

The investigation of a complaint
by Mrs X
against Gwynedd Council

A report by the
Public Services Ombudsman for Wales
Case: 201503803

The complaint

1. Mrs X complained, on behalf of her son, Mr X, about how the Council had assessed his needs in March 2015. Mr X, an adult with mild learning disabilities and limited mobility, had been receiving nine hours of one-to-one support a week but this was withdrawn completely. Mrs X was also aggrieved about the inadequacy of alternative services offered by the Council following the withdrawal of one-to-one support. Mrs X was concerned that withdrawing the one-to-one support had a significant detrimental impact on Mr X.

Investigation

2. I obtained comments and copies of relevant documents from the Council and considered those together with the evidence provided by Mrs X. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked.

3. Both Mrs X and the Council were given the opportunity to see and comment on a draft of this report before the final version was issued.

4. I obtained professional advice on this case from one of the Ombudsman's professional advisers ("the Adviser"). Her name is Dr Angie Ash and she is an experienced social worker.

Relevant law, policy and guidance

5. "Health and Social Care for Adults: Creating a Unified and Fair System for Assessing and Managing Care", which provided guidance for Local Authorities and Health Services, was published by the (then) Welsh Assembly Government in 2002. At the time of the events complained about, assessment and management of care of a person with learning disabilities was carried out under this guidance ("the UACM guidance"). This guidance required local authorities to put the service user at the centre of the assessment and care management process, having regard to the Fair Access

to Care Services Eligibility Criteria (“FACS”). FACS set out four factors of independence: autonomy, health and safety, managing daily routines, and involvement. Combining the extent of risk of these key factors provided the framework of eligibility criteria.

6. “Learning Disability Strategy – Section 7 Guidance on Service Principles and Service Responses”, published by the (then) Welsh Assembly Government in 2004, reaffirmed its commitment to principles previously enshrined in public policy, including the right of a person with learning disabilities to be treated as an individual; to be regarded as a full citizen; and for support to live a healthy and independent life. This statutory guidance endorsed the person-centred approach to individual planning with a person with learning disabilities: good quality service and support should reflect an individual’s needs and goals. In setting eligibility thresholds, the 2004 guidance required local authorities to seek to enable a person’s potential and inclusion in community life.

7. The House of Lords found in the Barry case (*R v Gloucestershire CC ex p Barry* (1997)) that it had been lawful for the local authority to take into account its resources when framing its eligibility criteria, but unlawful for it do to that without reassessing the service users’ needs. The effect of this case and subsequent judgments is that social services authorities are entitled to take their available resources into account when framing general eligibility criteria. The principle is subject to various constraints, including: the obligation to reassess, the duty to meet eligible needs and the principle that resources cannot be the sole criterion applied.

8. With respect to the consultation that should be undertaken by the local authority, although there are no strict rules that set the timescales and defined scope and scale of consultation exercises, local authorities may face legal challenge if the process they use is flawed. Before implementing across-the-board restriction of criteria or service cuts, local authorities should consult interested parties and allow reasonable time for consultation to occur. Consultation with stakeholders should be meaningful and not appear to be a sham.

9. The Council's eligibility policy (2007) stated that:

"The four key factors of independence [see paragraph 5 above] are intended to present a holistic view of the person's circumstances and their possible impact on independence. It is not suggested that there is any hierarchy of importance between these factors. For some individuals, some factors may be more crucial than others and it will be through assessment that the importance of these factors for the individual is identified."

10. The Council's assessment of a service user's eligibility was based on the person's problems, circumstances and related risk. The four eligibility Bands the Council used were: One, Critical risk – high need/dependency; two, Substantial risk – substantial need/dependency; three, Moderate risk – moderate need/dependency; four, Low risk – low need/dependency. The Council's policy said the eligibility threshold was drawn between Band 2 and Band 3.

11. The Council's single test for eligibility was the application of the criteria set out in its policy: "there will be no separate criteria operating for different elements of the service". The Council's eligibility policy said there was "no fixed 'menu' of responses to eligible need" and stated "if consequent to a review and reassessment there is a proposed withdrawal or reduction in service, it is essential that the service user is given reasonable notice."

Relevant background information and events

12. At the time of the events complained about, Mr X was a young adult with cerebral palsy and mild learning disabilities who had received one-to-one service support from the Council since he was five years old.

13. On **12 December 2011**, the Council reviewed Mr X's care plan. He was deemed to have substantial needs that fell into Band 2 of the Council's eligibility criteria which meant that he was to continue to have nine hours a week support worker time.

14. On **27 August 2013**, Mr X's care plan was reviewed and it was agreed the support worker package would continue at nine hours per week.

15. On **31 January 2015**, 18 months after the last review was carried out, the Council wrote to Mr X to tell him his support worker service would end on 6 March 2015. He had not been reassessed.

