

The investigation of a complaint by Mr M against Carmarthenshire
County Council

A report by the Public Services Ombudsman for Wales

Case: 201001198

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mr M.

Summary

Mr M complained that the Council had allocated him a property in 2008 which it subsequently stated could not be adapted to meet his needs. Mr M is disabled and the Council had been fully aware of his needs prior to allocating the property to him. The Council advised Mr M to apply for a transfer to a more suitable property, but Mr M did not wish to move again as he and his family had become settled there. Mr M had requested internal adaptations to the property (the fitting of a stairlift and a walk-in shower), and work to improve the external access. The Council stated that the external adaptations were not feasible and would not meet Mr M's needs. It therefore carried out no adaptations to the property for over three years until it reassessed Mr M's needs following Mr M's complaint to the Ombudsman's office in 2011. It then agreed to carry out all the adaptations requested. The Ombudsman found maladministration in the allocation process and throughout Mr M's request for adaptations at the property. There had been no occupational therapy assessment of the property prior to allocation to Mr M, nor was there a full assessment of Mr M's needs for adaptations by either an occupational therapist or social services for over three years after he had moved into the property. The Council did not appear to recognise its statutory social care duties to Mr M, or that his human rights may have been engaged. The Ombudsman upheld Mr M's complaint and made a number of recommendations including an apology to Mr M and a payment of £3000.

The complaint

1. Mr M, a disabled man, complained that Carmarthenshire County Council (“the Council”) had allocated a property to him and subsequently refused to carry out adaptations to the property to make it suitable for his needs. The Council offered to rehouse him in an adapted property, but he did not want to move again as his family had become settled in the property and it was close to other family support. He felt particularly aggrieved as he had made his housing needs clear to the Council when he had initially applied for rehousing.

Investigation

2. Comments and copies of relevant documents were obtained from the Council and considered in conjunction with the evidence provided by Mr M. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked.

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

Relevant Legislation and Guidance

Assessment and Provision of Community Care Services

4. There are a number of statutes that deal with the assessment of need and provision of social care services. The overarching duty on councils to carry out an assessment of need for community care services is set out in the NHS and Community Care Act 1990 (“the NHSCCA”). Section 47(1) of the NHSCCA imposes a duty on councils to carry out an assessment of need for community care services for people who appear to be in need of such services. An assessment is triggered where:

- the person’s circumstances have come to the Council’s attention; and
- the person may be in need of some community care services.

5. Based on the results of the assessment, the Council decides whether the identified needs call for the provision by it of any services.

6. Section 29 of the National Assistance Act 1948 places a duty on councils to make arrangements for promoting the welfare of people 'ordinarily resident' in its area, "aged 18 or over who are blind, deaf, or dumb, or who suffer from mental disorder of any description, and other persons aged 18 or over who are substantially and permanently handicapped by illness, injury, congenital deformity or any other disabilities as may be prescribed by the Minister."

7. The Chronically Sick and Disabled Persons Act 1970 ("the CSDPA") requires a council to provide certain services necessary to meet the needs of a disabled person. The specific services set out in Section 2(1) of the CSDPA include practical assistance for the person at home and assistance in arranging for works of adaptation in the home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience. The obligation under the CSDPA to assist in arranging works of adaptation is a duty that arises once a council is satisfied that it is necessary for this service to be provided to meet the needs of the disabled person.

Adaptations

8. Grants for adaptations to properties on grounds of disability (Disabled Facilities Grants or "DFGs") are covered by the Housing Grants Construction and Regeneration Act 1996 ("HGCRA"). These are mean-tested mandatory grants, for both tenants and owner occupiers, up to a maximum amount of money for eligible works. Section 23 of the HGCRA sets out the purposes for which a grant must be approved. These include works to facilitate access by a disabled occupant to and from a dwelling and to ensure access to a lavatory, wash hand basin and bath or shower.

9. Section 24 of the HGCRA gives details of the two stage approach to determining whether requested adaptation works are eligible for a DFG. Firstly, the Council must determine whether the works are "necessary and appropriate" to meet the disabled person's

needs and secondly, whether it is “reasonable and practicable” to carry out the work having regard to the age and condition of the dwelling. DFGs are available to council tenants. However councils often choose to carry out adaptation works to their own properties outside of the DFG system and this is funded through their housing budget.

10. Welsh Government guidance on DFGs is contained in Annex D of the National Assembly for Wales circular 20/02. It states that “in considering applications for grants towards such works, the presumption should be that the occupant should normally have access into their home, to the main habitable rooms within the home – namely the living room, bedroom, kitchen , laundry facilities and to a bathroom or shower room in which there are suitable facilities for washing and/or showering.”

11. In determining whether works are reasonable and practicable, the circular states that:

“Local authorities as housing authorities need to have regard to a number of factors in deciding whether it is reasonable and practicable to carry out the relevant adaptation works. Each case will present its own problems which need to be resolved in reaching decisions on grant approval but the following are issues which commonly arise in the processing of grant applications:

- a) the architectural and structural characteristics of the dwelling may render certain types of adaptations inappropriate;
- b) the practicalities of carrying out adaptation to smaller properties with narrow doorways, halls and passages which might make wheelchair use in and around the dwelling difficult;
- c) conservation considerations and planning constraints may prevent certain types of adaptation being carried out
- d) the practicalities of carrying out adaptations to older properties with difficult or limited access e.g. steep flights of steps making access for wheelchair use difficult and

therefore making continued occupation of the dwelling open to question;

- e) the impact on other occupants of proposed works which will reduce or limit the existing facilities or amenities in the dwelling.”

