

**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint about  
Worcestershire County Council  
(reference number: 21 005 339)**

**27 April 2022**

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## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms X            The complainant

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## Report summary

### Adult social care

Ms X complained Worcestershire County Council (the Council) took too long to put in place a direct payment for her care. She said this caused her distress and meant she did not receive appropriate care.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice, we recommend the Council:

- apologises for the fault identified in this report and the impact on Ms X;
- pays her £3,000 to reflect the impact on her of the lack of care and support caused by its delay;
- updates us on its progress with putting in place the direct payment; and
- identifies other cases where there was a delay in putting in place a direct payment and remedies any injustice to those affected in line with our [Guidance on Remedies](#).

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

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## The complaint

1. Ms X complained Worcestershire County Council (the Council) took too long to put in place a direct payment for her care. She said this caused her distress and meant she did not receive appropriate care.

## Legal and administrative background

### The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
4. This complaint involves Penderels Trust (Penderels). The Council commissioned Penderels to provide a support service to adults receiving a direct payment in Worcestershire. A different organisation took the service over recently. Penderels provided the service on behalf of the Council so we can investigate complaints about it.

### Relevant law and guidance

5. A council must carry out an assessment for any adult with an appearance of need for care and support, applying national criteria to decide if a person is eligible for care. (*Care Act 2014, section 9*)
6. In this report, we refer to an assessment of need as a 'social care assessment'.
7. An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs. (*Care and Support Statutory Guidance 2014, Paragraph 6.24*)
8. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
9. If a council decides a person is eligible for care, it should prepare a care and support plan which specifies the needs identified in the assessment, says whether and to what extent the needs meet the eligibility criteria and specifies the needs the council is going to meet and how this will be done. The council should give a copy of the care and support plan to the person. (*Care Act 2014, sections 24 and 25*)
10. The care and support plan must set out a personal budget. A personal budget is a statement which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. (*Care Act 2014, section 26*)

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11. A direct payment is money a council gives to an adult who asks to receive one to meet their eligible care and support needs. (*Care and Support Statutory Guidance, paragraph 12.1*)
  12. A council looking to provide a person with a direct payment must be satisfied:
    - the person has mental capacity to request a direct payment;
    - there is no prohibition on making a direct payment to the person;
    - the person is capable of managing a direct payment; and
    - a direct payment is an appropriate way of meeting the person's needs.
  13. Councils must have in place clear and swift processes to respond to requests for a direct payment. (*Care and Support Statutory Guidance, paragraph 12.10*)

## **How we considered this complaint**

14. We produced this report after examining relevant documents and speaking to Ms X.
15. We gave Ms X, the Council and Penderels a confidential draft of this report and asked for their comments. We took comments into account before finalising the report.

## **What happened**

16. Ms X had a stroke in August 2020 and went into hospital. Her solicitor contacted the Council and asked for a social care assessment and an advocate for her. A social worker spoke to Ms X the same month. Ms X said she did not want an advocate and agreed to a social care assessment by phone. At the end of the month, Ms X and a social worker spoke again. Ms X said she did not want any involvement from the Council and declined a social care assessment. The social worker closed the case.
17. Ms X contacted a social worker again in December. She agreed to have a social care assessment. The social worker noted in the case records that she started a social care assessment by phone and she and Ms X spoke about how Ms X was managing. Ms X said she had a private home worker for housework and shopping. They spoke about direct payments and a financial assessment among other things. The Council did not provide us with a copy of a social care assessment dated December 2020. So the social worker did not write up the assessment following her contact with Ms X.
18. In the last week of December, Ms X said she wanted a care package and that she had not been coping since her stroke in August.
19. Ms X complained to the Council in December about the issues in her complaint to us and about other issues. She said the social worker had not sent her any information about direct payments. The Council upheld this part of the complaint but said the information had since been sent to Ms X. Ms X did not pursue her complaint further at this time.
20. A social worker referred Ms X to Penderels at the start of January 2021 for support around recruiting personal assistants (PAs) and managing the direct payment. The social worker also referred Ms X to the Council's reablement team. (The reablement team provides short-term support, usually around six weeks, in a person's home to help them regain or relearn independent skills.)