16. On **2 February**, a social worker from the learning disability team (“the Social Worker”) confirmed in an internal communication with the Learning Disability Supervisor that she was giving one month’s notice that Mr X’s support service would end. No care plan review or reassessment of needs had taken place.

17. On **5 February**, the Social Worker was contacted by a worker from another support agency and confirmed that, firstly, the Council was reviewing all one-to-one support and, secondly, Mr X’s needs would be met by him attending group sessions. During this contact, the Social Worker listed places to where she intended referring Mr X. She commented that Mr X would have much to gain from group sessions rather than “the dependency he has with one-to-one [support worker/s]”. The contact record stated that Mr X did not meet eligibility for one-to-one support and the Social Worker felt that the Council had been “over-servicing”. This conversation took place before Mr X’s needs had been reassessed and before any consultation had taken place with him about the Council’s proposals.

18. On **10 February**, Mr X met with three officers from the Council. The minutes of that meeting indicated that Mr X was informed about the intended Socialising Group that was to be set up which would meet every other Saturday for seven hours a session.

19. On **4 March**, the Council’s specialist assessment, undertaken by the Social Worker, said that Mr X’s needs fell into Band 3. Previously, Mr X had fallen into Band 2. The specialist assessment stated “the learning disability team are no longer able to offer one-to-one socialising due to financial constraints on the local authority”.

20. On **6 March**, the support worker hours to Mr X ended, less than five weeks after he was given notice of this, and two days following his reassessment. On **10 March**, three Council staff met Mr X. The Council confirmed to Mr X that his one-to-one support had ended. The meeting minutes recorded: “the 9 hours support that have been provided ... do not meet the eligibility for services criteria of [the Council] (critical, substantial) ...”.

21. On **18 March**, Mr X’s GP wrote to the Council to express concern about the impact this matter was having on Mr X and supporting Mr X’s efforts to have his one-to-one service reinstated.

22. Mr X complained to the Council about this matter and his complaint was independently investigated under stage 2 of the Social Services Complaints Procedure. The investigation concluded in **June 2015**, three months following the withdrawal of Mr X’s support worker hours. The Council still, at that time, had not held any consultation meetings with the service users affected. Mr X was offered an ‘enablement’ service as the Council was of the view that he could undertake more personal tasks for himself, rather than Mrs X undertaking these for him.

The Council’s evidence

23. The Council, when responding to the Stage 2 investigation report, accepted that there had been shortcomings in how this process had been undertaken. It agreed that it should have put in place alternative means of support before withdrawing the support worker hours. The Council accepted that it could have planned these changes better and said it was “taking these lessons on board”.

24. The Council said that its Learning Disability Manager met with Mrs X and Mr X on 3 August 2015 to discuss changes to Mr X’s support package and to offer alternative provision to promote his independence and encourage socialising. It said that group support for 7 hours every 2 weeks was offered, along with an offer to join a local cookery course especially designed for people with learning disabilities. The Council said that it had accepted that alternative means of support should have been put in place before withdrawal of the support service and it regretted that this did not happen.

25. The Council said that the assessment clearly showed that Mr X did not fall into Band 1 or Band 2 of the eligibility criteria and did not therefore qualify for the level of service he was receiving before the care package was changed. The Council said that, despite this, it acknowledged that better preparing Mr X for the changes to come would have made a difference in his ability to accept those changes. It said that it had learned valuable lessons from this case, in particular with regard to managing service users' expectations when their care plan needed to be reviewed.

26. The Council said that, since the conclusion of the investigation of Mr X's concerns, an extensive consultation with service users and their families was undertaken in order to explain why their services needed to change and to provide them with an opportunity to tell the Council what service they wished it to provide for them in the future. It said that this type of engagement with service users would be an ongoing process to ensure that their voices were heard in future.

Professional advice

27. The Adviser noted that the Council told Mr X it was going to end his nine hours a week support worker service some four weeks before it determined his eligibility in a reassessment of needs. She said that in discussing its intention to withdraw the support worker with another agency, the Council stated Mr X's needs [at that point no reassessment of need had taken place] would be met by attending group sessions and noted 'the dependency he has with his one-to-one [support worker/s]'. The Adviser told me that in the same discussion, the Council stated '[Mr X] doesn't meet eligibility for one-to one and we have been guilty of over-servicing [sic]'. The Adviser said that the reassessment carried out on 2 March 2015 therefore took place after the Council had decided to withdraw services and to offer another specific service instead.

