

The investigation of a complaint against Gwynedd Council

A report by the
Public Services Ombudsman for Wales
Case: 201801474

The Complaint

1. Mr & Mrs A complained about the way in which Gwynedd Council (“the Council”) dealt with their concerns under Stage 2 of its Social Services Complaints Procedure (“the Stage 2 investigation”). This is a formal investigation pursuant to the Social Services Complaints Procedure (Wales) Regulations 2014 (“the Regulations”). It is conducted by an external Independent Investigation Officer (“IIO”) who is appointed by the Council.
2. Mr & Mrs A voiced the following concerns:
 - a) That the Council had inappropriately influenced the role of the IIO.
 - b) Whether the IIO’s original report was amended as a result of inappropriate intervention by the Council?
 - c) Whether it was equitable for the first two versions of the IIO’s report to be withheld from Mr & Mrs A whilst the Council was given the opportunity to consider and meet with the IIO to discuss them?
 - d) Whether there was an unreasonable delay in the Council responding to Mr & Mrs A in accordance with the Regulations, and whether it had informed them appropriately of the delay?
 - e) Whether it was appropriate for the IIO’s report to exclude their concerns about a staff member’s comments about Mr & Mrs A in his emails to professional colleagues (included within an earlier version of the IIO’s report)?
 - f) Whether it was appropriate for the Council to refuse to divulge the staff member’s comments about Mr & Mrs A, and ought this to have been acknowledged in its formal response?
 - g) Was the Council acting reasonably in refusing to accept some of the IIO’s recommendations?

Investigation

3. I obtained comments and copies of relevant documents from the Council and considered those in conjunction with the information and evidence provided by Mr & Mrs A. I have not included every detail investigated or considered in this report, but I am satisfied that nothing of significance has been overlooked.

4. Both Mr & Mrs A 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, guidance and policies

5. I have considered the following relevant material

- The Regulations (see above).
- A Guide to Handling Complaints and Representations by Local Authority Social Services – Welsh Government guidance August 2014 (“the Guidance”).
- The Children Act 1989 (“the CA”).
- The Human Rights Act 1998 (“the HRA”).
- The Social Services and Well-being (Wales) Act 2014 (“the SSWA”).
- The Council’s policy for its Integrated Team for Disabled Children (“Derwen”).

6. The Regulations set out the Council’s responsibilities upon receipt of a complaint about social services matters. It can respond to the complaint locally (Stage 1),¹ but at the same time must inform a complainant of their right to request a formal investigation (Step 2).² If a formal investigation takes place, the Council must, within 25 working days of the investigation’s

¹ Regulation 16.

² Regulation 15 with Regulation 17 setting out the process for the Stage 2 investigation.

start date, send a complainant a written response from its Director of Social Services, as well as details of the Ombudsman should they wish to complain further. The Council's response must include the following:³

- A summary of the complaint investigated.
- A description of the investigation undertaken.
- An apology, where appropriate.
- Identification of any actions necessary, in light of the outcome.
- An offer to discuss the response with the complainant.

7. If the Council cannot meet the prescribed time limit, it must inform the complainant and give reasons for the delay. The response should be sent as soon as reasonably practicable, and '...no later than 6 months beginning on the day upon which the [Council] received the complaint.'⁴

8. The Guidance is statutory guidance, meaning that it must be followed unless an authority can show good reason for departing from it. It states that a complaint includes an expression of dissatisfaction (oral or written) by a member of the public which does not fall into the definition of a service request or formal appeal.

9. The Guidance sets out the IIO's investigative role at paragraph 78. It includes the following:

- Investigate the complaint by undertaking a fact-finding exercise which is impartial, open and transparent, and proportionate to the seriousness of the complaint...;
- Interview those concerned and find out the facts;
- Make constructive, proportionate and achievable recommendations;

³ Regulation 18.

⁴ Regulation 18 (3) and (4).

- Prepare a report of the investigation for the local authority to consider; and
- Complete the work within the specified time-scale.

10. Where a complaint involving a child (under 18) is considered under the Regulations, then an Independent Person (“IP”) must also be appointed. They must be a different person from the IIO. The IP’s function is to provide oversight of the investigation and the IP ‘...must take part in the investigation...and any discussion held by the local authority about action to be taken in light of the investigation...’⁵ The Guidance explains that the IP has four main tasks, including ensuring the investigation is fair and unbiased, as well as ensuring ‘everyone involved is able to express their views and without any pressure.’ At the end of the investigation, the IP’s own report will confirm that the IIO’s report has met the Guidance’s requirements (see paragraph 9 above).

11. The IIO’s report ‘will form the basis of the [Council]’s response’, reaching clear conclusions and making recommendations for resolving the complaint. It should be ‘normal practice’ to share the full report with the complainant.⁶ The Guidance replicates the Regulations regarding the content of the Council’s response (paragraph 6 above).

12. The CA defines a ‘child in need’ as someone who is disabled, is unlikely to achieve a reasonable standard of health or development without provision of local authority services, or someone whose health or development is likely to be significantly impaired (or further impaired) without such services. As well as listed physical disabilities (e.g. blindness), the CA states that ‘development’ includes intellectual, emotional, social or behavioural development and that ‘health’ means mental as well as physical health. The CA ceased to have effect in Wales from 6 April 2016, being replaced by the SSWA (see below).

