



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Investigation under Section 17 of the Welsh Language Act 1993

Office of the Public Guardian

The Welsh Language Commissioner's report and recommendations issued
under section 19 of the Welsh Language Act 1993

Reference Number 63



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Background

The principal aim of the Welsh Language Commissioner, an independent body established by the Welsh Language (Wales) Measure 2011, is to promote and facilitate use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales by imposing standards on organisations and reviewing and investigating compliance with the Measure and the Welsh Language Act 1993. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will underpin the work:

- In Wales, the Welsh language should be treated no less favourably than the English language
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so

Contact details:

- Phone: 0845 6033 221
- Email: post@comisiynyddygybraeg.org
- Website: comisiynyddygybraeg.org

Welsh Language Commissioner
Market Chambers
5–7 St Mary Street
Cardiff
CF10 1AT

Contents

| | | |
|---|----------------------------|----|
| 1 | Context | 1 |
| 2 | Basis of the investigation | 2 |
| 3 | The investigation | 4 |
| 4 | The evidence | 6 |
| 5 | Conclusions | 13 |
| 6 | Recommendations | 18 |
| 7 | Index of appendices | 19 |

Foreword

This investigation report is issued by the Welsh Language Commissioner (the Commissioner) in accordance with section 19 of the Welsh Language Act 1993 (the Act) following the transferral of relevant functions under the Act to the Commissioner through a series of statutory instruments.

Part II Welsh Language Act 1993

○ Compliance with schemes – Investigations

An investigation is held into the possible failure of a public body to implement its language scheme under section 17 of the Act:

17. – (1) Where it appears to the Board¹, whether on a complaint made to it under section 18 below or otherwise, that a public body may have failed to carry out a scheme approved by the Board, the Board may conduct an investigation in order to ascertain whether there has been a failure.

(2) The procedure for conducting an investigation under this section shall be such as the Board considers appropriate in the circumstances of the case, and in particular an investigation may be conducted in private.

○ Compliance with schemes – Complaints of non-compliance

Section 18 of the Act applies when an individual submits a complaint regarding a public body's failure to implement its language scheme:

18. – (1) This section applies where –

(a) a written complaint is made to the Board by a person who claims to have been directly affected by a failure of a public body to carry out a scheme approved by the Board,

(b) the complaint is made within the period of twelve months beginning with the day on which the complainant first knew of the matters alleged in the complaint, and

(c) the Board is satisfied that the complainant has brought the matter complained of to the notice of the public body concerned and that that body has had a reasonable opportunity to consider it and to respond.

(2) Where this section applies, the Board shall either investigate that complaint under section 17 above or shall send to the complainant a statement of its reasons for not doing so.

¹ The Welsh Language Board was abolished on 31 March 2012 and investigatory power was transferred to the Welsh Language Commissioner on 1 April 2012. Any reference to the Board in this foreword equates to a reference to the Commissioner.

○ Compliance with schemes – Reports on investigations

A report is to be produced under section 19 of the Act based on the findings of the investigation:

19. – (1) Where the Board undertakes an investigation under section 17 above, it shall send a report of the results of the investigation to the public body concerned, to the Secretary of State² and, where the investigation is conducted on a complaint made under section 18 above, to the complainant.

(2) Where the Board considers that it would be appropriate for a report of the results of an investigation to be published, either in the form of the report made under subsection (1) above or in some other form, the Board may arrange for publication in such manner as it thinks fit.

(3) Where on completing an investigation the Board is satisfied that the public body concerned has failed to carry out the scheme, the Board may include in its report recommendations as to action to be taken by the public body in order to remedy the failure or to avoid future failures.

○ Compliance with schemes – Directions by Secretary of State

If, following the publication of a report, the Commissioner believes that a public body has failed to implement the actions recommended by him, he may refer the matter to the Minister responsible for the Welsh language:

20. – (1) If at any time it appears to the Board that a public body has failed to take any action recommended in a report under section 19 above, the Board may refer the matter to the Secretary of State.

