need to be assessed at regular intervals... it is incumbent on local authorities to demonstrate they are doing all they reasonably can to meet needs”. It also stated that GTAAs should be updated at least every 5 years because it is difficult to accurately assess Gypsy and Traveller population changes over a period longer than 5 years.

13. Following the commencement of the Housing Act Welsh Government developed a Gypsy and Traveller Sites Compliance Review template to monitor the progress being made by local authorities. This was sent to local authorities, which were required to complete the template and return it to Welsh Government. The template stated that “information provided on this form will be utilised by Welsh Government to ascertain whether it would be appropriate for Welsh Ministers to utilise their power under section 104 of the 2014 Act to compel a local authority to provide sites”.

14. Welsh Government published a plan called “Enabling Gypsies, Roma and Travellers” in June 2018. In this, Welsh Government committed to “scrutinise Gypsy and Traveller Accommodation Assessments to ensure they are robust” and “monitor local authorities on an annual basis to ensure sufficient pitches are provided”. The plan noted that Gypsies and Travellers were one of the most marginalised groups in society and often experienced inequality. It said that “many of the issues experienced by Gypsy and Traveller Communities arise from, or are exacerbated by, the lack of access to appropriate accommodation”. It also said that the Welsh Government would continue to push forward policies relating to accommodation for Gypsies and Travellers.

15. “Enabling Gypsies, Roma and Travellers” followed on from “Travelling to a Better Future”, published by Welsh Government in September 2011, which said that Gypsies and Travellers have a strong sense of family and that family bonds were very strong. It also said that many Gypsies and Travellers lived in wider family groups to provide each other mutual care and support. It noted the challenges that Gypsies and Travellers, living on unauthorised sites, faced in accessing essential services and the detrimental impact this had on health and wellbeing.

16. In August 2022 the Senedd’s Local Government and Housing Committee published a report entitled “Provision of sites for Gypsy, Roma and Travellers”. It said that despite Wales having a clear framework in place to ensure that local authorities delivered sites for Gypsies and Travellers where they were required, very little progress had been made. It recommended that Welsh Government should work with local authorities to ensure the effective delivery of the framework if meaningful changes were to be made for the Gypsy and Traveller community in Wales.

17. Welsh Government has published guidance on the procedure for making a complaint. In a section called “When to use this procedure” the guidance states that Welsh Government is able to consider complaints about issues including “Maladministration in our administrative actions, whether through poor administration or applying rules incorrectly... Failing to provide a service we planned to provide or must provide by law”.

18. The guidance also splits the complaints process into 2 stages:

- Stage 1 is informal resolution. Complaints under this stage are usually considered and resolved quickly and, if possible, within 10 working days of being raised. If a complainant is dissatisfied after receiving a stage 1 response, they can ask that their complaint be reviewed under stage 2 of the process.
- Stage 2 is resolution through formal investigation. Under this stage complaints are acknowledged within 5 working days. Complainants are provided with advice about the process and how their complaint is being handled. A lead officer will be appointed to consider the complaint and a full response given within 20 working days of the complaint being received. If this is not possible the guidance states that this timeline may need to be extended but that the complainant will be kept updated.

The background events

19. From the evidence provided it appears that the first review of local authority compliance with the outcomes of their GTAAs took place in autumn 2017, albeit not using a formal template. Local authorities were asked to respond, using the compliance review template, to the second annual review by 10 May 2018 and the third by 6 January 2020. The fourth annual review, which was due to commence in December 2020, was postponed until 2021/22 financial year. From the evidence provided it does not appear that this, or any further annual reviews, took place.

20. Once a GTAA has been approved the local authority receives a letter from Welsh Government. This informs it that it is required to publish the approved GTAA and begin work on meeting any identified unmet need. The letter also states that Welsh Government will monitor the progress

local authorities are making towards meeting need for accommodation identified in the GTAA. As both local authorities identified an unmet need, section 103 of the Housing Act required them to take steps to meet that need.