⁵ Guidance para 51.

⁶ Guidance paras 86 & 87.

13. Article 8 of the European Convention on Human Rights (“ECHR”) provides a right to respect for one's ‘private and family life, home and correspondence’, subject to certain restrictions. The ECHR was incorporated into UK law by the Human Rights Act 1998 (“the HRA”). All public authorities must follow the HRA. It is not the function of the Ombudsman to make definitive findings about whether, or not, a public body has breached an individual’s human rights by its actions or inaction. However, he will identify where human rights matters are engaged and comment on a public body’s regard for them.

14. The SSWA states that children with disabilities, and their carers who need care and support, should be assessed (Part 3). The definition of ‘disabled’ for the purposes of the SSWA is adopted from the Equality Act 2010 – a person having a physical or mental impairment that has a ‘substantial and long-term negative effect’ on a person’s ability to do normal daily activities. The ‘vast majority of people receiving PIP’ (see paragraph 16) are likely to be covered by the definition of ‘disability’ in the Equality Act.⁷ The SSWA requires councils to promote the well-being of people who need care and support. Well-being is defined by s2 of the SSWA in relation to a number of factors. They include a person’s physical and mental health, their emotional well-being and domestic, family and personal relationships.

15. The Derwen policy document states that it is the team that ‘provides assessment, intervention and support for disabled children and young people with continuing needs as a result of disabilities or illness.’ It will support families, carers and the wider community in order to promote the health and welfare of disabled children. Derwen’s eligibility criteria sets out those who are eligible or ineligible, for its services. It says that those ‘with ADHD, but who are not disabled or have significant developmental delay’ are ineligible. It does not specifically mention Autism or other similar diagnosed conditions.

⁷ “Equality Analysis PIP assessment criteria” – Department of Work & Pensions February 2017.

Relevant background information and events

16. Mr & Mrs A had previously complained to the Ombudsman⁸ about the Council's failure (between 2010 and 2016) to provide services to their son ("X")⁹, who suffers from Autism and Pathological Demand Avoidance.¹⁰ X was in receipt of the highest award of Disability Living Allowance (DLA).¹¹ He now receives the highest award of Personal Independence Payments (PIP),¹² which have replaced DLA. Mr & Mrs A complained about the Council's decision to discontinue services - reducing the support hours previously afforded to X in accordance with his Statement of Special Education Needs ("SEN"). They also complained that the Council had failed to deal with that complaint correctly pursuant to the Regulations. During that investigation X turned 17, meaning that he would be transitioning from Children's Services to Adult Services.

17. That Ombudsman's investigation was completed in April 2018 ("the First Ombudsman Investigation"). After seeking advice from one of the Ombudsman's professional advisers on social care matters, it concluded that there had been a failure to provide services, recommending that there should be a comprehensive assessment of needs for the whole family (so including Mr & Mrs A as well as X), and upholding the complaint handling issue. As a result, a recommendation was made that all members of the Council's Social Services department should undergo training on the Regulations.

18. Concurrent with the above, Mr & Mrs A had further complained to the Council about its failure to assess X from September 2016 onwards (outside the timeframe of the First Ombudsman Investigation). The formal complaint was made to the Council by email on 25 May **2017**. Whilst written by Mr A, it was made on behalf of both Mr & Mrs A. It said that '...our relationship with the council is so fractured and we have lost faith in the council...we seek our complaint be investigated by an Independent Person as a Stage 2

⁸ Investigation report 201700072 – issued 25 April 2018.

⁹ X is Mrs A's son and Mr A's step-son.

¹⁰ Autism affects the individual's social interaction, communication, interest and behaviour. Pathological Demand Avoidance is a type of autism whereby a child shows a greater refusal to do what is asked of them.

¹¹ DLA is a benefit awarded to an individual assessed as either having a disability and/or needing assistance with daily living (substantially more than the average person). Such might result in them incurring a cost to meet those needs.

¹² PIP is paid to those aged 16 - 64 who have a long-term disability or health condition requiring support with daily living.

complaint.’ In addition, Mr & Mrs A complained about a failure to assess them as X’s carers. It is these complaints that became the subject of the Stage 2 investigation about which Mr & Mrs A now complain and are considered by this report.

19. On 5 June **2017**, the Council wrote to Mr & Mrs A confirming it would investigate those concerns at Stage 2 from the outset and appoint an IIO. The IP (see paragraph 10) and original IIO both confirmed their availability to start that investigation on 20 June and 3 July respectively. Both met with Mr & Mrs A on 4 July. However, the original IIO had to withdraw unforeseeably. A new IIO was sourced (“the IIO” hereafter) who formally agreed, on 2 August, to undertake the investigation. (The contract sent to the IIO by the Council requested her to investigate the complaint in accordance with an earlier version of the Regulations, dated 2005.)

20. The IIO met with some Council staff on 23 August, and, a week later, met with Mr & Mrs A. The complaints were further clarified (in part to avoid duplication with the First Ombudsman Investigation). Telephone interviews took place between the IIO and relevant social workers on 6 September, again to scope the complaint.