(2) If on a reference under this section the Secretary of State is satisfied, after considering any representations made to him by the Board and by the public body concerned, that the body has failed to take any action recommended in the report, he may give such directions to the public body as he considers appropriate.

(3) Any directions given by the Secretary of State under subsection (2) above shall be enforceable, on an application made by him, by mandamus.

Following the establishment of the National Assembly for Wales in 1999, reports under section 19 of the Act are sent to the Welsh Government Minister responsible for the Welsh language.

1 Context

- 1.1 The Office of the Public Guardian has a Welsh language scheme prepared under section 21 of the Welsh Language Act 1993 (the Act). The language scheme was approved on 28 February 2020.
- 1.2 The language scheme states that the Office of the Public Guardian has adopted the principle that in the conduct of public business in Wales, it will treat the Welsh and English languages on a basis of equality. The scheme states how the Office of the Public Guardian will apply that principle when delivering services to the public.
- 1.3 The main purpose of this report is to draw conclusions, based on the evidence gathered, on the Office of the Public Guardian's compliance with specific clauses of its language scheme. The report does not draw conclusions regarding the Office of the Public Guardian's general performance with regard to compliance with its language scheme.
- 1.4 This is the first investigation conducted by myself under section 17 of the Act in relation to the Office of the Public Guardian. The investigation was conducted in private by the Commissioner's Regulatory Officers. The Commissioner would like to thank the Office of the Public Guardian for its cooperation during the inquiry.

2 Basis of the investigation

Complaint 1

- 2.1 I received a complaint on 20 March 2020, relating to significant delays and problems whilst trying to register for Lasting Power of Attorney for the complainant's client in Welsh. The complainant claimed that the reason for the delay and the problems she experienced was that her client had corresponded with the Office of the Public Guardian in Welsh, and had requested a Lasting Power of Attorney in Welsh.
- 2.2 The complainant claimed that the Office of the Public Guardian noted that a request for responses in Welsh would delay the process, and the Office continued to send correspondence and documents in English only contrary to the wishes of the complainant and client during the applications' processing period.
- 2.3 A letter was sent to the Office of the Public Guardian on 19 May 2020 requesting information and evidence regarding the suspicion by 3 June 2020.
- 2.4 An email was received in response to the letter, on 17 July 2020. The response confirmed that all correspondence from the Office of the Public Guardian regarding the health and welfare Lasting Power of Attorney (LPA) had been in English, despite the preferred language being known. The Office acknowledges that it had not sent the correspondence in Welsh nor had it dealt with the complainant's direct complaints appropriately.

Complaint 2

- 2.5 On 27 September 2020 I received a further complaint from a member of the public regarding the failure to complete an application for Lasting Power of Attorney online in Welsh, and delays whilst corresponding.
- 2.6 It is alleged that an online application can only be completed in English, which means that the final application forms would be in English.

Complaint 3

- 2.7 I received a complaint on 10 November 2020, regarding an individual not being able to apply for Lasting Power of Attorney online in Welsh, and delays in receiving correspondence.
- 2.8 The complainant claimed that when clicking on the relevant link you are led to an English only page and resources.
- 2.9 A further letter was sent to the Public Guardian Nick Goodwin on 11 June 2021 requesting information in relation to complaints 2 and 3.
- 2.10 A response was received on 25 June 2021 which explained that:

"it is not possible to complete the application in full in English or Welsh because, under current legislation, for both languages, the forms must be printed, signed and sent to the Office of the Public Guardian to be registered..... The 'online application tool for lasting power of attorney'

allows people to fill in some fields online, however, it is not possible to submit the application electronically."