Conwy County Borough Council's GTAA submissions to Welsh Government

21. Welsh Government approved CCBC's GTAA on 28 March **2017**. Interviews with Gypsy and Traveller families carried out in late 2015 formed part of the evidence base for the GTAA which found a current need for 5 residential pitches (land on a mobile home site where occupiers are entitled to station their mobile home indefinitely). At the time of completing the GTAA, work was nearing completion on a residential Gypsy and Traveller site (a permanent site designated for use as a Gypsy and Traveller site indefinitely) in the CCBC area. This would provide 4 pitches, leaving an unmet need of 1 pitch. It was noted in the GTAA that this need arose from family members of the households due to move onto the new residential site who wished to join them. The GTAA went on to state that it would be challenging to provide a further pitch at this site due to the lack of available land and because it may not represent value for money, and that further advice would be sought from Welsh Government. The GTAA also found an unmet need for 7 transit pitches (land on a mobile home site where occupiers are entitled to station their mobile homes for a temporary period) for use by Gypsies and Travellers passing through the area.

22. On 18 September the Housing Services Manager from CCBC emailed the Equality Team at Welsh Government. They said that the local authority was focusing on meeting the need for transit pitches and that they anticipated submitting a planning application during the 2019/20 financial year. In respect of the need for the 1 further residential pitch they said that they had not progressed a plan to meet the need and asked for a view from Welsh Government on how to proceed. I have not seen any evidence that this email was responded to by Welsh Government.

23. In May **2018** CCBC submitted its second annual review of compliance to Welsh Government. This stated that CCBC had provided a site to meet the residential need identified in the GTAA. This was the site that was nearing completion at the time the GTAA was undertaken. It also stated

that a steering group would be established to deliver a transit site. On 29 November Welsh Government wrote to CCBC and confirmed that it had provided sufficient evidence to show that the need identified in the GTAA was being met. This was despite CCBC only having plans to provide 4 residential pitches, when there was an assessed need for 5.

24. A third annual review of compliance submitted by CCBC in January **2019** again stated that the residential need identified in the GTAA had been met in providing a residential site with 4 pitches. It said that a preferred location for a transit site had been identified and that it would be subject to consultation through the Local Development Plan process. I have not seen any evidence that Welsh Government responded to this submission.

25. On 23 February **2022** CCBC submitted an updated GTAA to Welsh Government for approval. This was acknowledged by Welsh Government on 10 March and has yet to be approved. This GTAA found that there continued to be an unmet need for 1 residential pitch and no need for transit pitches. In response to this investigation CCBC said that they are unable to progress any work on meeting unmet need until the updated GTAA is approved by Welsh Government.

Denbighshire County Borough Council's GTAA submissions to Welsh Government

26. Welsh Government also approved DCC's GTAA on 28 March **2017**. This GTAA also used interviews carried out with Gypsy and Traveller families in late 2015 as part of its evidence base. The GTAA found a need for 6 residential pitches and 5 transit pitches. The GTAA said that the residential pitches should be delivered as a priority and that a search for suitable land would begin.

27. On 5 September a Project Manager from DCC emailed the Equality Team at Welsh Government. They said that a project team had been established to meet the need identified in the GTAA and they anticipated submitting bids for funding to construct sites in the 2019/20 financial year.

28. The second annual review of compliance detailed the work that had been undertaken to identify land for both residential and transit pitches and

stated that approval had been given to progress to planning application stage. In November **2018** Welsh Government confirmed that DCC had provided sufficient evidence that progress was being made to meet the need identified in the GTAA.

29. The third annual review of compliance submitted by DCC said that a planning application had been submitted for a residential site in October **2019**. In respect of a transit site, it said that there was currently no viable option and that potential sites would be progressed through the Local Development Plan process. Welsh Government responded to the third annual review of compliance on 29 January **2021**. It said that it was concerned the information provided did not show how DCC was going to meet the need identified in the GTAA and that it may not be compliant with the requirements of the Housing Act. This was because DCC's Planning Committee had refused the application to provide a residential site and DCC had not since provided an update that set out how it intended to meet the need identified in the GTAA.

