

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

**Investigation into a complaint against
Norfolk County Council
(reference number: 16 013 790)**

27 February 2018

The Ombudsman's role

For 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

Mr C	The complainant
Mrs B	The service user (complainant's mother)

Report summary

Adult social care

Mr C complains the Council failed to properly explain to him how his mother's care home fees would be paid. As a result, the family chose a care home which, they later found out, would be unaffordable once his mother's capital has reduced to £23,250.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council has accepted our recommendations. 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.

In addition to the requirements set out above the Council has agreed to:

- apologise to Mr C, and his family, for the distress he is experiencing because he is worried his mother will be not be able to remain in the care home, once her capital has reduced;
- pay Mr C £300 for the time, trouble and distress the Council has caused him;
- inform the staff involved in needs and financial assessments of the correct approach with regard to people in similar situations;
- review the process it has in place, to ensure people receive the information they need (verbally and in writing), at the time they need it, to make informed decisions about finding an affordable care home;
- based on the review, ensure that staff involved in needs and financial assessments know what type of key information they need to provide (verbally and in writing), and at what stage, to enable people to make informed decisions about finding an affordable care home;
- remind staff involved in needs and financial assessments about the importance of keeping records that show what information they provide to clients about charging and when;
- review its policy on charging to ensure it contains sufficient detail about when the Council (should not) ask for a top-up; and
- review if there have been similar cases, in the last 12 months, where the Council has made the same errors, and ensure that any injustice arising from these will be remedied. The Council will need to produce a report for the Ombudsman that shows how it has carried out the review and summarises its findings.

Introduction

1. Mr C complains the Council failed to properly explain to him how his mother's care home fees will be paid. As a result, the family chose a care home which, they later found out, will not be affordable once his mother's capital has reduced to £23,250.

Legal and administrative background

The Ombudsman's role

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*)

Care Act 2014

3. The Care Act 2014 (section 9) says that, where it appears to the council that an adult may have care and support needs, the council must assess whether the adult does have such needs and (if so) the extent of his/her needs. Where such a needs assessment indicates that an adult is in need of care, the council has an obligation to assess whether those needs meet certain eligibility criteria; as set out in the Care and Support (Eligibility Criteria) Regulations 2015.
4. Once the council has carried out the needs assessment, and if an adult meets the eligibility criteria, section 17 of the Care Act states the council must carry out an assessment of his/her financial resources. This assessment is to find out what amount (if any) he/she could afford to pay towards their care. This is governed by the Care and Support (Charging and Assessment of Resources) Regulations 2014/2672 (the 2014 Regulations). These Regulations state that if an adult has more capital than £23,250 (the upper financial resource limit) the council is not permitted to pay towards the care costs and the adult must pay for their own care (see regulation 12). Alternatively, if his/her capital is under this limit, the council must carry out a financial assessment of the adult to establish what contribution he/she can afford to pay towards their care.
5. In accordance with regulation 18 and schedule 2 (paragraph 2) of the 2014 Regulations, the value of an adult's main home should be disregarded from an assessment of a permanent resident's capital for the first 12 weeks of them moving into a care home. If the effect of this is the adult's remaining capital is below the £23,250, the council needs to carry out a financial assessment to find out the amount the adult could afford to pay towards their own care (see section 17 of the 2014 Act). Furthermore, the council will have a duty to meet the adult's eligible care needs on the basis that condition 1 referred to in section 18(2) of the 2014 Act will have been satisfied, i.e. the adult has less than £23,250 of capital.

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6. The Department of Health produced guidance for using the Care Act called 'Care and Support Statutory Guidance'. Paragraph 45 of Annex B to the Statutory Guidance outlines why the value of an adult's main home should be disregarded for the first 12 weeks. It says: "*An important aim of the charging framework is to prevent people being forced to sell their home at a time of crisis. The regulations under the Care Act 2014 therefore create space for people to make decisions as to how to meet their contribution to the cost of their eligible care needs. A council must therefore disregard the value of a person's main or only home for 12 weeks in the following circumstances: (a) when they first enter a care home as a permanent resident*". Further, paragraph 18 of Annex E to the Statutory Guidance states: "*At the end of 12 weeks, the value of the person's home is taken into account... This may result in the person becoming liable to pay for all of the costs of their care and choosing to enter into a private contract with the care home for the provision of their care on a permanent basis, rather than continuing to be provided with accommodation by their placing authority*".
 7. Paragraph 11.7 of the Statutory Guidance makes clear that: "*Everyone whose needs are met by the council, whether those needs are eligible, or if the council has chosen to meet other needs, must receive a personal budget as part of the care and support plan, or support plan*". This is also reflected in section 24.1 and 26.1 of the 2014 Act. The personal budget must always be an amount enough to meet the person's care and support needs.
 8. The Statutory Guidance makes clear that, as part of its obligation under section 18 to ensure Mrs B's care needs are met, the Council: "*must ensure that at least one option (in this case 'care home') is available that is affordable within a person's personal budget and should ensure that there is more than one. If no preference has been expressed and no suitable accommodation is available at the amount identified in a personal budget, the council must arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met. In such circumstances, the local authority must not ask for the payment of a 'top-up' fee. Only when a person has chosen a more expensive accommodation can a 'top-up' payment be sought.*"
 9. The guidance also says councils should ensure there is enough information and advice available to ensure the person and/or their representative can understand any contributions they are asked to make.
 10. The council should also support the person to identify options of how best to pay any charge. One such payment option can be a deferred payment agreement (DPA). A universal deferred payment scheme has been established, which means that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a DPA, a person can 'defer' or delay paying the costs of their care and support until a later date. If somebody is eligible for a DPA, the council must explain to them how it works. This explanation should, at a minimum, include: an explanation of what happens when the agreement is terminated, and provide an overview of some potential advantages and disadvantages of taking out a DPA.