28. The Adviser noted that the revised care plan included the Council's care assessor's comment: 'the new [care] plan has been formed to reflect the service that the learning disability team offers'. The Adviser told me that the Council must have regard to the relevant law and policy. The Adviser said that the Council should have followed the UACM guidance and its own eligibility criteria policy. The Adviser said that under the UACM guidance, the

purpose of the assessment was to identify, describe, and evaluate people's needs, circumstances, risks to independence and other aspects of daily life. She said that assessment should start from the service user's perspective of their situation. The Adviser said that eligibility should be determined by comparing the risks to autonomy, health and safety, ability to manage routines and involvement in family and wider community life, with the eligibility criteria for care and support.

29. The Adviser considered that it was a failing of the Council to reach its decision that Mr X would lose his support worker hours before reassessing his needs. The Adviser stated that the Council should not have told Mr X what support he was getting without re-assessing his needs, and talking with him about options to meet his assessed needs. Further, the way in which the Council informed Mr X of the withdrawal of the support worker service (by letter, in a way the Council later acknowledged was 'blunt') was poor practice.

30. The Adviser said that it was also poor practice, and contrary to the direction of public policy to support people with learning disabilities, for the Council to fit Mr X into its service-led response to meeting the service user's needs. The Adviser said that the Council did not give Mr X reasonable notice of its intentions and had not revised its eligibility criteria policy, before withdrawing these services.

31. The Adviser said that Mr X spoke of his desperation when the support service was withdrawn. His GP wrote to the Council to provide his medical opinion of the negative effect the withdrawal of the service was having on the service user. The Adviser said that such negative impact might have been mitigated if the Council had properly reassessed Mr X before telling him of the service withdrawal, and if it had given more thought, and paid greater care and attention, to the possible impact on Mr X, who had had support workers for 19 years.

32. With respect to the consideration given to alternative services and offers of those services, the Adviser said that the Council told Mr X that it was going to arrange 'groups'. Such 'groups', which had not been developed at the time support hours were withdrawn from Mr X (or for some time after that), were intended to 'encourage the introduction of socialising opportunities'.

33. The Adviser said that Mr X's needs should have been reassessed, and a range of ways in which assessed needs might be met should have been considered with Mr X. The Adviser stated that consultation with service users generally, and with Mr X in this case, should have preceded the Council's withdrawal of his support service. The Adviser said that Mr X was not meaningfully consulted about alternative ways in which his needs to socialise could be met.

34. The Adviser said that, given that the Council wanted to provide 'socialising opportunities', she would expect some specifics to be stated about what 'socialising' meant for Mr X. The Adviser was of the view that details about how he socialised, with whom, when, where, doing what, with what flexibility and with what outcome should have been considered. The Adviser said that the Council should have considered alternatives based on the person, i.e. Mr X, and not the service the learning disability team had decided to offer.

Analysis and conclusions

35. In reaching my conclusions, I have been guided by the advice provided set out above, which I fully accept. The advice provided to me indicated that there were a number of shortcomings in the way that the Council handled this process. Firstly, the Council decided to withdraw Mr X's services without first reassessing his needs, as it was required to do. Secondly, the Council failed to meaningfully consult with Mr X about alternative support to meet his assessed needs, as it should have done. Thirdly, from the information I have seen, the Council appears to have followed a service-led, rather than a person-centred, response to Mr X's assessed needs and the changing of his support package.

36. In light of the above, there is clearly maladministration in how the Council undertook the process of Mr X's reassessment, the withdrawal of his one-to-one support service and the offering of an alternative service. Those shortcomings were likely to have caused Mr X significantly more distress than he would otherwise have experienced had the process been properly undertaken. That amounts to a significant injustice to Mr X. I therefore **uphold** Mr X's complaint.

37. As noted above, the Council has accepted that there were shortcomings in how it handled this matter, following the independent investigation, and has taken steps to remedy those (see paragraph 26 above). I have formulated my recommendations in that knowledge.

Recommendations

I recommend that:

- (a) The Council provides, within one month of the date of the report, a fulsome apology to Mrs X and Mr X in recognition of the failings found above.
- (b) The Council offers, within one month of the date of the report, a payment of £500 to Mr X for the significant distress caused by the failings identified above.
- (c) The Council offers, within two months of the date of the report, to reassess Mr X having regard to the comments made by the Adviser about what should be considered when determining Mr X's needs and taking a person-centred approach in respect of how those needs can be met.

- (d) The Council arranges any necessary training, within four months of the date of the report, to ensure its managers and staff are aware of, and act in line with, their statutory obligations and the requirements of public policy, specifically: the delivery of a person-centred approach to assessment and care management; the requirement to reassess the needs of the service user before it withdraws service because of its resource shortfalls; and on consulting meaningfully with a service user about changes it proposes to make to their service support. 'Meaningful' here includes ensuring the service user has reasonable time to make their views known, and to plan and prepare for any changes in support packages that result.

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



Steffan Evans
Investigation Officer

11 January 2016

ENDNOTE

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

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