



Equalities and Welsh Language Complaints Guidance 2016



**WORKING TOGETHER
FOR THE GOOD OF ALL**

Mae'r cyhoeddiad hwn ar gael yn Gymraeg. Mae ar gael mewn ieithoedd a fformatau eraill ar gais.
This publication is available in Welsh. It is available in other languages and formats on request.

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www.caerphilly.gov.uk/equalities

Introduction

Caerphilly County Borough Council is committed to dealing effectively with any complaints we receive about our service. If possible, we will put right any mistakes we may have made. We will provide any service to the public, to which they are entitled that we have failed to deliver. If we were wrong, we will apologise and offer redress if appropriate. We also aim to learn from our mistakes and use the information we gain to improve our services.

This Equalities and Welsh Language guidance document has been produced to provide additional support for staff members who, when dealing with a complaint, find that it involves allegations of discrimination, or possibly brings wider aspects of Equalities or Welsh Language legislation and duties into the complaint resolution.

This guidance should be used in conjunction with Caerphilly CBC's Corporate Complaints Policy as additional support and guidance.

The document is split into three main sections and two appendices.

Section 1 - What is a Complaint? A definition under this Guidance

Section 2 - Legislation

Section 3 - Caerphilly CBC Practice

- i) Complaints alleging discrimination**
- ii) Complaints around Welsh Language service provision**
- iii) Complaints submitted in Welsh**
- iv) The complaints process and what happens if the complainant remains dissatisfied**

Appendix A - Standard Wording and Paragraphs

Appendix B - Equalities and Welsh Language Complaints Data
(Public information already published and available, to give context to the guidance in this document)

This guidance is issued under the Council's **Strategic Equality Plan 2016-2020** and carries its full authority, and should be used in conjunction with the existing Corporate Complaints Policy, Education and Social Services Complaints Procedures and all Human Resources guidance around the code of conduct of staff.

1) What is a Complaint? A definition under this Guidance

Regardless of what type of complaint or code of conduct issue is under discussion, the Council will aim to use the following principles throughout. Our process must:

- **Be accessible and simple;**
- **Be fair and impartial;**
- **Be timely, effective and consistent;**
- **Be accountable;**
- **Deliver continuous improvement.**

As staff members, we have to understand that when a person contacts us to complain, although we may have a number of different internal policies and procedures for dealing with the various types of issues that arise, that is not something the person complaining necessarily wishes to know in detail; they are complaining and want a successful resolution to their problems.

A complaint is generally regarded as an allegation of failure on the part of the Council to provide a service, or an allegation that we have provided a service in the wrong way, or a delayed way. A code of conduct issue is concerned with the attitude or behaviour of staff, and is dealt with through Human Resources procedures not the complaints process.

When dealing with allegations of discrimination or any wider aspects of Equalities or Welsh Language legislation and duties as part of a complaint however, a staff member's *alleged* attitude towards a particular issue *may* have influenced how the service was delivered. This means that Equalities and Welsh Language complaints have a potentially broader scope to investigate, as it can cover both the complaints and code of conduct processes at the same time.

Wherever allegations of discrimination occur as part of an issue, in addition to seeking the advice of your service area's complaints officer or HR support, you should also copy in the Equalities and Welsh Language team for specific advice and guidance - email equalities@caerphilly.gov.uk with the details, or with a meeting request if the issues are sensitive and/or confidential.

This ensures that the issue is dealt with in accordance with the many pieces of legislation and regulations that the Council must comply with when dealing with complaints and code of conduct issues, and safeguards you by showing that all aspects of the issue have been properly covered by the Council in your response.

2) Legislation

The specific Equalities and Welsh Language legislation in relation to this complaints guidance is as follows:

**a) Equality Act 2010
Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011**

Section 149 of the UK Act refers to the Public Sector Equality Duty (the PSED) and applies to public bodies named in the Act (all local authorities for example) in the exercise of any of their functions, which includes the handling of complaints and staff conduct issues.

