

The investigation of a complaint  
against Pembrokeshire County Council

A report by the  
Public Services Ombudsman for Wales  
Case: 201806802

## **The Complaint**

1. Mrs X complained that Pembrokeshire County Council (“the Council”) did not assess her needs for care appropriately between May and August 2018.
2. In particular, Mrs X complained that:
  - a) The Council did not assess her in a timely manner.
  - b) The Council did not provide her with support to meet her assessed needs in a timely manner.
  - c) The Council did not give proper consideration to her personal circumstances during the assessment process.
  - d) The Council did not handle Mrs X’s complaint properly.

## **Investigation**

3. I obtained comments and copies of relevant documents from the Council and considered these in conjunction with the evidence provided by Mrs X and her Advocate. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.
4. I obtained advice from one of the Ombudsman’s Professional Advisers (“the Adviser”). Chris Pearson is an experienced adult social worker and team manager.

## **Relevant legislation and guidance**

5. The relevant legislation is the Social Services and Wellbeing (Wales) Act 2014 (“the Act”). Under the Act, where it seems that an adult may have needs for care and support, local authorities must assess whether the adult does have those needs (s19). A number of Regulations and Codes of Practice were made to put the Act into effect, which outlines eligibility for care and support and how to assess and plan for individuals who may require care.

6. The Social Services and Wellbeing Act 2014 Part 3 Code of Practice<sup>1</sup> (“the Code of Practice”) deals with assessing the needs of individuals. The duty to assess is described in detail, as are the key principles of assessment, which include the principle that the assessment must be timely and responsive to the urgency of the needs of the person being assessed. The Code of Practice also describes the “Five Key Elements”, which are pieces of information that must be explored to make sure that the circumstances of the person being assessed are looked at in the round. These are:

- the person’s circumstances,
- their personal outcomes (what they are looking for),
- any barriers to those outcomes,
- any risk to the person if those outcomes are not achieved and
- any strengths and capabilities of the person.

The Code of Practice explains that the assessment should begin with a conversation which explores these five elements.

7. The Equality Act 2010 places a duty on public bodies, such as the Council, to make reasonable adjustments to their services or functions to address barriers preventing people with a protected characteristic, such as a disability,<sup>2</sup> from accessing services / functions. The Human Rights Act 1998 (“the HRA”) incorporated the European Convention on Human Rights (“the Convention”) into UK law. All public authorities must follow the HRA. It is not the Ombudsman’s function to make definitive findings about whether, or not, a public body has breached an individual’s human rights by its action or inaction, or to make determinations of a breach of the Equality Act. However, he will identify where human rights matters are engaged and comment on a public body’s due regard for them, and its due regard for the Equality Act.

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<sup>1</sup> Social Services and Well-being (Wales) Act 2014 Part 3 Code of Practice (assessing the needs of individuals) paragraph 53

<sup>2</sup> Disability is defined as an impairment that substantially affects a person’s normal day to day activities. Someone with a life limiting condition/terminal diagnosis is likely to fall into this definition - see Appendix to Guidance [www.odj.gov.uk/equalityact](http://www.odj.gov.uk/equalityact)

8. Article 8 of the Convention provides the right to respect for one's private and family life. This encompasses the individual's rights to make personal choices and of self-determination. Human Rights are underpinned by a core set of values known as the FREDA principles:

- Fairness
- Respect
- Equality
- Dignity
- Autonomy.

9. The Council has its own policy documents, including one called Adult Care and Joint Strategic Commissioning Pathway Policies ("the Pathway Policies document"). This document sets out when and how an assessment for adult care should be undertaken. It explains how the Five Key Elements should be discussed with the person being assessed as part of a conversation about what matters to them, or a "What Matters Conversation". It also states that assessments should be completed within 35 working days unless they are "critical assessments" in which case they should be completed within 24 hours.

10. The Council has its own Complaints and Compliments Policy ("the Complaints Policy"), which sets out a 2-stage process for investigation of complaints against social services. The Complaints Policy explains that responses to informal complaints should be provided within 15 working days and where this is not possible the complainant should be told why. If an independent investigation of the complaint is required under the formal stage of the Complaints Policy, a response should be sent out within 25 working days. If this is not possible, complainants should be told and a reason for the delay given.