21. On 11 September, the newly clarified complaint and scope of the Stage 2 investigation, as agreed with Mr & Mrs A (on 6 September), was sent to the Council’s complaints officer (“Officer 1”). The investigation start date was confirmed as 6 September, meaning that under the Regulations the investigation should be completed, and the Council’s response to it issued to Mr & Mrs A, by 12 October (see paragraph 6 above). The following six heads of complaint had been agreed:

- 1) X’s assessment undertaken in September 2016 did not reflect his needs (and so X’s needs were not being met);
- 2) The social worker who conducted that assessment (“the Social Worker”) had agreed with Mr & Mrs A to include some information regarding X being disabled within that assessment, but had failed to do so (impacting on the assessment as above);
- 3) Despite repeated requests Mr & Mrs A had never had a carers’ assessment;

- 4) The Council had sent an email to X's birth father regarding the complaint by Mr & Mrs A, and it should not have done;
- 5) X's child in need plan had not been reviewed since February 2016, and this further evidenced that X's needs were not met;
- 6) The Council had sent Mr & Mrs A an email which was redacted. They felt the redacted material to include disparaging comments about them by a staff member to another officer. Mr & Mrs A had also been supplied with information relating to other third parties, being a breach of data protection requirements.

22. On 7 October, the IIO contacted Mr A (and the Council) to say that she needed a bit more time to complete the investigation report. This was in part due to having to repeat some interviews as the IIO had met with officers without the IP's presence (see paragraph 10 above). Mr A was content. Further interviews with relevant staff took place on 18 October and, on 27 October, the IIO completed the report. She sent it to Officer 1 on 31 October ('the First draft'). The IP's report was also sent to the Council on 31 October. The IP's report said the following:

'The information provided by all parties is noted accurately and appropriately within the final report...

The findings and conclusions of the [IIO] are fair and reasonable.

Particular emphasis has been placed on the needs and welfare of the child.

To conclude: I agree with the [IIO]'s findings and outcomes.'

23. Officer 1 shared the First draft with relevant officers on the day of receipt. They met to discuss it on 9 November and expressed concerns. Officer 1 emailed the IIO (on 13 November) to say that officers' comments were being collated and would be passed for her consideration. The same day, Mr & Mrs A were told that there would be a delay as the IIO would be considering comments from the Council.

24. Mr & Mrs A replied to Officer 1 immediately, saying they were unhappy, and querying why the First draft could not be shared with them at that stage. Their email included the following:

‘[The]Council have had the report for 2 weeks and now you are telling us that there is to be a significant delay. That is not acceptable to us...We have been beyond patient in the matter of this complaint...

The Council now have the outcome of a 2nd stage complaint, conducted following...procedures, by an [IIO], yet are now seeking to question it?

We truly hope that this is not an attempt to in any way manipulate the outcome of this Independent Investigation into our complaint, or change the completed report in any way...’

25. On 14 November, Officer 1 emailed Mr & Mrs A stating that the Council had the right to seek clarification or comments. It was then ‘up to the [IIO] to decide if they review any part of the report itself.’ Until then, the report could not be sent to Mr & Mrs A. On 24 November, Officer 1 emailed Mr & Mrs A again to apologise for the delay. Owing to relevant officer absences the Council’s comments had not been sent to the IIO. They were sent on 27 November, and Mr & Mrs A informed.

26. The Council’s comments to the IIO included the following:

- Officers felt the report was ‘very one sided’, the Council’s point of view being insufficiently reflected within it.
- There was no, or limited, consideration of the Council’s policies; specifically, its eligibility criteria for services.
- It questioned the need for a carer’s assessment, having, it said, taken legal advice on the point earlier.
- It felt that X’s voice (being 17 years old) was absent.

- The report had gone beyond the remit of the complaint (referring to 2010 matters that were being investigated by the Ombudsman).

27. On 15 December, Officer 1 emailed both the IIO to request an update, and Mr & Mrs A to apologise for the ongoing delay. The IIO told the Council that the report should be completed by 29 December. This information was passed on to Mr & Mrs A.

28. Officer 1 emailed Mr & Mrs A on 2 January **2018**, to say that the IIO's report had still not been received. The IIO had been spoken with and had indicated it would be completed by the end of the day. The IIO's report ('the Second draft') was emailed later that day. Within that email the IIO said the following:

'...please inform Senior Management Team that I have carefully considered all of their points and reduced the report and deleted certain statements that were outside of the complaint remit.

If the [SMT] are still dissatisfied with the report attached, I would respectfully request a meeting with them to discuss.'

29. A meeting was arranged between the IIO and Council senior officers on 30 January. An email (dated 31 January produced by Officer 1 and sent to a Council senior manager) noted the discussion at the meeting and comments made. (There were otherwise no formal minutes of the meeting). Officer 1 subsequently emailed the IIO (on 1 February) with the main points and sent her some documentation.

30. An email from the IIO to the IP (9 February), referred to what was described as 'a flurry of documentation that was not given to us during the investigation period' having now been provided by the Council, and asking to meet the IP to discuss this. The IP's reply (the same day) agreed a meeting was required 'to discuss and overview the additional documents and the amendments that you made to the original report'. It concluded 'Omg...will it never end'. The IP said that she would be available to meet

on 15 February. On 12 February, the IIO responded 'I am going to telephone the Ombudsman's Office for advice before then – as it doesn't seem right to me. I will let you know what they say'.¹³

31. The IIOs final report (third version – “the Final report”) was dated 15 February. It upheld many of Mr & Mrs A's complaints including finding that X needed a specialist assessment by someone competent in the field of autism, and that his child in need plan had not been properly reviewed. The IIO also concluded that Mrs A required a carer's assessment, given her own health and mobility issues (potentially impacting on her as X's carer). The Final report cited references to Mrs A's own health problems as noted in an earlier assessment of X (dated in 2007). The Final report made recommendations to the Council to conduct those assessments, and (as had earlier versions) noted that early Council documentation had described X as 'disabled' more than once. It noted that X was in receipt of PIP at the highest rate and set out the Equality Act's definition of 'disabled' (see paragraph 14).