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21. The reablement team assessed Ms X and agreed to provide two calls a day to support her with personal care, meals and medication. A reablement worker tried to discuss longer term care with Ms X who said she would not agree to a financial assessment or a care agency.
  22. After a few days, Ms X declined calls and told an occupational therapist (OT) she did not want the reablement service and wanted a direct payment to organise her own care. The OT's view was Ms X needed help with showering, medication and meals. After the OT's visit, Ms X spoke to the social worker and set out her concerns about reablement which included call times not being specific. The social worker told Ms X there was a waiting list for Penderels and she needed to complete and return the financial declaration form (a form to enable the Council to financially assess the care charge).
  23. The social worker and a worker from Penderels exchanged emails in February. The social worker said Ms X's indicative weekly personal budget was £150 and she wanted a 30-minute care visit at lunch and an hour visit at tea-time.
  24. The records show periodic contacts from Ms X saying she was frustrated it was taking so long to set up the direct payment.
  25. The case notes show Ms X had difficulty completing and returning the financial declaration form because of her disability. In the end, Ms X returned the form, completed and signed. She told us she sent it recorded delivery at the start of March, although the records show the Council did not receive it until the end of March. The finance team completed a financial assessment at the start of May. Ms X did not have to pay a charge.
  26. In the middle of May, a different social worker referred Ms X to Penderels again.
  27. A social worker completed a social care assessment in May. The assessment described Ms X's eligible care needs. Ms X's care and support plan was started in May and finished in August 2021. It noted she wanted a direct payment and a managed account. The plan set out Ms X's eligible needs and the support she needed to achieve her goals. Ms X told us the care and support plan was incorrect on several occasions.
  28. A new social worker was allocated at the end of May. The social worker sent out a direct payment agreement for Ms X to sign. Penderels emailed the social worker asking for her to confirm hours and costings for the direct payment.
  29. The social worker emailed Penderels in the middle of June to say the Council had agreed a personal budget of £126 or 14 hours a week of care and support and Ms X wanted a managed account (this is where Penderels manages the payment for Ms X).
  30. Ms X and the social worker spoke at the end of June. Ms X said Penderels had sent her paperwork which she could not complete because of her disability. The social worker completed the papers for Ms X and sent them back to Penderels.
  31. The social worker noted in Ms X's care and support plan that Ms X needed care and support urgently. In July, the social worker found a care agency that could provide Ms X's care, Ms X declined as she did not want an agency. She told the social worker she was angry about the continuing delay.
  32. Ms X complained to us in July about the delay in setting up her direct payment.
  33. Ms X had another period of ill health in August and she was in hospital for a few days. She had support from the reablement team, but this broke down again

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quickly and she cancelled their service. The case records include some internal emails between the reablement team and social care team about which team would be responsible for reviewing Ms X's care needs.

34. At the time of issuing the draft version of this report in January 2022, Ms X did not have a direct payment in place. Her request to the Council for care and support was over a year earlier in December 2020. Since receiving our draft report, the Council updated us on the actions it has taken to put in place Ms X's direct payment. It told us:

- it sent Ms X an amended care and support plan, noting not all the amendments she would like would be possible because they referred to dates produced by its database;
- it sent her a direct payment agreement for her to sign which she is yet to return (Ms X told me this has now been done); and
- the new direct payment support service was supporting Ms X and an advert has been placed to recruit her a PA.

### **Comments from the Council**

35. The Council acknowledged there had been a delay in setting up Ms X's direct payment and said this was for various reasons.