### **Relevant background information and events**

11. On 9 May **2018** Mrs X was discharged from hospital with a diagnosis of advanced heart failure. Mrs X was discharged with time limited support from a voluntary support project ("the Project"), lasting about 6 weeks, which assists people to get home from hospital, have a visit from a case

worker and, if necessary, have adaptations done to their home. The Project can also make additional referrals, with consent. Mrs X understood that she had around 6 months to live. Mrs X's need for personal care was not fully assessed before her discharge from hospital. As Mrs X has not complained about the lack of assessment at the hospital, I cannot comment on this.

12. On 29 May Mrs X telephoned the Council's Contact Centre and asked to be assessed for a package of social care support. A referral was sent by the Contact Centre to the First Contact Team (a team within the Council made up of social workers and social care assistants) which said that Mrs X wanted a care package because she did not shower or bathe unless someone was present with her because she felt unsafe, having got stuck in the bath previously. The First Social Worker telephoned Mrs X once the First Contact Team received the referral from the Contact Centre.

13. The First Social Worker noted that Mrs X had recently been discharged from hospital following a 2-week admission with heart failure. Mrs X said that her mobility was poor, her hearing was okay and her sight was good. She said she was not eating much as she felt sick all the time and she was losing weight. She also said she was breathless and was on a lot of medication. Mrs X told the First Social Worker that she felt like she was struggling to cope. The First Social Worker recorded that Mrs X's feeling that she was struggling to cope was because she felt unwell and sick in the mornings. Mrs X was hoping to see her GP that day. The First Social Worker recorded that he asked what help Mrs X was looking for and she said that although she was able to "strip-wash", she wanted someone to be around and help her when she showered a few mornings a week. The First Social Worker told Mrs X that the Council did not provide this service, sent a list of private care providers to Mrs X via her Project worker and checked that she had been referred for a benefit check. The recording states that "Mrs X continued to say how unwell she feels and (was advised) hopefully the GP can help her resolve this". The referral was closed with no further action to be taken by the Council.

14. Mrs X contacted a number of private providers with support from the Project but could not afford to pay for their services. Mrs X was supported by an Advocate from 1 June.

15. On 8 June Mrs X's Advocate contacted the Council on Mrs X's behalf. In the referral, the Advocate said Mrs X needed to receive a package of care because of her health needs.

16. The Second Social Worker spoke to Mrs X on 13 June and recorded that she was terminally ill and needed 45 minutes of support with morning personal care tasks and food preparation. The Second Social Worker made a referral to the Council's Reablement Service on 13 June. The Second Social Worker recorded that Mrs X had end stage heart failure with 10% function of her heart which presented as breathlessness and general fatigue. It was noted that during the conversation Mrs X had to take a break due to breathlessness. The referral included a brief assessment of what Mrs X could manage alone. It noted that her mobility was mostly okay around the house although she got very tired washing and dressing. Mrs X needed help washing and dressing her lower half. It also noted 45 minutes of support each morning was requested.

17. On 26 June, the Second Social Worker contacted the Reablement Service, who had not been able to assess Mrs X, and was advised that there was no service available to assist Mrs X at the time in the local area.

18. On 17 July the Second Social Worker contacted Mrs X to tell her that the Reablement Service still had no availability, and to offer to refer her to Domiciliary Care (which is home based care and support with personal care, household tasks, and so on, provided by paid care workers). Mrs X said she did not need to be referred to Domiciliary Care because she was managing with help from her local community plus a charity.

19. On 19 July the Second Social Worker telephoned Mrs X to offer her a 30-minute morning call from 08:30 until 09:00. This was refused by Mrs X, who said it was too early for her to be able to use it. On 8 August, a further call was offered at 12:00. Mrs X turned this down on 10 August because, she said, her family were now supporting her and she was very ill. Mrs X did not engage with the Council after 10 August.

20. On 9 August the Advocate made a complaint to the Council on behalf of Mrs X. The Council acknowledged receipt of the complaint on 15 August. A further letter was sent to the Council on 10 September. A

response was then provided on 17 September which began by apologising for the delay. In the response Mrs X was offered a further assessment but was told that this may be by the Reablement Service.