32. The Final report referred two matters (complaints 4 and 6) to the Council's Information Manager for investigation, as they were felt to be information/data breach issues. Mr & Mrs A received a response on those matters separately in June 2018, but were unhappy, and they form complaint (e) and (f) in paragraph 2 above. A copy of the Final report was sent (by post on 20 February) to Mr & Mrs A, without any comment from the Council. The IP submitted her revised report to the Council on 20 February. It endorsed the Final report in the same way as her report had previously endorsed the First report, concluding that the IP agreed with the IIO's findings and outcomes.

33. The Council formally responded to the IIO's report through its letter of 16 March to Mr & Mrs A, with an apology for the delay in providing it. An earlier internal draft version of that letter (dated 19 February) was produced during this investigation, internal scrutiny of it apparently accounting for the delay in sending a definitive version to Mr & Mrs A. Whilst some of the wording was different, fundamentally, both letters indicated that the Council did not accept the IIO's recommendations. It said that X did not meet its

¹³ The Ombudsman has a written record of a telephone call received from the IIO wherein it was noted she was seeking legal advice. As that is not the Ombudsman's function (and his investigation at that time related to different events), the IIO was told that the Ombudsman could not offer such advice. No detail was otherwise discussed.

Derwen criteria, and that the Social Worker's assessment complained about was not intended as a transition assessment for X from Children to Adult services. In that respect, it said that the Social Worker could not have amended the documentation, as had been asked of her. The Council said that X (or Mr & Mrs A) needed to request that assessment explicitly.

34. The Council said it was not aware that Mrs A had health issues which might impact on her daily life. If she wished an assessment of her needs, she should request one. In relation to a role as carer for X, the Council repeated its view that it did not consider X was disabled according to the criteria. He was also receiving support hours through his Statement of SEN and had capacity, being 17 years old. Thus, the Council said, as X was not disabled, he was not eligible to have a carer. No linked assessment of Mrs A was needed. If X's needs had 'significantly changed', an invitation was again made to refer X for an assessment. The Council acknowledged that X's child in need plan had not been regularly reviewed and that it 'did drift due to numerous reasons.' It noted that one significant reason was a 'lack of access to' X but added that the child in need plan was no longer in use due to the advent of the SSWA.

35. Whilst noting that the information related matters were to be investigated by the relevant manager, the Council apologised for any upset caused to Mr & Mrs A by the email sent to X's birth father. It had not been the Social Worker's intention to cause distress, it said, but given his birth father regularly saw X she felt he ought to know about his son's assessment. The Council acknowledged that the redaction complaint issues should be dealt with and responded to in due course by its Information Manager.

36. The Council concluded by giving contact details for relevant services should X or Mr & Mrs A wish to refer themselves (for any assessment as mentioned), and said that it was not of the view that the IIO 'had fully reflected all the information made available to her in the course of the investigation'. For this reason, the Council said, it could not accept the Final report or agree to its recommendations. It added, that the Council wished to work with Mr & Mrs A to 'move forward constructively' in X's best interests.

Mr & Mrs A's evidence

37. Mr & Mrs A made this complaint (see paragraph 2) to the Ombudsman on 4 June 2018. They commented that they felt the IIO's Final report lacked some of the detail they had discussed with the IIO, including references to X's risk and needs. They considered this was because of 'the Council's interference with the independent process and insistence that the [IIO] remove or change parts of her report.' Furthermore, whilst the IIO had upheld their complaints for the most part, Mr & Mrs A were dismayed that the Council's response would 'not accept the evidence-based report.' They complained that the response was 'totally inadequate, nonsensical and even farcical. It ignored the concerns and recommendations of an Independent Investigation and took no responsibility for continued failings in this case'.

38. In detailed comments about the Council's response, Mr & Mrs A said it was unacceptable that they again be asked to re-refer for an assessment of X (or a carer assessment) before the Council would undertake one. They explained that X would not ask for services himself – he lacked an understanding about this. They, as his parents and carers, had to speak for him. Mr & Mrs A said that X trusted them to do so as he found talking about himself and his needs too difficult. This was precisely why the Social Worker's assessment had not reflected his needs - his Autism needs were not appreciated and understood. Finally, Mr & Mrs A said that the Council did know about Mrs A's health issues despite its saying that it didn't, and there was ample evidence of this. In commenting on a draft of this report, Mr & Mrs A repeated many of the points previously made and noted above. They said that the investigation had also failed to consider their complaint about information shared with X's birth father (see paragraph 21 point 4 above). Mr & Mrs A were also plainly unhappy with the assessment the Council did subsequently undertake (following the First Ombudsman's Investigation – see paragraph 17), being of the view that X was still being denied services.