- 2.11 The Office of the Public Guardian confirmed that complainant 2 did not receive a response within the 10 day target. It was noted that the problem was caused by a lack of communication when trying to pass the message on to the relevant team.
- 2.12 It was explained that a response had been drafted to complainant 3 but due to administrative negligence, the response was not sent to him.
- 2.13 A response to the draft report was received from one complainant. He said that he agreed that a full application for a lasting power of attorney cannot be made online in English or Welsh but "it is possible to apply online in English to the point where the paperwork must be printed and signed". He added that the thrust of his complaint was that "the Office does not even offer the opportunity to make the partial application online in Welsh".

3 The investigation

- 3.1 I decided to exercise my powers under section 17 of the Act to conduct an investigation in order to ascertain whether there had been a failure by the Office of the Public Guardian to deliver the language scheme. The Public Guardian was notified of this on 4 March 2021.
- 3.2 On 4 March 2021 a letter was sent to the Office of the Public Guardian explaining the subject and structure of the investigation and asking questions for the purpose of gathering information. It was explained that the investigation would consider compliance with the following clauses of the Welsh language scheme:

3. Dealing with the Welsh-speaking public

3.1 Written communication (including email)

- *When we receive correspondence in Welsh, we will reply in Welsh within the same timescale as English correspondence. When we cannot answer fully in this timescale, a full response in Welsh will follow.*
- *Correspondence sent to us in Welsh should not itself lead to a delay.*

4. The Office of the Public Guardian Public Face

4.3 Publications and forms

- *We will make sure that our bilingual or Welsh language publications are available alongside the English versions in print or on our website at GOV.UK, and at the same time.*

4.4 Internet

- *We are responsible for providing content on our individual pages on this website, such as our homepage, forms and guidance and we will ensure that these are available in English and Welsh.*

- 3.3 It was noted that the investigation would be conducted in private by the Investigation and Enforcement team, and that it would include the following steps:
1. Receive information and evidence from the Office of the Public Guardian by 1 April 2021.
 2. Undertake a desktop analysis of the information and consider whether any further information is required, for example by meeting with Office of the Public Guardian officers.
 3. Prepare a draft report on the investigation's findings and give the Office of the Public Guardian the opportunity to check its facts.

4. Send a copy of the final report to the Office of the Public Guardian, and the Minister responsible for the Welsh language.
5. Publish the final report.

This report considers the Office of the Public Guardian's compliance with specific clauses in its Welsh language scheme. It is based on information and evidence received from the Office of the Public Guardian in a letter dated 12/04/2021. A copy of the letter is attached at Annex 1 to this report and further information received in correspondence on 17/07/2020, 25/06/2021 and 16/08/2021.

4 The evidence

Consideration 1: Dealing with the Welsh-speaking public

There were grounds to believe that the Office of the Public Guardian had failed to comply with the following clause in its Welsh language scheme:

3.1 Written communication (including email)

- When we receive correspondence in Welsh, we will respond in Welsh within the same timescale as English correspondence. When we cannot reply fully in this timescale, a full response in Welsh will follow.
- Correspondence sent to us in Welsh should not in itself lead to a delay.

4.1 At the time of the investigation, I received three complaints alleging that there had been a significant delay before the complainants received a response to correspondence sent in Welsh.

Complaint 1

- 4.2 I received a complaint on 20 March 2020, relating to delays and problems in registering for a Lasting Power of Attorney for the complainant's client in Welsh. The complainant claimed that the reason for the delay and the problems she experienced was that her client had corresponded in Welsh with the Office of the Public Guardian, and had requested a Lasting Power of Attorney in Welsh.
- 4.3 The complainant claimed to have made two applications for Lasting Power of Attorney, one for health and welfare decisions, and one for financial decisions in February 2019.
- 4.4 The complainant received the Lasting Power of Attorney for the health and welfare decisions by April 2019, but only an English version was provided. The complainant had to wait until February 2020 before receiving the Lasting Power of Attorney for financial decisions in accordance with her choice to receive it in Welsh. Although she had been in regular contact with the Office asking for a response and documents in Welsh, the waiting time until she received the correspondence in Welsh has been a year.
- 4.5 The complainant alleged that the Office indicated that a request for Welsh responses would delay the process and the Office continued to send correspondence and documents in English only contrary to the wishes of the complainant and the client during the applications' processing period.