How we considered this complaint

11. We produced this report after examining relevant files and documents and interviewing the complainant and relevant employees of the Council.
12. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

Investigation

13. At the beginning of June 2016, it was agreed between the Council and Mr C that his mother needed residential care and the family would look for a suitable home. His mother owned a property, which the Council would consider in the financial assessment.
14. Mrs B's social worker says:
 - when she met Mr C on 3 June 2016, she provided him with two brochures: "Care Select, Handbook for Relatives" and "Norfolk – your guide to care and support 2016"; and
 - she explained that, once Mrs B's capital falls below the £23,250 threshold, the Council will pay £460.71 a week; a top-up will be required for any difference.
15. Mr C said the social worker did not provide this information at this meeting. He says he also did not receive any handbooks or guides about charging from the Council. The record of this meeting does not say what (if any) information Mr C received about charging, verbally or in writing.
16. Mr C says that he subsequently went to try and find a suitable home for his mother, without being told what his mother's indicative personal budget was (eventually set at £460.71 a week).
17. A finance officer from the Council met Mr C on 9 June 2016, to carry out a financial assessment. Mr C says the officer explained that his mother's "assessed contribution" was £275 a week. The officer explained this was the amount that his mother would have to pay during the 12 week property disregard period. After this 12 week period, Mrs B would have to pay for the full cost of her care. However, Mr C says:
 - the officer failed to mention what his mother's indicative/personal budget would be and explain how the Council arrived at this figure;
 - the officer failed to explain the £275 was actually "a contribution towards" such a personal budget;
 - when he told the officer that he was looking for care homes of around £700 to £825 a week, the officer failed to explain to him that this could mean a top-up payment would be required; and

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- if he had known the correct information he would not have placed his mother in a home that was not affordable.
18. The finance officer did not record what he discussed at this meeting.
19. Mr C says that, later, his mother's social worker told him "the Council will pay £460 per week". However, he says the social worker did not explain why the amount was £460 a week or that his mother's assessed charge is actually a "contribution towards that amount". Mr C says he therefore believed he could choose a care home with a weekly fee of around £802 (£460 + his mother's weekly income).
20. When Mr C told the social worker on 16 June 2016 that his mother had chosen the care home, the social worker did not ask about the rate the home would charge. The social worker contacted the home on 28 June, which told her that its weekly rate would be £725 per week. This rate was more than Mrs B's personal budget of £460. Even so, the social worker did not contact Mr C to discuss this with him.
21. The Council said:
- social workers usually give a copy of "*Norfolk – your guide to care and support 2016*" to clients at the time of the decision that somebody needs to move into permanent residential care. The Council also has a sheet "*Charges for people moving into a residential or nursing care home*", which social workers often give to people looking for a care home;
 - the £460 a week is the amount at which the Council believes it is possible to find the residential care home Mrs B needed, for clients placed by the Council;
 - Mrs B's capital, including her property, was above £23,250. This meant she is a privately funded resident. As such, the Council did not have an obligation to provide a care home that would not be more expensive than the amount identified in the personal budget. The Council has no control over the rates care homes charge privately funded residents. Care homes in the area do not accept the Council's (lower) rate (of £460 a week) for those who enter the home on a 12 weeks property disregard;
 - Annex A, paragraph 12 of the Statutory Guidance does not apply, which says that: if the Council cannot offer any suitable accommodation at the amount identified in the personal budget, it: "*must arrange care in a more expensive setting and adjust the personal budget to ensure it meets the person's needs*". The Council has obtained its own legal advice, who have confirmed the above position;
 - at the time the social worker dealt with Mrs B's case, she had not yet gained a lot of practical experience with residential care funding. The Council has already acknowledged to Mr C that it failed to explain to him, before his mother went into the home, that a top-up would be needed for the first 12 weeks. The Council has already provided an apology to Mr C for this oversight. It has also waived the top up-fee for the 12 weeks property disregard period; and

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- the manager of the team that was involved has asked the finance team to do a presentation to the team's social workers about any faults identified.
22. The Council sent a Deferred Payments pack to the family on 17 June 2016. If Mr C had chosen to go ahead with the DPA, it would have started on 26 September; 12 weeks after Mrs B entered the care home. However, Mr C says that, by this time he had already found a buyer for Mrs B's home.
23. Mr C also said: if the Council had properly explained everything to him, the family would never have chosen a care home that is not affordable. The family is worried, because it will not be able to pay a third party top-up fee of £252 a week, once Mrs B's capital has reduced to £23,250. This will put his mother's placement at the care home at risk. The family is concerned this may result in a decision to move his mother to a different (cheaper) care home, which will be disruptive and upsetting for her.
24. The Council told Mr C in December 2016 that, once Mrs B's capital reduces to below £23,250: "It cannot guarantee that it will agree the funding needed for Mrs B to remain at this home indefinitely. However, it will carry out a review/assessment that will consider, among others, how long Mrs B had been at the home and how happy and settled she was there. In addition, it would consider if the home was still appropriate in meeting Mrs B's needs".