The Council's evidence

39. As well as repeating matters set out in its response to Mr & Mrs A (see paragraphs 33-36), the Council told the Ombudsman that it had complied with the Regulations in dealing with Mr & Mrs A's complaint. It said its understanding was that the purpose of an IIO's investigation report

was to form the basis of its response to the complaint made. Otherwise, the Council said, it had not had any opportunity of commenting - particularly as this complaint had gone straight to Stage 2 of the process. The Council said it was also its understanding that it should be given the opportunity of 'seeking clarification', and also to comment, if needed, 'in order to fully respond to the complaint made'. This was to ensure a report did not contain 'inaccuracies', which might be misleading. It was its normal practice.

40. In this instance, the Council said it felt that there were 'factual inaccuracies', and so it wanted those corrected. This was one reason for not sharing the First (or Second) draft with Mr & Mrs A. However, the Council was of the view that it was not required to share any draft with Mr & Mrs A. It said that the Regulations did not specify this. In support of its view, it said that it had sought information from other councils in North Wales about their practice, which accorded with the Council's position. The Council said that it was the IIO that had requested a meeting to discuss the Second draft. The Council had referred the IIO to documents already provided to review those inaccuracies it had pointed out. It said that 'extra copies' of those documents were provided to her. Only one additional (new) item was produced, which the Council had initially felt to be irrelevant to the IIO's investigation, as it related to an earlier complaint made in 2010. The Council said that the sole purpose of the meeting was to ensure the report's accuracy. It was not an attempt to influence the IIO. The Council added that it had to chase the IIO to obtain the Final report. It was not sent until 11.13pm on 2 January 2018 (despite assurance it would reach Officer 1 by 29 December 2017). This was '...unfortunate and highly disappointing that the IIO's reluctance to respond to [Officer 1's] requests for a corrected draft...during December further added to the delay'.

41. The Council confirmed that its Information Manager had responded to Mr & Mrs A, but had felt that the sixth complaint about the officer's comments (see paragraph 21 above) was not something which was within the service's remit after all. Accordingly, the Council said, that the service manager had logged another complaint and sought to investigate it (as a Stage 1 complaint). However, after informing Mr & Mrs A, the Council said that they had 'declined permission' for it to be progressed to completion. The Council added that the officer concerned had already been spoken with and had said that it was never his intention to make comments to another officer which Mr & Mrs A might find derogatory, or to cause them

distress. The officer said he was merely seeking to let another professional who would be engaging with the family know that the officer's team had encountered difficulties with the family at the time. He wanted to apologise to Mr & Mrs A for any distress his comments may have caused them. The Council said that owing to Mr & Mrs A declining consent to progress the new investigation of this issue, it had not been able to convey this apology to them until now. Whilst it was accepted that the officer said he had spoken with his line manager at the time, when asked, the line manager could not recall what had been discussed. The Council added that it was inappropriate to pursue that line of enquiry two years after the discussion took place.

42. The Council noted that it had previously responded to a solicitor instructed by Mrs A on the question of her carer's assessment, noting that X did not need care and support beyond that provided by his parents. It said X's needs '...do not meet the criteria as a disabled child under the Equality Act 2000 (sic). It notes within the Act that a carer is "a person who provides or intends to provide care for an adult or a disabled child". As explained [X] is not seen as a 'disabled child'...' In responding to the draft report, the Council reiterated its view about X possessing capacity, saying there was a need to appreciate and respect his views and wishes, which it felt it had sought to do.

The IIO and IP's comments

43. The **IIO** commented that she felt her Final report to be both independent and objective in its findings. She was experienced in social services complaints matters and the Regulations, adding that she had previously been a senior complaints officer for another Welsh council. The IIO understood that, at the time of her investigation, the Council did not have in place an established senior complaints officer familiar with Stage 2 investigations under the Regulations, which she added were "complex". She surmised that this was, possibly, why events had evolved as they did once she had presented her First draft.

44. The IIO said that she felt what happened in this case to be unusual. She said that she had suggested the meeting "out of respect" to senior officers because she wanted to understand what the Council's issue was. On attending, the IIO said that she had not anticipated being met by some

six senior Council officers, when she was attending alone, adding that she felt “a bit overwhelmed”. She was prepared to listen to their comments, take them on board and change some of the report if warranted, albeit felt she had “undertaken a fair investigation”. The IIO said she felt she had done so as far as she could. For example, having understood the Council’s concern about including some of the historical matters (outside the investigation’s timeframe), she omitted it. She said that she had only included it for some context. Omitting it held no bearing on her conclusions about the complaint.

45. After meeting with the Council, the IIO said that she had, in confidence, spoken with another experienced person undertaking IIO work in the North Wales area. That individual had commented that he had never before come across an IIO having to meet with senior managers, and being asked to produce another report, as she had been.

46. The IIO said that the IP had also commented that she felt the investigation to be thorough and fair. The IP had also commented to her “are [we] supposed to be independent or not?”. She took this to mean that the IP had not come across such a situation either, despite being extremely experienced. The IIO said that, apart from the omission described above, and some word changes that she felt to be “semantic” only, she had stuck to her independent findings on the evidence. The IP had agreed with it. Nothing the Council presented changed the evidence she and the IP had seen. Given how it had evolved, the IIO said that she had afterwards reflected on this case and reviewed the Guidance. She said she could find nothing to support what the Council did here in meeting and requesting a change to drafts. The IIO said she had since learnt that the Council had declined to accept her recommendations. She added that she understood this to be unusual.