21. On 12 October the Advocate made a formal complaint and requested an independent investigation under Stage 2 of the Complaints Policy. An independent investigation report was received by the Council and Mrs X on 13 December. A letter of response from the Council was sent to Mrs X on 7 February **2019** which apologised for this delay.

### **Mrs X's evidence**

22. Mrs X said in her evidence that as an ex-clinician herself, she was very concerned that the processes and procedures followed by the Council were not in line with the law.

23. Mrs X said that the initial telephone assessment completed by the First Social Worker had not probed deeply enough into her personal circumstances, both in terms of her health and her finances.

24. Mrs X said that she had not accepted the offer of a 12:00 call, which was made on 8 August, as by that time she was being supported by her family and she did not want to have to undergo a long assessment with a team of people, given the state of her health.

25. Mrs X said that she felt the informal complaint response from the Council was insulting because it suggested that Mrs X was responsible for the Council not giving her support because she had not provided all of the information the Council needed.

26. Mrs X said that the response to her request for support and the response to her complaint had both taken too long. She said that she was left feeling that the Council was “waiting for her to die”, so that it did not have to address her complaint.

## **The Council's evidence**

27. The Council said that members of the public can request support by contacting the Contact Centre. The Contact Centre passes referrals to the First Contact Team, who will contact the member of the public, usually by telephone, to gather information. It does this by having a "What Matters Conversation" with the person concerned.

28. The Council said that at this point, if it seems likely that the member of the public has urgent needs which are eligible for support, then the Social Worker at the First Contact Team will complete a full integrated assessment and Care and Support Plan either over the telephone or face to face. If it is not urgent, the referral is passed to the Managed Care Team to complete that assessment.

29. The Council said that Mrs X had not told it that she was terminally ill when she spoke to the First Social Worker on 29 May and it did not have supporting medical evidence, and Mrs X had recently been discharged from hospital with no medical needs recorded. The Council therefore felt Mrs X's needs were medical because she was physically unwell, and she was advised to contact her GP. The Council explained that social workers are not medically trained, and it had wanted to ensure Mrs X had appropriate medical support. The Council believed that it should have made a follow up call to Mrs X a few days later to check the outcome of her contact with her GP. The Council said that it had spoken to the Project worker who had not raised any specific concerns about Mrs X, and the GP did not raise any concerns about Mrs X either.

30. The Council said that the referral from the Advocate indicated a request for a home visit for Mrs X. It said that when the Second Social Worker spoke to Mrs X on 13 June it was agreed that a morning call was needed, and Mrs X agreed to this.

31. The Council said that it provides a Reablement Service which is in line with the Act. It said that the Reablement Service provides assessment and support for up to 6 weeks which helps people become more independent and identifies any long-term support needs. The Council said the Reablement Service was not a long paper-based assessment and was



instead about working with needs to get a care plan in place. The Council said that if the person needed further support then a full integrated assessment of the person's needs would be carried out. The Council said that offering to refer Mrs X to the Domiciliary Care Service was its offer to complete the integrated assessment, although this may not have been understood by Mrs X. It accepted that it did not explain the roles of the two Services to Mrs X and apologised if this was unclear.

32. The Council said that when Mrs X was offered a referral to the Domiciliary Care Service on 17 July it was declined, and Mrs X had capacity to decline the service.

33. In its response to the independent investigation the Council said that, depending on capacity, the Reablement Service was usually the quickest way to get support from carers, although there were alternatives when the service was not available which were through the integrated assessment process. The Council apologised that the information provided to Mrs X about the available options was not clear.

34. The Council also said that there were monitoring arrangements in place to check that the Reablement Service will inform the Council whether it could offer a service within 48 hours of receiving a referral. The Council accepted that this did not happen for Mrs X. The Council apologised for this and said that it had, in fact, subsequently followed up on the delay. It said that, ultimately, two offers were made to Mrs X and both were declined.

35. The Council said that alternatives to the Reablement Service were available when it did not have capacity to offer a service to members of the public, but that the Reablement Service was a "critical part of our assessment offer". The Council said that "alternatives such as direct payments are routinely offered once assessments are completed and eligibility has been established."