**b) Welsh Language (Wales) Measure 2011
The Welsh Language Standards (No. 1) Regulations 2015**

In addition to the general principle that in Wales, the Welsh Language shall be treated no less equally than English, Standards 147, 148 and 149 relate to the record keeping of complaints regarding any made against a named body (all local authorities for example) concerning an alleged failure to comply with a Standard to which that body has received a Compliance Notice.

This means that corporately, all complaints or code of conduct issues that contain any aspect of Equalities and/or Welsh Language issues are recorded, reported on and published each year as part of the Council's overall annual reports on our performance and compliance with the various legal duties.

It places a great deal of responsibility on the Council to ensure that our complaints and HR procedures are compliant and clear in terms of Equalities and Welsh Language, but Caerphilly CBC has been putting these requirements into practice for some time and has a good track record of how open and transparent our practices are. This guidance is meant to update and build on the existing good practice.

Section 3 is intended as guidance on where different aspects of Equalities and Welsh Language issues may arise as part of a complaint, or as a complaint in its own right.

3) Caerphilly CBC Practice

A number of guidance documents are available on the Council's intranet for staff around provision of different services, and compliance with both the Equalities legislation and the Welsh Language Standards. More will be added over time but familiarising yourself with the wider guidance should help avoid having to rely on this complaints guidance when things have gone wrong.

i) Complaints alleging discrimination

As a reminder, the various Equalities strands that need to be considered when relevant to the complaint issue being dealt with are shown below.

They are explained in more detail in the Council's **Strategic Equality Plan** and cover the protected characteristics as defined by Equalities legislation, as well as wider Equalities, Welsh Language and Human Rights issues.

- Age
- Disability
- Gender Reassignment / Transgender
- Gypsies and Travellers
- Human Rights
- Linguistic Skills
- Marital Status
- Nationality
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex (Gender)
- Sexual Orientation
- Welsh Language

Whether ultimately the allegation of discrimination is upheld or not, any complaint that includes aspects of racism, homophobia, disability discrimination or anything else covered by Equalities legislation has to be investigated and addressed in the response to the complainant. This is true of corporate complaints, specific Education or Social Services complaints or code of conduct issues.

Issues can be around, for example:

- poor physical access to buildings;
- restrictions to customers' access to services;
- failure to correspond in someone's chosen language or format (such as in Welsh, large print, Braille or sign language);
- delays in service provision due to any of these issues;
- lack of consultation and/or consideration of an individual or family's circumstances when making decisions;
- allegations that failure to consult on or consider any of these issues were part of a decision, or delay in service, that the complainant felt contributed to a negative outcome for them.

The Council has to ensure that these allegations are fully investigated and accounted for openly and transparently. Sometimes the complaint will not be upheld based on the evidence available and if the Council has acted properly and lawfully, there will be no further action taken that affects a service area.

The law requires the Council to make what are called “reasonable adjustments” to policies, procedures, practices and functions in order to ensure that the specific needs of groups covered by Equalities legislation are taken into consideration.

If no evidence can be found that proper consideration was given however, or that no impact assessment was made on the possible consequences of a decision, the complaint could very well be upheld.

This could mean in some cases that decisions can be reversed and the service area could be liable for costly corrections to service provision and have to spend a great deal of time updating policies and practices, all of which should easily have been avoided.

Full and proper consultation on policy development, financial decisions and specific projects however, if made in line with the existing guidance documents on **Equalities Consultation and Monitoring** and **Equalities Implications in Committee Reports**, would ensure that this is less likely to happen, as your service area’s operation would have taken these issues into account in the first place.

The “reasonable adjustments” however cannot put the Council’s policies and practices into conflict with other legislation, so very often the complaints resolution is not one the complainant is happy with. In every case however, the Council has to prove it has acted properly and can evidence due regard to equalities implications its decision making processes.

You should contact your service area’s complaints officer as normal regarding a complaint or HR if it is a code of conduct issue. It remains the responsibility of the service area however to respond to the complaint, it does not solely fall to the Equalities and Welsh Language team to respond, simply because the complaint is wholly or partly around the implementation of the Public Sector Equality Duty.

ii) Complaints around Welsh Language service provision

From 2016, the new Welsh Language Standards will replace the old Welsh Language Schemes in many organisations across Wales.