47. The **IP** said that she had “lost count” of how many times she had undertaken the role of an IP. She had done so throughout North Wales for many years. She recalled this case because of how it had both started and ended. Initially, the IIO had started speaking with Council officers without her knowing or being present. The IP said this was wrong and she had emailed the Council saying she could not perform her function if this was the case. The IP said she knew the IIO to be an experienced social services complaints officer, but thought this was, possibly, the first Stage 2

formal independent investigation she had undertaken. The IP thought that this was, probably, why the IIO had begun without her. They went back to the beginning and started the investigation afresh – interviewing officers and scrutinising documents. The IP said that she was present for everything (except the meeting with senior officers about the Second draft). She and the IIO had gone through everything together, reaching the findings contained within the First draft and Final report.

48. The IP said that that she was surprised to learn that the Council had concerns and that the IIO had met with senior officers. The IP said that she distinctly remembered what the IIO told her after the meeting – that the IIO felt she “was being bullied”. The IP said that she felt sorry for the IIO, although stressed she was not present at the meeting to know what may have been said, or implied, to result in that comment. Afterwards, she met with the IIO to consider what the Council had said, and some additional documents it had provided (documents not seen before). However, the IP said, from her recollection, the additional documents were not so significant, when all the evidence was considered again, to change the overall findings originally reached. This was why, the IP explained, the Final report’s findings were largely unchanged from those in the First draft. This was the IP and IIO’s view on the evidence before them. The IP commented that she had not before this (or since) known of any council conducting a meeting and seeking more than one draft report.

49. The IP said that she was satisfied that the Final report was fair and evidenced based. She said that she had, as required by her function, reported to the Council (after each version) that it was produced following a properly conducted investigation. She remained of this view and that the Stage 2 Final report produced was a robust product.

Analysis and conclusions

50. I am conscious that I have referred to the First Ombudsman investigation within this report (see paragraph 17). Initially, it was for context and background only. However, as I will explain, it has become relevant in reaching my conclusions. Whilst there are some seven heads of complaint set out in paragraph 2 above, there is some overlap in some so, where appropriate, I shall deal with them together.

Complaints about the Council's influence or that it inappropriately sought to amend the IIO's report – complaints (a) and (b):

51. The background set out shows this was not Mr & Mrs A's first complaint against the Council. Emails sent by Mr & Mrs A (see paragraphs 18 & 24) show that they were mistrustful of the Council. The email of 13 November (paragraph 24) shows it was their clear perception that the Council was influencing the Stage 2 investigation of a complaint they had first made some months earlier (May 2017). It was by then November. Against that background, and in the context of the further delay which occurred (with a meeting and further drafts), viewed, objectively, from their perspective, it is perhaps understandable why they felt that the Council was seeking to exert pressure on the IIO to change her report. Moreover, in their eyes, this was also 'all going on in secret'.

52. The Regulations state that Stage 2 is an Independent Investigation. The public's expectation is just that – independent. In its ordinary meaning, that means free from influence or control in any way by other people. A delay and multiple versions of a report, naturally, leaves a complainant wondering if it is not independent after all. It comes as no surprise that Mr & Mrs A were unhappy with the process. This was particularly given the Council's clear reluctance to accept some of the recommendations made by the IIO, which I will comment on later. The Council has said it was not seeking to influence the IIO into changing the report, rather it wanted to make sure that "inaccuracies" were corrected. When commenting as part of this investigation, it has reiterated this view. However, it has not identified any particular inaccuracies. Having spoken with both the IIO and IP, it is clear that they considered the report to be accurate.

53. In reaching a view, I find the IP's evidence persuasive. I place significant weight upon it given her function and experience in her role. I am persuaded by not only the IP's evidence to me, but the certification she gave (twice) about the report (draft and final versions) being accurate, fair and that she endorsed the findings – see paragraphs 22, 32 & 49 above. The IP's function is to provide oversight and she considered the evidence together with the IIO. I note that the IP also recalls the IIO as saying she felt she was being "bullied". The IIO said she felt "overwhelmed" – only she knows how she genuinely felt. The imbalance in the number present at the meeting was, at least, sufficient to make her question, as she has, whether

the independence of the process was being compromised. Both the IP and IIO have described what happened as not usual. Whether or not the Council intended to (and it says it did not), the overall impression when viewed, objectively, is that the Council was unhappy with the findings. By acting as it did, it gives at least the impression that it was seeking to influence the outcome even though I have no hard evidence that this was its intention (bearing in mind it has denied such). However, that was how Mr & Mrs A saw it. Perception is often enough. On the evidence before me, bearing in mind the Council has not identified anything specific by way of 'inaccuracies', despite ample opportunity to do so, I find that it did act inappropriately. **I uphold** the complaints. Their perception about the investigation's independence being compromised by the Council's actions represents an injustice to Mr & Mrs A.

Whether the first two versions of the IIO's report should have been shared with Mr & Mrs A at the time – complaint (c):

54. I agree with the Council that the Regulations are clear that the report is for Council in first instance (as it forms the basis of its response) - particularly here as there had been no Stage 1 consideration. The Council was entitled to share it internally and, if appropriate, question any factual inaccuracies identified. When complaints are made to the Ombudsman, he allows parties to comment on a draft (see para 5). That is his decision to allow that as part of his adopted process – the law governing his work does not require him to. The Regulations are silent on whether the Council must share a report with a complainant at all.