12. The Council has a “Policy for the Delivery of Adaptations” (“the Adaptations Policy”) which states that:

“Adaptations in council-owned properties are funded directly through the Housing Revenue Account (HRA). There is no requirement to subject council house tenants to a means-test. This is likely to account for the disproportionate demand from council house tenants compared to private sector tenants. Council house tenants are able to apply for a disabled facility grant and be subject to the prescribed procedure; [the result] of this would be increased pressure on general capital resources and potentially longer waiting times.”

Guidance on ramped access to buildings for wheelchair users

13. Part M of the Building Regulations 2000 (as amended) sets out the standards for creating ramped wheelchair access to buildings. There are two standards, one for public buildings and one for dwellings. Section 6 (which relates to dwellings) states that:

“The provision of an approach which can be used by disabled people, including wheelchair users, will often be a matter of practicability. Variations in topography, available plot area or the distance of the dwelling from the point of access may all influence the type of approach that can be provided.”

14. In order to satisfy the requirement set out in the Building Regulations, a ramped approach should have “individual flights not longer than 10 m for gradients not steeper than 1:15, or 5m for gradients not steeper than 1:12”.

15. The Council’s Adaptations Policy explains its traffic light policy for identifying houses within its stock which are suitable for disabled

tenants. Green properties are those which are wheelchair accessible. Amber properties have an approach with some incline which may be possible to adapt either to suit wheelchair access, or to incorporate graded platform steps for those with limited mobility. Red properties are those which are unsuitable for wheelchair access and are impractical to adapt. Green properties should have a maximum gradient of not more than 1:15 to access the property.

16. In 2006 the College of Occupational Therapists (in conjunction with the then Housing Corporation) produced an advice document aimed at Housing Associations entitled “Minor Adaptations without delay”. It gives practical advice on property adaptations and is accompanied by a technical specification which recommends that the gradient of an access path for a wheelchair accessible dwelling “should not exceed 1:20 and should avoid any abrupt changes in gradient or level”.

Equality Duty and Human Rights

17. The Human Rights Act gives everyone the right to respect for his private and family life¹. This is a qualified right which means that it can be interfered with to protect the rights of other individuals or in the public interest. However any such interference must be in accordance with the law, necessary and proportionate. A council, as a public body, is under a positive duty to prevent a breach of the right to respect for private and family life. The Equalities and Human Rights Commission has recently published guidance to Social Landlords on the Human Rights Act and social housing².

18. From April 2011, the obligation on public authorities to promote equality and eliminate discrimination for ‘protected’ groups (including those with a disability) was strengthened and streamlined by the Equality Act 2010³. This act supersedes existing equality legislation including the Disability Discrimination Act 1995.

¹ Article 8, Human Rights Act 1998

² Human Rights at Home; Guidance for Social Housing Providers, Equalities and Human Rights Commission March 2011.

³ Section 149 Equality Act 2010

Complaints Procedure

19. At the time of the events of the complaint, the Council had a three stage customer complaints procedure. Stage one involved a response from the relevant department, stage two was a further investigation of the complaint by the Departmental Complaints Officer (or other nominated officer) and, if the complainant remained unhappy, he could request that the matter be considered by the Chief Executive. This was the third and final stage of the procedure. It is noted that the Council has now streamlined this to a two stage complaints process which is in line with the Model Concerns and Complaints Policy and Guidance issued earlier this year.

20. There is a separate Social Services complaints procedure. Complaints about Social Services have to be dealt with in accordance with the procedures laid down in legislation. This involves a three stage procedure, the third stage being consideration of the complaint by an independent panel.

A summary of the background events

2006

21. Mr M submitted an application for rehousing (with his partner and two children) to the Council in 2006. At the time of his application, Mr M was living with his family in a private rented property. On his housing application form, which was dated 21 June 2006, Mr M indicated, in response to a question on the form "Are there any specific housing issues that we need to be aware of?" that he was disabled and would need adaptations to any property he was offered. He stated that he found stairs difficult and would need a walk-in shower. A subsequent question on the form asked "Do you have a disability which would affect your choice of accommodation?". Mr M wrote "Ground floor accommodation or a property with stairlift or suitable for stairlift. Need walk-in shower."

2007

22. Mr M subsequently requested a DFG for adaptations to the private rented property. A Occupational Therapist from the Council ("the OT") visited the property on 29 March 2007. There are no notes of this visit nor any correspondence as a result of it, but it appears

that the poor condition of the property and its layout meant that adaptation was impossible. Mr M's needs had also been assessed by a Hospital Occupational Therapist ("the Hospital OT") and her letter to one of the Council's Housing Officers dated 26 March 2007 indicated that Mr M "walks short distances only using elbow crutches. I have ordered a wheelchair for him to be pushed in outdoors so he can access community facilities. He would benefit from a property with level access and nearby parking for the family car." She advised that he should be rehoused "ideally in a property with ground floor bedroom and level access shower, or a property which can be adapted for his individual needs."

23. On 26 June, Mr M's AM wrote to the Head of Housing requesting assistance for the family because of Mr M's "very complex medical needs" and the state of disrepair of his current accommodation. The Assistant Area Housing Manager wrote back on 6 July confirming that "we are well aware of the complexities of Mr [M]'s housing situation." Mr M's MP also wrote to the Assistant Area Housing Manager about Mr M's housing situation. She again responded that:

"We are fully aware of the housing issues that this family are encountering. An environmental health officer has been to the property to inspect and has served an improvement notice on the landlord. In relation to their application for re-housing with ourselves, we will continue to try and to identify suitable alternative accommodation."

24. Mr M was offered a property in December 2007. However, this offer was refused as there were steps up to the property.