Complaint 2

- 4.6 On 27 September 2020, I received a complaint from an individual referring to a delay in correspondence. The complainant wrote to the Office of the Public Guardian on 23 August 2021. An English only message was received on 1st September 2021 stating:

Thank you for your email dated 23 August 2020, the contents of which have been noted. I have passed on your email to our service improvement concerning your query and they will be in touch in due course – this should take around 10 days.

If you have any further queries, please do not hesitate to call us on 0300 456 0300 or email the OPG at customerservices@publicguardian.gsi.gov.uk. Further information can also be found on GOV.UK at www.gov.uk/power-of-attorney and Justice at <http://www.justice.gov.uk/about/opg>

The complainant had not received a response at the time the complaint was lodged

Complaint 3

- 4.7 On 10 November 2020 I received a complaint about the delay in receiving correspondence. It is alleged that all emails to the Office's customer service address result in an automatic response indicating that efforts will be made to respond within 10 working days. The complainant noted that he received a message (in response to an e-mail he sent in English as he failed to receive a response to his message in Welsh) explaining that his original correspondence in Welsh was being sent to translators, and as a result it would take approximately 21 days to respond.
- 4.8 For completeness, it should be noted that in responding to the draft report, complainant 3 indicated that he sent numerous messages to the Office of the Public Guardian without receiving a "substantive" reply to any of them.
- 4.9 In order to establish whether the Office of the Public Guardian (Office) had complied with the above clauses of its Welsh language scheme, it was asked to verify the complainant's allegation and explain the following to me:
- *how the office deals with Welsh correspondence it receives,*
 - *how it ensures that persons who correspond in Welsh receive a response in Welsh,*
 - *how it can be ensured that the need to translate correspondence does not lead to delays.*
- 4.10 I also asked for reasons for the alleged delay to be provided, together with any steps the Office had been taking to ensure that delays in registration did not occur again.
- 4.11 In response to the call for evidence, on 12 April 2021, the Office said that there had been a delay in processing lasting powers of attorney and correspondence in English and Welsh as a result of the Covid-19 pandemic.
- 4.12 In its response dated 17 July 2020, the Office explained that two applications for lasting power of attorney (LPA) had been received in Welsh on 26 February 2019 and that they had been processed in Welsh.
- 4.13 It was explained that the LPA application for health and welfare had been registered on 16 April 2019, within the statutory period of 8 weeks, but that there had been a delay in registering the property and finance LPA as it had been held back for it to be apportioned to a caseworker (it is noted that this is normal). It was noted that the application had been held back further in order to translate the letters.

- 4.14 It was noted in correspondence dated 12 April 2021 that the translations had not been posted as they should have been and in accordance with the Office of the Public Guardian's processes.
- 4.15 In its communication of 17 July 2020, the Office noted that there was a language inconsistency in the registration letters sent to complainant 1, and it was confirmed that all correspondence from the Office of the Public Guardian regarding the health and welfare LPA had been in English contrary to the complainant's wish.
- 4.16 In this case, it was explained that the two LPA applications were apportioned to two different employees suggesting a lack of communication within the Office.
- 4.17 The Office noted that it notified complainant 1's lawyers on 10 July 2019, that translating correspondence regarding the property and finance LPA would result in a delay of 4-6 weeks. It was explained that this information was incorrect and that the person who shared the message had been informed of this.
- 4.18 It said that Welsh letters had been sent regarding the property and finance application on 18 July 2019, but that the formal registration notices were sent in English by another caseworker on 21 August 2019.
- 4.19 Complainant 1 received the property and finance registration notices in Welsh in February 2020, one year after the original application was sent.
- 4.20 The Office apologizes for the discrepancies and for the delay.
- 4.21 In correspondence dated 25 June 2021 the Office of the Public Guardian explained that it had informed complainant 2 that it would take approximately 10 days to answer their query. It was noted that this was the standard target to answer all email enquiries, in English or Welsh.
- 4.22 After researching, it explained:

"it was clear that, despite the intention, the email had not reached our Service Improvement Team, and it is not known whether this was due to negligence or a technical problem. The problem was caused by a lack of communication when trying to pass the message on to the relevant team and does not appear to be related to any delay in providing correspondence in Welsh".