36. The Council said that it was not its intention to suggest that Mrs X was responsible for the Council not giving her support, and it was not its intention to upset Mrs X. The Council said that Mrs X had said that she had capacity and was fine and coping, so the decision was based on its

knowledge and the facts at the time. The Council also said that the First Contact Team had received national recognition for its hard work, having won the British Association of Social Workers Cymru “Social Work Team of the Year” in 2017. The First Contact Team had also taken part in the Wales Audit Office’s national review of Initial Assessment services and had received positive verbal feedback.

## **Professional Advice**

37. The Adviser said that during the telephone conversation on 29 May Mrs X made it clear to the First Social Worker that she was in crisis, she felt unsafe, was not eating much, was breathless and could not walk far. The Adviser said that, in his opinion, what Mrs X said should have triggered further questions about what her needs were. The Adviser said that by advising her to see her GP the First Social Worker had made Mrs X go through another “assessment door”, instead of helping her. The Adviser said that the First Social Worker’s assessment of Mrs X had focused more on process than on Mrs X’s needs. He said that this affected the timeliness and response to Mrs X’s needs in her interactions with the Council.

38. The Adviser said that one of the core skills for social workers is the ability to tease out information because people come to social services when they are in crisis and will often under-play their concerns. The Adviser said that it was for social workers to try to explore through questioning what was **not** being said. The Adviser said that in his experience it was not often that a GP would make contact with social services, but the Council should have followed up with a conversation with Mrs X’s GP.

39. The Adviser said that Mrs X’s inability to walk far, breathlessness and feeling unwell most of the time clearly indicated that a home visit would have been a better option for her. He commented that when Mrs X met her Advocate face to face, it was much easier for the Advocate to find out what Mrs X needed.

40. The Adviser said that although there was no set timescale for Mrs X to undergo a full assessment or begin to receive support, it was clear that a timescale should have been given to Mrs X on or after 13 June. The

Adviser said that the periods of waiting were not acceptable. He said that Mrs X's needs should have been considered "an utmost priority".

41. The Adviser said that the Council seemed to rely on the fact that Mrs X had been referred to the Reablement Service to say that it did not have to complete an assessment of her. However, the Council was aware by 26 June that the assessment was not being completed by the Reablement Service because it did not have capacity. The Adviser said that in his view a full integrated assessment should have been completed at that time because the duty to complete an assessment arises no matter what resources are available. The Adviser said that the Council should have begun the full integrated assessment on 26 June and should have put in place a co-produced, person centred plan.

42. The Adviser said that the Council should also have offered to undertake a full integrated assessment of Mrs X on 17 and 19 July, because the Council knew that Mrs X was breathless and had heart failure but did not know how her health was affecting her. The Adviser said that throughout the Council's dealings with Mrs X, it did not offer her a full integrated assessment as an alternative to the Reablement Service. The Adviser said that whilst the Reablement Service is an effective way of providing care and support, it should not be used exclusively. He said that insisting people use the Reablement Service makes assessment into a resource which is not person centred or led, which is contrary to the Act.

## **Analysis and conclusions**

43. In relation to Mrs X's complaint that the Council did not assess her needs for support in a timely manner I **uphold** this aspect of the complaint.

44. The Council first had the opportunity to assess Mrs X during the telephone call on 29 May. Although during that telephone call Mrs X did not mention that she had been diagnosed with a terminal illness, she clearly explained that she felt ill and unsafe and was struggling to cope alone. Mrs X also said that the First Social Worker did not probe deeply enough in relation to her health or financial circumstances during the call. Under the Act, the Council must assess any adult where it appears that the adult may have needs for care and support. I find that Mrs X clearly explained that she

might have needed care and support on 29 May, and therefore the Council should have begun its assessment of her on that date.

45. The Council's Pathway Policies document states that most assessments should be completed within 35 working days, and critical assessments should be completed within 24 hours. Mrs X's assessment had not been completed by the time she disengaged from the Council on 10 August, some 52 days after the telephone conversation on 29 May. This is not timely and is not within the Council's own targets.