2008

25. An offer of an unadapted 3 bedroom house, which had been empty for several months, was made to Mr M in February 2008 which he accepted. He viewed the property and signed the agreement on 5 March 2008. The tenancy started on 10 March 2008.

26. Mr M submitted an enquiry form for adaptations to the property dated 10 March 2008. On the form he indicated that he could not climb stairs, or get to the toilet or shower at the property. He indicated that he needed a stairlift, a level access shower and the paths to the front and back of the house to be raised and fitted with handrails to enable easier access to the property.

27. The OT visited Mr M at the property on **16 June 2008** to assess the adaptations required at the property to meet Mr M's needs. There are no notes of this visit. However, it appears that the OT voiced concerns about the gradient of the path to the house because he felt that it might be too steep to make the property wheelchair accessible.

28. Mr M's MP wrote to the [then] Head of Social Care and Housing on **30 June** expressing concern that the family had been told that the property could not be adapted. He stated:

"They [Mr M's family] had a visit from the Occupational Therapist [...] to assess the disabled works required for the property, and he has now informed them that the property is not suitable for an external ramp that is desperately required for Mr M as he is a wheelchair user. The reason for unsuitability is mainly due to the lay [sic] of the external drains on the existing path. A property some 3 doors up from [Mr M's property] has had an external ramp done outside their home, which is exactly what is required for Mr [M]'s property. A few days after the OT stated this to Mr [M], a technical officer visited the property and he has stated to Mr [M] that the drain would not be a problem. In the meantime, [the OT] has provided Mr and Mrs [M] with an application form to apply to be re-housed due to the unsuitability of this property to have disabled adaptations carried out on it.

...

I am quite surprised that they were originally awarded this property if it was not suitable for their needs – what kind of assessment was done on the family before they were offered this property? There was sufficient medical support letters given with their application form and when they were offered this

house, I would have thought that this would have been the main priority for consideration if the property was suitable for their needs. To ask them to move now would have a devastating effect on the family. They are very happy with this property if the adaptation work could be done. ... I would be grateful if you could look at this as a matter of urgency and that the property is looked at again to ascertain the suitability for disabled works so that the problems can be dealt with as soon as possible.”

29. One of the Council’s Home Improvement Officers (“the first HIO”) had also visited the property in June 2008 because of the concerns raised about adapting it. He did not take any photographs or measurements, rather paced out the distance to determine whether a wheelchair accessible ramp at the property was feasible or not. There are no notes on file about this visit. The first HIO was then off work for a period of time but he confirmed by email on 22 September 2008 his view that “ramped access would not be achievable as a straight run from gate to front door”.

30. Mr M’s MP wrote again on 28 October as no reply had been received. The Council confirmed that this letter would be treated as a complaint and investigated under stage 1 of the Council’s complaints procedure. A response was sent on 11 November from the Home Improvement Team Manager. He stated:

“I sympathise with Mr [M]’s circumstances and officers have previously explained the issue relating to the adaptation request.

The request by Mr [M] for a ramped access, or other means of entry to his property, has been considered at length. Having regard to the property and guidance issued by the Welsh Assembly it is clear that [Mr M’s property] cannot be provided with a ramp which would be deemed reasonable, practicable, safe and lastly comply with regulations that apply.

The ramp provided at [the neighbouring property] is not recent and would not comply with the current standards adopted.

Having regard to the allocation in early 2008, I am advised that Mr [M]'s previous accommodation was totally unsuitable for his needs and also in poor condition. It is my understanding that there was some urgency at that time to identify a suitable property and [Mr M's property], being partly adapted, seemed more than adequate, given the circumstances.

I am sure that Mr [M] is disappointed that a new ramp cannot be provided for this property, however, the department now wishes to address his long term needs. I am more than happy to liaise with the Area Team to identify a transfer to a more suitable property."

31. There was further correspondence from the MP in December 2008 concerning the adaptation of the property. An offer of an alternative property had been made but Mr M was concerned that it was away from his family and friends and he wanted to stay at the current property. The response from the Council from the then Principal Health Assessment Officer ("the PHAO") reiterated that the adaptation request "has been refused having regard to the Authority's Adaptations Policy and the WAG guidance and is based on the fact that the property cannot be made accessible with a ramp that would be deemed reasonable, practicable, safe and lastly comply with the regulations that apply. The decision has been verbally conveyed to Mr [M] and I will now ensure that he receives it in writing"

2009

32. It seems that, following the above correspondence, Mr M's sister (on Mr M's behalf) spoke to the Council's Complaints Officer on 14 January 2009 to again highlight Mr M's outstanding concerns. It was recorded that she had requested a meeting. A subsequent file note of 19 March 2009 indicates that a Complaints Assistant identified that no action had been taken following the conversation between the Complaints Officer and Mr M's sister in January. It is recorded that the Complaints Assistant spoke to the Assistant Area Housing Manager about this and as there had been no further correspondence from the family in the time that had elapsed, it was

decided that no further action would be taken. It is recorded that Mr M's sister subsequently contacted the Complaints Department on 30 April asking why she had not heard from the Council following her request to take her complaint further. The matter was therefore escalated to stage 2 of the Council's complaints procedure. The complainant's desired outcome was stated as being a "full investigation as to what went wrong with the delay in the complaints procedure and a full assessment of Mr [M]'s needs to receive adaptations to enable him to have a good quality of life". The Complaints Assistant also recorded that she [the Complaints Assistant] had "requested that a Social Worker visits to assess and support Mr [M]."