Conclusions

25. The Council says that Mrs B's capital, including her property, was above £23,250. It says this meant the Council did not have an obligation to offer a care home that will not need a top-up.
26. For the first 12 weeks of a placement in a residential care home, the charging rules require the Council to disregard the value of the person's main or only home. This means a Council must carry out a financial assessment assigning no capital value to the property to be disregarded. The Council did this and provided a personal budget.
27. If, as a result of that assessment, the adult's remaining financial resources do not exceed £23,250, the condition(s) provided for in section 18 of the 2014 Act will have been met (even if it is only for the initial 12 weeks period) and the Council will have a statutory duty to meet the adult's care needs during that period.
28. In this case, the result of disregarding the value of Mrs B's home meant that Mrs B's capital fell below £23,250 during the 12 weeks property disregard. To meet Mrs B's care needs, the Council was under a duty, in accordance with the 2014 Act and the Statutory Guidance, to offer at least one residential care home option that was affordable within Mrs B's personal budget for residential care homes (less any assessed contribution payable by Mrs B). The Council failed to offer this and did initially not accept that it had such a duty. This is fault. Insofar as the 12 weeks disregard period is concerned, the Council should not have asked for a top-up in this case.

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29. After the 12 weeks period has elapsed, it will be open to a council to take a property into account and re-assess the financial resources available to the person. This assessment can, if needed and agreed with the person, take the form of a light touch financial assessment. If the adult's capital will then be above the £23,250 capital threshold, he/she will be responsible for meeting all of the costs of their own care. However, the fact that Mrs B's resources exceeded the upper financial limit at the end of the 12 weeks does not mean the Council does not owe a duty under section 18 during the 12 weeks period.
 30. The Council has already told Mr C that his mother will not have to pay a top-up for the first 12 weeks. However, it made this decision not because of the reason provided above (see paragraph 27 and 28), but because it acknowledged that it did not tell the family about top-ups in a timely manner.
 31. The Council has assured the family of the steps it will take once Mrs B's capital reduces to below £23,250 (see paragraph 24 above).
 32. The Council failed to provide the information Mr C needed, at the time he needed it, to ensure he could make informed decisions to choose an affordable care home and decide how to pay for this. This is fault.
 33. There was a delay in Mr C being told what Mrs B's indicative / personal budget would be, and how this amount was arrived at.
 34. The Council failed to explain that the "assessed contribution", was a contribution towards Mrs B's personal budget of £460.71 a week.
 35. The Council did not discuss top-ups, even though it had decided that Mrs B would have to pay a "first party top-up". In addition, the Council had also failed to ensure Mrs B had agreed to this before she went into the home. This is fault.
 36. Furthermore, both the social worker and the finance officer failed to appropriately record the discussions they had with Mr C about charging. This is fault.
 37. There was also a significant delay in Mr C receiving the Council's Finance Report, which he received in September 2016.

Recommendations

38. 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.
39. In addition to the requirements set out above the Council has agreed to:
 - apologise to Mr C, and his family, for the distress he is experiencing because he is worried if his mother will be able to remain in the care home, once her capital has reduced;

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- pay Mr C £300 for the time, trouble and distress the Council has caused him because of the above faults;
 - inform the staff involved in needs and financial assessment of the correct approach (as outlined in paragraph 28 and 29) with regards to people in similar situations;
 - review the process it has in place, to ensure people receive the information they need (verbally and in writing), at the time they need it, to make informed decisions about finding an affordable care home;
 - based on the review, ensure that staff involved in needs and financial assessments know what type of key information they need to provide (verbally and in writing), and at what stage, to enable people to make informed decisions about finding an affordable care home;
 - remind staff involved in needs and financial assessments about the importance of keeping records that show what information they provide to clients about charging and when;
 - review its policy on charging to ensure it contains sufficient detail about when the Council (should not) ask for a top-up;
 - review if there have been similar cases, in the last 12 months, where the Council has made the same errors, and ensure that any injustice arising from these will be remedied. The Council will need to produce a report for the Ombudsman that shows how it has carried out the review and summarises its findings.

Decision

40. We have completed our investigation into this complaint. The Council failed to act in accordance with the Care Act 2014; this caused injustice to the complainants. It caused the complainants distress and they had to spend additional time and trouble to obtain the correct information and pursue the complaint. We are satisfied the actions already taken by the Council and its agreement to the recommendations in paragraph 39, are sufficient to acknowledge the impact of that fault and to prevent future problems.