- A lack of engagement by Ms X in assessment and support planning and difficulty contacting her.
- Her refusal to sign the financial form had a knock on-effect. It meant the Council could not complete the process because it couldn't complete a financial assessment which was needed to determine her personal budget (see paragraph 10).
- Her changing decisions.
- Further life events (hospital admission).

### **Comments from Penderels**

36. Penderels told us there was no upper limit on new referrals and current cases so at times there was a waiting list. It also told us that the Council was aware of this and it would work with council officers to ensure urgent cases had priority. Penderels said it was unfair to attribute any fault to it and the delays were caused by the Council delaying in providing information about Ms X's budget or because Ms X did not return calls.

### **Conclusions**

37. The Council took from December 2020 to May 2021 to complete a social care assessment and care and support plan. Taking five months was fault, was not a reasonable or appropriate timeframe and was not in line with paragraph 6.24 of Care and Support Statutory Guidance.

38. There was further fault by the Council. It has a legal duty to meet Ms X's eligible unmet needs under section 18 of the Care Act 2014 and she has a right to a direct payment which the Council can only refuse if it is satisfied she does not meet one or more of the conditions described in paragraph 12. The Council did not suggest Ms X failed to meet any of the conditions. So our view is it should have taken the actions required to put in place the direct payment. It failed to do so in a timely fashion.

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39. There is no evidence to support the Council's assertion Ms X changed her mind about a direct payment. The records indicate she was consistent in her request since December 2020. While we might expect the process of assessing needs, completing a care and support plan and setting up a direct payment to take a few weeks, the process should have been finalised by the end of January 2021 at the latest. The Council offered Ms X agency care in July 2021 as a temporary alternative to a direct payment, which was an appropriate action to take although seven months late. Ms X's response was to refuse agency care. She was entitled to do this because she wanted a direct payment. The Council's and Penderels' inaction in progressing the direct payment indicates there was no clear or swift process in place to respond to requests for direct payments. This was not in line with paragraph 12.10 of Care and Support Statutory Guidance and was fault.
40. There is no evidence to suggest there were any significant difficulties contacting Ms X or that she did not co-operate, other than on one occasion when she told the reablement team that she would not have a financial assessment. The records show Ms X had problems completing papers, but staff accepted this was because of her disability and helped her with the financial declaration form and with the papers Penderels sent. There is no evidence of a continued refusal to co-operate.

## Recommendations

41. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
42. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, although we found fault with Penderels, we have made recommendations to the Council.
43. The Council needs to apologise to Ms X and pay her £3,000 to reflect the disruption, inconvenience and distress caused by not having care between January 2021 and January 2022. We have taken into account our [Guidance on Remedies](#) which allows for exceptional payments where the loss of service has a high and continuing impact which applies in this case. The Council has not yet accepted this recommendation for the reasons given above.
44. We are satisfied that since our involvement, the Council is now taking all appropriate action to start up the direct payment. The Council needs to provide us with a further update on progress within four weeks of the date of this report.
45. The Council's records show the delay by Penderels was a known issue as there was a waiting list. This means others may also have been affected in a similar way. We recommend the Council identifies other cases on Penderels' waiting list from January 2021 where there was a delay in putting in place a direct payment and remedies any injustice to those affected in line with our [Guidance on Remedies](#). It should do so within three months of the date of this report and provide us with a summary of the key facts in each case, the length of delay, the impact on the person and the financial remedy agreed. The Council has accepted this recommendation in principle, but it says there may be difficulties identifying cases. It has agreed to try.



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46. Had the Council still been using Penderels to provide a direct payment support service, we would have made recommendations to improve the service as the delay in this case was exceptionally poor. Fortunately, the Council has commissioned another organisation to provide direct payment support to clients in Worcestershire.

### **Final decision**

47. There was fault by the Council in setting up Ms X's direct payment. This meant Ms X did not have care to meet her assessed needs. The Council needs to apologise, make Ms X a payment and take action described in this report.