33. The stage 2 complaint was referred to a project manager within the Housing Department ("the Project Manager") to investigate. He visited Mr M at home on 8 May 2009 to discuss the details of the complaint with him. It appears that as part of his investigation into the complaint, he requested that the feasibility of ramped access was reassessed by the Home Improvement Team. On 31 July 2009, the Principal Home Improvement Officer and a second Home Improvement Officer ("the second HIO") visited Mr M's property and took some measurements of the levels to consider the possibility of creating a ramped access. There are no notes on file about this visit. The matter was then referred to the Council's Residential Design Team within Building Services. A Technical Officer visited the property on 20 August 2009 and took photographs and measurements. From these details, and following further discussion with the Home Improvement Team, the decision was that a ramp that complied with the regulatory requirements could not be constructed at Mr M's property because of the length and steep gradient of the path down to the front door.

34. In the meantime, the Project Manager had left the Council and the stage 2 investigation remained unfinished. The investigation was therefore transferred to the Head of Public Protection. Mr M was notified of the change of investigating officer in writing on 8 December 2009. A final response detailing the outcome of stage 2 of the

complaints procedure was dated 18 December. In it, the Head of Public Protection stated that:

“I am satisfied that [Mr M] has not been treated unfairly in his request for the adaptation of [Mr M’s property]. The needs of [Mr M and his family] were known to Officers at the time of his original application for housing accommodation when he and his family lived in an unfit house [...], but an adapted property in [Mr M’s areas of choice] was unavailable at that time. [Mr M’s property] was one of two offered to [Mr M] and although non adapted, it was the best option. I have noted that [Mr M] wanted that particular house and records indicate⁴ that he was satisfied with its non-adapted state and its condition.

I am also satisfied that [Mr M] has not been unfairly treated in the application of the Council’s Adaptations Policy. A number of Officers have explained the reasons behind the decision not to undertake works to [Mr M’s property] and those have been given in writing to [Mr M] and his Member of Parliament.”

35. The Head of Public Protection also noted Mr M’s complaints about the lack of social care assessments relating to Mr M. He established that there had not been any contact between Mr M and social care staff for some time and as a result caseworkers had not been assigned to him. He therefore wrote to the Head of Integrated Services requesting that a Social Services caseworker be assigned to Mr M in order to restore the contact with Social Services.

2010

36. Mr M remained dissatisfied with the response to his complaint. He maintained that he did not wish to move and that he wanted the adaptations to be carried out at the property. Therefore the complaint was escalated to stage 3. A written response was given following a telephone discussion with Mr M’s sister about the points of complaint that remained outstanding. The response reiterated that Mr M had

⁴ My investigator has seen no notes or records on the Council’s housing file relating specifically to any discussion or agreement as to the condition or non-adapted state of the property. The only document is the standard tenancy agreement signed by Mr M.

“accepted the tenancy [...] fully knowing its condition and there is no record of any discussion relating to the possibility of its future adaptation or its state of repair. If Mr [M] was not satisfied with the condition of the property for any reason at all, he should have rejected it.” The best long term solution for the family, the letter stated, was to be rehoused in a property which was specially adapted to suit their needs. Complaints in relation to the lack of Social Services assessments could not be dealt with under the Corporate Complaints Procedure, as there is a specific statutory complaints scheme for Social Services complaints. Details of this aspect of the complaint were forwarded to the Social Care complaints team for consideration under the statutory Social Care process. [Note: My investigator has seen no documentation to indicate any further consideration of this under the Social Services complaints procedure or that any specific response was given to Mr M.]

37. Mr M remained unhappy with the Council’s response to him and his unresolved housing situation. He wished to stay at the property and have the relevant adaptations done. He therefore complained to my office in November 2010.

38. Following the intervention of my office, the Council arranged for Mr M’s housing needs to be reassessed by another OT. The result of this was that Mr M did not require a wheelchair accessible ramp, rather a widened, resurfaced path with a handrail to the door of the property. Relevant external and internal adaptation works were agreed. This included the provision of a stairlift so that Mr M could access the bathroom and the fitting of a level access shower.

A summary of additional evidence provided by Mr M

Rehousing and Adaptations

39. Mr M stated that he had been visited in March 2007 by the Council’s OT at his previous private rented property but had been unable to get a DFG for adaptations to that property due to its poor state of repair and unsuitability for adaption. He did not receive any paperwork from the OT in relation to that visit, but he had been seen by the Hospital OT who had written to the Council concerning his rehousing needs. He explained that the bathroom in that property

was downstairs so he had access to it, but he was unable to get up the stairs to access the bedrooms. He had already made an application for a Council property but no suitable property in his areas of choice had become available.

40. Mr M stated that, following his rehousing application, he had met with the then Assistant Area Housing Manager to discuss his current problematic housing situation and the availability of housing for disabled people. He said that the Housing Manager was aware of his housing needs, but that no suitable properties were currently available in any of his areas of choice.

41. In February 2008, Mr M said that he was offered a property by the Council. It was in one of his areas of choice and was suitable for his family. He viewed the property with his sister, his partner and a friend. He said that neither he nor his sister went to look at the upstairs of the property because they were not able to get up the stairs (Mr M said that he was walking with the aid of crutches), but his partner and friend did view the upstairs. He said that he spoke to the Housing Officer about adaptations and the Housing Officer indicated that Mr M would have to apply but that there should be no problem. Mr M accepted the property and moved in. Mr M completed the form to apply for adaptations when his tenancy began.

42. The OT visited Mr M at the property in June 2008 as a result of Mr M's application for adaptations. The OT told him that he did not think that the outside of the property could be adapted for wheelchair access because of the gradient from the road to the front door. Mr M said that the OT did not undertake any further assessment of the inside of the property and did not go upstairs. The OT advised Mr M that he should think about applying for rehousing. Mr M was extremely upset at the thought that he might have to move again.