- 4.23 The Office apologised sincerely that complainant 2 had not received a reply, and for any inconvenience caused.
- 4.24 After investigating complainant 3's complaint, the Office explained that a response appears to have been drafted to be sent to the complainant, and added:

"but due to administrative negligence the response was not sent to him. Clearly, this is not the level of service that Mr xxxx should expect, or the level of service we strive to provide. Appropriate feedback was given to the individuals and teams involved, with a view to making improvements and reducing the possibility of this happening again in the future."

4.25 The Office noted that it apologised sincerely that complainant 3 had experienced difficulties in obtaining a response from the Office of the Public Guardian's Service Management Team.

Consideration 2: The Office of the Public Guardian Public Face (forms)

There were grounds to believe that the Office of the Public Guardian had not fulfilled the following clause in its Welsh language scheme:

4.3 Publications and forms

- We will make sure that all our bilingual or Welsh language publications are available alongside the English versions in print or on our website at GOV.UK, and at the same time.

4.26 On 27 September 2020 a complaint was received from a member of the public (complaint 2) about not being able to complete an application for Lasting Power of Attorney online in Welsh.

4.27 He said that paper forms have to be opened and printed in advance in order to apply in Welsh, but that the documents can be loaded and the details completed online in English (then everything prints easily and is completed clearly).

4.28 I received a further complaint on 10 November 2020 (complaint 3), regarding an individual not being able to apply for a Lasting Power of Attorney online in Welsh, despite the Office of the Public Guardian webpage stating:

"You can make a lasting power of attorney (LPA) online – it's easier than using paper forms and prevents a number of common mistakes".

4.29 The complainant claimed when clicking on the relevant link that you were led to an English only page and resources.

4.30 To ascertain whether the Office of the Public Guardian had complied with the above clause the Office was asked whether it was possible to complete an online application in Welsh for a lasting power of attorney.

4.31 In its evidence dated 17 July 2020, the Office states:

"All our standard documents such as LPA application forms are available to download from Gov.UK in Welsh and English".

4.32 However, it added that:

"Unfortunately, there has been some delay in the development of our 'Use an LPA' service. But we anticipate that it will reach the wider public testing stage in mid-July 2020"

4.33 I asked for clarification on how it can be said that forms are available in Welsh for loading, whilst at the same time noting that there had been a delay in developing the web-based service.

4.34 According to the Office of the Public Guardian's written response, the reference to 'forms' in this context does not extend to their digital services.

4.35 In its communication of 12 April 2021, the Office confirmed that:

"The current digital service for making a lasting power of attorney is only available in English"

4.36 It went on to explain that applying for lasting power of attorney requires a hand-written signature, and that a fully digital service is not currently available in Welsh or English.

4.37 The details I received in correspondence dated 17 July 2020 explained that the Office has a statutory duty to register LPAs within 40 working days, and that Welsh and English applications are calculated together to achieve the average as they have the same statutory target.

4.38 In giving evidence on 25 June 2021, the Office of the Public Guardian stated that it was serious about the need to provide excellent services in both English and Welsh. Reference was made to its commitment in introducing the Use a Lasting Power of Attorney service in both English and Welsh and when running a 'Your Voice, Your Decision' advertising campaign, ensuring that the advertisements were in Welsh.

Consideration 3: The Office of the Public Guardian Public Face (Internet)

There were grounds to believe that the Agency had failed to comply with the following clause in its Welsh language scheme:

4.4 Internet

- We are responsible for providing content on our individual pages of this website, such as our homepage, forms and guidance and we will ensure that these are available in English and Welsh.

