

Report by the Local Government Ombudsman

Investigation into a complaint against Central Bedfordshire Council (reference number: 13 014 946)

15 January 2016

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.

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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 J - the complainant

Report summary

Adult care services – direct payments

Ms J complains about the way the Council has administered her direct payments and that it did not follow its complaints procedure when investigating her complaint. She says this has caused her significant avoidable distress, and meant she has not had as much care as she should have had.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To put right the injustice arising from the fault we have identified, the Council should:

- apologise to Ms J
- confirm immediately that it will not seek to reclaim any unpaid contributions from Ms J, and write off any debts it is currently attempting to recover
- arrange for an independent social worker to carry out a new care needs assessment and prepare a new support plan, without delay
- set up a clear working agreement for future reviews and monitoring
- reconsider Ms J's disability related expenditure (DRE) and provide a clear explanation of why it does not consider some costs arise from her disability
- pay Ms J:
 - £5,000 to acknowledge the impact on her of being without adequate care and support for over two years
 - £2,000 to acknowledge the avoidable distress and frustration the Council's faults have caused her.

The Council has accepted our recommendations. It should confirm it has taken the action within three months of the date of this report.

Introduction

1. Ms J has limited mobility. She can stand and walk for short periods but cannot sit, so she has to spend most of her time lying on her back. She is in severe and constant pain, managed by medication which affects her concentration. She lives alone and is dependent on others for her personal care and all domestic tasks.
2. Ms J receives direct payments so she can arrange and purchase her own care. She complains that the Council:
 - has not been consistent about what items are covered by direct payments
 - has failed to adhere to government guidelines about what should be covered
 - increased her client contribution without carrying out a financial assessment
 - did not take account of all relevant information when it did carry out the financial assessment
 - did not follow its complaints procedure in investigating the complaint.
3. So she suffered:
 - reduced care, because it is not clear what her direct payment will cover and she has had to divert carer support to helping her pursue the complaint, and
 - significant avoidable stress.

Legal and administrative background

The role of the Ombudsman

4. The Ombudsman investigates 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)*)
5. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

Relevant law and guidance about adult social care

Charging for care

6. Once an assessment has concluded a person is eligible for social care services, a care or support plan should follow without delay. The service user should receive a copy.
7. Most councils charge people for home care. To work out the person's contribution to the cost of care, they carry out a financial assessment. Guidance on charging for home care (*Fairer Charging*) tells councils they should carry out a prompt financial assessment and tell people about the charge when care starts.

8. *Fairer charging* gives detailed guidance about disregarding 'disability related expenditure' (DRE) when calculating a person's contribution. Any additional expenses claimed in relation to a person's disability should be considered. (*para 53*)

Direct payments

9. Direct payments (DPs) are cash payments a council makes to a person with eligible care needs, instead of providing them with care services. They give people control and choice over their care arrangements, and let people have greater flexibility and independence by increasing the social, educational, employment and community involvement opportunities they can access.
10. The Council has procedures for assessing and monitoring direct payments. The first step is to assess the person's care needs. The Council then works with the person to produce a support plan setting out how those care needs will be met. The support plan should include:
- confirmation of which assessed needs will be covered by DPs, and how these needs will be met
 - the indicative personal budget and how often it will be paid, and
 - the initial review date.
11. Once it has completed the support plan the Council calculates an Actual Personal Budget (APB) to decide the final DPs amount. It sends a DPs agreement to the person. This sets out the person's contribution to the costs of care and the arrangements for paying contributions into the DPs bank account. All terms and conditions of the DPs agreement apply as soon as the DPs begin, even if the person has not signed the DPs agreement.