43. Two days later, a technical officer from the Council visited to assess whether a ramp could be built to enable wheelchair access to the property. Mr M said that the technical officer said that it might be 'doable'. The following day, a Housing Officer visited with a housing application form and a verbal offer of a property in a different area.

According to Mr M, he indicated that he had been asked to visit by the OT, but was unable to give Mr M any further detail about the situation with the adaptations. Mr M said that he later found out that the technical officer had stated that an access ramp could not be provided as a straight path between the pavement and the front door within the required maximum gradient.

Complaint

44. Mr M explained that the complaint had begun because a letter from his MP asking for responses to his queries (about the reason why the property could not be adapted) was treated as a complaint by the Council. Mr M said that he was disappointed at the brief response to the stage 1 complaint by the Home Improvement Team Manager. No one had actually contacted him to discuss his complaint.

45. At stage 2 of the complaint, Mr M explained that the matter had been referred to the Project Manager who had come out to visit them. Mr M felt that he was helpful. He listened to the concerns at length, made copious notes and also suggested possible avenues for resolution of the situation, such as a possible meeting with the Council staff involved to discuss a way forward or perhaps Mr M signing a waiver about the gradient of the path. Mr M felt that these were good and helpful suggestions. Later on, in August 2009, Mr M said that two surveyors from the Council attended his property unannounced and took some measurements in the front garden.

46. However, Mr M said that he received no further response in respect of the stage 2 investigation and it transpired in October 2009 that the Project Manager had left the Council. The stage 2 investigation was therefore transferred to the Head of Public Protection. Mr M felt that his written response was unsatisfactory. He felt that he had not been given a specific reason why there could not be a ramp to the front of the property. He therefore asked for the complaint to be dealt with at stage 3 of the complaints procedure. Mr M complained that the Council then did not follow its own stage 3 complaints procedure. He had been expecting an independent panel to hear the complaint and hopefully provide some resolution. Instead the stage 3 officer telephoned Mr M's sister at home and went

through the complaint with her over the phone. Mr M's sister said that she was not happy with this at all as it put her under pressure in case she forgot to mention things.

Social Services

47. In respect of Social Services' involvement, Mr M stated that he had become so upset when the OT had indicated that he might have to move again, that the OT had suggested that they contact Social Services for some assistance. Therefore Mr M's sister said that she contacted Social Services for help and a social worker was allocated to Mr M. He was involved in Mr M's case for a while, but then nothing further was heard from him. When Social Services were contacted, Mr M was told that the social worker had left. Mr M's case had not been passed on to another social worker to deal with. After further contact with Social Services, Mr M said that he was allocated another social worker. She carried out a lengthy home visit which appeared to go through Mr M's housing history and the history of the complaint. Mr M said that the social worker asked about whether he had care needs that required outside assistance. He said that his partner helped him and that he therefore did not need any outside carers. He said that the social worker was aware that he was sleeping downstairs but neither she, nor any other social worker or OT made any enquiries as to how he was managing with day to day hygiene or getting in and out of the property.

48. Mr M stated that after this visit from the social worker, he heard nothing further from her or from Social Services. Mr M's sister therefore made a further referral to Social Services to ask for assistance in dealing with the problem with the adaptations. The response was that Social Services do not provide advocacy services and that there were other organisations who could offer assistance with this.

49. Mr M explained that he used a wheelchair for travelling distances outdoors. He said that he had a self propelled wheelchair but was unable to propel it himself due to problems with his wrists. He said he is able to mobilise around the ground floor of the house using elbow crutches and able to walk using crutches up the front path to

the road. His friend or partner will then bring the wheelchair for him to use outdoors and/or put it in the car. He said that he had only been upstairs in the house on around three occasions since he had lived there due to the pain, difficulty and risk of getting up and down the stairs. There was no timescale in terms of any progression of his condition and symptoms. He said that whilst it may be that at some point, he will need to use the wheelchair all the time, it might also be the case that he would never be a permanent wheelchair user.

50. Mr M was pleased that the Council had now agreed to carry out the adaptations. However, as he had originally requested these adaptations on his housing application form in 2006 and on the original DFG enquiry form in 2008, he did not understand why the Council had not agreed to undertake this work much sooner.

A summary of the Council's evidence

51. In its formal written response to my investigator, the Council stated that it processes enquiries for adaptations for its own tenants in the same way as for a DFG and relies on an assessment carried out in accordance with the National Assembly for Wales circular 20/02. In Mr M's case, the adaptations were considered as a Council Property Adaptations ("CPA"). The Council explained that this differs from the process for a DFG in that a DFG requires a formal application accompanied by a means assessment of the tenant, whereas a CPA is funded, with the work being undertaken by the Council in its capacity as landlord.

52. The Council stated that, in Mr M's case, the critical issue in providing adaptations related to the practicality of accessing the property with a wheelchair as the property is set well below the level of the public highway. Various officers had considered the technical aspects of ramping but it was clear that this could not be achieved in compliance with building regulation requirements, as the slope from the front gate is too steep. Without being able to provide safe access, the decision, based on National Assembly for Wales circular 20/02 (specifically paragraphs 40 and 41), was that the property could not in the circumstances be adapted as it was not reasonable, practical or safe. This was advised to Mr M throughout. Circular 20/02 specifically

mentions the practicalities of carrying out adaptations where access is an issue (paragraph 4d). The principal reason for unsuitability for adaptation related to the topography of the front garden from the public highway to the front door of the property. Building regulations require ramps for disabled access to meet a maximum gradient of 1:12 (over a short distance) which it was assessed could not be met. The Council also cited the guidance from the College of Occupational Therapists which advised a gradient no steeper than 1:20 along the length of the path. The Council indicated that it had not considered internal adaptations on the basis that adapting the bathroom and providing a stairlift in isolation would not provide Mr M with an appropriate dwelling for his needs in that the property could not be accessed safely because of the slope. The Council highlighted the fact that it has sought over the period of the complaint to identify alternative adapted properties for Mr M in an attempt to resolve his housing situation; however, unfortunately none of these had proved suitable.

