

Special Report issued under s28 of the
Public Services Ombudsman (Wales) Act 2019
following a complaint made against
Cardiff Council

A report by the
Public Services Ombudsman for Wales
Case: 202002933

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Introduction

This report is issued under section 28 of the Public Services Ombudsman (Wales) Act 2019 (“the Act”).

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 the Member of Parliament (MP), the Aggrieved Person as Mr A, and to any members of staff of Cardiff Council by their post designation.

Summary

Mr A complained to the Ombudsman in March 2020, via his MP, that, having agreed to complete an independent assessment of his needs in early 2019, Cardiff Council had failed to do so. In accordance with his powers, the Ombudsman resolved the complaint (as an alternative to investigation) on the basis of the Council's agreement to conduct an independent assessment of Mr A's needs. This action was to be completed by 27 September 2020.

Being dissatisfied that the Council (without reasonable excuse) had failed to comply with the earlier recommendation, the Ombudsman invoked his powers to issue a special report. This was critical of the Council's failure to implement the recommendation it had previously agreed to with no evidence of proactive attempts on its behalf until it was sent the draft special report for comment. Therefore, the Ombudsman made further recommendations and the Council agreed to:

- a) Complete an independent assessment (undertaken by someone who is not an employee of the Council) of Mr A's needs by 31 January 2021.
- b) Provide a weekly update to his office about the progression of the independent assessment.
- c) Provide a copy of the independent assessment to his office once completed.
- d) Issue an apology to Mr A in writing (within 1 month), with a copy to the MP, for the delay in completing the independent assessment. It also agreed to provide a copy of the letter to the Ombudsman's office.

My jurisdiction

1. Under the provisions of the Act, pursuant to s6, I am able to take any action I consider appropriate to resolve a complaint as an alternative to investigating it. This can include agreeing with a relevant body that it will take certain actions within a stipulated time. Where I am not satisfied that the relevant body has carried out the actions it explicitly agreed to undertake within the time specified, I may issue a special report under s28 (6) of the Act.

The background

2. Mr A is a vulnerable man who has a personality disorder and a visual impairment. He is known to Cardiff Council (“the Council”) and to his MP, who has been advocating for him for some time. Mr A is housed in accommodation provided by the Council and is supported by the Council’s Adult Social Services Team.

3. On **3 March 2020** the MP on behalf of Mr A, complained to me that the Council had failed to complete an independent assessment of Mr A’s needs. He said that the Council had agreed to undertake an independent assessment of Mr A’s needs following a meeting between the MP’s Senior Caseworker and his Office Manager, and Cardiff Council in early 2019.

4. On **4 May** (after enquiries from my office) an officer in the Council’s Complaints Team (“the Officer”) said that the Council had not refused to arrange an independent assessment of Mr A’s needs. He said that social workers who were employed by the Council, but not assigned to Mr A, had completed assessments of Mr A’s needs in March and September 2019. The Officer said that he did not realise that the request was for Mr A’s assessment to be independent of the Council. The Officer suggested that the Council may be able to resolve Mr A’s complaint by completing an independent assessment of his needs.

5. The same day my office asked the Officer whether, considering any difficulties caused by measures imposed due to the COVID-19 pandemic, it would agree to complete an independent assessment of Mr A’s needs

within 4 months. My office informed the Officer that if the Council encountered any difficulties arranging such the independent assessment due to unexpectedly prolonged COVID-19 measures being implemented, then an extension to any agreed timescale could be discussed.

6. On **27 May** the Officer informed my office that the Council agreed with the proposal to resolve Mr A's complaint.

7. The matter was formally closed on **28 May** on the basis that, within 4 months, the Council would arrange to complete an independent assessment (undertaken by someone who was not an employee of the Council) of Mr A's needs. This meant the Council had agreed to complete the assessment by **27 September**.

Implementation of action

8. An update was requested from the Officer on **8 October**, as nothing had been heard by the deadline for completion. On **15 October** the Officer informed my office that the independent assessment had not been completed.

9. The Officer said that he took responsibility for not completing the agreed action within the agreed timeframe. He added that the last few months had been very challenging due to several Complaints staff leaving and that it had taken some time to replace them. The Officer said that he had briefly discussed the agreed action with a colleague in the Adult Social Services Department and the feeling was that the Council would struggle to complete the agreed action owing to the local restrictions due to COVID-19. He acknowledged that this had not been communicated to Mr A, nor to my office.