Monitoring direct payments

12. Councils should monitor and audit DPs. The frequency of monitoring will depend on how long the person has managed DPs (either alone or with help) and their particular circumstances. The timing of the first review should be set at the beginning and should cover how the person is managing the DPs. If financial monitoring and review of the care arrangements are not done by the same officer, councils should ensure they exchange information.
13. The Council monitors DPs to check:
- the purchased care and support meet the person's needs
 - the person's ability to manage the DPs bank account and employer responsibilities (if employing a personal assistant), and
 - the person is paying the correct contributions to the DPs bank account.

14. People send spending receipts and bank statements to the Council monthly, or annually if the Council decides this is sufficient. Triggers for the Council to intervene include:
 - more than 12 weeks of DPs in the bank account, above any sum set aside for planned expenditure such as respite
 - less than two weeks of DPs in the bank account, or
 - the person reporting problems or concerns about money management and record-keeping.
15. DPs must be used to meet the person's eligible care needs. Examples include:
 - employing a personal assistant/carer of the person's choice, instead of an agreed home support package
 - transport at actual cost
 - a respite (short) break
 - equipment to support independent living
 - support to help people stay independent in the home and reduce risks
 - support to reduce social isolation
 - support to access or maintain employment
 - support to participate in physical activities, and
 - support to access cultural or religious activities, social event or outings.
16. There are restrictions on using DPs. They cannot be used for the costs of day to day living, or any service or activity that cannot be shown to improve or maintain support for the person's quality of life.

Adult social care complaints procedure

17. The Council's procedure for considering complaints about adult social care says it will take all reasonable steps to resolve the complaint by local resolution. The Council aims to resolve complaints within 20 working days or, where this is not possible, as soon as reasonably practicable. The Council then writes to the complainant to say if it upholds the complaint and give the reasons why.
18. After this, a complainant can ask for an independent investigation. A person from a different service area in the Council investigates the complaint. The Council sends an investigation report to the complainant within 65 days and may then offer an adjudication meeting. But if there are difficulties in setting up such a meeting the Council sends the complainant a written response on the complaint. The Council will send its final response within six months of receiving the complaint.

How we considered this complaint

19. This report has been produced following the examination of relevant documents and an interview with the complainant.

20. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Investigation

Events leading to the complaint

21. Until late 2010, the Council paid Ms J DPs which met the cost of her support in full. In October 2010 the Council carried out a new financial assessment. As a result of this, the Council asked Ms J to contribute £57 a week towards the cost of her care. Ms J complained and provided more information about her DRE. The Council reduced Ms J's contribution to £24 a week.
22. Ms J says when she told her social worker that she could not afford this, the social worker told her to reduce the number of hours her carers worked, and this would cancel out her contribution. The Council has no record of this conversation. But this is what Ms J did.
23. In November 2011 the Council carried out an annual review of Ms J's support plan and direct payments. Ms J continued to receive the same DPs and continued not to pay her contribution.
24. In 2012 there were problems between Ms J and her care provider. Ms J complained about the standard of care she received. This complaint was not resolved and in August Ms J cancelled her contract with the agency. The Council knew about this and decided it needed to reassess Ms J's care needs.
25. Officers tried to arrange an appointment with Ms J to do this. When Ms J did not respond the Council sent a letter to her, saying if she did not arrange an appointment her DPs might be suspended. Ms J complained.
26. Officers met Ms J at her home at the end of November 2012 to discuss this complaint. The Council then reviewed Ms J's care needs by speaking to her care provider.
27. Ms J regularly sent the Council receipts for items she paid for from her DPs. In December 2012 officers raised concerns internally that some of Ms J's receipts were for items which were not to meet her care needs. In particular, officers were concerned that physiotherapy sessions were to meet a health need so the costs should not come from DPs, which were intended to meet care needs. Ms J had been submitting receipts for physiotherapy since 2006.
28. The Council was also at this time catching up on monitoring DPs accounts. On 18 February 2013 the Council wrote to Ms J to say:
 - she could not claim for some items from her DPs (physiotherapy, vet bills)
 - she needed to pay her client contribution of £24 a week into the DPs account, and
 - the current balance on the account was nearly £14,000, so Ms J needed to repay the Council £10,500.