The new law gives people the right to expect an equal service in Welsh to be provided to them and failure to do so could lead to official investigations by the Welsh Language Commissioner's office, the possibility of having to answer to a tribunal and ultimately, the possibility of a £5,000 fine for non-compliance.

The majority of the complaints the Council receives in terms of Welsh Language is around failure to provide that service automatically.

What many people fail to realise is that a request to have a Council form sent to an individual in Welsh (where the Council has not made a Welsh or bilingual version available, or even offered the choice from the outset) is considered a failure of service provision under the legislation and therefore can become a valid complaint.

It is **not** a service request therefore, as the Council should have offered and/or provided this service in the first place.

You should ensure that your service area's documentation, website etc. are available in both English and Welsh and offer the option, and record the choice, when people contact you.

All Welsh translation requests should be sent to the Equalities and Welsh Language team's translation inbox - **WWW: Cymraeg** in the email address book, or cymraeg@caerffili.gov.uk in full.

It remains the responsibility of the service area to respond to the complaint, it does not solely fall to the Equalities and Welsh Language Team to respond, simply because the complaint is around the implementation of the Welsh Language Standards.

One very important point to bear in mind when dealing with complaints around failure of Welsh Language service provision, is that should a complaint be made to the Welsh Language Commissioner on a particular issue, under the legislation their timescales take precedence over any Council timescales and must be adhered to.

iii) Complaints submitted in Welsh

Complaints or code of conduct issues could be submitted to any service area in Welsh, and will need to be translated. All direct correspondence with the complainant, from acknowledgements to final letters must be in the language in which they corresponded with us or have noted as their preference.

This does not cover any copies of internal emails or notes for example, that may be required as evidence, as that would be kept in the language of the original written conversation, however all formal correspondence around the specific complaint issue would need to be translated for the complainant.

You will need to factor in translation time for correspondence as part of the complaints resolution process, as the Council cannot delay a complaint being resolved because of translation time.

It remains the responsibility of the service area to prepare the response to the complaint, it does not fall to the Equalities and Welsh Language team to respond simply because the complaint is in Welsh.

Appendix A shows some ready-to-use acknowledgements for emailed or written complaints, so that the complainant can have a standard response straight away to help save time. There is also a standard paragraph to include with complaint responses should the complainant be dissatisfied with the outcome.

iv) The complaints process and what happens if the complainant remains dissatisfied

a) Dealing with a Complaint – Stage 1

This is the initial contact and the first record of that complaint. The council will formally acknowledge a complaint within five working days and let the complainant know that it will be dealt with, if possible, straight away. If the complaint involves Equalities or Welsh Language issues in any way, it is at this point that the Equalities and Welsh Language team needs to be consulted.

b) Formal Investigation – Stage 2

If the complainant is unhappy with the Stage 1 response, and comes back to the Council wishing to take the matter further, a nominated Complaints Officer from the service area in question will look into it and where issues are more complicated, this will be done together with someone from elsewhere in the Council, including the relevant Head of Service if necessary. If the complaint involves more than one Head of Service's area of responsibility it will be dealt with by the Council's Monitoring Officer or deputy.

c) External Investigation

If the complainant remains dissatisfied despite both the Stage 1 and Stage 2 investigations and correspondence, they can complain to the Public Services Ombudsman for Wales (see the Corporate Complaints Policy for further details) however where there are Equalities and Welsh Language issues involved, it is not only to the Ombudsman that the issues can be referred.

Complaints and issues in the past have been referred to, or have been received from, the Equalities and Human Rights Commission, the Older People's Commissioner for Wales, the Children's Commissioner for Wales and the Welsh Language Commissioner. The latter in particular under the Welsh Language (Wales) Measure 2011 has very specific enforcement and investigatory powers.

In all cases however, these Commissions deal with issues at a Chief Executive, Corporate Management and Cabinet level, so in operational terms can lead to a great deal of additional work on complaints that in some cases could have been dealt with at a far more operational level, and much quicker.

Appendix A - Standard Paragraphs and Wording

When responding to complaints, it is recommended that as part of all responses a standard paragraph is included to ensure that the complainant is aware of what subsequent stages could be if they are not satisfied. Examples are shown below.