4.39 In order to comply with the above clause the Office of the Public Guardian needed to ensure that their forms and guidance on its website were available in both English and Welsh.

4.40 One complainant stated that it was only possible to download the documents and fill in the details to apply for a lasting power of attorney online in English.

4.41 Another complainant mentioned that the Office of the Public Guardian webpage stated: "You can make a lasting power of attorney (LPA) online – it's easier than using paper forms and prevents a number of common mistakes".

4.42 He said that he clicked on the relevant link and was led to an English-only page and resources.

4.43 In order to ascertain whether the Office of the Public Guardian had complied with the above clause I asked the Office whether it was possible to complete an online application in Welsh for a lasting power of attorney.

4.44 In its evidence dated 17 July 2020, the Office states:

4.45 *"All our standard documents such as LPA application forms are available to download from Gov.UK in Welsh and English".*

4.46 However, it adds that:

4.47 *"Unfortunately, there has been some delay in the development of our Use an LPA service. But we anticipate that it will reach the wider public testing stage in mid-July 2020"*

4.48 In its communication of 12 April 2021, the Office confirmed that:

"The current digital service for making a lasting power of attorney is only available in English"

4.49 It went on to explain that applying for a lasting power of attorney requires a hand-written signature, and that there is currently no fully digital service available in English or Welsh.

- 4.50 Correspondence dated 17 July 2020 explained that work was underway to update and modernise LPA digital services.
- 4.51 It noted that the 'Use an LPA' service would reach the stage of introducing the tool from a limited group of testers, to a wider audience.
- 4.52 On 12 April 2021, the Office said that the Welsh language service 'Use a Lasting Power of Attorney' would be launched on 9 September 2020. It noted that this service enables the user who already has a lasting power of attorney to share details with organisations (such as banks and primary care providers) digitally.
- 4.53 It was noted that the intention is to replace the current lasting power of attorney system with a fully digitised service.
- 4.54 The Office notes that it is committed to ensuring that their lasting power of attorney services will be available in Welsh 'at the earliest possible opportunity'.
- 4.55 Giving evidence on 25 June 2021, it stated that it accepted that not being able to apply for a lasting power of attorney online was frustrating, and added:
- "I am also frustrated about that and, as explained below, this is a problem that affects speakers of both languages and we are determined to resolve this for everyone, if legislation allows. Although a facility was developed in 2013 to allow users to complete some parts of an online application form, that service is not as good as it could be as the key operational parts, including the provision of witness and attorney signatures, must be handwritten on printed forms."*
- 4.56 In correspondence dated 16 August 2021, the Office of the Public Guardian stated that it had decided not to invest in developing the 'My LPA' system in Welsh, as had been committed to in the Language Scheme, on the basis that they wanted to focus their efforts on the new LPA system that is to be built.
- 4.57 In a meeting with officers from the Commissioner's office, the Office of the Public Guardian explained that the Ministry of Defence is running the project. They noted that a date for the completion of the project cannot be set, as it relies on new legislation before the work can be completed. It has been estimated that this can take up to 4-5 years.

5 Conclusions

- 5.1 This report provides an opinion on the Office of the Public Guardian's compliance with its Welsh language scheme. In light of the available evidence, I conclude that the Office of the Public Guardian has failed to implement clauses 3.1, 4.3 and 4.4 of the language scheme.

Conclusion 1: Dealing with the Welsh-speaking public

There were grounds to believe that the Office of the Public Guardian had failed to comply with the following clause in its Welsh language scheme:

3.1 Written communication (including email)

- When we receive correspondence in Welsh, we will respond in Welsh within the same timescale as English correspondence. When we cannot reply fully in this timescale, a full response in Welsh will follow.
- Correspondence sent to us in Welsh should not in itself lead to a delay.