46. The Council next had the opportunity to assess Mrs X on 13 June. I accept that on this date the Council referred Mrs X, and the need to complete an assessment of her, to the Reablement Service, believing that the assessment would be completed. Unfortunately, the Reablement Service did not have capacity to assess Mrs X and, owing to a system failure, it appears that the Council was not aware of this until 26 June. The Council has recognised and apologised for this.

47. The next opportunity for Mrs X to be assessed was on 26 June, when the Council became aware that the Reablement Service did not have capacity. I accept the Adviser's advice that once it was aware that the Reablement Service could not assess Mrs X, the Council should have completed a full integrated assessment of her. No alternative to the Reablement Service, and no integrated assessment, was offered to Mrs X on 26 June.

48. The Council failed to advise Mrs X that she could be referred for a full Integrated Assessment after 17 July by being referred to the Domiciliary Care Team. As a result, Mrs X was not aware that she could receive a full Integrated Assessment at that time. Before 17 July, Mrs X was not offered a full Integrated Assessment despite the Reablement Service being unable to help her. I consider the failure to assess Mrs X in a timely manner (and, indeed, at all) to be a significant injustice to her as had this been done the Council might have provided the support she needed, rather than Mrs X having to arrange this herself.

49. Mrs X was not offered an assessment of her needs until after 17 July. This is 33 working days after she first contacted the Council. I find that it is unlikely that a full integrated assessment of Mrs X's needs would have been completed within 2 working days, or that support would have been put in place within 35 working days. Whilst I accept that Mrs X declined support from the Council after 17 July, she was not offered any support before this date. Therefore I **uphold** this aspect of Mrs X's complaint.

50. The next aspect of Mrs X's complaint is that the Council did not provide her with support to meet her assessed needs in a timely manner. I **uphold** this aspect of Mrs X's complaint.

51. I have found that an assessment of Mrs X should have begun on 29 May. As part of that assessment, the First Social Worker should have had a "What Matters Conversation" with Mrs X. I accept the Adviser's advice that, as part of that conversation, the First Social Worker should have teased out the information that Mrs X had been diagnosed with a terminal condition and explored with Mrs X any barriers to her ability to meet her needs, such as breathlessness and feeling sick. Mrs X also said in her evidence that her health could have been probed further during the call.

52. The Council has said that Mrs X did not inform the First Social Worker that she was terminally ill on 29 May, and therefore the Council was not aware that Mrs X was eligible for support on that date. Mrs X did, however, provide clear information about her health and how it was affecting her during that conversation.

53. The Second Social Worker recorded on 13 June that "it appears that support with morning personal care tasks is needed". I find that if a more detailed conversation about Mrs X's need for support had taken place on 29 May, this conclusion should have been drawn then, and Mrs X would have received that support from the Council from 29 May.

54. Although Mrs X is said to have told the Council that she was able to manage with support from friends and the charitable sector, this conversation did not take place until 17 July, 33 days after the assessment of Mrs X should have begun. This does not affect the Council's failure to provide the support identified (but not provided) on 13 June, from 29 May.

55. Mrs X was referred to the Reablement Service on 13 June with the intention that she would receive support. Unfortunately, that support was not available. The Council became aware that the Reablement Service was not available on 26 June. By this time, the Council was aware that Mrs X was terminally ill and needed support with personal care tasks in the morning. Nonetheless, no support was offered to Mrs X either from 29 May, 13 June or after 26 June. Although the Council followed up on the unavailability of the Reablement Service, this was not within 48 hours of the referral being made as set out in the Council's monitoring arrangements and was not, in fact, until almost 2 weeks after 13 June and over 3 weeks after 26 June.

56. I cannot see any evidence that Mrs X has ever received support from the Council. I consider the Council's failure to provide support to Mrs X to have caused injustice to her as she had to arrange this for herself.

57. In relation to Mrs X's complaint that the Council did not give proper consideration to her personal circumstances during the assessment process, I **uphold** this aspect of the complaint.