55. Looking to the Guidance, in my opinion, this reinforces that view by indicating that a copy of the report (final) should 'normally' be shared with complainants. The use of that word must mean that there could be an instance when the Council could decide not to share it, or only provide a summary of it. The Council did share the Final report (and by information requests, Mr & Mrs A have since seen the report in all its versions). Whilst appreciating their concerns, and perception, I consider it was reasonable of the Council to therefore decline to share a draft with Mr & Mrs A. **I do not uphold** the complaint as put. The Council did not have to provide the draft version to them on request. I understand why Mr & Mrs A felt as they did, and about what was going on (so feeling it unfair). I have already dealt with that in heads (a) and (b) above.

The delay in handling Mr & Mrs A's complaint and whether the Council kept them appropriately informed about the delay - complaint (d):

56. The Regulations require the Council to issue its response to a Stage 2 investigation within 25 working days from the start date. The Ombudsman acknowledges that this is a challenging deadline in some cases. That said, there is facility within the Regulations to extend the overall time for complex cases. The complaint was made by email (so also received by the Council) on 25 May 2017. The 'start date' (as explained above) is a technical date. In this case, it was 6 September. There were unforeseen difficulties early on leading to that timeframe, and Mr & Mrs A knew this. The additional time permitted by the Regulations (reg 18(4)) is that the Council's response must be issued within 6 months of the complaint being **received** (not the start date). Therefore, Mr & Mrs A should have received the Council's response (and the investigation report) no later than 24 November. The Council sent a copy of the IIO's Final report to Mr & Mrs A on 20 February 2018, and its response (the relevant date) on 16 March. That is evidently an unacceptable delay.

57. The Council must accept some responsibility for this, given what I have found regarding complaints (a) and (b), despite its suggestions that the IIO was the cause of the delay. The Council itself delayed a month before sending its comments on the First draft (see paragraphs 23-25). It then delayed some weeks before responding formally to Mr & Mrs A after receipt of the Final report (see paragraphs 32-33). **I uphold** this element of the complaint.

58. From the evidence, Officer 1, acting on behalf of Council, did update and advise Mr & Mrs A at each stage about the delay, giving reasons. In the context of events, Mr & Mrs A may have found those reasons to be unacceptable. Nevertheless, there was good communication from Officer 1. **I do not uphold** this element of the complaint. Overall, therefore, **I uphold in part** complaint (d). The overall delay represents an injustice to Mr & Mrs A.

59. I would also pass comment on the email sent by Mr A in November 2017 (see paragraph 24). In my view, this was a sufficient expression of dissatisfaction to be recorded as a complaint in its own right (see paragraph 8). The Council may wish to reflect on this.

Whether it was appropriate for the IIO's report to not deal with an officer's comments about Mr & Mrs A and for the Council not to divulge them (by redaction) - complaints (e) and (f):

60. It was perhaps questionable, in my opinion, for the first issue to be deferred to the Information Manager, but the second relating to redaction was appropriate for referral. Overall, as they were linked to an officer's comments about Mr & Mrs A, I can understand why the IIO deferred both to the Information Manager. A response has been provided about the redacted information (complaint (f)), which, in my view, is reasonable and has upheld certain aspects with suitable apology. If Mr & Mrs A remain unhappy with that aspect, then such complaints are matters for the Information Commissioner. I make no finding on complaint (f).

61. In relation to the complaint about the officer's comments (complaint (e)), the Council has said that it did begin to look at this (after the Information Manager felt it was not within remit to do so), but that its investigation was not completed because Mr & Mrs A declined to give their consent for it to progress. Given what the Council has said, I cannot see how this issue could now be taken forward. The line manager cannot recall her conversation with that officer, due to passage of time. I would not gain anything by further enquiries, for the same reason. The Council has said that the officer did not mean to cause offence to Mr & Mrs A and was simply passing on a point of information to a colleague, which is plausible, albeit he might have given greater thought to his language. Whatever his reasons, he has, through the Council's comments to me, apologised if those comments in the email caused Mr & Mrs A distress. That is the most by way of remedy the Ombudsman would afford in such a situation even if the officer was formally interviewed. On that basis, it was not proportionate to do so. Nevertheless, having considered it appropriate to apologise, I do not accept the Council's reasons for saying it could not communicate this to Mr & Mrs A. It could, in my view, have passed on that apology directly to Mr & Mrs A irrespective of closing off the complaint opened. Had it done so it is possible that this aspect of their complaint may not have been made to the Ombudsman. Accordingly, **I do uphold** an element of complaint (e) as a failure in communication on the part of the Council. I note that the Council has already apologised to Mr & Mrs A about sharing of information with X's birth father (see paragraph 35). Despite Mr & Mrs A's further

comments (paragraph 38), this matter was taken into consideration in this investigation. An apology is what the Ombudsman would consider to be an appropriate remedy for this issue.