- 5.2 It appears that a Welsh language service was not provided to the complainants within the same timescale as English correspondence.
- 5.3 The Office of the Public Guardian acknowledges that there is inconsistency in the language of the letters of registration sent to complainant 1, and it was confirmed that all correspondence from the Office of the Public Guardian regarding the health and welfare LPA had been in English contrary to the complainant's wish.
- 5.4 In order to comply with the above clause, I would expect Welsh correspondence to be answered within the same timescale as English correspondence. The Office noted that it notified complainant 1's lawyers on 10 July 2019, that translating correspondence regarding the property and finance LPA would result in a delay of 4-6 weeks.
- 5.5 This is contrary to the content of the language scheme's clauses which clearly state that Welsh correspondence should not lead to delays.
- 5.6 In its correspondence dated 12 April 2021 he stated:

"... we can confirm that there were no delays as a result of the need to translate letters."

This contradicts what was said on 17 July 2020. It explained that it was a misunderstanding on the part of a caseworker that held back the lasting power of attorney and that the individual had been informed.

- 5.7 In addition, it was noted that the provisions when communicating in writing include the following:

"Customers are welcome to correspond with us in Welsh and/or bilingually. We use the same targets for sending correspondence in Welsh and correspondence sent in English".

- 5.8 It appears that both the Complainant's evidence and that of the Office of the Public Guardian are contrary to the requirements of the above clauses of the language scheme.
- 5.9 The response notes that a number of things have gone wrong and that officers have not taken correct action in dealing with the case. It was explained that a caseworker had informed one complainant that it would take between 4-6 weeks to translate correspondence. It was confirmed that the information provided was incorrect.
- 5.10 In its evidence of 12 April 2021, the Office said that the Content team *"implements a robust translation service"*, and that they consider that no further corrective action is required to provide assurance in their service.
- 5.11 Nevertheless, the Office refers to, and confirms that:
- an 'application had been held back';
 - correspondence had been sent in English even though Welsh was the preferred language;
 - there had been 'negligence or technical problems'
 - reference was made to 'administrative negligence'
 - incorrect information had been shared
- 5.12 It appears that the inconsistencies are due to a lack of internal communication on more than one occasion and the lack of a robust process when dealing with correspondence in Welsh.
- 5.13 The response does not address the arrangements or systems that have led to the failures in this case. While noting what went wrong, the Office does not note any steps taken to ensure that a situation such as this does not arise again. No assurances have been offered in response to the written request for evidence that give confidence that what happened here were merely slips.
- 5.14 In presenting its evidence, the Office's response is clear that there is a failure here to respond to Welsh correspondence within the same timescale as English correspondence, on more than one occasion. Indeed, there appear to be delays in dealing with correspondence or registration applications in Welsh.

Based on the above, I am of the opinion that the Office of the Public Guardian has failed to implement clause 3.1 of its language scheme.

Conclusion 2: The Office of the Public Guardian Public Face

4.3 Publications and forms

- *We will make sure that all our bilingual or Welsh language publications are available alongside the English versions in print or on our website at GOV.UK, and at the same time.*

- 5.15 The complainants were not able to complete an application for lasting power of attorney online in Welsh as the Welsh forms needed to be downloaded and printed whilst it is claimed that the information can be completed online in English.
- 5.16 One complainant mentioned that the Office of the Public Guardian webpage stated that: "You can make a lasting power of attorney (LPA) online – it's simpler than using paper forms and prevents a number of common mistakes". Applying online seems to be the way the Office of the Public Guardian recommends.
- 5.17 I considered the Office of the Public Guardian's comment that the reference to 'forms' in this context does not extend to their digital services.
- 5.18 I accept that the forms are available in Welsh for printing, but without the resource to enable an individual to make an application, by completing an online form in Welsh, the Office of the Public Guardian does not adopt the principle that it will treat the Welsh and English languages on a basis of equality whilst conducting public business in Wales, in accordance with its language scheme.
- 5.19 The fact that the Office does not calculate the time spent dealing with Welsh and English applications separately is a concern, as they cannot identify that problems arise, or that there are delays as a result of applications made in Welsh. In accepting that the statutory target is relevant and must be met for both languages, the timetable of the Welsh and English language service could also be measured separately for the purpose of ensuring compliance with the language scheme.
- 5.20 There appear to have been slips in dealing with a number of individuals' requests, and the Office has not proposed any changes to their arrangements, or proposed a supervision or management process in order to resolve these slips.