29. Ms J queried the content of the letter and the Council agreed to allow physiotherapy and vet bills up to March 2013. It said these items would not be allowed in future. The Council offered Ms J a meeting to discuss her DPs account. Officers visited on 10 April 2013. The Council has no record of this meeting.
30. On 30 April 2013 officers found an Actual Personal Budget (APB) for Ms J dated November 2011. This reduced the number of hours of support Ms J received, and therefore the payments she would receive, by about half. The Council did not immediately apply the reduction.
31. In June the Council carried out a financial reassessment of Ms J. This calculated her contribution as £48 a week. The Council told Ms J this in August. Ms J complained to the Council's chief executive.
32. In August 2013 the Council applied the reduction to Ms J's DPs from the November 2011 APB. Ms J noticed the payment had significantly reduced and made a further complaint.
33. Officers discussed the situation internally by email. They established that the APB from November 2011 had not been actioned until August 2013. It had created an overpayment of some £13,000 which the Council could recover from Ms J. But it was not clear whether anybody had told Ms J about the outcome of the November 2011 assessment. It was also not clear whether the November 2011 APB was correct – her social worker's recollection was that this assessment had not resulted in any change to Ms J's budget.
34. The Council decided to visit Ms J to discuss this, and also the high balance on her account, her failure to provide receipts for six months, and her failure to make a payment to HMRC in 2012. An officer contacted Ms J to arrange a meeting. Ms J said she was still waiting for a response to her complaint to the chief executive. The Council sent a response on 24 September. Ms J told the Council she was not satisfied with this response.
35. The Council arranged to meet Ms J on 4 November. Ms J was unhappy about her contribution to her budget, the reduction in her DPs, the response to her complaints, and the planned reassessment of the activities her DPs could fund. Officers established what support Ms J's carers provided.
36. The Council completed a review of Ms J's support plan, which restored her APB to the higher level. It carried out a financial reassessment and decided Ms J's contribution should be £36 a week, with effect from 5 August 2013. The Council wrote to Ms J (and to her MP, whom Ms J had now involved) explaining this. The Council also said Ms J needed to pay all the client contributions she had missed since January 2011. The Council offered to visit Ms J again to discuss this.
37. Ms J said she did not want another visit so the Council finalised her support plan and sent it to her on 26 November 2013. The support plan listed items which Ms J could and could not pay for using her direct payments.

38. Ms J could not understand the Council's calculations and asked the Council to explain them. She also complained to the Ombudsman. We referred her complaint back to the Council because she had not yet exhausted the Council's full complaint procedure. The Council held a meeting of officers to decide how to respond to the complaint and asked Ms J to confirm she wanted to pursue the complaint. The Council said it would soon be sending Ms J a letter explaining its calculations and Ms J might want to read this before deciding.
39. At Ms J's request, the Council delayed sending this letter until early January 2014. In February the Council asked Ms J if she still wanted to pursue her complaint. Ms J said she was still waiting for a response to the complaint she had made to the chief executive in August 2013. The Council offered Ms J a meeting to discuss her complaint. It repeated its offer four weeks later, at the end of March. By this time the Council had also written to Ms J saying her financial returns were overdue – Ms J disputed this, saying she had posted them on time.
40. The Council met Ms J to discuss her complaint on 15 April. The Council has no notes of this meeting. Ms J sent clarification of her complaint following this meeting and Council officers met to discuss the complaint on 29 April. The Council sent its written response to Ms J's complaint on 16 May 2014.
41. In early June 2014 Ms J's new social worker tried to set up a meeting with Ms J to discuss her direct payments and review her support plan. Ms J responded on 2 July. She did not feel able to meet with a new professional to discuss a situation which was causing her significant distress.