30. Welsh Government officials met with representatives from DCC on 27 April. It was noted that need from the 2017 GTAA remained outstanding. Welsh Government officials said that they were concerned about the lack of progress in meeting need and that actions proposed by DCC would not take them closer to meeting need. The meeting ended with Welsh Government officials saying that they would consider the potential use of section 104 of the Housing Act to direct DCC to meet the need. An officer from DCC emailed Welsh Government on 26 May with comments and amendments to the minutes of the meeting and a request to meet again in a few weeks. No response was received to this email and DCC received no further correspondence from Welsh Government regarding the action being taken to meet the need for accommodation for Gypsies and Travellers.

31. On 24 December DCC submitted an updated GTAA to Welsh Government for approval. This GTAA found that there was an unmet need for 12 residential pitches and no need for transit pitches. Welsh Government have yet to comment on this GTAA.

32. DCC said that it was disappointed by the lack of feedback from Welsh Government on its updated GTAA, especially as it had adhered to

Welsh Government's deadline for submission. Following submission of the updated GTAA a family that had not taken part in the GTAA contacted DCC and asked to be included. DCC decided that this family should be included in the GTAA, and that previous participants should be re-interviewed to ensure that the GTAA was as up to date as possible. DCC said that the lack of feedback from Welsh Government meant that any identified issues were not able to be addressed when this update was undertaken after the additional family came forward.

The Local Government and Housing Committee

33. On 5 October **2023** the Minister for Social Justice and Welsh Government officials gave evidence to the Local Government and Housing Committee ("the Committee"). They acknowledged that progress in reviewing GTAAs by Welsh Government had been slow, initially due to the COVID-19 pandemic and more recently because of severe staffing constraints. The Committee was told that additional staff had been recruited to the team responsible for reviewing GTAAs and that it was planned to have reviewed all submitted GTAAs by the end of the year. Updated GTAAs were due to be submitted by 24 February 2022 and, at the time of the committee meeting, 21 of the 22 local authorities in Wales had submitted updated GTAAs to Welsh Government. Following the meeting, the Chair of the Committee wrote to the Minister for Social Justice expressing the Committee's concern that 1 local authority had yet to submit a GTAA and that the review process for the remaining GTAAs was still ongoing.

34. The Committee had previously launched an enquiry into the provision of sites for Gypsy, Roma and Travellers. A report resulting from that enquiry was published in August 2022. In respect of GTAAs it found that value and effectiveness of GTAAs varied across Wales and recommended that Welsh Government should review whether the existing GTAA process is the most appropriate and effective way of assessing the accommodation needs of Gypsies and Travellers. It also recommended that Welsh Government should set out how it intends to support local authorities to provide sites for Gypsies and Travellers, and how it will work with local authorities to mitigate the challenges this can present. The Minister for Social Justice provided a written response to the enquiry to the Committee in October 2022. In that response she said that the effectiveness of the GTAA process would be

reviewed following the conclusion of the current GTAA round, and that the currently submitted GTAA's would be used to develop a national picture of the need for and provision of accommodation for Gypsies and Travellers.

Complaint to Welsh Government

35. Mr A submitted a complaint using Welsh Government's complaints portal on 9 September 2022, which was acknowledged on 15 September. In that complaint Mr A said that he believed Welsh Government had failed to take action to ensure that CCBC was meeting the need for Gypsy and Traveller accommodation identified in its 2017 GTAA. That complaint was subsequently broadened to include Mr B's complaint about DCC. Mr A lives on a residential site in CCBC and Mr B lives on an unauthorised site (land occupied without the correct land use planning permission) in DCC.

36. On 20 September Mr A received an email from a Welsh Government official ("the Official") who had been tasked with providing a response to him. The subject of the email was "complaint". Mr A was asked to direct all further correspondence to the Official. On 6 October Mr A received a further email from the Official. The email had the subject "Complaint" and Mr A was told his complaint was being dealt with. The Official said they hoped to be able to respond soon but no timescale was given for when Mr A could expect a substantive response.

37. On 24 October Mr A approached an advocacy agency ("the Advocacy Agency") for support as he had yet to receive a response to his complaint. The Advocacy Agency emailed Welsh Government's Complaints Advice Team on 25 October, copying in Mr A. The Complaints Advice Team is part of Welsh Government and deals with complaints made about Welsh Government. The Advocacy Agency asked what stage Mr A's complaint was at, and when he could expect a response. On 27 October the Complaints Advice Team replied saying that the Official had contacted Mr A, and that Mr A was aware of the current position.