Was the Council acting reasonably in refusing to accept some of the IIO's recommendations? - complaint (g):

62. To a degree there is a link here between complaints (a) and (b) above. Having had three versions of the IIO's reports (relatively unchanged on main findings and recommendations) the Council mostly refused to accept the recommendations in the Final report, in particular relating to assessments for X and Mrs A (the IIO's investigation heads 1 and 3 set out in paragraph 21 above). Whilst it is open to a Council to decline to accept recommendations, there needs to be cogent and robust reasons for doing so, given the independent status of the Stage 2 investigation. As noted, the Council has not identified the 'inaccuracies' it has repeated as the reason for challenging the IIO's report in the first instance. I acknowledge what the Council has said in response to the draft report (see paragraph 42). Whilst accepting that X's rights as a young person are important, this does not affect the conclusions I have reached about the Council's actions under scrutiny here concerning the independence of the Stage 2 process.

63. The reasons set out in the Council's letter of 16 March 2018 to Mr & Mrs A, for refusing to accept the assessment recommendations in particular, appear to be that as X was receiving support through his Statement of SEN that this meant his needs were met. It was of the view that X was not disabled and did not meet its Derwen criteria. However, in my view, it appears to overlook the fundamental point that it had itself earlier noted that X should undergo assessment by a specialist in Autism, but it had not arranged for one. In addition, X was in receipt of a disability related benefit (PIP) and, by September 2016 (the time at issue), the law had changed the relevant definition of 'disabled' (paragraph 14). The Council needed to have regard to this, and that receipt of PIP might itself be sufficient to meet the definition. There is documented evidence that some individuals at the Council knew about Mrs A's health problems (information in the 2007 assessment – paragraph 31), so to claim in response to the IIO's Final report that it was not aware, is disingenuous.

64. Ultimately, in deciding this aspect of Mr & Mrs A's complaint I need only refer to the First Ombudsman Investigation (paragraph 17). Whilst relating to a different timeframe, the recommendations were that an up to date assessment should be undertaken of both X and of Mrs A. The Council accepted those findings just a month later (April 2018), having been provided with a draft report for consideration on 29 March. If it felt as it did about X's needs, then it would not have accepted the Ombudsman's recommendation to undertake an up to date assessment. It makes the refusal to accept the IIO's same recommendation just two months earlier somewhat illogical – even if the investigations were looking at different periods of time because the assessment would be undertaken in real time. It did not either retract its letter on receipt of the draft report of the First Ombudsman's Investigation knowing it would agree to undertake the assessment. I find that to be unreasonable. **I uphold** complaint (g). That failure has resulted in this complaint made two months after the First Ombudsman's Investigation, and is itself an injustice to Mr & Mrs A.

65. The Council subsequently undertook the assessment. It is not for me to deal with the outcome in this report. It is clear from comments received from Mr & Mrs A that they are very unhappy with it. However, the lack of plan reviews and assessments which have resulted in these complaints, in my view, engage Article 8 (see above). There has been an impact on Mr & Mrs A's and X's family life. The Council might wish to reflect on this. That is as far as I can go on that issue for the reasons set out in paragraph 13 above.

66. Finally, I need to comment on the IIO's finding (complaint head 5) that X's child in need plan had not been reviewed for some time. In that context, I cannot see how the Council could confidently say that X was not disabled or had no unmet needs. I am also troubled by the fact that all the Council says about this failure (in its letter to Mr & Mrs A) is an acceptance that it 'did drift due to numerous reasons'. It then simply says that due to the change in the law (paragraph 12) that the child in need plan was no longer in use. It offers no apology for the failure identified and accepted. That is itself unreasonable on its part, in my view. I would also add that I am concerned at the number of inaccurate references to legislation made by the Council in this matter suggesting either a lack of attention to detail in

its response or a lack of awareness of such changes and their impact (see paragraphs 19 & 42). I would ask that the Council reflect upon that – at the very least I feel that its standard contract documentation for instructing IIOs need to be reviewed, if not already amended (see paragraph 19).

Recommendations

67. I **recommend** (within **one month** unless specified differently) that the Council undertakes the following actions.

68. The Council should, through its Chief Executive, apologise in writing to Mr & Mrs A (and through that letter to X for failings directly affecting him).

The apology must cover the following matters:

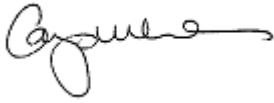
- the delay in providing its response to their complaint.
- the officer's apology for distress caused by his comments.
- the failure to review X's child in need plan.
- the other failures identified above.

69. The Council should also offer Mr & Mrs A redress for those failings in the sum of £250, and a further sum of £250 for their time and trouble in pursuing their complaints with the Ombudsman (total sum £500).

70. The Council should review its Derwen policy to ensure its criteria aligns with the Social Services and Wellbeing (Wales) Act 2014 and the Equality Act 2010's definition of 'disability', and ensure staff are informed about any changes (within **three months**).

71. The Council should (within **three months**) seek specialist input to develop a plan for dealing with future assessment and support requests from/for those suffering with Autism.

72. I am pleased to note that in commenting on the draft of this report Gwynedd Council has agreed to implement these recommendations.

A handwritten signature in black ink, appearing to read 'Carys Williams', with a long horizontal flourish extending to the right.

Carys Williams
Assistant Investigation Manager

5 June 2019

ENDNOTE

This document constitutes a report under s.21 of the Public Services Ombudsman (Wales) Act 2005 and is issued under the delegated authority of the Ombudsman.

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