Ms J's support plan

42. Ms J's support plan sets out the tasks with which she needs help. It says this will be delivered by a daily morning and evening call from a carer, which totals 7 hours a week, and by a personal assistant providing 15 hours of support a week. It is not clear how this number of hours of personal assistant support has been calculated. The total weekly budget for this (at November 2013) is £253.10 a week.
43. The support plan does not outline any other form of support to be met from Ms J's personal budget.

Calculation of Ms J's contribution to her budget (November 2013)

44. First the Council considered Ms J's income. It deducted some of her disability benefits and her savings (which are too low to be significant). This gave a figure of £234.15 for her total income.
45. Then the Council considered items which Ms J has to pay for because of her disability (that is, DRE), and items which she has to pay for as a householder. The Council added these expenses to the part of Ms J's income which is 'protected' so she has enough to live on. This gave a figure of total allowances of £197.37.

46. The Council deducted the total allowances from the total income. This gave a figure of £36.78 for Ms J's contribution to her budget.

47. The dispute here arises from the calculation of Ms J's DRE. The Council has included:

- £5 a week for laundry, and
- £5 a week for garden maintenance.

And these figures are clearly marked as such.

48. It has also included a list of figures marked 'Any other'. These figures include disposable gloves and nappy sacks (£1.69 a week) and a list of equipment which averages £10.46 a week.

49. It is not clear if the Council has included:

- transport costs – an ambulance is not always available to take Ms J to appointments and activities
- assistance dog costs
- visiting costs – that is, the extra charge professionals make to visit Ms J, because she cannot easily travel to their premises
- the cost of complementary therapies which ease Ms J's condition
- domestic costs such as window-cleaning, which Ms J cannot do herself and which is not one of the tasks listed for her personal assistant or carers, and
- delivery costs for items which Ms J cannot easily leave the house to buy.

50. Ms J had provided the Council with information about these costs. The Council said they could not be met from her DPs, which were intended only to meet the costs of her care. It is not clear whether the Council considered including them as DRE.

Conclusions

Record-keeping

51. The Council has failed to keep adequate records. It cannot provide:

- Ms J's care needs assessment
- records of meetings, or
- confirmation of whether the APB of November 2011 was correct or not.

52. The Council has not provided Ms J with clear information about its assessments and calculations. Some of its attempts to do this simply fail to make sense.

53. These failings are fault.

DRE and charging

54. It is not our role to arbitrate on what amounts to DRE. But the Council has not properly considered Ms J's DRE in accordance with *Fairer Charging*. This calls into question its financial assessment of Ms J.
55. The Council does not have a list of what it will and will not class as DRE. This is not fault, because *Fairer Charging* is clear that the Council needs to be flexible on this, and it cannot be flexible if it works to a list.
56. But *Fairer Charging* is also clear that any additional expenses claimed in relation to a person's disability should be considered. The Council is not taking sufficient account of the impact of Ms J's disability on what she is able to do.
- Ms J physically cannot travel to a location and then wait for a professional to see her, because she cannot easily travel by car, and is not able to wait for an appointment standing or sitting. So she incurs costs associated with the professional visiting her at home which arise from her disability.
 - The responsibilities of Ms J's personal assistants are not clear. If their duties include tasks which Ms J cannot do, such as cleaning windows or visiting shops, this should be clear in the support plan, and part of the calculation of hours of support Ms J needs. If their duties do not include these tasks, then the costs of hiring other help or having purchases delivered arise from Mrs J's disability.
57. So these costs are not a 'lifestyle choice'. They arise directly from Ms J's disability and should be considered as DRE. The Council's failure to accept such costs as DRE is fault.