38. On 31 October the Advocacy Agency replied to this email, copying in Mr A. They acknowledged that the Official had been in contact with Mr A but said that Mr A still did not know what stage his complaint was at or when he would receive a response. Having had no response to this email

the Advocacy Agency emailed the Complaints Advice Team again on 17 November.

39. The Complaints Advice Team replied on 22 November. They said that they were unable to share information with the Advocacy Agency without Mr A's written permission. Mr A provided this by email the same day. The Complaints Advice Team emailed the Advocacy Agency and Mr A on 29 November. It said that they were unable to consider Mr A's complaint as the complaints policy only allowed them to consider complaints about maladministration, not complaints about Government policy or to change legislation. Mr A replied to this email the same day saying that he was not trying to change policy or legislation but was complaining about existing powers not being used. Mr A then made a complaint to this office in December.

40. Welsh Government officials met with Mr A and Mr B in December. The purpose of the meeting was to clarify priorities and the way forward. No notes were made of this meeting although on 29 December the Official emailed Mr A and thanked him for taking the time to meet. He told Mr A that Welsh Government hoped to look at all aspects of the problem very soon. Mr A replied later that day raising several issues and asking if he would receive a formal response to his complaint. The Official replied to that email the next day and said a formal response would follow, but no date was provided for this.

Mr A and Mr B's evidence

41. Mr A said he found the way Welsh Government dealt with his complaint extremely frustrating, and that he had needed the support of an advocacy agency to assist in his dealings with Welsh Government. Mr A questioned if his ethnicity had influenced the way his complaint was handled, saying that the failure to deal with his complaint appropriately was part of broader inaction by Welsh Government to address the accommodation needs of Gypsies and Travellers.

42. Mr A said that the residential pitch identified as being needed in CCBC's 2017 GTAA was for his daughter, who was currently homeless along with her own children, and that no progress had been made in providing this

pitch. Mr A said that he found this situation extremely distressing as his grandchildren had serious health problems that were exacerbated by being homeless. Mr A said that the failure by Welsh Government to use its powers to ensure CCBC were meeting identified need meant that they were unable to live together on the same site as an extended family and provide support to each other.

43. As there are no authorised pitches in the DCC area Mr B said he and his family were homeless and living on temporary, unauthorised sites. These sites do not have a water or electricity supply and as they were unauthorised and lacked the correct land use planning permission, they were in constant fear of being evicted. They found the situation particularly stressful as the family includes children and people with medical needs.

44. Both Mr A and Mr B said that when the Housing Act was commenced, they were optimistic that more accommodation for Gypsies and Travellers would be provided by local authorities. They said that they found the lack of action by Welsh Government to ensure sites were being provided very disappointing.

Welsh Government's evidence

45. Welsh Government said that Mr A's complaint was not considered under its complaints policy. It believed the complaint to be in relation to government policy or legislation, which it is not able to consider under its complaints policy. They said that arrangements were made to meet with both Mr A and Mr B in December 2022 to understand the nature and reasons for their complaint. They said that following this meeting Mr A was content for the issues raised to be dealt with from a policy perspective rather than as a complaint. As no minutes of this meeting were taken this is not documented.

46. Welsh Government initially said that it was unable to locate any correspondence between themselves and the 2 local authorities regarding the adopted GTAAs. Following further enquiries by this office Welsh Government shared some relevant documents. Welsh Government said that the team responsible for reviewing approved GTAAs has suffered a significant loss of

staff, which had a negative impact on the team's corporate memory and resilience.

47. In response to a draft version of this report, Welsh Government accepted that there had been failures to monitor the progress local authorities were making to meet the need identified in their GTAAs. It stated its commitment to supporting Gypsy and Traveller families and to addressing the inequalities they experience. It acknowledged that significant improvements were needed. However, Welsh Government said that local authorities are required by law to take action to meet identified need, and the lack of monitoring by Welsh Government did not negate this duty. It said that there was no evidence that more rigorous monitoring by Welsh Government would have led to a different outcome for the complainants.