58. On 29 May, the First Social Worker was told that Mrs X was breathless and struggling to cope. I accept the Adviser's advice that Mrs X's personal circumstances at that time, namely her inability to walk far, breathlessness and feeling unwell most of the time, clearly indicated a home visit would have been a better option for her. On 13 June, the Second Social Worker noted that Mrs X had to take a break in their conversation owing to her breathlessness. The Second Social Worker was also aware that Mrs X was terminally ill and had 10% heart function. I accept the Adviser's advice that the Council should have undertaken a face to face assessment of Mrs X and her home environment as a result of the personal circumstances, of which the Council was aware.

59. The Code of Practice says that assessments must be timely and responsive to the urgency of individual needs. By 13 June, the Council was aware that Mrs X was terminally ill and was expected to live for only a further 6 months. I find that this should have been taken into consideration, and an assessment of Mrs X's needs undertaken at that stage. Not only was that obvious but it seems to me that this would, at the very least, have

been a reasonable adjustment that the Council should have offered. Knowing the extent of Mrs X's condition (having a terminal diagnosis), it should have taken steps to prioritise her assessment as urgent. In line with the Equality Act it ought to have acted proactively (see paragraph 7). Furthermore, I consider that Article 8 of the Convention is engaged here, given that the provision of services, which an assessment might have led to, were intrinsically linked to Mrs X being able to live her life, and continue to do so, as independently as possible and for as long as possible. Not dealing with Mrs X's assessment with the urgency it required means that the Council, in my view, did not fully consider Mrs X's dignity in this regard. I take into account here the feelings Mrs X expressed, that she felt the Council was 'waiting for her to die' (see paragraph 25). I acknowledge what Mrs X says and only she knows how she felt. I ask that the Council reflect on this and my findings and consider how to take forward any learning points.

60. Mrs X's assessment was not completed, and she had no support in place by the time she disengaged from the Council, some 41 days after she advised it that she was terminally ill and 52 days after her first contact with the Council. I find that there was a failure by the Council to take into account Mrs X's personal circumstances during the assessment process. Had this been done, the assessment might have been expedited.

61. Finally, in relation to Mrs X's complaint that the Council did not handle her complaint properly, I **uphold** this complaint.

62. A response to Mrs X's informal complaint was not provided until 23 days after the complaint was made, after a further letter was sent to the Council. No acceptable reason for the delay was provided, although an apology was offered.

63. The formal complaint investigation report was received by the Council on 13 December, the investigation having begun in early November. The Council's response to the independent investigation was sent to Mrs X on 7 February 2019 with apologies for the delay.

64. I find that these failures to comply with the Complaints Policy caused an injustice to Mrs X, who said that she was left feeling that the Council was waiting for her to die so that it did not have to address her complaint. It is also perhaps the clearest indication that the Council did not take into account Mrs X's personal circumstances, particularly her terminal diagnosis.

## **Recommendations**

65. I **recommend** that the following actions are completed within **seven days** of the date of the final report, given Mrs X's health condition:

- (a) the Council apologises to Mrs X for the failings identified in this report
- (b) the Council offers Mrs X the opportunity to have a full integrated assessment undertaken at her place of residence by a single person, in the knowledge that this may be refused.

66. I **recommend** that the following actions are completed within **three months** of the date of the final report:

- (c) the Council undertakes an audit of the monitoring system for the Reablement Service, which should advise the Council of its availability within 48 hours, and addresses any identified issues
- (d) the Council amends its policies to clarify who is responsible for completing a full integrated assessment and arranging appropriate support if the Reablement Service is unavailable within the relevant timescale
- (e) the Council refers this case to its Equalities and Human Rights officer for review and identification of learning points.



66. I **recommend** that the following action is completed within **six months** of the date of the final report:

- (f) the Council commissions training for the First Contact Team on how to ask probing questions during the “What Matters Conversation”, designed to tease out crucial information including current diagnoses and prognoses. The training should also remind the First Contact Team that there are cases where a health need and a social care need interlink and that a person with a health need may still require social care assistance. I note that the Council is in the process of commissioning training in this area, to be delivered by the local Safeguarding Board.

67. I am pleased to note that in commenting on the draft of this report **Pembrokeshire County Council** has agreed to implement these recommendations.



**Abigail Cherry**  
Investigation Officer

8 November 2019

#### **ENDNOTE**

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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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