The Council's comments on the draft report

10. The Council said that due to safety concerns, it was necessary to send 2 independent assessors to Mr A's property. It said that this presented a difficulty as it was proving difficult to find 2 independent assessors with the same schedule.

11. The Council said that it had made enquiries to identify 2 independent assessors who could complete the assessment of Mr A's needs. However, it said that 2 were unable to do so until the week beginning 11 January 2021, another was checking whether they could do so the week beginning 30 November 2020, and if they were able to, the Council would need to find another independent assessor available the same week, and a fourth independent assessor indicated that they could conduct the independent assessment but had since gone into self-isolation due to COVID-19 guidelines.

12. The Council said that it appreciated that it had already had a substantial amount of time to complete the independent assessment of Mr A's needs. It asked whether it would be acceptable to complete the independent assessment by the end of January 2021.

Analysis and conclusions

13. The Council explicitly agreed to accept and implement the terms of the resolution proposed by my office in May 2020, as set out in paragraph 7 above. It has failed to do so.

14. In considering whether or not to issue this report, I have had regard not only to the fact that the Council explicitly agreed to the resolution action, and the generous timescales for implementing them which took account of the impact of COVID-19 restrictions, then failed to fulfil them. I have also taken into account the length of time the Council has had overall to complete an independent assessment of Mr A's needs (since 2019).

15. The Council is fully aware that Mr A is vulnerable and has been waiting for an independent assessment of his needs for over 18 months. This means that Mr A will have been without services the assessment may conclude he requires for 18 months.

16. At no point during the 4 months did the Council approach my office to inform it of any difficulties it had completing the actions or discuss an extension to the agreed timescale. It simply did nothing. Similarly, the Council failed to keep Mr A informed. Whilst mindful of the pressures on

public bodies, this was taken into account in determining and agreeing with the Council the timescale for implementation at the outset.

17. A resolution under s6 of the Act is just as important as formal recommendations following a full investigation by my office. The consequences of my failing to be satisfied as to their implementation are exactly the same – the issuing of a report such as this under s28 of the Act. Issuing such a report is not commonplace and not a decision I take lightly. I consider it unacceptable for a major public body to fail to take prompt and effective action to ensure that agreed recommendations are properly implemented. This is particularly so when it involves the need to support a vulnerable person. The Council failed to fulfil what are, in effect, binding promises to me as Ombudsman.

18. The Council has now agreed to complete an independent assessment by the end of January 2021 having identified potential suitable independent assessors. I accept this timeframe given the difficulty presented by the availability of independent assessors and the need to attend in pairs. It is a shame, given that the Council already knew of the need to visit Mr A in pairs and the apparent difficulty in finding suitable independent assessors with compatible schedules, that the Council failed to take proactive steps to implement my previous recommendations until now. It has produced no evidence to show any earlier attempts it has made since originally agreeing to the actions in May 2020. Therefore, I am issuing this report in its final form with the following further recommendations.

Further recommendations

19. I expect and **recommend** that the Council:

- (a) Complete an independent assessment (undertaken by someone who is not an employee of the Council) of Mr A's needs by 31 January 2021.
- (b) Provide a weekly update to my office about the progression of the independent assessment.

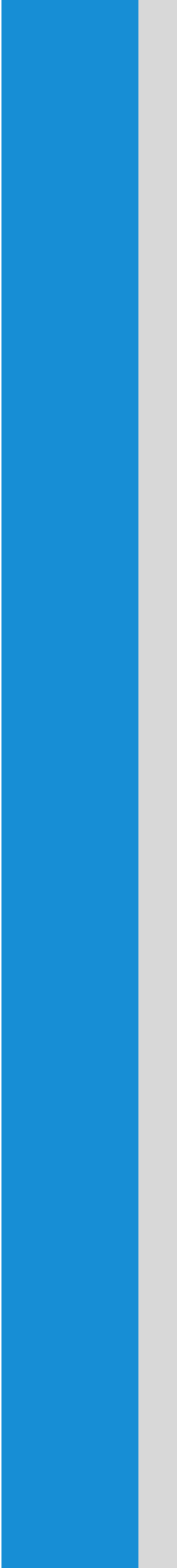
- (c) Once completed, provide a copy of the independent assessment to my office.
- (d) Issue an apology in writing to Mr A (within **1 month** of the date of this report), with a copy sent to the MP, for the delay in completing the independent assessment. It should also provide a copy of the letter to my office.

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



Nick Bennett
Ombudsman

2 December 2020



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