- **Stage 1 Example Paragraph**

Please accept this letter as a Stage 1 response under the Council's corporate Complaints procedure. If you remain dissatisfied with this response you are entitled to escalate your correspondence to Stage 2 of the complaints process and I would ask that you contact the Council's corporate complaints officer c/o Legal Services Caerphilly County Borough Council, Penallta House, Tredomen Park, Ystrad Mynach, Hengoed CF82 7PG or alternatively by telephone on 01443 864221 or by email to complaints@caerphilly.gov.uk.

- **Stage 2 Example Paragraph**

Please accept this letter as a Stage 2 response under the Council's corporate Complaints procedure. If you remain dissatisfied with this Stage 2 response you are entitled to escalate your correspondence to the Public Services Ombudsman for Wales. You can contact them by writing to: Public Services Ombudsman for Wales, 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ, by telephone on 0300 790 0203 or by emailing ask@ombudsman-wales.org.uk.

As noted previously in this guidance however, when responding to complaints that contain Equalities or Welsh Language aspects, the wording needs to be amended according to the routes available to the complainant. Below is one example as illustration of the extra paragraph that can be added, in addition to the above.

- **Example additional paragraph for Stage 1 Welsh Language issues**

You are also entitled to escalate your correspondence to the Welsh Language Commissioner's Office at any time during this complaints process. You can contact them by writing to: Welsh Language Commissioner, Market Chambers, 5–7 St Mary Street, Cardiff CF10 1AT, by telephone on 0845 6033 221 or by emailing post@welshlanguagecommissioner.wales.

Appendix B - Equalities and Welsh Language Complaints Data

This is public information that is, or will be, published and available, to give additional context to the guidance in this document.

The tables that follow show an analysis of the complaints received during the financial year 2015-2016 as an overview of the Council figures, following improved reporting and recording systems. This information is recorded and published in the Annual Monitoring and Improvement Reports submitted to the Equalities and Human Rights Commission and the Welsh Language Commissioner's Office.

Equalities and Welsh Language complaints data forms part of the quarterly reporting to the Audit Committee as part of the Corporate Complaints process where appropriate, and staff from the Equalities and Welsh Language team are also part of the corporate **Learning from Complaints Group** that meets quarterly to discuss both specific and cross-cutting complaints.

The following tables are summaries of the complaints; the full details of each have been removed to maintain the anonymity of those making the complaint and due to the financial year in question, the Directorates refer to the new corporate structure in place and so comparison between directorates over the last two financial years is not possible.

The current structure of services areas is as follows:

DIRECTORATE:	SERVICE AREAS WITHIN THAT DIRECTORATE:
Chief Executive	<ul style="list-style-type: none">• 21st Century Schools• Education and Lifelong Learning
Corporate Services	<ul style="list-style-type: none">• Corporate Finance• Human Resources• ICT and Customer Services• Legal• Performance and Property• Procurement Services
Communities	<ul style="list-style-type: none">• Community and Leisure Services• Engineering and Transport• Housing Services• Regeneration and Planning• WHQS
Social Services	<ul style="list-style-type: none">• Adult Services• Children's Services• Public Protection

2015 - 2016 COMPLAINTS BY EQUALITIES STRAND

(following the categories listed in the Caerphilly CBC Strategic Equality Plan)

STRAND	NUMBER
General / Unspecified	0
Age	0
Disability	12
Gypsy and Traveller	0
Human Rights	0
Linguistic Skills	1
Marital Status	0
Nationality	0
Pregnancy and Maternity	0
Race	2
Religion or Belief	1
Sex (Gender)	0
Sexual Orientation	0
Gender Reassignment / Transgender	1
Welsh Language	26
TOTALS	43

2015 - 2016 COMPLAINTS BY DIRECTORATE

DIRECTORATE	EQUALITIES	WELSH LANGUAGE	TOTALS
Chief Executive	5	2	7
Corporate Services	4	11	15
Communities	6	11	17
Social Services	2	2	4
TOTALS	17	26	43

The full complaints report will be published online in June each year as part of the annual monitoring data - www.caerphilly.gov.uk/equalities.