48. Welsh Government said that the duty to meet needs identified in approved GTAAs rests with local authorities. It said that determinations about how to meet that need were issues for local authorities alone. Welsh Government said that any failure to respond to correspondence from local authorities regarding this would not have prevented the authorities from taking action to meet identified need. Welsh Government expressed concern that my findings might lead local authorities to consider that they have no responsibility to meet their Section 103 duties in the time between submission and approval of an updated GTAA.

49. Welsh Government acknowledged that there had been a delay in assessing the updated GTAAs but said that there was no causal link between its failings as identified in this report and the failure of CCBC & DCC to comply with their legal duties to meet the housing needs of Mr A and Mr B. This was because both CCBC and DCC had adopted GTAAs in place and those GTAAs remained valid until an updated GTAA was approved. Welsh Government said that as a result, it did not consider that its delay in approving the updated GTAAs caused an injustice to the complainants.

50. In respect of DCC, Welsh Government acknowledged that advice had not been provided to the Minister regarding the use of section 104 powers. It said that even if advice had been provided it was highly unlikely that it would have been appropriate to use those powers. As such, in the view of Welsh Government, this failure did not cause an injustice to Mr B.

Analysis and conclusions

51. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.

Mr A and Mr B's concern that Welsh Government had failed to use their powers to ensure that Conwy County Borough and Denbighshire County Council were taking action to meet the need for accommodation for Gypsies and Travellers as required by the Housing (Wales) Act 2014.

52. It is important to say at the outset, that the duty under the Housing Act to meet the needs identified in approved GTAAs rests with the local authorities (CCBC & DCC), not with Welsh Government. However, the legislative framework is such that Welsh Ministers have a critical role in deciding whether to approve those GTAAs and in monitoring local authorities' compliance with previously assessed needs. The Local Government and Housing Committee also highlighted the importance of Welsh Government working with local authorities to address the accommodation needs of Gypsies and Travellers. As such Welsh Government has an important role in leadership and oversight. Also, in line with other public bodies in Wales, the Welsh Government must have regard to my Office's Guidance on the Principles of Good Administration when discharging its functions.

53. Welsh Government's fourth annual review of compliance, which was due to take place in the 2021/22 financial year, did not happen. The last recorded monitoring of local authority compliance with outcomes of their GTAAs took place in January 2020. This is contrary to Welsh Government's commitment in "Enabling Gypsies, Roma and Travellers" that annual monitoring would take place. Whilst I accept that the COVID-19 pandemic and staff shortages caused delay, as 4 years have elapsed this delay is excessive and, in my view, amounts to maladministration.

54. I have not seen any evidence that Welsh Government responded to requests from CCBC for assistance in meeting the need for a residential pitch. CCBC was clear in both its approved GTAA and an email to Welsh Government that it was facing difficulties in addressing its unmet need for a residential pitch. Welsh Government should have acknowledged and responded to this correspondence. It was a matter for the Welsh Government to decide whether it wished to assist the Council in any

way. The failure to respond to this correspondence to provide CCBC with an answer to its request was an administrative failure which amounts to maladministration.

55. I have also not seen any evidence that Welsh Government responded to the CCBC's third annual statement of compliance. This was a missed opportunity to identify that the 4 residential pitches provided by CCBC were insufficient to meet the need for 5 pitches identified in its GTAA. Subsequently CCBC submitted an updated GTAA nearly 5 years after the approval of the first GTAA still showing an unmet need for 1 residential pitch. The failure to identify this shortfall and respond to the Council was again a failure which amounts to maladministration.

56. CCBC has said it is currently unable to take action to address unmet need identified in the updated GTAA as it has yet to be approved by Welsh Government despite it being submitted two years ago in February 2022. Welsh Government said that CCBC should be continuing to take steps to meet the need for accommodation identified in the 2017 GTAA whilst it awaits approval of the updated GTAA. CCBC had previously been told by Welsh Government that its plans to provide a residential site with 4 pitches was sufficient evidence that the need identified in the 2017 GTAA was being met. In the absence of any other direction from Welsh Government, it was not unreasonable for the local authority to conclude that it had exercised its powers so far as was necessary, as required by the legislation.