53. The Council's response also referred to input from Social Services, including home visits; however the Council noted that the records indicated that Mr M attended to his own personal needs. The Council stated that the complaints documentation indicated that Council officers tried to assist Mr M whenever they were in contact with him, including advice on the need to make an application for re-housing to a specially adapted property that would meet his longer term needs and those of his family. The Council further stated that Mr M had had his concerns considered at the three stages of the Council's complaints procedure.

54. The Council confirmed that in line with its traffic light policy (to easily identify homes which are or can be adapted), Mr M's property was now classed as a red property because of the access problems. Given the Council's extensive housing stock, the Council's approach is to assess and record the classification of properties in this regard as and when they have either been improved or adapted over time.

A summary of what Council Officers said

55. My investigator sought additional evidence from discussions with Council Officers involved in Mr M's rehousing.

Housing Staff

56. The Assistant Area Housing Manager explained that the Council's processes had changed since the time of this complaint. All applications are now processed centrally by an assessment team so any specific accommodation requirements can be identified at an early stage. If necessary, a Housing Options Adviser will visit the applicant. The Assistant Area Housing Manager stated that there are property descriptors on the Council's computer system which identify any adaptations at a property such as ramps, walk-in showers etc. Properties are now categorised using the 'traffic light system' to indicate whether they are suitable for adaptation. There is also a panel to make sure that adapted properties are allocated to the applicants who would most benefit from the adaptations; therefore the available properties can be matched more effectively to the needs of applicants.

57. The Assistant Area Housing Manager recalled discussing Mr M's housing situation with Mr M and his sister. Whilst Mr M was on the housing list, no three-bedroom fully adapted properties had become available. She recalled that the family had been very interested in the property when it was identified as available. She said that it had been described as partly adapted in the Council's records, but could not recall why this was. As the family wanted the property she said that she asked the Housing Officer to undertake the letting and she had no further involvement in the process.

58. The Housing Officer confirmed that he had undertaken the viewing in February 2008. He said that he was not able to remember whether Mr M went to look at the upstairs of the property, but that had he appeared unable to, that would clearly have 'rung alarm bells' about the suitability of the letting. He did recall that Mr M mentioned adaptations during the viewing, and that he [the Housing Officer] stated that any adaptations would be done through application to and assessment by the Home Improvement Team. He did not recall Mr M

requesting information on specific adaptations, such as a stairlift or ramp. He said that he certainly did not promise that adaptations would be done at the property as this was not his role.

59. The Housing Officer confirmed that the housing file, containing the original application form and supporting information, would have been available to him prior to the letting. However, he indicated that Housing staff would always try to be helpful and ask applicants if they wish to consider something else, if an ideal property is not available. It then becomes the applicants' decision as to whether a property is suitable and whether they wish to accept it, unless of course there was an obvious reason why it was unsuitable.

Home Improvement Team

60. The OT confirmed that he had visited Mr M in his previous privately rented property to assess for adaptations. He confirmed that the property was not suitable for adaptation because of its substandard state of repair and the narrow stairway which could not accommodate a stairlift. The OT stated that he did not write a report as, following his visit, he was made aware that the Hospital OT had recently done a full assessment of Mr M's needs and had written in support of his housing request.

61. Following Mr M's move to the current property, the OT had been asked to visit Mr M at his property concerning the adaptations. The OT confirmed that he did not make any notes or take any measurements during his visit; he had been asked to assess whether the adaptations were feasible and he gave a verbal report to the PHAO on his return to the office. He said he could see that the gradient of the path down from the road to the front door was significant. He recalled having a conversation with Mr M about his concerns regarding the external access and that a transfer to a different property may be more appropriate. The OT stated that the stairway appeared to be wide enough for a stairlift to be fitted, though he did not carry out a full assessment of the property for Mr M's needs at that point as he was aware of the previous assessment by the Hospital OT (which had indicated that Mr M needed level access to the property suitable for a wheelchair user) and there was no

requirement to redo this. The OT recalled that when he visited Mr M at his property, Mr M was mobilising for short distances using crutches, but with difficulty. For longer distances outdoors, he used a wheelchair. In respect of getting up and down stairs, the OT said that sometimes people do manage with difficulty using specific coping strategies and the assistance of others, but in Mr M's case, getting up and down the stairs, if he could manage this at all, would have been associated with a high degree of risk.

62. The OT confirmed that it was generally not the practice at the time for an OT assessment of a property to be undertaken prior to a tenant moving in, though it was much more likely now that such an assessment would be done to ensure that a property would meet the needs of the prospective tenant. He confirmed that the Council now operates a system where properties which are suitable for adaptation are designated as 'green' properties. It was the intention that in time all properties will be classified in this way. The OT confirmed that the standard for ramped access to houses used by the Council was a 1:15 gradient. This was felt to be the safest and most practical standard to use given the building regulations and OT guidelines. Whilst there may flexibility over short distances where the building regulations provide that a 1:12 gradient can be acceptable, the OT's view was that over longer distances a 1:15 gradient or shallower was necessary because of the effort required to push a self-propelled wheelchair over longer distances (or if pushing someone else) is so great. A level 1.2 metre platform is required at the entrance to the property and at any turns in the ramp and this has to be factored in when looking at the feasibility of creating the access.