Based on the above, I am of the opinion that the Office of the Public Guardian has failed to implement clause 4.3 of its language scheme.

Conclusion 3: The Office of the Public Guardian Public Face

4.4 Internet

- *We are responsible for providing content on our individual pages of this website, such as our homepage, forms and guidance and we will ensure that these are available in English and Welsh.*

- 5.21 The complainants were not able to complete an application for lasting power of attorney online in Welsh. One complainant noted that he clicked on the relevant link and was led to an English only page and resources.
- 5.22 I considered the evidence of the Office of the public Guardian which stated "*The current digital service for making a lasting power of attorney is only available in English*".
- 5.23 To comply with clause 4.4. of the language scheme, the website pages, including forms, need to be available in both Welsh and English, and links should lead to resources in the chosen language without any hindrance.
- 5.24 I considered that the Office of the Public Guardian stated that they were committed to ensuring that their lasting power of attorney services were available in Welsh "*at the earliest possible opportunity*". However, it is worrying that no timetable has been submitted indicating when the work will be completed, and when members of the public will be able to complete an application for lasting power of attorney online in Welsh. There is no evidence that they have considered the Welsh Language Commissioner's most recent guidance on bilingual software either.
- 5.25 I considered that the project will be run by the Ministry of Justice, and that it is not possible to set a date for the completion of the project as it is dependent on new legislation, and the work can take up to 4-5 years to complete.
- 5.26 I considered that the Office of the Public Guardian stated in correspondence dated 16 August 2021 that it would focus their efforts on the new LPA system that is to be built rather than invest in developing the 'Make an LPA' system in Welsh.
- 5.27 I considered the project to modernise the LPA process to be a large and complex one, however, the Office of the Public Guardian should consider using the Welsh language from the outset when planning and developing their information technology services rather than thinking about improvements or solutions at a later date.
- 5.28 The Office of the Public Guardian does appear to recognise the seriousness of the situation and the frustration that has been caused to the complainants in trying to register for lasting power of attorney in Welsh.
- 5.29 However, service users should not have to go out of their way to use Welsh. Organisations must offer Welsh language services that are of good quality and this needs to be done by default or proactively.

Based on the above, I am of the opinion that the Office of the Public Guardian has failed to implement clause 4.4 of its language scheme.

6 Recommendations

- 6.1 Based on the findings of this investigation, I am of the opinion that the Office of the Public Guardian should act in accordance with the following recommendations provided under section 19 of the Act:

Recommendation 1

The Office of the Public Guardian should ensure that they consider the Welsh language from the very beginning when planning and developing its new LPA information technology services rather than think of improvements or solutions at a later stage.

Evidence of this should be provided by 30 November 2022

Recommendation 2

The Office of the Public Guardian should submit a detailed project plan for completing the work and completion of the project of enabling applications for lasting power of attorney to be made online in Welsh

Evidence of this should be provided by 30 November 2022

Recommendation 3

The Office of the Public Guardian should calculate the time taken dealing with requests for Welsh and English lasting powers of attorney separately. By doing so, it will be possible to record any problems or delays that arise.

Evidence of this should be provided by 30 November 2022

7 Index of appendicesⁱ

[Appendix 1](#) Email from the Office of the Public Guardian dated 17 July 2020.

[Appendix 2](#) Letter from the Office of the Public Guardian dated 12 April 2021

[Appendix 3](#) Letter from the Office of the Public Guardian dated 25 June 2021

[Appendix 4](#) Letter from the Office of the Public Guardian dated 14 August 2021

Documentation is attached in the language in which it was presented or published.