57. Therefore, whilst the duty to meet unmet needs in its approved GTAA rested with CCBC, the administrative failures on the part of Welsh Government to engage with and respond to CCBC's correspondence, caused delay and an impasse. Given that it did not clearly respond to CCBC and explain its position the maladministration on Welsh Government's part therefore indirectly caused an injustice to Mr A.

58. Mr A said that he was disappointed that no progress seemed to have been made in meeting the unmet need identified in the 2017 GTAA. Mr A said that the pitch was needed for his daughter and her dependent children and in its GTAA, CCBC acknowledged that the need arose from family members of people living on its authorised residential site. Mr A said that

his daughter was homeless, along with his grandchildren, as there were no available pitches in the CCBC area. Whilst there is no guarantee this pitch would have been allocated to a member of Mr A's family, the fact that it was never provided meant that they were unable to apply for it, and Mr A was not able to have the opportunity to live with members of his wider family. This is something Welsh Government have previously acknowledged in "Travelling to a Better Future" as an important part of Gypsy and Traveller culture.

59. Following the meeting between Welsh Government and DCC in April 2021, Welsh Government made no further contact with DCC about the potential use of its powers under section 104 of the Housing Act to direct DCC to provide pitches. Welsh Government has not provided any evidence that the use of these powers was considered further after the meeting. This is despite concerns from Welsh Government officials that DCC did not have a plan to meet the identified need, contrary to section 103 of the Housing Act. Whilst again it was a matter for Welsh Government to decide whether to exercise its powers, its lack of action to follow-up after that meeting and confirm its position to DCC was an administrative failure which amounts to maladministration.

60. Welsh Government officials had identified that DCC was potentially failing to meet its duties under the Housing Act, but no further action was taken to address this. In response to a draft of this report, the Welsh Government said it was unlikely the use of section 104 powers would have been appropriate. That may or may not be the case. However, it indicated to DCC that it was considering use of the s104 power and DCC e-mailed Welsh Government, with comments on the minutes of its meeting when this was discussed, with a request to meet again, but DCC had no response from Welsh Government. Even though the legal duty to meet unmet need in the approved GTAA rested with DCC, it was not unreasonable for DCC to await a response from Welsh Government. The lack of response or confirmation of Welsh Government's intentions clearly impacted on DCC and contributed to delay and inaction. This failure amounted to maladministration.

61. DCC has not provided any accommodation for Gypsies and Travellers and nearly 7 years after Welsh Government approved DCC's

GTAA, Mr B and his family are still homeless. Whilst we cannot know for certain whether DCC would have met the need identified in the GTAA or whether Mr B and his family would have been allocated pitches on a site, were one to have been constructed, the current impasse may have been avoided had the failures on the part of Welsh Government not occurred. Although the duty to meet the assessed accommodation needs rests with DCC, I consider that the Welsh Government's failures indirectly impacted upon Mr B's position, causing him injustice and distress.

62. DCC chose to revise its updated GTAA after it was submitted to Welsh Government. If Welsh Government had commented on the GTAA before this point any issues raised could have been addressed in this update. If Welsh Government identify any issues with this new GTAA, then there is a possibility that DCC will have to commission an additional update to the most recent GTAA. This will further delay any work that DCC may take to address identified need. This is an injustice to Mr B and his family whose accommodation needs remain unmet.

63. The Minister for Social Justice has said that submitted GTAAs are being reviewed. Whilst this is welcomed, any delay will further suspend action the local authorities may take to meet the identified need, as the local authorities' duty, to meet the assessed needs under section 103 of the Housing Act, does not take effect until a GTAA has been approved by Welsh Government. Welsh Government has said that whilst local authorities are awaiting approval of an updated GTAA they should continue to undertake work to meet the need identified in its existing approved GTAA in compliance with their legal duties.

64. In the case of CCBC and DCC this would mean taking action to meet unmet need based on interviews with Gypsy and Traveller families conducted over 8 years ago. Welsh Government guidance on conducting GTAAs says that it is difficult to accurately assess need for Gypsy and Traveller accommodation over a period longer than 5 years. As such, existing GTAAs may no longer accurately reflect the current need for Gypsy and Traveller accommodation. In the case of DCC the need for residential pitches in its updated GTAA has increased significantly since the 2017 GTAA was approved. If local authorities were continuing to take action to meet need in

approved GTAs this would not address any newly arising need that had occurred since the 2017 GTAs were approved.