63. The first HIO explained that he had been asked in 2008 by the then PHAO to give an opinion on the feasibility of creating a ramped access to Mr M's property. This was due to concerns raised by the OT after his visit in June 2008 about the steepness of the slope of the front path. The first HIO explained that it was preferable to try and create any ramped access in one straight run. Whilst a ramp with turns could be created to try and lessen the gradient, this was more difficult because of the necessity to create level landings at each turning point. This had to be factored into the total distance. To

consider this option, a full survey with levels would have been required. He had not been asked to do this; rather he had been asked for an opinion as to whether a wheelchair accessible ramp was feasible at the property. By pacing out the distance, it was his view that it was not. The property was not suitable for a wheelchair user and would therefore be classified as a red property under the Council's policy.

64. The second HIO said that she had become involved in Mr M's case in 2009 at the request of the then PHAO. She understood that this request to look at the matter again was a result of the investigation of Mr M's complaint at stage 2 of the Council's complaints process. She confirmed that she had visited the property with the Principal Home Improvement Officer. Measurements and levels were taken. She stated that a number of different options were explored including creating an access via the back door but there were difficulties with all the options considered. The matter was then forwarded to the Residential Team who is responsible for drawing up design plans for specialist adaptation/alteration works. On 20 August 2009, one of the technical officers from this team visited the property. He confirmed that he took photographs and measurements at the front of the property, and on the basis of these, he concluded that a ramp could not be constructed within the guidelines (that is the building regulation standard of a 1:15 gradient) in the space available. It was certainly impossible to achieve the relevant gradient in one straight ramp. In devising a ramp with turns, it was necessary to take account of the length of the landings that were required at each turn, and the required 1.5 metre width of the ramp and any edging. A scheme could have been devised that would zig-zag the whole garden, but even this, in his view, would not have achieved the relevant gradient and would be extremely difficult for anyone in a wheelchair to negotiate.

Analysis and conclusions

65. There are several aspects of this complaint that I have to consider. These are:

- The allocation of the property to Mr M;
- The manner in which the Council dealt with Mr M's requests for adaptations to the property; and,
- The manner in which the Council dealt with Mr M's complaint.

Allocation

66. The Council had more than enough information in its possession about Mr M's situation to enable it to make an offer of accommodation appropriate to Mr M's needs. Whilst the Council was right to consider all options, given the lack of availability of an adapted house at the time, it should have arranged for an OT to visit the property before it was let to Mr M to ascertain whether it could be adapted to meet his needs. Discussions in respect of any adaptations could have taken place, and been documented, before Mr M took the tenancy. Any problems could therefore have been addressed at an early stage. Mr M was happy with the property and he reasonably assumed that the relevant adaptations could be made; it was the Council who subsequently decided that the property was not suitable for adaptation. It should have considered the suitability of the property before the letting and its failure to do so amounts to maladministration. Throughout there seems to have been confusion about the differing interpretation of what 'level access' means. The Council's HIO and OT have taken this to mean 'wheelchair accessible'. Mr M on the other hand uses 'level access' to mean without steps. A proper assessment and discussion with Mr M at the outset would have clarified any misunderstanding here.

67. I note the comments made by officers that the current system for allocations has changed and is now managed via a central housing allocations team. Therefore, they say, it is much easier to collate information on applications and match up properties with the needs of the applicant. Any improvement in the system is to be welcomed, but it remains a concern that crucial information provided by the applicant in relation to his housing and adaptation needs was overlooked.

Adaptations

68. It is accepted, from the documents that my investigator has seen, that the gradient at the front of Mr M's property is such that a wheelchair accessible ramp cannot be constructed which would fully meet the requirements set out in the building regulations (that is a 1:15 gradient along its length). However, as stated above, this should have been identified by the Council and resolved before the property was allocated to Mr M.

69. I am extremely concerned that between the start of the tenancy in March 2008 and August this year (over 3 years) there was no full OT or Social Services assessment of Mr M's needs at the property. There is no documented consideration given to doing the internal adaptations to the property during these 3 years to enable Mr M to access proper washing facilities and participate fully in family life at home. The Council does not appear to have considered or asked Mr M how he was managing in the interim.

70. The Council was aware that it had allocated Mr M a property where he had no access to a toilet or washing facilities and, in its view, there would be problems for Mr M getting in and out of the property. The OT has stated in his evidence that any attempt by Mr M to get up the stairs, if indeed he could manage it at all, to access the bathroom would have entailed a high degree of risk. The lack of access to basic facilities at home can only have had a detrimental impact on his dignity and wellbeing. The Council appeared content to allow Mr M to continue to live in these difficult circumstances until he agreed to move. I find this wholly unacceptable.

71. As outlined in the legislation section of this report, the Council has a statutory duty to carry out an assessment of those who may be in need of community care services. It also has a statutory duty under the CSDPA to provide specific services, including assistance in arranging works of adaptation in the home. It seems to me that the Council failed to fulfil its duties in these respects. I am concerned that there were numerous contacts between Mr M and Social Services, yet none of these resulted in any further action by Social Services. There appears to have been no recognition by the Council of its

duties to Mr M under social care legislation. In addition, there is no evidence of any joint working between Social Care and Housing in this case, despite both being part of the same Social Care and Housing Department within the Council.