Ms J's support plan

58. In 2012, the Council reviewed Ms J's care needs by speaking to her care provider. It was not fault to consult the care provider. But it was fault not to put the service-user at the heart of the review.
59. As we have said, Ms J's support plan is not clear on the duties of her personal assistants. It is also not clear on other support to meet her needs.
- The plan does not include complementary therapies, which provide Ms J with some respite from the pain associated with her condition. They are therefore activities which improve her quality of life and can legitimately form part of her support plan.
 - The plan does not identify the purpose of vocal coaching and swimming lessons. If these are activities to improve her mental and physical health, and reduce her isolation, these are grounds to include the whole cost of the activity, not just the transport cost.
 - Ms J says she has trained her dog as an assistance dog, in which case it should be identified in her support plan and the associated costs included in her personal budget. If the Council does not accept the dog is an assistance dog, it should record the reasons why. It could still take the view that the dog has a role in promoting Ms J's

mental health (by providing company) and physical well-being (as she can sometimes mobilise to exercise it herself).

60. A support plan is not just about calculating the number of hours of support with personal care a service user needs. It is about meeting the needs of the individual. The Council's failure to take a person-centred approach in preparing Ms J's support plan is fault.

Monitoring of DPs

61. There is no documentary evidence that a social worker told Ms J to avoid the charge for her care by reducing the hours of care she purchased. However the fact that Ms J reduced the hours of care she purchased does suggest that she was told this. And irrespective of this, the Council should have seen within a matter of weeks that Ms J was not paying her contribution into the DPs bank account. The Council's failure to deal with this straight away was fault.
62. The guidance is clear that if financial monitoring and review of the care arrangements are not done by the same officer, councils should ensure they exchange information. So the delay from November 2011 to April 2013 in updating its own records about Ms J's personal budget was also fault.
63. The failure to inform Ms J of the change to her assessed charge in November 2011 was further fault. This was compounded by the Council backdating the charge when it did finally update its records some 18 months later. The Council has not sought to recover unpaid charges from Ms J but its administrative faults here have caused her significant stress.

Complaint handling

64. The Council did not follow its complaints procedure when Ms J complained.
- it did not provide a local resolution or written response within 20 working days
 - when Ms J said she was not happy with the Council's response to her complaint, it did not begin an independent investigation, and
 - the Council did not reach a final view of the complaint and signpost Ms J to the Ombudsman within six months.
65. Instead, the Council attempted to resolve the complaint by arranging meetings with Ms J. This failed to take account of the impact of Ms J's disabilities on her ability to participate in such meetings.
66. These failings are fault.

Injustice

67. Because of the Council's faults, Ms J:
- does not have a support plan which adequately reflects her needs
 - has not had an accurate financial assessment since 2010, and is likely to have been wrongly charged

- has had less care and support than she should have had, from 2011, both because she could not afford the support she needed, and because she has had to use her personal assistants to help her pursue her complaint
- has lost trust in the Council, and
- has suffered significant avoidable distress and frustration, which has affected her mental health.

Ms J is an extremely vulnerable service-user. Her disability leaves her isolated and entirely dependent on others, and she does not have an informal network of support she can turn to in times of extra need. She has also been affected over a number of years by the Council's fault. Our *Guidance on Remedies* is clear that such circumstances justify a greater remedy than would usually be the case.

Decision

68. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms J. The Council should take the action identified in paragraph 70 to remedy that injustice

Recommendations

69. To put right the injustice arising from the fault we have identified, the Council should:
- apologise to Ms J
 - confirm immediately that it will not seek to reclaim any unpaid contributions from Ms J, and write off any debts it is currently attempting to recover
 - arrange for an independent social worker to carry out a new care needs assessment and prepare a new support plan, without delay
 - set up a clear working agreement for future reviews and monitoring
 - reconsider Ms J's DRE and provide a clear explanation of why it does not consider some costs arise from her disability
 - pay Ms J:
 - £5,000 to acknowledge the impact on her of being without adequate care and support for over two years
 - £2,000 to acknowledge the avoidable distress and frustration the Council's faults have caused her.
70. The Council has accepted our recommendations to remedy the complaint. It should confirm it has taken the action within three months of the date of this report.