65. If the view of Welsh Government is that local authorities should continue to take steps to meet need identified in previous GTAs whilst waiting for updated GTAs to be assessed, this should be clearly articulated to the local authorities. This investigation has found that this position is potentially not understood by local authorities. It is also not included in the current guidance on undertaking GTAs published in 2015, which only states that GTAs should be reviewed at least every five years.

66. The delay and inaction by Welsh Government to engage with both local authorities has led to stagnation and constrained their ability to progress the urgent need for additional sites. In the case of DCC no new sites have been provided and the site provided by CCBC was insufficient to meet the need identified in its GTA. The need for Welsh Government to work with local authorities if meaningful change were to be achieved for Gypsies and Travellers in Wales has been highlighted by the Local Government and Housing Committee.

67. In response to this investigation, Welsh Government has said that it does not believe there is a causal relationship between the failures identified in this report and the failures of local authorities to meet need identified in their GTAs. Whilst local authorities are legally required to take steps to meet identified need, Welsh Government must ensure that it administers its function in the GTA approval process appropriately and that it communicates clearly and promptly with local authorities – this is essential to avoid the failures in these cases being repeated.

68. For the reasons outlined above, rather than Welsh Government responding to CBCB and DCC clearly in line with the legislative framework it implemented, its failures contributed towards the delay and inaction on the part of both local authorities. If it is the case that it expects local authorities to implement previously approved GTAs (regardless how long ago they were approved) whilst new GTAs are being considered, it needs to ensure it communicates this and makes this clear to local authorities during its engagement with them.

69. The lack of available sites is a source of great frustration to Mr A and Mr B. It has led Mr B and his family to have a prolonged period of homelessness and has meant that Mr A is not able to provide support to his daughter and grandchildren. While the complaints I have considered have been made by 2 individuals, others are likely to have been affected, or potentially affected, in a similar way.

70. The failings identified in this report are significant and ongoing. It appears that no monitoring of approved GTAAs has taken place since January 2020 and updated GTAAs have yet to be assessed. For the reasons outlined above, this is, indirectly, causing an injustice to Mr A and Mr B as their housing needs remain unmet. I also find that the failings identified in this report are likely to be systemic, going beyond the issues identified with the monitoring of the 2 local authorities mentioned in this report. The Minister for Social Justice has acknowledged that progress on reviewing GTAAs has been slow. The Chair of the Local Government and Housing Committee has also raised concerns about the GTAA process. The failings also relate to the implementation of new legislation, as Mr A and Mr B's complaint related to the monitoring of the first GTAAs submitted after the commencement of the Housing Act. Mr A and Mr B have expressed their disappointment at the way this legislation has been implemented, which they believe could have had a significant positive impact on the lives of Gypsies and Travellers in Wales. It is for these reasons I consider this report to be of a wider public interest.

71. Public bodies are required to comply with the provisions of the Equality Act, which includes paying due regard to the need to advance equality of opportunity. It is not for me to make a definitive determination regarding whether a body has complied with the terms of the Equality Act, but I can consider if an organisation has had due regard to its obligations. Welsh Government has acknowledged the inequality often experienced by Gypsies and Travellers. The failure, to monitor the progress being made by local authorities in meeting the need for accommodation for Gypsies and Travellers, suggests it may not have paid due regard to the need to minimise the disadvantages faced by Gypsies and Travellers in relation to accommodation.

72. I also consider that Article 8 of the Convention was engaged by the circumstances of this complaint. This is because the lack of action by

Welsh Government to monitor the progress being made by local authorities to meet the needs identified in their GTAAs has contributed to situation where the rights of Mr A and Mr B to have their family life respected may have been compromised.

73. Welsh Government has failed to use its powers to ensure that the 2 local authorities are taking action to meet the need for accommodation for Gypsies and Travellers as required by the Housing Act. This meant that Mr A has potentially been unable to live with his wider family and provide support to them. This is an injustice to him. As a result of the absence of any authorised residential pitches in the second local authority, Mr B and his family have been homeless for a number of years. This is a source of great stress and limits their ability to access essential services. This is an injustice to him. I therefore **uphold** this part of Mr A and Mr B's complaint.