72. The Council, as a public body, has a positive duty to ensure that Mr M's right to respect for his private and family life is not unduly interfered with. The situation that Mr M found himself in, as a result of the Council's maladministration, compromised his access to basic facilities and his ability to participate in his family life. The Council's actions, in the specific circumstances of this case, in failing to carry out a proper needs assessment and giving no consideration to carrying out internal adaptations, could be construed as interfering with this right. In my view, Mr M's human rights were potentially engaged and there is no evidence to show that the Council considered this.

Complaint

73. The complaint started when the Council treated a letter from Mr M's MP as a complaint. This was good practice given the content of the letter and the fact that the matter remained unresolved. However, the first complaint response was very brief and vague. It refers to the property as partly adapted, though there is no documented reason, and the Council has been unable to tell my investigator why the property was classified in this way. It also does not specify the exact reason why the Council had decided that a ramp to meet Mr M's needs could not be provided (that is because of the gradient). It does not acknowledge, and none of the responses from the Council has ever acknowledged, that the Council was at fault during the allocation process. The Council has consistently chosen to lay the responsibility at Mr M's door.

74. At stage two of the procedure, there was significant delay at the start when no action was taken in respect of Mr M's sister's contact with the Council. When the stage two investigation took place, it appeared to be thorough and further visits to the property were undertaken by Home Improvement Team staff to look at whether a ramp could be constructed. However the officer undertaking the stage

two investigation left and the matter was passed to a different officer causing further delay. The final stage two written response did not identify that there was a potential failing and appeared to justify the allocation of an unsuitable property to Mr M on the grounds that he had accepted it. Likewise, the stage three response failed to address the central point of the complaint, which seems to have become lost in a sea of other detail. Yet another opportunity to review matters and try to resolve the situation by arranging a full assessment of Mr M's needs slipped by.

75. The stage three response to Mr M's complaint did acknowledge that he had complained about a lack of social care assessments and it was stated that this complaint was forwarded to the social care complaints team. I have seen no further correspondence or documents in respect of this part of the complaint. I am also concerned that the Council, at each stage of the complaints procedure, has referred to the consideration of Mr M's long term needs as a reason why he should move. This reasoning lacks any credibility when it is considered that the Council allocated the current property to Mr M without any assessment as to whether it was capable of meeting his current needs, let alone his needs in the longer term. I have seen no evidence of any assessment or projection of Mr M's possible needs in the longer term on the Council's files.

76. I have also considered Mr M's specific complaint about stage 3 of the complaints process, in that he was expecting an independent panel to hear his complaint and this did not happen. It seems to me that there has been some confusion here. The independent panel hearing is part of the statutory social services complaints process. It is not part of the Council's corporate complaints procedure that Mr M was following in terms of his complaint about his housing situation. I therefore find no fault with the process followed by the Council at stage three.

Overall Conclusion

77. I accept that the Council found itself in a difficult situation. It had allocated a property to a disabled tenant and later found that the property could only be adapted to a standard slightly short of that

required by building regulations. However, its explanations to Mr M about the reasons for the decision not to build a ramp were not specific, there was no acknowledgment by the Council of its role in relation to the allocation nor was sufficient attempt made to find a resolution to the problem, other than telling Mr M that he must move. No assessment of Mr M's needs at the property was carried out. These failings amount to maladministration and I **uphold** Mr M's complaint.

78. The result of the maladministration identified in this report is that Mr M has had to wait over three years for basic and essential adaptations to his home. During this time, he has had no access to a toilet or bathing facilities at home and has been unable to access the upstairs of his home. He has also been put through the stress of being told that he and his family would have to move house again to get those basic facilities.

Recommendations

79. The Council should consider carefully the content of my report and the significant failings identified within it. In its response to a draft version of this report, the Council has highlighted the improvements that it has made since the events of this case. I welcome the positive action already taken by the Council, which includes:

- A full assessment of Mr M's needs and undertaking relevant adaptations to his property,
- Establishing an Accessible Housing Register (AHR) in 2010 [the Council has had an AHR procedure since April 2011] for council properties to ensure the best use of its adapted housing stock. This procedure involves Housing Officers, Home Improvement Officers and Occupational Therapists at a early stage in the allocation process,
- Streamlining its complaints procedure to a two stage process in line with the Model Complaints Policy for Wales.

- A proposal that the Home Improvement Manager will carry out an audit of all open Home Improvement cases to ensure that the circumstances highlighted in this case are not replicated in any other cases.

80. In addition to the action outlined above, I am pleased to note that the Council has agreed to carry out the following recommendations:

- a) To ensure that, as soon as possible, all the agreed adaptations to Mr M's property have been completed to an appropriate standard.
- b) To give Mr M a full written apology for the shortcomings outlined in this report.
- c) To make a payment of £2750 in recognition of the distress caused to Mr M by the lack of proper assessment and the resultant delay in carrying out appropriate adaptations at his property. An additional payment of £250 should also be made to cover Mr M's time and trouble in having to pursue his complaint to my office.
- d) To ensure that Social Care and Housing staff are aware of their statutory duties and their obligations under the Human Rights Act. Staff should be aware of the content of the EHRC guidance to Social Landlords referred to in paragraph 17 of this report and training for staff should be provided if necessary.
- e) To review and improve its standard of record keeping within the Housing Department.
- f) To work towards ensuring that its Accessible Housing Register procedure covers properties from all registered social landlords in the county. In addition, the procedure should enable identification of properties which have the potential to

be adapted to make them suitable for disabled applicants. The Council should regularly review the operation of the AHR to ensure that it is appropriately meeting the needs of disabled housing applicants and improving the service available to them.

Peter Tyndall
Ombudsman

Date: 22 December 2011