Their complaint had been dealt with in accordance with Welsh Government policy.

74. It took over 10 weeks for Welsh Government to tell Mr A that his enquiry did not fall within the scope of its complaint policy. If Welsh Government considered that Mr A's enquiry did not fall within the scope of its complaint policy, he should have been told much sooner.

75. Mr A and Mr B had complained that Welsh Government had failed to monitor CCBC and DCC to ensure that action was being taken to meet the identified need for accommodation for Gypsies and Travellers. Mr A and Mr B were making a complaint about action Welsh Government had said it would undertake, and their complaint should have been considered under the complaints policy. Welsh Government was wrong to suggest that the complaint related to Government policy or legislation as it clearly related to inaction on the part of Welsh Government under legislation which already existed and therefore fell firmly within Welsh Government's complaints policy.

76. Mr A questioned if his ethnicity had influenced the way his complaint was handled. Mr A linked the way his complaint was handled to Welsh Government's wider policy agenda on accommodation for Gypsies and Travellers. This report has identified significant failings by Welsh Government to ensure local authorities were taking action to meet the need for accommodation for Gypsies and Travellers. I have not seen any

evidence that Mr A's complaint was handled differently because he is a Gypsy, but it remains Mr A's perception that this may have led to him being treated less favourably.

77. The poor handling was evidence of further maladministration which caused an injustice to Mr A and Mr B. The approach taken by Welsh Government was also contrary to our Complaints Standards Authority Principles of Effective Complaint Handling.

78. This was a source of considerable frustration to Mr A, who engaged the services of an advocacy agency to assist in his dealings with the Welsh Government. This is an injustice to Mr A and Mr B and I therefore **uphold** this part of their complaint.

Recommendations

79. I **recommend** that within **1 month** of the final report:

- a) Welsh Government should apologise to Mr A and Mr B for the failings identified in this report.
- b) Welsh Government should offer Mr A and Mr B payment of £1,000 each in recognition of the injustice caused to them as a consequence of the failings identified in this report.
- c) Welsh Government should ensure that it informs local authorities clearly of the requirement to continue to take steps to meet identified need in approved GTAAAs whilst updated GTAAAs are being assessed by Welsh Government.
- d) Welsh Government should remind staff who deal with complaints of the importance of responding in a timely manner. It should also ensure that all staff who deal with complaints receive training on its complaints policy and how it should be applied.

80. I recommend that within **4 months** of the final report:

- e) Welsh Government should determine whether to approve the revised GTAA's submitted by local authorities.

81. I recommend that within **6 months** of the date of the final report:

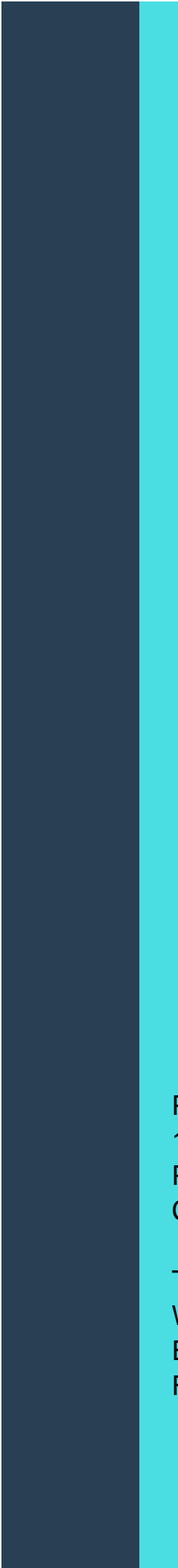
- f) Welsh Government should set out a plan for how it will review the GTAA process and monitoring arrangements.

82. I am pleased to note that in commenting on the draft of this report **Welsh Government** has agreed to implement these recommendations.

M.M. Morris.

Michelle Morris
Ombwdsmon Gwasanaethau Cyhoeddus/
Public Services Ombudsman

22 March 2024



Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel: 0300 790 0203
Website: www.ombudsman.wales
Email: ask@ombudsman.wales
Follow us on X: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)